

BOTSWANA DEFENCE FORCE ACT, 2018

No. 3



of 2018

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An Act to provide for the establishment, administration, recruitment, conditions of service, training, command, discipline and employment of the Botswana Defence Force; to declare offences, restrictions and penalties; to make provision for trials by court-martial and for appeals therefrom; to prevent the unauthorised wearing or use of military uniforms, decorations, medals or badges, and the unauthorised use of certain military documents; and for matters incidental to the foregoing and connected therewith.

Date of Assent: 27/03/2018

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana

PART I

Preliminary (ss 1 – 7)

1. This Act may be cited as the Botswana Defence Force Act, 2018, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —

Interpretation

“active service” shall be construed, in relation to any unit or part of the Defence Force, that it is engaged in operations against the enemy, and, in relation to a person, that the person is serving in or with a unit or part of the Defence Force which is on active service;

“acting rank” means a rank higher than the member’s substantive rank to which the member may be appointed to act but the member receives financial compensation of the substantive rank;

“aircraft” means any fixed or rotary wing flying machines, guided missiles that derive their lift in flight chiefly from aerodynamic forces, and flying devices that are supported chiefly by their buoyancy in the air, and includes any aeroplane, kite balloon, airship, glider or kite;

“aircraft material” includes —

- (a) parts of, and components of or accessories for, aircraft, whether for the time being in the aircraft or not;
- (b) engines, armaments, ammunition and bombs, and other missiles of any description in, or for use in, aircraft;
- (c) any other gear, apparatus or instruments in, or for use in, aircraft;
- (d) any apparatus used in connection with the taking-off or landing of aircraft or for detecting the movement of aircraft;
- (e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

“air signal” means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;

“appointment” includes a transfer, a promotion, a temporary appointment and an acting appointment;

“appropriate superior authority” in relation to an officer charged with an offence means —

- (a) in the case of officers of the rank of Colonel, an officer of the rank of Major General and above;
- (b) in the case of officers of the rank of Lieutenant-Colonel, an officer not below the rank of Brigadier within the member’s command; or
- (c) in the case of officers of the rank of Major, any officer not below the rank of Colonel within the member’s command;

“Auxiliary Force” means a military or para-military type augmentation force which shall be called primarily for protection and other duties to allow the Regular Force to conduct combat and offensive operations;

“before the enemy” means that a person being in reasonable tactical proximity to enemy or opposition forces while engaged in active kinetic military operations;

“billeting” means lodging of troops provided by the Defence Force;

“billeting order” means an order directing that such lodging be provided;

“Board of Enquiry Rules” means rules made by the President under section 225;

“civil court” means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside Botswana;

“civil offence” has the meaning assigned to it in section 155;

“classified information” means any information whose unauthorised disclosure would prejudice security of the Defence Force, national security and includes information on strategy, doctrine, capability, capacity, acquisition, plans (including operational plans and orders), deployment of the Defence Force;

“command” means —

- (a) a military order by any person whose rank, position, appointment or duty entitles the member to give the order;
- (b) as applied to the authority of an officer, warrant officer or non-commissioned officer deriving from the member’s military status;
- (c) a geographical area, of given boundaries, in which troops are stationed and may contain districts, areas, or further sub-divisions; and
- (d) a body of troops over which an individual has direct authority, and in the case of a battalion commander it includes the person’s unit;

“The Commander” means the person appointed under section 27;

“Commander in Chief” means the President as defined in the Constitution of Botswana;

- “commanding officer” —
- (a) means the officer who is the commanding officer of a person for the purposes of any provision made by or under this Act;
 - (b) when used in relation to a member of the Defence Force, means the officer prescribed by regulations as having powers of command over that person; or
 - (c) in relation to a person charged with an offence, means the officer for the time being commanding the Unit or detachment to which the person belongs or is attached;
- “competent military authority” means the Defence Council or any officer as may be prescribed;
- “corresponding civil offence” has the meaning assigned to it in section 155;
- “court administration officer” means an officer appointed under section 170;
- “court-martial” means a military court established under section 168;
- “damage” includes destruction, and references to damaging shall be construed accordingly;
- “date of attestation”, in relation to any person, means the date on which the person attests in accordance with the provisions of regulations made under this Act;
- “day’s pay” means the annual pay divided by the number of days in the year;
- “decoration” includes medal, medal ribbon, clasp and good-conduct badge, honour badge;
- “Defence Council” means the Defence Council established under Part IV;
- “Defence Force” means the Botswana Defence Force continued under section 8;
- “Department of Defence” means the Department responsible for Defence in the Ministry responsible for Defence;
- “desertion” shall be construed in accordance with section 81;
- “detachment” means a part of a unit which is so separated from the unit to which it belongs that the officer commanding that unit cannot effectively exercise disciplinary powers as commanding officer over it;
- “detention” refers to a period of confinement at a designated detention facility and includes —
- (a) a punishment,
 - (b) confinement during trial, or
 - (c) confinement prior to sentencing by court-martial or the High Court;
- “discharges” means —
- (a) separation of a member from duty in the Defence Force,
 - (b) discharging a member on other than honourable grounds, and
 - (c) cashier or to dismiss a member with ignominy or disgrace;

“duty” means military duty and includes —

- (a) every duty which an officer or soldier may legally be required by superior authority to execute;
- (b) when in the actual exercise of command, the commander of a post, or of a command, or of a detachment in the field is constantly on duty, as is the commanding officer on board a vessel;
- (c) in the case of other officers or soldiers, duty relates to duties of a routine or detail, in garrison, at a station or in the field, and does not relate to those periods when, no duty being required of them by orders or regulations, officers and soldiers occupy the status of leisure known as “off duty” or “on liberty”;
- (d) in a region of active hostilities, all members of a command may properly be considered as continuously being on duty within the meaning of this Act; and
- (e) an officer of the day and members of the guard, or of the watch, are on duty during their entire tour within the meaning of this Act;

“employee” means a person appointed to the Department of Defence in terms of the Public Service Act and or any other law that may be in force from time to time, or any person regarded as having been appointed to the Defence Secretariat;

“enemy” includes —

- (a) all persons engaged in armed operations or hostilities against the Defence Force and any forces co-operating therewith;
- (b) all armed mutineers, armed rebels and armed rioters; and
- (c) entities engaged in hostile actions against the state and its interest;

“field rank” means the rank of major and any higher rank, and “field officer” shall be construed accordingly;

“fraternisation” means personal relationships in the Defence Force that contravene the customary bounds of acceptable senior-subordinate relationships and includes —

- (a) improper relationships or social interaction between officers, between officers and soldiers or between soldiers;
- (b) actions that have the potential to adversely affect morale, discipline, respect for authority, unit cohesion or mission accomplishment, such as:
 - (i) officers gambling with soldiers,
 - (ii) officers borrowing money from soldiers and vice versa,
 - (iii) officers engaging in sexual relations or dating soldiers and vice versa,
 - (iv) officers sharing living accommodation with soldiers, or
 - (v) officers engaging, on a personal basis, in business enterprises with soldiers, or soliciting sales to or from soldiers;

- “full time staff of the Reserve Force” means staff engaged on a full time and defined basis and receiving pay for that engagement in the Reserve Force;
- “Imprisonment” refers to a period of confinement in a military prison following conviction by court-martial or the High Court;
- “Imprisonment and Detention Regulations” means regulations made under section 224;
- “judge advocate” means a person appointed as such under section 175;
- “judge advocate general” means a person appointed as such under section 248;
- “local rank” means a rank to which an officer or a member of the Force may be appointed, higher than the member’s substantive rank, which is neither a substantive rank nor an acting rank, which does not entitle the member to any increase in pay or other financial benefit, and which is made in circumstances where there is no vacancy in the establishment for officers or members of such rank, but where the officer or other member is required to perform the duties of such rank;
- “military” shall be construed as relating to all or any part of the Botswana Defence Force;
- “member” means officer or soldier of the Regular Force of the Defence Force, Defence Force reserve, Auxiliary Force or the Volunteer Force;
- “military police” means members subject to this Act with powers of policing within military jurisdiction;
- “Minister” means the Minister responsible for Defence;
- “non-commissioned officer” means a soldier holding the rank of staff sergeant or below and does not include a soldier of the rank of private or equivalent;
- “officer” or “commissioned officer” means:
- (a) a member who holds a presidential commission in the Botswana Defence Force;
 - (b) any person who pursuant to law is attached or seconded as an officer to the Botswana Defence Force; but does not include a person who is —
 - (i) appointed to honorary commissioned rank, or
 - (ii) the holder of an honorary appointment;
- “operational service” means military operations to the exclusion of operations on active service involving the possibility of engaging an enemy, a combatant, belligerent, armed opponents or other hostiles by members of the Defence Force;
- “other ranks” means soldiers or members of the Defence Force who are not officers;
- “pay” means basic salary plus allowances, entitlements and privileges;
- “prescribed working days for members of the Defence Force” means the number of working days a member of the Defence Force is presumed to be at work and is equal to the number of calendar days in the year:

- Provided that members will be reasonably afforded free days or passes on weekends and public holidays as applicable, unless otherwise required to be on duty;
- “promote” means to raise a member to a higher rank;
- “provost-marshal” means the prescribed officer having command over provost officers and other ranks of the Military Police, who is also the head of the Military Police of the Defence Force;
- “provost officer” means an officer appointed to exercise the provost functions conferred by or under this Act;
- “provost” means relating to the Military Police;
- “public property” means any property belonging to any department of the Government or held for the purposes of any such department;
- “rank” includes —
- (a) acting rank;
 - (b) field rank;
 - (c) local rank; and
 - (d) substantive rank;
- “recruiting officer” means a member authorised to arrange for the entry of persons as members in the Defence Force as such under section 36;
- “Regular Force” means the Regular Force of the Defence Force referred to in section 8 (2);
- “Reserve Force” means the Defence Force Reserve referred to in section 8 (2);
- “Repealed Act” means the Botswana Defence Force Act repealed under section 350;
- “Rules on the Use of Force” means pre-approved directives, rules or orders to guide the Defence Force on the use of force during various operations in self-defence or to accomplish their mission, primarily in domestic or internal operations or in operations in support of civil authority;
- “Rules of Engagement” means pre-approved directives, rules or orders to guide the Defence Force on the use of force during various operations in self-defence or to accomplish their mission against an adversary, primarily in operations outside of Botswana;
- “Rules of Procedure” means the Rules of Procedure made by the President under section 223;
- “service”, when used adjectively, means belonging to or connected with the Defence Force or any part of the Defence Force, or any force co-operating therewith;
- “service”, when used as a noun, means a particular kind of duty;
- “soldier” does not include an officer but, with the modifications contained in this Act in relation to Warrant Officers and non-commissioned officers, includes a Warrant Officer and a non-commissioned officer;

“stoppages” means the recovery, by deductions from the pay of the offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

“substantive rank” means a permanent rank held by a member which is not acting or local rank;

“summary trial” means a trial conducted by or under the authority of a commanding officer or appropriate superior authority in accordance with Summary Jurisdiction Regulations;

“unit” means —

(a) a battalion, regiment, air squadron or any equivalent body of troops; or

(b) any other body of the Defence Force declared to be a unit;

“Volunteer Force” means a force which may be raised from time to time as may be required to augment the Defence Force;

“war” means, armed conflict, armed invasion or armed insurrection or is at war, and for which the Defence Force has been employed for service in the defence of the State, and any period during which the State is under threat of war; and

“Warrant Officer” means a soldier holding the rank of Warrant Officer Class I or Warrant Officer Class II;

(2) References in this Act to officers and soldiers of the Defence Force shall be construed as including references to officers and soldiers attached or seconded to the Defence Force.

3. (1) Subject to section 44, the following persons are subject to this Act —

(a) officers and soldiers of the Regular Force;

(b) officers and soldiers when attached to the Defence Force or any part thereof;

(c) officers and soldiers of the Reserve Force when deployed in terms of section 312, 313 or 319;

(d) officer cadets;

(e) officers and soldiers of the Auxiliary Force referred to in section 8 (2); and

(f) officers and soldiers of the Volunteer Force referred to in section 8 (2);

(2) This Act shall apply to persons subject thereto both inside or outside Botswana notwithstanding their attachment under section 10 or 17.

4. (1) Where it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary in the public interest that a unit should be deemed to be on active service, he or she may declare that for such period, not exceeding six months beginning with the coming into force of the declaration as may be specified therein, that unit shall be deemed to be on active service.

Persons
subject to
this Act

Provisions
as to active
service

(2) Where it appears to the President necessary in the public interest that the period specified in a declaration under subsection (1) should be prolonged, or, if previously prolonged under this section, should be further prolonged, he or she may declare that the said period shall be prolonged by such period, not exceeding six months, as may be specified in the declaration under this subsection.

(3) If any time while a unit is deemed to be on active service by virtue of this section it appears to the President that there is no longer necessity for the unit to continue to be treated as being on active service, he or she may declare that from the coming into operation of the declaration the unit shall cease to be deemed to be on active service.

(4) Any declaration under this section shall be by proclamation published in the *Gazette*.

Protection of
members on
active or
operational
service

5. (1) For the purposes of this section “member” includes an employee deployed with the Defence Force.

(2) Where a member of the Defence Force has been captured or has gone missing in circumstances not constituting an offence under this Act, and the member’s commanding officer is satisfied that the member’s capture or absence arose from the performance of the member’s duties while rendering services in terms of this Act, such member shall be regarded to be still serving in the Defence Force for all purposes until the day on which he or she again reports for duty or on which his or her death is confirmed or on which a competent court issues an order whereby the death of such member is presumed.

(3) The pay or any portion thereof accruing to a member during his or her captivity or other absence contemplated in subsection (2) may be paid to a beneficiary designated by the member concerned.

(4) The Commander shall take the necessary steps to ensure that for every member of the Defence Force, there is at all times a record of the particulars of the beneficiary designated by such member for purposes of subsection (3).

(5) A member of the Defence Force may designate another person in the place of the person designated for purposes of subsection (3) and shall ensure that any change in designation is notified to the Commander in writing.

(6) Any change in designation becomes valid for purposes of subsection (3) when it is received by or on behalf of the Commander.

No
appropriations,
seizures,
attachments, etc.

6. Notwithstanding any other law relating to the protection of citizens, no appropriations, including seizures or attachments, may be made under or by virtue of any writ of execution, garnishee or sequestration order issued against a member of the Defence Force who is employed on active service during a state of emergency or in fulfilment of peace support operations, except appropriations under or by virtue of a maintenance order issued against the said member.

7. (1) A member of the Defence Force who, through no misconduct on the member's part, sustains a wound or injury or contracts an illness while on military service or undergoing training is, under such conditions and for such period as may be prescribed, entitled to be provided with medical, dental and psychological or other necessary treatment for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond that member's service contract.

Injury or illness
on military
service

(2) A member who is receiving the treatment referred to in subsection (1) shall receive the member's pay and allowances on their becoming due and such period of treatment shall for all purposes be regarded as duty.

PART II

Establishment of the Defence Force (ss 8 – 17)

8. (1) The Botswana Defence Force established under the Repealed Act is hereby continued under this Act.

Establishment
and maintenance
of the Defence
Force

(2) The Defence Force shall consist of —

- (a) the Regular Force of the Defence Force;
- (b) the Defence Force Reserve and may include a Volunteer Force of the Defence Force; and
- (c) the Auxiliary Force.

(3) The Defence Force shall consist of such number of members as shall be determined by the President from time to time.

(4) Such components of the Defence Force referred to in subsection (2) may be formed into units or other military bodies as the President may from time to time determine.

(5) The Defence Force shall be organised, trained, equipped and armed to pursue its mandate and shall procure such armament as may be required for the effective fulfilment of its mandate.

9. The Defence Force shall defend the Republic of Botswana and provide for her security, participate in external security cooperation activities, and contribute in domestic support operations, with the aim of —

Functions of
the Defence
Force

- (a) protecting the Constitution of the Republic of Botswana;
- (b) defending territorial integrity of the Republic of Botswana on land, in the air and at sea;
- (c) contributing to national security and stability;
- (d) protecting national interests of the Republic of Botswana;
- (e) protecting the people and their property;
- (f) preserving the Republic of Botswana as a free, independent and sovereign state;
- (g) aiding civil authorities in domestic support operations; and
- (h) performing such other duties as may from time to time be determined by the President.

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Employment of the Defence Force outside Botswana

10. The President may order that the whole or any part of the Defence Force shall be employed out of or beyond Botswana.

Availability of members of the Defence Force for military duties

11. (1) Members of the Defence Force shall at all times be available for the discharge of such functions referred to in sections 9 and 10 and shall be deemed to be on duty, unless otherwise authorised.

(2) For the fulfilment of subsection (1), members of the Defence Force shall be required, under prescribed circumstances, to be at prescribed places at prescribed times.

(3) Special permission by a competent military authority under such circumstances shall be required if a member is to be exempt from the provisions of subsection (1).

Deployment of the Defence Force

12. (1) For purposes of sections 9 and 10, the whole or any part of the Defence Force may be deployed.

Obligation to serve during a state of emergency

13. (1) Subject to this Act, every person who is contracted to serve in the Defence Force is obliged to serve and remain in service during a state of emergency or when so required.

(2) Nothing in this section may be construed as prohibiting an application for exemption or deferment of service by a member of the Defence Force in terms of this Act.

Oaths and administration of oaths

14. The following persons shall not enter upon duties until they have taken or subscribed the oath of allegiance —

- (a) a person who becomes a member of the Botswana Defence Force;
- (b) a person being commissioned as an officer for service in the Defence Force;
- (c) a member subject to this Act who is promoted to the rank of Warrant Officer Class 2 and above in the case of Other Ranks and to the rank of Major and above in the case of officers; and
- (d) a member assuming responsibility requiring him or her to take an oath.

Authority to administer oaths

15. The following members are authorised to administer oaths in the Defence Force —

- (a) officers of the rank of Captain and above; and
- (b) Warrant Officers.

Limitation of liability

16. The Commander or any member of the Defence Force shall not be liable for any action or proceedings for any act or matter done in good faith in the exercise of the powers under this Act.

Overseas training, duty and employment

17. (1) The Commander may order that any officer or soldier of the Regular Force, or, with the person's consent, any officer or soldier of the Defence Force Reserve and any officer or soldier of the Auxiliary Force shall proceed to any place outside Botswana for the purpose of undergoing instruction or training or for duty or employment.

(2) The Commander may order officer cadets to proceed for training outside Botswana.

(3) The President may, if the consent of the officer or soldier concerned is first obtained, place any officer or soldier of the Defence Force at the disposal of military authorities of any other country for the purpose of his or her being attached to the armed forces of that country.

PART III

Military Lands (ss 18 – 21)

18. (1) Land that has been granted for use by the Defence Force in terms of the Tribal Land Act, the State Land Act or any other written law shall be declared or zoned as “military land”.

Power to acquire land for use by the Defence Force
Cap. 32:02
Cap. 32:01

(2) “Military land” may not be converted for use for any other purpose except for military use or for the benefit of the Defence Force without the authority of the President.

19. (1) The President may declare land, garrisons, installations, properties, etc. to be a protected place and or restricted area in accordance with sections 4 and 5 of the Protected Places and Areas Act.

Declaration of military land, garrisons, installations, properties etc. as a protected place or area
Cap. 22:01

(2) Such land, place or area may have a buffer zone or an associated restricted airspace as may be determined.

20. (1) The Defence Force may lease or borrow from any person, body of persons, or authority holding land in any capacity for private or public purposes, such land for use for military purposes.

Power to let, lease, borrow and use land

(2) A lease, letting or borrowing under this section shall cease to have effect if the land ceases to be used for military purposes.

21. Land acquired under section 20 may not be used for any other purpose unless as so authorised by the President.

Use of land for military purposes

PART IV

Defence Council (ss 22 – 25)

22. (1) There shall be a Defence Council which shall, subject to the provisions of this Act and to the general or special directions of the President, be responsible for the control, direction, and general superintendence of the Defence Force.

The Defence Council

(2) The responsibility of the Defence Council shall not extend to the operational use of the Defence Force, which shall remain vested in the President who may delegate such responsibility as he or she may think fit to the Commander.

- (3) The Defence Council shall consist of the following members –
- (a) Minister responsible for Defence who shall be the Chairperson;
 - (b) Minister responsible for Finance;
 - (c) the Permanent Secretary to the President;
 - (d) Attorney General;
 - (e) Permanent Secretary in the Ministry responsible for Defence;

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- (f) Permanent Secretary in the Ministry responsible for Finance;
- (g) the Commander and the Deputy Commander, who shall be ex-officio members; and
- (h) such other persons as the President may, from time to time, appoint.
- (4) Ex-officio members shall not have voting rights.
- 23.** (1) The Defence Council may establish committees for the effective discharge of its functions.
- (2) The Defence Council may co-opt into the membership of the committees established under subsection (1) other persons whose knowledge and skills are considered necessary for the functions of the Council.
- (3) Any person co-opted into a committee of the Defence Council under subsection (2) may attend the meetings of the Council and participate in its deliberations, but shall not vote.
- 24.** (1) The Defence Council shall regularly review the pay, allowances, entitlements, rewards and other conditions of service of members of the Defence Force and make recommendations to the President.
- (2) The Minister shall recommend to the President allowances and other conditions of service of the Defence Council.
- 25.** The business and affairs of the Defence Council shall be conducted in accordance with Schedule 1.
- Committees of the Defence Council
- Determination of pay, allowances and other conditions of service
- Conduct of business of the Defence Council

PART V
Command (ss 26 – 31)

- 26.** Pursuant to Section 48 (1) of the Constitution of Botswana, the President is the Commander in Chief of the Armed Forces.
- 27.** (1) The President shall appoint the command of the Defence Force which shall include an officer to be the Commander, the Deputy Commander, and Command Commanders.
- (2) The Commander, the Deputy Commander and Command Commanders shall have such ranks and titles and fulfil such duties and functions as may be determined by the President.
- (3) The command of the Defence Force shall vest in the Commander and the Commander may make such leadership and other appointments of officers and warrant officers as may be necessary for the proper functioning of the Defence Force.
- Commander in Chief of the Armed Forces
- Appointment of Command of the Defence Force

(4) The Commander may delegate to any officer under his or her command such duties, functions and powers, other than such power of delegation, as he or she may from time to time deem expedient.

(5) A delegation or assignment under subsection (4) shall not prevent the Commander from exercising the duties, functions and powers in question in person.

28. (1) Officers of the rank of Lieutenant-Colonel and above shall be appointed by the President.

Appointment
of officers

(2) Officers of the rank of Major and below shall be appointed by the Commander.

29. The Commander shall —

Functions of the
Commander

(a) plan, direct and conduct all military operations as strategic military commander;

(b) command the Defence Force;

(c) be the principal military advisor to the President and Minister;

(d) report to the President and Minister on operational and administrative matters of the Defence Force;

(e) be responsible for implementing the deployment of members of the Defence Force as directed by the President;

(f) formulate military policy and strategy;

(g) ensure the effective utilization of resources and the education, training and development of all members of the Defence Force; and

(h) perform any other function as may be assigned by the President, the Minister, the Defence Council or any other written law.

30. Officers and soldiers of the Defence Force shall stand with each other in order of rank and seniority or in such order of precedence as may be prescribed by the President.

Command and
precedence

31. (1) Officers of the rank of Major and above who have retired from the Defence Force, may retain the use of their rank after they have so retired, but shall append the appellation “Retired” or “Rtd” whenever it is used in writing.

Use and
retention
of rank on
retirement

(2) A retired officer shall forfeit his or her rank and status —

(a) after conviction by a civil court where the said conviction results in a custodial sentence; or

(b) when it has been determined that the continued use of that rank by such person is likely to bring disrepute to the Defence Force.

(3) Notwithstanding subsection (1) and (2), a retired officer may request to resign his or her commission.

(4) If the President considers it expedient in the public interest, he or she may by Order prohibit a person referred to in subsection (2) from purporting to be still holding such rank or status.

(5) A person who contravenes an Order referred to in subsection (4) commits an offence and shall be triable by civilian court and liable to a fine not exceeding P2 000 or to a term of imprisonment not exceeding two years, or to both.

PART VI

Cooperation With Other Authorities (ss 32 – 33)

Cooperation
with other
authorities

32. The Defence Force shall —

- (a) in the interest of national security, co-operate and work with other security organs in the discharge of its mandate;
- (b) assist and co-operate with other authorities in situations of emergency or disaster; and
- (c) on the orders of the President, be deployed to restore peace, law and order in any part of Botswana affected by unrest or instability.

Use of the
Defence Force
in support of
the Police
Cap. 21:01

33. (1) The Commander may, at the request of the Commissioner of Police, and with the consent of the President, authorise the use of any member or unit of the Defence Force in support of, or to give assistance to, the Botswana Police Service in the discharge of their functions under section 6 of the Police Act.

(2) A member of the Defence Force acting pursuant to an authorisation under subsection (1) shall have and may exercise all the powers of a police officer of corresponding authority.

PART VII

Relations With Other Forces (s 34)

Powers of
command of
members of
cooperating
forces

34. (1) In so far as the powers of command depend on rank, a member of a military force from any country outside Botswana who is —

- (a) acting with; or
 - (b) a member of a body of those forces which is acting with
- any body in the Defence Force shall have the same powers as a member of the Defence Force of corresponding rank, and for the purposes of sections 30 and 34 (3), any such member of the said forces shall be treated as if he or she were a member of the Defence Force of corresponding rank.

(2) If the whole or any part of the Defence Force is required to act with any other military, naval or air force the President may place the Defence Force or such part thereof under the command of the officer commanding such other force.

(3) Where any part of the Defence Force is acting in cooperation with any other force, the Commander or the officer commanding that part of the Defence Force may, in agreement with the officer commanding that other force, define the powers of command and the order or precedence of the officers and other ranks of the Defence Force in relation to the officers and other ranks of such other force.

PART VIII
*Limitations of Fundamental Rights and Freedoms of
 Persons Subject To This Act (s 35)*

35. (1) Nothing contained in or done under the authority of this Act shall be held to be inconsistent with the fundamental rights and freedoms set out in Chapter II of the Constitution of Botswana if reasonably necessary and justified for purposes peculiar to military service to ensure —

Conditions for
 limitations of
 fundamental
 rights and
 freedoms

- (a) the defence and protection of the sovereignty and territorial integrity of the Republic of Botswana;
- (b) the security and safety of members of the Defence Force;
- (c) the training and readiness of members of the Defence Force;
- (d) the good order and service discipline;
- (e) the security and protection of information within the Defence Force;
- (f) the interests of defence, national security, public safety, public order, public morality or public health;
- (g) the protection of the rights and freedoms of other members including the right to observe and practice religion, belief, opinion without the unsolicited intervention of members of another religion;
- (h) the protection of the reputations, rights and freedoms of other persons or the private persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts martial;
- (i) the technical administration or the technical operation of telecommunication, posts, wireless broadcasting, communication, internet, satellite communication or television; and
- (j) the mandate of the Defence Force.

(2) Acts reasonably necessary and justified for purposes peculiar to military service include the imposition of limitations upon a person subject to this Act.

(3) Without derogating from the generality of subsection (2) —

- (a) limitations reasonably necessary and justified for purposes peculiar to military service include limitations on a person subject to this Act with respect to —
 - i. the right to reside at a location of their choice,
 - ii. the right to unionise,
 - iii. the right to demonstrate,
 - iv. the right to picket,
 - v. the right to petition public authorities on military matters, and
 - vi. any such rights which may be determined to be prejudicial to the functioning, readiness and discipline of the Defence Force except for concerns properly directed to the Defence Council or through rightful authorities under the protections of the Whistleblowing Act; and

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- (b) the Defence Force shall be entitled, with respect to a person subject to this Act, to —
- i. inspect and search the person's home or property,
 - ii. seize property under a search referred to in paragraph (i),
 - iii. demand personal information relating to the person's family or private affairs, and
 - iv. investigate or otherwise interfere with the privacy of the person's communications.

(4) The limitations referred to in subsection (3) (a) (ii), (iii), (iv), (v) and (vi) shall not apply to joining or participation in the activities of professional associations by a person subject to this Act.

(5) A person subject to this Act shall not be regarded as having been deprived of his or her right to protection from slavery, servitude or forced labour if his or her labour is required in pursuance of training or military duties.

(6) A person subject to this Act shall not be regarded as having been deprived of his or her right to life if he or she dies as a result of a lawful execution of duty or any act of war.

PART IX

Enlistment, terms of service, etc. (ss 36 – 43)

Enlistment

36. (1) A member shall be enlisted in the Regular Force on such terms and conditions as may be prescribed.

(2) The President may make regulations, for the enlistment of members in the Regular Force.

(3) The regulations may —

- (a) require the enlistment of members in the Regular Force to be undertaken by recruiting officers;
- (b) appoint recruiting officers;
- (c) prohibit the enlistment of members under the age of 18, but greater than the age of 17, without the consent of prescribed persons;
- (d) deem a person, in prescribed circumstances, to have attained or not to have attained the age referred to in paragraph (c);
- (e) determine the procedure for enlistment (including requiring a recruiting officer to attest the enlistment);
- (f) determine approval for service of members who have enlisted;
- (g) determine the validity of a member's enlistment, including provision —
 - (i) as to when, how and on what basis the validity of a member's enlistment may be challenged,
 - (ii) deeming a member, in prescribed circumstances, to have been validly enlisted,
 - (iii) conferring on a member a right to discharge in prescribed circumstances, or
 - (iv) as to the status of a member until the person is discharged.

(4) Where the regulations referred to in this section create an offence they may provide that the offence —

- (a) is a service offence and is punishable by any punishment mentioned in accordance with the Act; or
- (b) is triable by a civilian court in Botswana.

37. (1) The President may by regulations or delegate this his or her authority to the Minister, with respect to the terms and conditions of enlistment and service of members enlisting, or who have enlisted, in the Regular Force.

Terms and conditions of enlistment and service

- (2) The regulations may in particular make provisions for —
 - (a) specifying the duration of the term for which a member is enlisted (whether by reference to a number of years or another criterion or both);
 - (b) requiring any such term to be one of service with the Regular Force, or to be in part service with the Regular Force and in part service with the Reserve Force;
 - (c) enabling a member to end his or her service with the Regular Force at a prescribed time, or to transfer at a prescribed time to the Reserve Force;
 - (d) imposing a service obligation under certain circumstances;
 - (e) restricting a member, in consideration of the acceptance by him or her of any benefit or advantage, from exercising any right referred to in paragraph (c);
 - (f) enabling a member enlisted for a term of service of a prescribed description to be treated as if he or she had enlisted for a term of service of a different description;
 - (g) enabling a member to extend or reduce the term of his or her service (whether with the Regular Force or the Reserve Force, or both);
 - (h) enabling a member to continue in service after completion of the term of his or her service;
 - (i) enabling a member in the Reserve Force to re-enter service with the Regular Force;
 - (j) enabling a member to restrict his or her service to service in a particular area; or
 - (k) requiring a member who has restricted his or her service to service in a particular area to serve outside that area for a number of days in any year not exceeding a prescribed maximum.
- (3) The exercise of any right conferred on a member by virtue of subsection (2) may be made subject to prescribed conditions.
- (4) The President may by regulations make provision, enabling —
 - (a) a member of the Regular Force of or below the rank of Warrant Officer, or
 - (b) a member of the Reserve Force of or below the rank of Warrant Officer who is permanent on call-out under any provision of the Reserve Force regulations,
 to be transferred between units without his or her consent.
- (5) Regulations under subsection (4) may in particular make provision for varying the terms and conditions of service of a member transferred between units.

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Forfeiture of service due to desertion and absence without leave

- 38.** (1) The President may by regulations make provision —
- (a) with respect to the making of a confession by a member of the Regular Force that he is guilty of an offence under section 81;
 - (b) for the making of a determination as to whether a trial may be dispensed with in the case of a member who makes such a confession; and
 - (c) for the forfeiture of a period of service of such a member where a trial is so dispensed with.
- (2) The President may by regulations make provision, for the forfeiture of a period of service of a member of the Regular Force who is convicted of an offence under section 81.
- (3) Regulations under subsection (1) or (2) may include provision for enabling a determination to be made in prescribed circumstances restoring (in whole or in part) a forfeited period of service.

Discharge, etc. from the Regular Force and transfer to the Reserve Force

- (4) The President may by regulations make provision with respect to —
- (a) the issue of a certificate of absence for a member of the Regular Force absent without leave for more than a prescribed period; and
 - (b) the effects of such a certificate (in particular in connection with the pay and allowances of the member for whom it is issued).
- 39.** (1) The President may by regulations make provision with respect to —
- (a) the discharge of members of the Regular Force; and
 - (b) the transfer of such members to the Reserve Force.
- (2) The regulations may in particular make provision with respect to —
- (a) the convening of boards for administrative separations; and
 - (b) the status of a member who is entitled to be, but has not yet been, discharged or transferred to the Reserve Force.

Administrative reduction in rank

- (3) The regulations may in particular make provision conferring on a Warrant officer (other than an acting Warrant officer) a right to be discharged —
- (a) following the member's reduction in rank; or
 - (b) following the member's reduction in rank in prescribed circumstances.
- (4) The regulations may also in particular make provision enabling —
- (a) the discharge of a member from the Regular Force (including by virtue of subsection (3));
 - (b) the transfer of a member to the Reserve Force, to be postponed in prescribed circumstances; or
 - (c) the convening of boards for administrative separations.
- 40.** (1) The rank of a Warrant officer or non-commissioned officer may be reduced only by an order made by that member's commanding officer.
- (2) Subject to subsection (3), an order of a commanding officer reducing the rank of a Warrant officer or non-commissioned officer (hereinafter referred to as "an order reducing rank") may not be made without the permission of higher authority.

(3) The permission of higher authority is not required for an order reducing rank if —

- (a) the member whose rank is to be reduced is a lance corporal; or
- (b) the commanding officer making the order is of or above the rank of Brigadier.

(4) Nothing in this section applies to a reduction in rank by virtue of a sentence imposed pursuant to the court-martial.

(5) Nothing in this section applies in relation to the reversion of a member, otherwise than on account of his or her conduct, from his or her acting rank to his or her substantive rank.

41. (1) The Defence Council shall make recommendations to the President with respect to pay, allowances, entitlements, discretionary payments, and awards or decorations for members of the Regular or Reserve Force.

Pay, allowances,
entitlements
and rewards

(2) A provision made under this section may in particular —

- (a) prescribe pay, allowances, entitlements, discretionary payments and awards or decorations;
- (b) provide for the way in which pay, allowances, entitlements and discretionary payments are to be paid; or
- (c) impose conditions or restrictions on the making of such payments, awards or decorations.

(3) Provision that may be made by virtue of subsection (2) (b) includes in particular provision authorising the making of a deduction from a payment to a member —

- (a) for anything (including any service) supplied to him or her;
- (b) in order to recover any overpayment or advance; or
- (c) in order to reclaim any authorised payment.

(4) For the purposes of subsection (3) (c) a payment is authorised if —

- (a) it was made on condition that it would or might be repayable in specified circumstances; and
- (b) any such circumstance has occurred where the purpose of such payments has not been fulfilled in the discretion of the Defence Council.

(5) A provision under this section may not authorise the forfeiture of pay.

(6) Section 327 applies in relation to provisions under this section.

(7) Nothing in this section prevents provision as to rates of allowances from being made otherwise than under this section.

42. (1) An officer shall retire from the Force on attaining the age of 60 years provided that:

Retirement of
officers

- (a) an officer of the rank of Major General and above shall retire from the Force on attaining the age of 62 years; and
- (b) military medical officers, lawyers and chaplains shall retire from the Force upon attaining the age of 65 years:

Provided that an officer of the rank of Brigadier and above may, at the officer's own request, be permitted by the President, or at the request of the President, and with the officer's consent, continue in the Force until such age, not exceeding the age of 65 years, as the President, considers necessary or desirable, bearing in mind the exigencies of the Force, the officer's efficiency and experience and the difficulty of replacing him or her within a reasonable time.

(2) An officer may, at his or her own request, be permitted by the Commander, or at the request of the Commander, and with the officer's consent, continue in the Force until such age, not exceeding an additional five years, as the Commander, considers necessary or desirable, bearing in mind the exigencies of the Force, the officer's efficiency and experience and the difficulty of replacing him or her within a reasonable time.

(3) An officer who has attained the age of 45 years may, at the discretion of the President in the case of an officer of or above the rank of lieutenant-colonel, or of the Commander, in the case of any other officer, be required to retire from the Force.

(4) An officer shall be required to retire from the Force —

- (a) on being given a one month's notice, if the officer is found by a medical evaluation board and a physical evaluation board to be unfit for further service; or
- (b) on being given one month's notice in writing by the Commander, if —
 - (i) there is no establishment for him or her in the officer's present rank, or
 - (ii) there are no reasonable future prospects of promotion.

(5) An officer shall have the right to retire on or after completing 20 years pensionable service, or on or after attaining the age of 45 years, by giving six months' notice in writing to the Commander, of his or her intention to do so, and on repaying to the Government any amount which he or she is liable to repay to the Government under the Act:

Provided that —

- (a) the President, in the case of officers of the rank of Major General and above or the Commander, in the case of any other officer may vary the period of notice as circumstances may require; and
- (b) if such notice is given whilst the officer is on active service, or whilst he or she is under the orders of a superior office to hold himself or herself in readiness for such active service, the member's retirement shall not take effect until a period of one month has elapsed from the date on which such active service is completed or on which such orders are rescinded.

Retirement of
soldiers

43. (1) A soldier of the rank listed in the first column hereof shall retire from employment in the Force upon attaining the age specified in the second column in relation to the rank:

Rank	Retirement age
Private	45 years
Lance Corporal	47 years
Corporal	52 years
Sergeant	54 years
Staff Sergeant	56 years
Warrant Officer Class II	58 years
Warrant Officer Class I	60 years

- (2) Notwithstanding subsection (1), a soldier may —
- (a) in such manner as may be prescribed and with the agreement of the Commander resign from the Force at an earlier age than 45 years or less than 20 years of service; or
- (b) retire at any time on or after completing 20 years pensionable service or on or after attaining the age of 45 years, other than a soldier belonging to the rank of Private, by giving six months' notice in writing to the Commander, of his or her intention to do so:

Provided that —

- (a) the Commander may vary the period of notice as circumstances may require; and
- (b) if such notice is given whilst a soldier is on active service, or whilst he or she is under the orders of a superior officer to hold himself or herself in readiness for such active service, the member's retirement shall not take effect until a period of one month has elapsed from the date on which such active service is completed or on which such orders are rescinded.

(3) Notwithstanding subsection (1), a soldier may, at his or her own request, be permitted by the Commander, or at the request of the Commander, and with the soldier's consent, continue in the Force until such age, not exceeding an additional four years, as the Commander, considers necessary or desirable, bearing in mind the exigencies of the Force, the soldier's efficiency and experience and the difficulty of replacing him within a reasonable time.

PART X

Discipline and Trial and Punishment of Military Offences

(ss 44 – 226)

Treachery, Cowardice and Offences arising out of Military Service

(ss 44 – 66)

- 44.** The following persons are subject to this Part —
- (a) members of a Regular Force of the Defence Force, including —
- (i) those awaiting discharge after expiration of their terms of enlistment,
- (ii) inductees of the Defence Force from the time of their actual induction into the Defence Force, and

Persons subject
to this Part

(iii) other persons lawfully called or ordered into, or to duty in or for training in, the Defence Force, from the dates when they are required by the terms of the call or order to obey it;

- (b) members of the Volunteer Force;
- (c) officer cadets;
- (d) members who have retired from the Regular Force who are entitled to pay;
- (e) retired members of the Reserve Force who are receiving hospitalisation in the Defence Force;
- (f) members of the full time staff of the Reserve Force;
- (g) persons in custody of the Defence Force serving a sentence imposed by the court-martial;
- (h) prisoners of war and other persons in custody of the Defence Force; and
- (i) any civilian personnel or contractors when accompanying the Defence Force during active or operational service.

Application of Act to civilians in support of or who accompany the Force in deployment on active service

45. (1) This Part shall apply, with the following modifications, to any person who accompanies the Defence Force on deployment or active service, who would otherwise not be subject to this Act.

- (2) The modifications referred to in subsection (1) shall be as follows —
 - (a) the punishments which may be awarded by the court-martial shall include a fine, but shall not include any other punishment less than imprisonment;
 - (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding P5 000 but no other punishment;
 - (c) the following provision shall have effect in substitution for section 158, that is to say, that a person may be arrested by a provost officer, by any Warrant officer or non-commissioned officer legally exercising authority under a provost officer or on the member's behalf, or by order of any officer subject to this Act;
 - (d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure;
 - (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences, shall, except as otherwise expressly provided, apply as they apply to soldiers; and
 - (f) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer of a civilian to whom this section applies shall be the officer for the time being commanding the unit or detachment in which that person is employed or which he or she accompanies.

(3) Any fine awarded under this Act, whether by the court-martial or the commanding officer, shall be recoverable summarily on complaint by any officer of the Defence Force before a magistrate's court as a debt due to the Government.

46. The provisions of Part X relating to the award of fines and stoppages, and Part XII, shall not apply to officers and soldiers of the Reserve Force except when employed in terms of section 312, 313 or 319.

Application of Act to Reserve Force

47. Principal offenders are any persons subject to this Act or any person who —

Principal offenders

(a) commits an offence punishable by this Act, or aids, abets, counsels, commands, or procures its commission; or

(b) causes an act to be done which if directly performed by him or her will be punishable under this Act as a principal offender.

48. A person subject to this Act or a person who, knowing that an offence punishable under this Act has been committed, receives, comforts or assists the offender in order to hinder or prevent his or her apprehension and trial and punishment commits an offence and shall be punishable under this Act.

Accessory after the fact

49. An accused may be found guilty of an offence necessarily included in the offence charged or of an attempt to commit either the offence charged or an offence necessarily included therein.

Conviction of lesser included offences

50. A person subject to this Act who attempts to commit an offence against any of the foregoing provisions of this Part, commits an offence and shall on conviction by court-martial or the High Court be liable to the like punishment as for that offence:

Attempts

Provided that if the offence is one punishable by death the person shall not be liable to any greater punishment than imprisonment.

51. (1) A person subject to this Act who with intent to assist the enemy —

Aiding the enemy

(a) abandons or delivers up any place or post which it is the person's duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend;

(b) does any act calculated to imperil the success of operations of the Defence Force, or of any forces cooperating therewith, or any part of the Defence Force or of those forces;

(c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage;

(d) furnishes the enemy with arms or ammunition or with supplies of any description or with anything likely to assist him or her (whether similar to any of the things aforesaid or not);

(e) harbours or protects an enemy not being a prisoner of war;

(f) gives any false air signal or alters or interferes with any air signal or any apparatus for giving air signal; or

(g) when ordered by a superior officer, or otherwise under orders to carry out any warlike operation in the air fails to use his utmost exertions to carry out such orders into effect, commits an offence and shall on conviction by court-martial or the High Court be liable to the death penalty or any other punishment provided by this Act.

(2) A person subject to this Act who knowingly and without lawful excuse does any of the acts specified in subsection (1) shall, where it is not proved that the person acted with intent to assist the enemy, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act.

(3) A person subject to this Act who negligently causes the capture or destruction by the enemy of any aircraft or vessel belonging to the Defence Force or any forces co-operating therewith, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act.

Failure to take essential security measures

52. (1) A person subject to this Act who, during an operation or in any other service circumstances, fails to —

- (a) take reasonable precautionary or security measures necessary to safeguard the lives and health of persons and animals; or
- (b) maintain in good order or ensure the safety of the depots, installations, works, resources or other objects, for which the person is responsible, thereby hazarding them,

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding one year or to any less punishment provided under this Act.

(2) Where the offence in subsection (1) is committed in time of emergency, general mobilisation or war, the offence is punishable with imprisonment —

- (a) in the case of intentional failure; or
- (b) not exceeding three years in the case of negligence.

Conspiracy

53. A person subject to this Act who conspires with any other person to commit an offence shall, if one or more of the conspirator does an act to effect the object of the conspiracy, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Spying

54. A person who is found lurking as a spy in or about any place, vessel or within the jurisdiction of the Defence Force, commits an offence and shall on conviction by court-martial or the High Court be liable to the death penalty or any less punishment provided by this Act.

Espionage

55. (1) A person subject to this Act who with intent or reason to believe that it is to be used to the injury of the Defence Force or the Republic of Botswana or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit to any entity either directly or indirectly anything described in this section commits an offence and shall on conviction by court-martial or the High Court be liable to the death penalty or any less punishment provided by this Act.

- (2) In this section —
- (a) “any entity” means —
- (i) a foreign government,
 - (ii) a faction, party, military or naval force within a foreign country, whether recognized or unrecognized by the Republic of Botswana, or
 - (iii) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force; and
- (b) “anything” means document, writing, code book, signal book, sketch, photograph, photolineart negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defence.

56. (1) A person subject to this Act who, with intent to assist the enemy, communicates with or gives information or intelligence to the enemy commits an offence and shall on conviction by court-martial or the High Court be liable to the death penalty or any less punishment provided by this Act.

Communication
with the enemy

(2) A person subject to this Act who without authority communicates with or gives intelligence to the enemy commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act.

(3) In this section the expression “intelligence” means processed information, electronic or otherwise, which is or purports to be information as to any matter such that information about it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid —

- (a) the number, description, armament, equipment, disposition, movement or condition of the Defence Force or of any forces co-operating therewith, or any aircraft of the Defence Force or aircraft or vessel of any such co-operating forces;
- (b) any operations or projected operations of any such forces, aircraft or vessel;
- (c) any oral, written, or electronic information;
- (d) any measures for the defence or fortification of any place;
- (e) the number, description or location of any prisoners of war; or
- (f) ammunitions of war.

57. (1) A person subject to this Act who when before the enemy —

Cowardly
behaviour

- (a) leaves his or her post, position or other place where it is the person’s duty to be; or
 - (b) throws away the person’s arms, ammunition or tools, in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice,
- commits an offence.

(2) A person subject to this Act who when before the enemy induces any other person subject to this Act to commit an offence under subsection (1) commits an offence.

(3) A person who contravenes a provision of subsections (1) or (2) shall on conviction by court-martial or the High Court be liable to the death penalty or any less punishment provided by this Act.

Offences
against morale

58. A person subject to this Act who —

- (a) disseminates (whether orally, in writing, by signal or otherwise) reports relating to operations of the Defence Force or of any forces co-operating therewith, or of any part of the Defence Force or any of those forces, being reports calculated to create despondency or unnecessary alarm; or
- (b) when before the enemy uses words calculated to spread despondency or unnecessary alarm,

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act.

Prisoner of
war

59. A person subject to this Act who, through disobedience to orders or wilful neglect of his or her duty, is captured by the enemy commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by the Act.

Offences by
or in relation
to sentries, etc.

60. (1) A person subject to this Act who while on guard duty —

- (a) sleeps at his or her post;
- (b) when not on duty at his or her post, is asleep at a time when he or she is not allowed to be asleep;
- (c) is drunk; or
- (d) leaves his post without having been regularly relieved, or otherwise absents himself or herself from any place where it is his or her duty to be,

commits an offence.

(2) For the purposes of this section a person shall be deemed to be drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other substances, the person is unfit to be entrusted with his or her duty or with any duty which he or she may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit to the Defence Force.

(3) Any person subject to this Act who strikes or otherwise uses force against another person on guard duty, being a member of the Defence Force or of any forces co-operating with the Defence Force, or who by the threat of force compels any such person to let him or her or any other person pass, commits an offence.

(4) A person who contravenes a provision of this section shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence is not committed on active or operational service he or she shall not be liable to imprisonment for more than two years.

(5) In this section reference to a person on guard duty are references to a person who —

- (a) is posted or ordered to patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol, for the purpose of protecting any person, premises or place.

(6) The foregoing provisions of this section shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises or place, or regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

61. A person subject to this Act who —

- (a) steals from, or with intent to steal searches the person of, anyone killed or wounded in the course of warlike operations;
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or
- (c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

commits an offence of looting and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act.

Looting

62. A person subject to this Act who neglects to perform or performs negligently any duty lawfully imposed on that person commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Neglect of duty

63. (1) A person subject to this Act commits an offence if he or she, being an officer or soldier, on active or operational service not otherwise in command —

- (a) disobeys orders to carry out an operation of war or, on coming into contact with an enemy that it is the duty of the officer or soldier to engage, does not bring the vessel, aircraft or other material into action;
- (b) improperly withdraws from the action; or
- (c) improperly forsakes his or her post.

(2) A person who contravenes a provision of subsection (1) shall on conviction by court-martial or the High Court be liable —

- (a) if the officer or soldier acted traitorously, to the death penalty;
- (b) if the officer or soldier acted from cowardice, to imprisonment for life or less punishment; or
- (c) to imprisonment for life or any less punishment provided by this Act, in any other case.

Offences by officer or soldier when on active or operational service

64. (1) A person who is subject to this Act commits an offence if that person, being in command of any aircraft, vessel, vehicle or establishment of the Defence Force —

Offences by person in command when on active or operational service

- (a) fails to use the person's utmost exertions to bring into action any aircraft, vessel, vehicle or any part of the Defence Force that it is the person's duty to bring into action;
- (b) surrenders to the enemy any aircraft, vessel, vehicle of the Defence Force, any establishment or any part of an establishment of the Defence Force, when it is capable of being successfully defended or destroyed;
- (c) fails to pursue an enemy whom it is the person's duty to pursue, or to assist to the utmost of the person's ability any member of a friendly force whom it is the person's duty to assist; or
- (d) in the course of any action by or against the enemy, improperly abandons his or her command.

(2) A person who contravenes a provision of subsection (1) shall on conviction by court-martial or the High Court be liable to the death penalty —

- (a) if the person acted traitorously, to death penalty or any other punishment provided by this Act if the offence is committed with an intent to assist the enemy; or
- (b) if the officer or soldier acted from cowardice, to imprisonment for life or less punishment; or
- (c) in any other case any less punishment.

Misconduct on active or operational service

65. A person who is subject to this Act, who fails, if not in command of any aircraft, vessel, vehicle or establishment of the Defence Force, to use the person's utmost exertions to carry out lawful orders of superior officers into execution when ordered to prepare for action by or against the enemy or during any such action, commits an offence and shall on conviction by court-martial or the High Court be liable —

- (a) to the death penalty or any less punishment provided by this Act if the offence is committed with intent to assist the enemy; or
- (b) to imprisonment for life or any less punishment provided by this Act, in any other case.

Offences of torture or cruel treatment

66. (1) A person subject to this Act shall not subject another person to torture, cruel, inhuman or degrading treatment.

(2) A person subject to this Act who subjects another person to torture commits an offence and shall on conviction by court-martial or the High Court be liable to a fine not exceeding P10 000 or imprisonment for a term not exceeding five years or both.

(3) A person subject to this Act who subjects another person to cruel, inhuman or degrading treatment commits an offence and shall on conviction by court-martial or the High Court be liable to a fine not exceeding P5 000 or imprisonment for a term not exceeding two years or both.

(4) In this section —

- (a) “cruel, inhuman or degrading treatment” means a deliberate and aggravated treatment or degrading punishment not amounting to torture, inflicted by a person in authority or the agent of the person in authority against a person under his or her custody, causing suffering, gross humiliation or debasement to the person; and
- (b) “torture” means any act by which severe pain or severe suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of —
 - (i) obtaining information or a confession from the person or from a third person,
 - (ii) intimidating or coercing that person or a third person, or
 - (iii) for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence acting of a public official or other person in an official capacity,
 but shall not include reasonable activities undertaken for purposes of training and discipline.

Mutiny, Sedition and Insubordination (ss 67 – 80)

- 67.** (1) A person subject to this Act who —
- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy, or the impeding of the performance of any such duty or service;
 - (b) incites any person subject to this Act to take part in a mutiny, whether actual or intended, by publishing or circulating any writing, printing, or document in whatever form, including electronic form or by teaching or advocating the use of force;
 - (c) seduces any member of the Defence Force from his or her duty and allegiance to the President; or
 - (d) fails to do his or her utmost to prevent and suppress a mutiny or sedition being committed in his or her presence, or fails to take all reasonable means to inform his or her superior commissioned officer or commanding officer of a mutiny or sedition which he or she knows or has reason to believe is taking place,
- commits an offence and shall on conviction by court-martial or the High Court be liable to the death penalty or any less punishment provided by this Act.

Mutiny and
insubordination

(2) A person subject to this Act who, in a case not falling within subsection (1), takes part in a mutiny, or incites any person subject to this Act to take part in a mutiny, whether actual or intended, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act.

(3) In this section “mutiny” means a combination of between two or more persons subject to this Act, or between persons two at least of whom are subject to this Act —

- (a) to overthrow or resist lawful authority in the Defence Force or any forces co-operating therewith or in any part of the Defence Force or any of the said forces;
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or
- (c) to impede the performance of any duty or service in the Defence Force or in any forces co-operating therewith or in any part of the Defence Force or any of the said forces.

Sedition

68. (1) A person subject to this Act who with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority commits an offence of sedition and shall, on conviction by court-martial or by the High Court, be liable to the death penalty or any less punishment provided by this Act.

(2) In this section “sedition” means creating revolt, violence or disturbance against lawful civil authority.

Punishment for mutiny

69. A person subject to this Act, who, knowing that a mutiny is taking place or is intended —

- (a) fails to use utmost endeavours to suppress or prevent it; or
- (b) fails to report without delay that the mutiny is taking place or is intended,

commits an offence and shall on conviction by court-martial or the High Court be liable —

- (i) if the offence was committed with intent to assist the enemy to the death penalty or any less punishment provided by this Act,
- (ii) in any other case, to imprisonment or any less punishment provided by this Act.

Riot or breach of peace

70. A person subject to this Act who —

- (a) uses obscene, abusive or insulting language, to any person placed in authority over him or her in such a manner as is likely to cause a breach of the peace;
- (b) brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace; or
- (c) causes or participates in any riot or breach of peace,

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.

Contempt towards officials

71. A person subject to this Act who uses contemptuous words against the President, Vice President, Cabinet Ministers, Members of Parliament, Judicial Officer, or Dikgosi commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.

- 72.** (1) A person subject to this Act who —
- (a) strikes or otherwise uses violence to, or offers violence to, a superior officer; or
 - (b) uses threatening, or insubordinate language to a superior officer, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act:
- Provided that the person shall not be liable to be imprisoned for more than two years if the offence was not committed on active or operational service and did not involve the striking of or other use of violence, or offering of violence, to a superior officer exercising authority as such.
- (2) For purposes of this section “superior officer” means an officer, Warrant officer or non-commissioned officer of superior rank, and includes an officer, Warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as a member’s superior.
- 73.** A person subject to this Act who uses provoking or reproachful words or gestures to any other person commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.
- 74.** A person subject to this Act who fights or promotes or is concerned in or connives in fighting or duelling, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.
- 75.** A person subject to this Act who unlawfully strikes or uses violence against any person commits an offence and shall on conviction by court-martial or the High Court be liable, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- 76.** A person subject to this Act who commits an assault occasioning actual bodily harm commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding five years or any less punishment provided by this Act.
- 77.** A person subject to this Act who —
- (a) fights or quarrels with any other person whether subject to this Act or not; or
 - (b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause disturbance,
- commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- 78.** A person subject to this Act who obstructs or, when called upon, refuses to assist any person known to that person to be —
- (a) an officer, soldier, duty officer or officer of the patrol; or
 - (b) a person, whether subject to this Act or not, lawfully exercising authority under or on behalf of a military police, duty officer or officer of the patrol,
- commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Insubordinate
behaviour

Provoking
speeches or
gestures

Duelling

Unlawful use
of violence

Assault
occasioning
actual bodily
harm

Quarrelling

Obstruction
of officers,
soldier, etc.

A.82

Disobedience
to particular
orders

79. (1) A person subject to this Act who, in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him or her personally commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act.

(2) A person subject to this Act who, whether wilfully or through neglect, disobeys any lawful command commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offence was not committed on active service the person shall not be liable to imprisonment for a term not exceeding two years.

Disobedience
to standing
orders

80. (1) A person subject to this Act who contravenes, or refuses or fails to comply with, any provision of any standing or routine orders, being a provision that the person is aware of, or might reasonably be expected to be aware of, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) For the purposes of subsection (1), “standing or routine orders” means any order of a continuing nature, made for any formation or unit or body of service members, or for any command or other area, garrison or place, or for any ship train aircraft or vessel.

Desertion, Absence without Leave, etc. (ss 81 – 86)

Desertion

81. (1) A person subject to this Act who —

(a) deserts; or

(b) persuades or procures any other person subject to this Act to desert, commits an offence and shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:

Provided that the person shall not be liable to be imprisoned for more than two years unless —

(i) if the offence was in violation of paragraph (a), the person was on active or operational service or under orders for active or operational service at the time it was committed,

(ii) if the offence was in violation of paragraph (b), the person in relation to whom it was committed was on active or operational service at that time.

(2) For the purposes of this Act, a person deserts who —

(a) leaves the Defence Force or, when it is his or her duty to do so, fails to join or re-join the Defence Force, with (in either case) the intention, subsisting at the time of leaving or failure, or formed thereafter, of remaining permanently absent from his or her duty;

(b) being an officer, enlists in or enters any part of the Defence Force or other forces without having resigned his or her commission, or being a soldier enlists in or enters any part of the Defence Force or other forces without having been discharged from his previous enlistment; or

(c) absents himself or herself without leave when under orders to serve at any place outside Botswana or to avoid service or any particular service when before the enemy.

(3) Proof that a person has been absent from duty without leave for a period of 14 days or more shall be prima facie evidence of an intention to desert.

(4) In addition to or in lieu of any punishment authorised by sub-section (1), the court-martial or the High Court by which a soldier of the Regular Force is convicted of desertion may direct that the whole or any part of the person's service previous to the period for which the person is convicted of having been a deserter shall be forfeited.

82. (1) A person subject to this Act who, without authority —

- (a) fails to go to the appointed place of duty at the prescribed time;
- (b) leaves a place referred to in paragraph (a);
- (c) absents himself or herself or remains absent from his or her unit, organisation, or place of duty at which he or she is required to be at the prescribed time; or
- (d) persuades or procures any other person subject to this Act to be absent without leave,

Absence
without leave

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

(2) For purposes of this section a person shall be deemed to be absent without leave if such absence is for a period of six hours or more.

83. A person subject to this Act who —

- (a) knowingly assists any other person subject to this Act to desert or be absent without leave; or
- (b) knowing that any person subject to this Act has deserted or absented himself or herself without leave, or is attempting to desert or absent himself or herself fails to report that fact without delay, or fails to take any steps in his or her power to cause that person to be apprehended,

Assisting and
concealing
desertion and
absence without
leave

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

84. A person subject to this Act who, for the purpose of obtaining leave or prolonging the person's leave, knowingly makes any false statement, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Falsely obtaining
or prolonging
leave

85. A person subject to this Act who, without reasonable excuse, fails to attend any parade or any assigned duty of any description or leaves any such parade or duty before he or she is permitted to do so, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Failure to
perform
military or
assigned
duties

Missing movement

86. A person subject to this Act who through neglect or design misses the movement of a unit, aircraft or vessel in which he or she is required in the cause of duty to move commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.

Malingering and Drunkenness (ss 87 – 88)

Malingering

87. (1) A person subject to this Act who —

- (a) falsely pretends to be suffering from sickness, disability, mental lapse or derangement;
- (b) injures himself or herself with intent thereby to render himself or herself unfit for service, or causes himself or herself to be injured by any person with that intent;
- (c) injures another person subject to this Act, at the instance of that person, with intent thereby to render that person unfit for service; or
- (d) with intent to render or keep himself or herself unfit for service, does or fails to do anything (whether at the time of the act or omission the person is in hospital or not) whereby the person produces, or prolongs or aggravates, any sickness or disability,

commits an offence of malingering and shall on conviction by court-martial or the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

(2) In this section the expression —

- (a) “unfit” includes temporarily unfit; and
- (b) “injury” includes any disease and any impairment of a person’s physical or mental condition, and the reference to injuring is to be read accordingly.

Drunkenness or exceeding the prescribed limits

88. (1) A person subject to this Act who is drunk, whether on duty or not, commits offence of drunkenness and shall on conviction by court-martial or the High Court be liable to imprisonment for two years or any less punishment provided by this Act:

Provided that if the offence is committed by a soldier neither on active or operational service nor on duty the sentence imposed shall not exceed detention for a period of six months.

(2) For the purposes of subsection (1) a person commits an offence of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other substance, the person is unfit to be entrusted with the person’s duty or with any duty which the person may be called upon to perform, or behaves in a disorderly, nuisance, incapable, riotous manner or in any manner likely to bring discredit on the Defence Force.

(3) Notwithstanding the provisions of subsections (1) and (2), a person subject to this Act who having consumed alcohol or any drugs whether alone or in combination with any other substance —

(a) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner; or
 (b) operates or is in actual physical control of any vehicle, aircraft, or vessel,
 commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.

Offences relating to Property (ss 89 – 103)

89. A person subject to this Act who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to it being stolen or retained, commits an offence of robbery.

Definition of
Robbery

90. (1) A person subject to this Act who commits the offence of robbery shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding fifteen years or any less punishment provided by this Act.

Punishment for
robbery

(2) If the offender was armed with any dangerous or offensive weapon or instrument, or was in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he or she wounds, beats, strikes, or uses any other personal violence to any person, he or she shall be sentenced to a term of imprisonment of not less than 10 years.

91. (1) A person subject to this Act who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to it being stolen, commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding 14 years or any less punishment provided by this Act.

Attempted
robbery

(2) If the offender was armed with any dangerous or offensive weapon or instrument, or was in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the assault, he wounds, beats, strikes, or uses any other personal violence to any person, he or she shall be liable to a term of imprisonment of not less than 10 years.

92. A person subject to this Act who communicates threats to another person with the intention thereby to obtain anything of value or any acquaintance, advantage, or immunity commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of fourteen years or any less punishment provided by this Act.

Extortion

A.86

Unlawful sale, loss, damage, destruction or disposition of military property

93. (1) A person subject to this Act who without proper authority —

- (a) acquires or procures any military or public property;
- (b) sells or otherwise disposes of any military or public property;
- (c) wilfully or through neglect damages, destroys, or loses any military or public property; or
- (d) wilfully or through neglect causes to be lost, damaged, destroyed, sold, or wrongfully disposed of any military or public property,

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.

(2) In this section “military or public property” includes property of cooperating forces.

Loss or hazarding of aircraft, vessel or vehicle

94. A person subject to this Act who, either wilfully or negligently, causes or allows any aircraft, vehicle or vessel of the Defence Force to be captured, lost, destroyed, damaged, stranded or hazarded commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment —

- (a) for life or any less punishment provided by this Act, if the person acted wilfully or with wilful neglect; or
- (b) for a term not exceeding two years, in any other case.

Improper carriage of goods

95. A person subject to this Act who, being in command of an aircraft, vessel, ship or vehicle of the Defence Force or being a member of its crew, without lawful authority —

- (a) receives or permits to be received on board the aircraft, vessel, ship or vehicle any goods or merchandise intended for disposal or delivery by way of trade or business (whether on own account or on account of any other person), not being merchandise received in the course of salvage;
- (b) agrees to carry any goods or merchandise on board the aircraft, ship or vehicle in consideration of the payment of freight, or demands or receives any payment for such carriage; or
- (c) carries unauthorised goods,

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Larceny and wrongful appropriation

96. (1) A person subject to this Act who wrongfully takes, obtains, or withholds, by any means from the possession of the owner or the possession of any other person any money, personal property, or article of value of any kind —

- (a) with intent to permanently deprive or defraud another person of the use and benefit of property or to appropriate it to the person’s own use or the use of other person other than the owner, steals that property commits an offence of larceny; or
- (b) with intent to temporarily deprive or defraud another person of the use and benefit of the property or to appropriate it to the person’s own use or the use of other person other than the owner commits an offence of wrongful appropriation.

(2) A person subject to this Act who commits an offence under this section shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of ten years or any less punishment provided by this Act

97. A person subject to this Act who —

- (a) steals or fraudulently misapplies any property belonging to another person subject to this Act, or is concerned in or connives at stealing or fraudulent misapplication of any such property;
- (b) receives any such property knowing it to have been stolen or to have been fraudulently misapplied; or
- (c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to this Act,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

98. A person subject to this Act who wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.

99. A person subject to this Act who wilfully and maliciously burns or sets fire to the property of another, to service or government property commits an offence of arson and shall on conviction by court-martial or by the High Court be liable to be sentenced to life imprisonment or any less punishment provided by this Act.

100. A person subject to this Act who —

- (a) loses, or by negligence damages, any public or service property of which the person has the charge or which has been entrusted to the person's care or which forms part of property of which the person has the charge or which has been entrusted to the person's care;
- (b) is guilty of any act or neglect likely to cause damage or loss of any public or service property;
- (c) by negligence causes damage by fire to any public or service property;
- (d) loses, or by negligence damages, any clothing, arms, ammunition, explosives or other equipment issued to him for the person's use for military purposes;
- (e) fails to take proper care of any animal used in the public service which is in the person's charge; or
- (f) makes away (whether by pawning, selling, destruction or in any other way) with any service decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for the person's use for military purposes,

Offences in relation to property of members of Forces

Waste, spoilage, or destruction of property other than military property

Arson

Miscellaneous offences relating to property

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act:

Provided that it shall be a defence for any person charged under this section with losing any property, clothing, arms, ammunition or other equipment that the person took reasonable steps for the care and preservation thereof.

Housebreaking

101. A person subject to this Act who unlawfully enters a building, tent, barracks room, or other Defence Force structure with intent to commit a criminal offence therein commits an offence of housebreaking and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of fourteen years or any less punishment provided by this Act.

Breaking into building

102. A person subject to this Act who unlawfully enters a building, tent, barracks room, or other Defence Force structure commits an offence and shall on conviction by court-martial or by the High Court be liable to be sentenced to seven years imprisonment or any less punishment provided by this Act.

Criminal trespass

103. (1) A person subject to this Act who —
 (a) enters into or upon property in the possession of another with intent to commit an offence or to intrude upon the privacy of any person, woman or girl or to intimidate, insult or annoy any person lawfully in possession of such property; or
 (b) having lawfully entered into or upon such property unlawfully remains therein with intent thereby to intimidate, insult or annoy any such person or with intent to commit any offence or to intrude upon the privacy of any person, woman or girl,
 commits an offence of criminal trespass and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences relating to Billeting and requisitioning of Vehicles
 (ss 104 – 105)

Billeting offences

104. A person subject to this Act who —
 (a) knowing that no billeting requisition is in force under any written law authorising him or her to demand any billets, or that he or she is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them; or
 (b) takes or agrees to take, or demands, from a person on whom the person or any other person or any vehicle is or is to be billeted pursuant to a billeting requisition under any written law, any money or thing as consideration for not requiring, or ceasing to require, the accommodation for himself or herself or the said other person or standing room for the vehicle,

commits any offence against the personal property of the occupier of premises in which the person is billeted pursuant to a billeting requisition under any written law or of any other person being in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

105. (1) A person subject to this Act commits an offence if that person —

- (a) gives directions for the provision of a vehicle, or orders or procures another person to give them, knowing that no requisitioning order is in force authorising the person to give direction for the provision of that vehicle and that the person is not otherwise authorised to give such directions;
- (b) in purported exercise of powers conferred by a requisitioning order, takes or orders or procures any other person to take possession of a vehicle, knowing that no requisitioning order is in force under which the taking possession of the vehicle could be authorised or that the taking possession thereof is otherwise not authorised under such an order; or
- (c) takes or agrees to take, or demands, from a person any money or thing as consideration for directions, or any particular directions, for provision of a vehicle not being given, or for possession of a vehicle not being taken or not being retained, under a requisitioning order.

(2) Subsection (1) applies in relation to aircraft, vessels, boats, trains, railway rolling stock, horses, mules, donkeys, camels and other animals, food, forage and stores within the meaning of Part XIV, as it applies in relation to vehicles.

(3) A person who contravenes a provision of subsection (1) shall on conviction by the court-martial or the High Court be liable to imprisonment for a term not exceeding five years or any less punishment provided by this Act.

Offences in relation to requisitioning of vehicles

Offences Relating to Flying (ss 106 – 108)

106. A person subject to this Act who, either wilfully or by negligence, does any act or makes any omission in flying an aircraft of the Defence Force or an aircraft under the person's charge, or in the use of any such aircraft, or in relation to any such aircraft or to aircraft material, which causes or is likely to cause loss of life or bodily injury to any person commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for —

- (a) a term not exceeding ten years, if the person has not acted wilfully or with wilful neglect; or
- (b) life or any less punishment provided by this Act, in any other case.

Dangerous flying

A.90

Low flying **107.** A person subject to this Act who, being the pilot of an aircraft of the Defence Force or an aircraft under the person's charge, flies it at a height less than the prescribed height, except —
 (a) while taking off or landing; or
 (b) in such other circumstances as may be prescribed,
commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided under this Act.

Annoyance
by flying **108.** A person subject to this Act who, being the pilot of an aircraft of the Defence Force or an aircraft under the person's charge, flies the aircraft so as to cause, or as to be likely to cause, unnecessary annoyance to any person, commits an offence and shall on conviction by court-martial or by the High Court be liable, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences Relating to Detention and by, Persons in Custody
(ss 109 – 112)*

Irregular arrest
and
confinement **109.** (1) A person subject to this Act who, when another person subject thereto is under arrest —
 (a) unnecessarily delays the taking of such steps as it is the person's duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by the person's commanding officer, the Military Police or other appropriate authorities or tried by court-martial or by the High Court; or
 (b) fails to release, or effect the release of, that other person when it is the person's duty to do so,
commits an offence.

(2) A person subject to this Act who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer or other officer, or any Warrant officer, or non-commissioned officer, fails without reasonable cause to deliver —

- (a) at the time of the committal; or
- (b) if it is not practicable to do so at the time of the committal, then within 24 hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself or herself of the offence which the prisoner is alleged to have committed, commits an offence.

(3) Where any person is committed to the charge of a person subject to this Act who is in command of a guard, then if without reasonable cause that person does not as soon as the person is relieved from the person's guard and any further duty, or, if the person is not sooner relieved, within 24 hours after the committal, give to the officer to whom it is the person's duty to report —

- (a) a written statement containing so far as known to him or her the prisoner's name and the alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; and
- (b) if the person has received it, the report required under subsection (2), commits an offence.

(4) A person who contravenes a provision of this section shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

110. (1) A person subject to this Act who wilfully allows the escape of another person who is committed to the person's charge, or whom it is the person's duty to guard, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment or any less punishment provided by this Act.

Permitting
escape, and
unlawful
release, of
prisoners

- (2) A person subject to this Act who —
 - (a) without proper authority releases another person who is committed to the person's charge; or
 - (b) without reasonable excuse allows the escape of another person who is committed to the person's charge, or whom it is the person's duty to guard,
 commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

- 111.** A person subject to this Act who —
 - (a) resists arrest or breaks from lawful arrest;
 - (b) being concerned in any quarrel or disorder, refuses to obey the lawful order of any person senior in rank who orders him or her into arrest, or strikes or otherwise uses violence to, or offers violence to, any such person, whether or not the person is the person's superior officer; or
 - (c) strikes or otherwise uses violence to, or offers violence to, any person, whether subject to this Act or not, whose duty it is to apprehend or in whose custody the person is,
 commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Resistance
to arrest

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

112. A person subject to this Act who escapes from arrest, prison or other lawful custody (whether military or not) commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Escape from
confinement

Offences in Relation to Military Prisons (ss 113 – 115)

Prohibition of dangerous items, liquor, tobacco etc Cap. 63:04

113. A person who attempts to bring into a military prison or gives or attempts to give to a prisoner, a dangerous item, alcohol, unlawful drugs (as defined in Medicine and Related Substances Act) or intoxicating substances or tobacco, or other prohibited items or place any such in any place with intent that it shall come into the possession of a prisoner, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Unlawful communication with prisoners

114. A person who without lawful authority, communicates or attempts to communicate to a prisoner by a letter or any other form of communication, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Unauthorised entry into military prison

115. A person who without authority enters a military prison, or remains in a military prison after being requested to leave by the officer in charge or any person acting under the person's authority, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences in Relation to Courts Martial and Other Authorities
(ss 116 – 117)*

Offences in relation to courts-martial

- 116.** (1) A person subject to this Act who —
- (a) having been duly summoned or ordered to attend as a witness before the court-martial fails to comply with the summons or order;
 - (b) refuses to swear an oath when duly required by the court-martial to do so;
 - (c) refuses to produce any document in his or her custody or under his or her control which a court-martial has lawfully required him or her to produce;
 - (d) when a witness, refuses to answer any question which the court-martial has lawfully required him or her to answer;
 - (e) wilfully insults any person, being a member of the court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person while that person is going to or returning from the proceedings of the court; or
 - (f) wilfully interrupts the proceedings of the court-martial or otherwise misbehaves before the court,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

(2) Notwithstanding anything in subsection (1), where an offence against paragraph (e) or (f) is committed in relation to any court-martial held pursuant to this Act, the court, if of the opinion that it is expedient that the offender should be dealt with summarily by that court instead of being brought to trial before another court-martial or the High Court, may by order under the hand of the presiding officer order the offender to be imprisoned for a period not exceeding 21 days, or, in the case of a soldier, either to be imprisoned for such period or to undergo detention for such a period.

117. A person subject to this Act who in a judicial proceeding or in a course of justice wilfully and corruptly — Perjury

(a) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(b) in any declaration, certificate, verification, or statement under penalty of perjury, subscribes any false statement material to the issue or matter of inquiry,

commits an offence of perjury and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of seven years or any less punishment provided by this Act.

Miscellaneous Offences
(ss 118 – 154)

118. (1) A person subject to this Act who without authority discloses, whether orally, in writing, by signal, electronically or by any other means whatsoever, any information which is or purports to be information useful to an enemy commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Injurious
disclosures

(2) In this section the expression “information useful to an enemy” means information as to any matter such that information as to it would or might be directly or indirectly useful to an enemy, and in particular (but without prejudice to the generality of the foregoing provisions of this subsection) information as to any matter falling within the following paragraphs, being a matter such that information as to it would or might be useful as aforesaid —

(a) the number, description, armament, equipment, disposition, movement or condition of any part of the Defence Force or of any forces co-operating therewith, or any aircraft of the Defence Force or aircraft of any such co-operating forces;

(b) any operations or projected operations of the Defence Force or of any such forces or aircraft as aforesaid;

(c) any code, cipher, call-sign, password or countersign;

(d) any measures for the defence or fortification of any place;

(e) the number, description or location of any prisoners of war; or

(f) any munitions of war.

A.94

False answers
in attestation
papers

119. (1) A person appearing before a recruiting officer for the purpose of being enlisted in the Regular Force who knowingly makes a false answer to any question contained in the attestation paper and put to him or her by or by the direction of the recruiting officer, commits an offence and shall on conviction by court-martial or by the High Court be liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding three months, or to both.

(2) For the avoidance of doubt it is hereby declared that a person may be proceeded against under this section notwithstanding that the person has since become subject to this Act.

Fraudulent
enlistment,
appointment
or separation

120. A person who —

(a) procures his or her own enlistment or appointment in the Defence Force by knowingly making a false representation or deliberate concealment as to his or her qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(b) procures his or her own separation from the Defence Force by knowingly making a false representation or deliberate concealment as to his or her eligibility for that separation,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Effecting
unlawful
enlistment,
appointment
or separation

121. A person subject to this Act who effects an enlistment or appointment in or a separation from the Defence Force of any person who is known to him or her to be ineligible for that enlistment, appointment or separation commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.

Making of
false statements
on enlistment

122. (1) A person who, when before a recruiting officer for the purpose of being attested —

(a) knowingly makes a false answer to any question contained in the attestation paper put to him or her by the direction of the recruiting officer; or

(b) furnishes a false document,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for three months or to any less punishment provided by this Act.

(2) A person who furnishes any false information or false document, in relation to the enlistment of another person, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of less than two years or to any less punishment provided by this Act.

Failure to
protect classified
information

123. (1) A person who —

(a) fails to protect classified information;

(b) without proper authority enters, overflies or otherwise collects or gains access to classified information from specific classified facilities, installations or instruments of the Defence Force;

- (c) is in possession of, makes copies of, sketches, photographs, makes print-outs of, electronically or in any other manner records or obtains digital data from classified facilities, installations or instruments of the Defence Force; or
- (d) hands over or discloses to any person or loses or obtains from any member or employee of the Defence Force, copies, sketches, photographs, printouts, electronic or non-electronic recordings of the digital data referred to in paragraph (c),

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a period not exceeding 25 years, or any less punishment provided by this Act.

(2) For the purposes of this section —

- (a) “classified information” means information whose unauthorised disclosure would prejudice national security or security of the Defence Force; and
- (b) “information prejudicial to the security of the Defence Force” means information on strategy, doctrine, capability, capacity, acquisition, deployment or plans including operational plans and orders.

124. A person subject to this Act who, having been released from the Defence Force by reason of a sentence of the court-martial or by reason of misconduct, has afterwards been again enlisted in the Defence Force without declaring the circumstances of that release commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term not exceeding two years or to any less punishment provided by this Act.

Failure to declare circumstances for release from Defence Force

125. A person subject to this Act who is concerned with the enlistment of another person and who knows or has reasonable grounds to believe that by being enlisted that other person commits an offence under this Act commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years, or to any less punishment provided by this Act.

Offence in relation to enlistment

126. A person subject to this Act who —

- (a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to the person’s knowledge false in a material particular;
- (b) alters any service report, return, pay list or certificate or other service document, or alters any entry in such document, so that the document or entry is to the person’s knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is the person’s duty to preserve or produce;
- (c) with intent to defraud, fails to make an entry in any such document; or

Making of false documents

- (d) aids, abets, commands, counsels, procures or connives at the commission by another person subject to this Act of an offence against this section (whether or not the person knows the nature of the document in relation to which that offence will be committed),

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Fraud

127. A person subject to this Act —

- (a) who, knowing it to be false or fraudulent —
- (i) makes any claim against the Defence Force or any member thereof,
 - (ii) presents to any person in the civil or military service thereof, for approval or payment, any claim against the Defence Force, other entity or any member thereof, or
 - (iii) avails codes or gives access to unauthorised persons which results or may result in fraud;
- (b) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the Defence Force, other entity or any member thereof—
- (i) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements,
 - (ii) makes any oath to any fact or to any writing or other paper knowing the oath to be false, or
 - (iii) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;
- (c) who, having charge, possession, custody, or control of any money, or other property of the Defence Force, furnished or intended for the Defence Force, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt; or
- (d) who, being authorised to make or deliver any paper certifying the receipt of any property of the Defence Force furnished or intended for the Defence Force, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the Defence Force,

commits an offence and shall on conviction by court-martial or the High Court be liable to imprisonment for a term of seven years or any less punishment provided by this Act.

Forgery

128. A person subject to this Act who, with intent to defraud —

- (a) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change the other person's legal right or liability to the other person's prejudice; or

(b) utters, offers, issues, or transfer such a writing known by him or her to be so made or altered,
 commits an offence of forgery and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of five years or any less punishment provided by this Act.

129. (1) A person subject to this Act who —

- (a) for the procurement of any article or thing of value, with intent to defraud; or
- (b) for the payment of any past due obligation, or for any other purpose, with intent to deceive, makes, draws, utters, or delivers any cheque, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that cheque, draft, or order in full upon its presentment,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of five years or any less punishment provided by this Act.

(2) For the purposes of subsection (1) —

- (a) the making, drawing, uttering, or delivering by a maker or drawer of a cheque, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, shall be prima facie evidence of a person's intent to defraud or deceive and of the person's knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the cheque, draft, or order was not paid on presentment; and
- (b) the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that cheque, draft, or order.

130. A person subject to this Act who knowingly —

- (a) gives a false answer to any question set out in any document required to be completed; or
- (b) furnishes any false information or false document, in relation to the enlistment of that person,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of less than two years or any less punishment provided by this Act.

131. A person subject to this Act who without having ensured its accuracy, makes or signs a certificate relating to any aircraft, vehicle or vessels or any aircraft material of the Defence Force commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided under this Act.

Making, drawing
 or uttering
 cheque, draft
 or order without
 sufficient funds

False answers,
 information or
 documents

Inaccurate
 certification

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Scandalous
conduct of an
officer

132. A person subject to this Act who behaves in a scandalous manner, unbecoming the character of an officer, commits an offence and shall on conviction by court-martial or by the High Court be liable to be discharged with disgrace.

Illtreatment of
officers or men
of inferior rank

133. If —

(a) a person subject to this Act strikes or otherwise ill-treats any person also subject thereto of inferior rank or less seniority, or any soldier subject to this Act; or

(b) a Warrant Officer, non-commissioned officer subject to this Act strikes or otherwise ill-treats any person also subject thereto, being a Warrant Officer or non-commissioned officer of inferior rank or less seniority, or a soldier of the rank of private,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Abuse of
military
authority and
unlawful
command
influence

134. (1) A person subject to this Act who abuses or improperly uses his or her title, position or rank in a manner that —

(a) injures or adversely affects any other person;

(b) in relation to courts martial, summary proceedings or other investigations, coerces or attempts to coerce or, by any unauthorised means, influence the action of the court-martial, summary proceedings, any other military tribunal, investigations or any member thereof, in reaching the findings or sentence in any case or the action of any convening, approving, or reviewing authority with respect to such authority's judicial or administrative actions; or

(c) unduly or unlawfully influences,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding seven years or to any less punishment provided by this Act.

(2) A person subject to this Act who, in abuse of his or her commission or of the military authority conferred upon him or her, exempts from service a person who is legally under a liability to perform such service, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding seven years or to any less punishment provided by this Act.

(3) Where the offence referred to in subsection (2) is committed in time of emergency, general mobilisation or war, the person shall be liable to imprisonment for a term not exceeding ten years or to any less punishment provided by this Act.

Fraternisation

135. A person subject to this Act who fraternises with another person subject to this Act or employee of the Defence Force commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

136. (1) Sexual harassment of any person in the Defence Force, shall constitute an offence.

Sexual
harassment

(2) For the purposes of this section, “sexual harassment” means any unwanted, unsolicited or repeated verbal, non-verbal, or sexual advance, sexually derogatory statement or sexually discriminatory remark made by a person to another, or by a person in authority over another in the Defence Force, whether made in or outside the workplace, which is offensive, or objectionable to the recipient, which causes the recipient discomfort or humiliation, or which the recipient believes interferes with the performance of his or her job security or prospects, or creates a threatening or intimidating work environment.

(3) A person who contravenes a provision of subsection (1) shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

137. A person subject to this Act —

Adultery

(a) who is married, and engages in a sexual relationship with another person who is not the person’s spouse or is the spouse of another person; or

(b) who is not married and engages in a sexual relationship with another person who is married,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

138. (1) A person subject to this Act commits an offence if that person —

Offences
relating to
dual citizenship

(a) fails to disclose on enlistment or commissioning the fact that the person holds dual citizenship; or

(b) acquires dual citizenship while in service.

(2) A person who contravenes a provision of subsection (1) shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

139. (1) A person subject to this Act who, before, at, during or in anticipation of an examination cheats, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term, not exceeding two years or any less punishment provided by this Act.

Cheating in
examinations
and plagiarism

(2) A person subject to this Act who uses another person’s words or ideas as if they were his or her own and without acknowledging the source commits an offence of plagiarism and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(3) For purposes of subsection (1) —

(a) “cheating” includes any act or omission —

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- (i) through a fraudulent trick or device or in abuse of office or with intent to unjustly benefit any person, by which the person procures, a question paper or an answer script produced or intended to be used in an examination or graded exercise, or gives, allows to be given to another person, allows to be procured for another person or is in any way concerned in the unjust benefit, procurement or giving of such a paper or script, or
 - (ii) by any false pretence with intent to cheat or unjustly benefit the person or any other person or for any other purpose whatsoever, buys, sells, procures or otherwise deals with a question paper or answer script intended for use or represented as genuine in respect of a particular examination or graded exercise of persons; and
- (b) it shall be immaterial that the question paper or answer sheet concerned is proved not to be the one in question, or to be false, not genuine or not related to the examination.

Aiding, abetting,
counselling or
procuring

140. (1) A person subject to this Act who aids, abets, counsels or procures the commission by another person of an offence to which this Act applies, commits an offence.

(2) A person who contravenes a provision of subsection (1) may be charged, tried, including dealt with at a summary hearing and punished as a principal offender.

(3) A person subject to this Act who aids, abets, incites, counsels, procures or connives at the commission by another person of an offence under any of the provisions of this Part commits an offence and is liable to be charged, tried, and punished as a principal offender.

Disgraceful or
discreditable
conduct

141. A person subject to this Act who —

- (a) acts in a disorderly manner or in any manner likely to bring disgrace to or discredit the reputation of the Defence Force;
- (b) lends money to any person senior to him or her in rank or borrows money from or accepts any present from any person junior to him or her in rank;
- (c) incurs debt in or out of the Defence Force without any reasonable prospect or intention of paying the same or, having incurred any debt, makes no reasonable effort to pay the same;
- (d) puts himself or herself in a financially embarrassing position;
- (e) engages in disgraceful conduct;
- (f) if called upon by the Commander to furnish a full and true statement of his or her financial affairs, fails to do so; or
- (g) commits or fails to do certain acts though not specifically mentioned anywhere in this Act, but are of a nature likely to bring discredit to the Defence Force,

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

- 142.** A person subject to this Act who —
- (a) makes an accusation against any officer or soldier also subject thereto, which the person knows to be false or does not believe to be true; or
 - (b) in making a complaint in which the person thinks himself or herself wronged, makes a statement affecting the character of an officer or soldier also subject thereto, which the person knows to be false or does not believe to be true, or wilfully suppresses any material facts,
- commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.
- 143.** A person subject to this Act who, on receiving an order to submit to prophylaxis, inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any disease, except diseases precluded by any written law, wilfully and without reasonable excuse disobeys that order commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding two years or to any less punishment provided by this Act.
- 144.** A person subject to this Act who wrongfully uses, possesses, manufactures, distributes or introduces to any person or into an installation, vessel, vehicle or aircraft used by or under the control of the Defence Force a substance prohibited by the Medicine and Related Substances Act commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of five years or any less punishment provided by this Act.
- 145.** A person subject to this Act who refuses to undergo a drug test commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term of two years or any less punishment provided by this Act.
- 146.** A person subject to this Act who negligently, without lawful authority or reasonable cause fires or discharges munitions, ammunition from a weapon in his or her charge or entrusted to him or her, or which forms part of property within his or her charge or issued to him or her for his or her use for service purposes, commits an offence and shall on conviction by court-martial or by the High Court be liable, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- 147.** (1) A person subject to this Act, shall not, except with the written consent of the Commander and in accordance with such directions, if any, as the Commander may issue from time to time —
- (a) engage for profit in any business or occupation other than the person's official duties;
 - (b) be or become a director or engage directly or indirectly in the management or direction of any public company or syndicate; or
 - (c) engage in conflicting or any other activities as may be determined.

False
accusation, etc.

Offences in
relation to
inoculation, etc.

Wrongful use,
possession, of
controlled
substances
Act No. 8 of
2013

Refusal to
undergo drug
testing

Negligent or
unlawful
discharge

Unauthorised
engagement for
profit in trade
or business or
other activities

(2) For the purposes of this section the traditional practice of farming shall not be regarded as a business or occupation provided it is undertaken outside duty hours and does not affect the performance of the person's duties in any way.

(3) A person who contravenes a provision of subsection (1) commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

Restraint on release, communication and use of certain knowledge, skills, etc.

148. A person who engages in any activity that involves the release, communication, use of any knowledge or skills acquired by virtue of their previous employment in the Defence Force that might result in injurious disclosures or bring about harm to the Defence Force or against public interest or good or be interpreted in any way to be the release of classified information commits an offence and shall on conviction by court-martial or the High Court be liable to a term of imprisonment of fifteen years or any less punishment provided by this Act.

Prohibition and restriction of retired and former members from employment by foreign governments and other entities, etc

149. (1) A former member or employee of the Defence Force shall not without the permission of the Minister, procure employment with a foreign government or such other entities as may be determined by the Defence Council.

(2) A former member or employee of the Defence Force shall not, during a period of two years after his or her separation with the Defence Force contract for the supply of goods and services with the Defence Force.

(3) Notwithstanding the provisions of subsection (2), the Defence Force, may enter into a contract of employment with a former member or employee of the Defence Force.

(4) A person who contravenes provisions of subsection (1) commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for a term not exceeding ten years.

Active participation in politics

150. (1) A person subject to this Act shall not —

- (a) become a member of a political party or be associated with an organisation or movement of a political character;
- (b) canvass another person in support of or otherwise actively assist an organisation or movement of a political character;
- (c) display or wear rosettes, colours, symbols, posters, placards or like articles of a political party;
- (d) attend a political party meeting or assembly when wearing the Defence Force uniform or any part thereof likely to identify him or her with the Defence Force;
- (e) ask questions or make a comment from the floor at a political party meeting;
- (f) publish views of a political character or causing them to be published in speeches, broadcasts, letters to the press, articles, leaflets, posters, placards, books, electronically or otherwise;
- (g) vote in primary elections of a political party; or

- (h) do any other act or conduct whatever of a member whereby the public might reasonably be induced to associate or identify him or her with an organisation or movement of a political character.
- (2) Nothing in subsection (1) shall be construed as precluding a member from —
- (a) asking questions from the floor at a political meeting held with the permission of the Defence Council at which the audience consists only of persons in the employment of the Government;
 - (b) explaining Government policy in the course of the member's duties as a member;
 - (c) performing the duties of a returning officer, polling officer or like officer at an election of an elected Member of the National Assembly or an election of a member of a local authority; or
 - (d) voting at an election of an elected Member of the National Assembly or an election of a member of a local authority; which is not a primary election.
- (3) A trade union or employers' organization shall, for the purposes of sub section (1) (a) and (b), be deemed a movement or organisation of a political character.

(4) A person who contravenes a provision of this section commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

151. A person subject to this Act who engages in political campaigns or in activities of a political nature in the premises of the Defence Force or military installations commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment of two years or any less punishment provided by this Act.

Political activity in military installations

152. A person subject to this Act —

- (a) whose act, conduct or neglect is prejudicial to the good order and military discipline though not specified anywhere in the Act; or
- (b) who breaches custom of military service,

Conduct to the prejudice of military discipline

commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment for two years or any less punishment provided by this Act.

153. A person subject to this Act who without permission leaves the Republic of Botswana or any country where he or she is authorised to be and enters to a country where he or she is not authorised, commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment of two years or any less punishment provided by this Act.

Leaving the country without permission

154. A person subject to this Act who marries another person without seeking prior permission of the Commander or an officer authorised by him or her commits an offence and shall on conviction by court-martial or by the High Court be liable to imprisonment of two years or any less punishment provided by this Act.

Restriction and guidelines on marriage

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Civil Offences (s 155)

Civil offences

155. (1) A person subject to this Act who commits a civil offence, whether in Botswana or elsewhere, commits an offence under this section.

(2) In this section —

- (a) “civil offence” means any act or omission punishable by the law of Botswana whether or not the act was committed in Botswana or another country; and
- (b) “the corresponding civil offence” means the civil offence the commission of which constitutes the offence against this section.

(3) A person convicted by court-martial or the High Court of an offence against this section shall —

- (a) if the corresponding civil offence is treason or murder, be liable to death penalty; or
- (b) in any other case, be liable to suffer any punishment or punishments which the civil court could award for the corresponding civil offence, if committed in Botswana, being a punishment or punishments provided by this Act, or such punishment less than the maximum punishment which a civil court could so award as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than discharge with disgrace in the case of an officer, or detention in the case of a soldier, as is so provided.

Field Punishments (s 156)

Field
punishments

156. Field punishment shall consist of the following —

- (a) such duties or drills, in addition to those which the offender might be required to perform in the course of normal duties;
- (b) loss of privileges as may be prescribed under regulations made under this Act and may include —
 - (i) confinement in such place or manner, as may be so provided, or
 - (ii) such personal restraint as may be necessary to prevent the escape of the offender as may be so provided; and
- (c) physical training activities in order to enhance the offender’s military skills and discipline.

Arrest (ss 157 – 158)

Powers to
arrest offenders

157. (1) A person subject to this Act who is about to commit, or commits an offence against any provision of this Act or is reasonably suspected of having committed any such offence may be arrested in accordance with the provisions of this section.

(2) An officer may be arrested only by an officer of a superior rank.

(3) A soldier may be arrested by any officer, Warrant Officer or non-commissioned officer provided that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer, or any officer, Warrant Officer or non-commissioned officer lawfully exercising authority under a provost officer or on the person's behalf, may arrest any officer or soldier provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

158. (1) The allegations against a person subject to this Act who is under arrest shall be duly investigated within a reasonable time, and as soon as may be, either proceedings shall be taken against the person, or the person shall be released from arrest.

(2) Wherever a person subject to this Act, having been taken into military custody, remains under arrest for a period in excess of 14 days without either the court-martial for his or her trial being assembled or the date for trial by the High Court having been fixed, a special report on the necessity for further delay shall be made by the person's commanding officer to the Director of Military Prosecutions in the prescribed manner and a similar report shall be made to the like authorities and in like manner every 14 days until either the court-martial is assembled or the trial by the High Court is commenced, or the offence is dealt with summarily, or the person is released from arrest:

Provided that in the case of a person on active or operational service compliance with this subsection shall be excused in so far as it is not reasonably practicable having regard to the exigencies of military operations.

Investigations of, and Summary Dealing with, Charges
(ss 159 – 167)

159. (1) Before an allegation against a person subject to this Act to the effect that the person has committed an offence against any provision of this Part is further proceeded with, the allegation may be reported, in the form of an accusation or a charge, to the accused person's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

(2) Where it appears to the commanding officer that there is a need for preliminary or further investigation before he or she summarily deals with the matter, he or she shall refer the allegation to the Military Police or other appropriate authority who shall report their findings to the commanding officer.

Provisions for
avoiding delay
after arrest

Reporting of
charges to
commanding
officer and
referral to
military police
or other
appropriate
authorities for
investigation

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Charges to be dealt with summarily or by court-martial

160. (1) After investigation, a charge against an officer below the rank of Brigadier may be dealt with summarily by the appropriate superior authority in accordance with this Part.

(2) After investigation, a charge against an officer of the rank of Captain or below may be dealt with summarily by the person's commanding officer, subject to, and in accordance with, the following provisions of this Part.

(3) Any charge not dealt with summarily shall, after the investigation —

(a) in the case of an officer of the rank of Brigadier and above, be remanded for trial by court-martial or the High Court; or

(b) in any other case, be remanded for trial by court-martial.

(4) Notwithstanding anything in the foregoing provisions of this section, where —

(a) a commanding officer has investigated a charge against an officer or Warrant Officer; or

(b) a commanding officer has investigated a charge against a non-commissioned officer or private soldier, which is not one, which can be dealt with summarily,

a commanding officer, may dismiss the charge if he or she is of the opinion that it ought not to be further proceeded with.

(5) References in this Act to dealing summarily with a charge includes references to the taking by the appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge, or recording a finding of guilty accordingly, and awarding punishment.

(6) A remand for trial by the High Court referred to in subsection (3) (a) shall be deemed to constitute a committal by the Director of Military Prosecutions for trial to the High Court for the purposes of the Criminal Procedure and Evidence Act.

Rights of an accused person during summary proceedings

161. An accused person who is subject to this Act shall be informed of his or her rights at the beginning of the summary proceedings.

Further proceedings on charges against non-commissioned officers and soldiers

162. (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or soldier of the rank of private.

(2) If —

(a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed the charge; or

(b) the charge is one which can be dealt with summarily, but the commanding officer is of the opinion that it should not be so dealt with, he or she shall take the prescribed steps with a view to the charge being tried by court-martial.

(3) The commanding officer shall proceed to deal with the charge summarily; and if he or she records a finding of guilty, he or she may award one or more of the following punishments —

(a) if the accused is a non-commissioned officer —

- (i) detention for a period not exceeding 45 days, or, if the accused is on active service, field punishment for a period not exceeding 45 days,
- (ii) a fine of a sum not exceeding the equivalent of 45 days' pay,
- (iii) severe reprimand or reprimand,
- (iv) where the offence has occasioned any expense, loss or damage, stoppages, or
- (v) admonition; or
- (b) if the accused is a soldier of the rank of private —
 - (i) detention for a period not exceeding 45 days, or, if the accused is on active service, field punishment for a period not exceeding 45 days,
 - (ii) a fine of a sum not exceeding the equivalent of 45 days' pay,
 - (iii) severe reprimand or reprimand,
 - (iv) where the offence has occasioned any expense, loss or damage, stoppages,
 - (v) confinement to barracks for a period not exceeding 14 days,
 - (vi) extra guards or pickets, or
 - (vii) admonition.

(4) Where the accused is an acting Warrant Officer or an acting non-commissioned officer, and the commanding officer finds him or her guilty, the commanding officer may, if he or she awards no other punishment or no other punishment except stoppages, order the accused to revert to his or her permanent rank or to assume an acting rank lower than that held by him or her but higher than his or her permanent rank.

(5) Notwithstanding anything in subsection (3) or (4) where the accused is a non-commissioned officer and the commanding officer finds him or her guilty, the commanding officer may, if he or she awards no other punishment or no other punishment except stoppages, order the accused to be reduced to a lower rank than his or her substantive rank or to forfeiture of seniority in the prescribed manner:

Provided that any order reducing the accused in rank or to forfeiture of seniority may be subject to review in accordance with section 167 of the Act.

(6) If detention is awarded then the commanding officer shall not in addition award any of the following —

- (a) a fine;
- (b) severe reprimand or reprimand;
- (c) confinement to barracks;
- (d) extra guards or pickets; or
- (e) admonition.

(7) A fine shall not be awarded for an offence for which stoppages have been awarded.

(8) Where a charge is one which can be dealt with summarily, but the commanding officer has taken steps with a view to it being tried by court-martial, the Director of Military Prosecutions may refer the charge back to the commanding officer to be dealt with summarily, and on any such reference subsections (3), (4), (5), (6) and (7) shall apply as if the commanding officer had originally been of the opinion that the charge should be dealt with summarily.

163. (1) After investigating a charge against an officer or Warrant Officer, the commanding officer shall, unless he or she has dismissed the charge, submit it in the prescribed manner to the Director of Military Prosecutions, who shall determine how the charge is to be proceeded with in accordance with subsections (2) and (3).

(2) Subject to subsection (1) the commanding officer shall proceed to deal with the charge summarily; and if he or she records a finding of guilty, he or she may award one or more of the following punishments if the accused is an officer of the rank of captain or below, or a Warrant Officer —

- (a) reduction in rank to a rank lower than his substantive rank, except that an officer appointed directly from cadet training shall not be reduced to a rank below that of second lieutenant;
- (b) forfeiture in the prescribed manner of seniority;
- (c) a fine of a sum not exceeding the equivalent of 45 days' pay; and
- (d) where the offence has occasioned any expense, loss or damage, stoppages, except that the commanding officer may not award both reduction in rank or forfeiture of seniority and a fine.

(3) If the charge is one which can be dealt with summarily, it may be so dealt with by the appropriate superior authority.

(4) If the charge is not one which can be dealt with summarily or the charge is one which can be dealt with summarily but the Director of Military Prosecutions is of the opinion that it should not be so dealt with, the prescribed steps shall be taken with a view to it being tried —

- (a) by court-martial or the High Court in the case of officers of the rank of Brigadier and above; or
- (b) by court-martial in any other case.

(5) Where the charge is dealt with summarily by the appropriate superior authority, the charge shall be investigated in the prescribed manner to determine whether or not the accused is guilty of the charge, and take appropriate action thereafter.

(6) Where the commanding officer or their delegate determines that it is desirable that the charge be tried by court-martial, the prescribed steps shall be taken with a view to it being so charged:

Provided that if in the course of investigating the charge the appropriate superior authority determines that it is desirable that the charge be tried by court-martial, the prescribed steps shall be taken with a view to it being so tried.

(7) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments —

- (a) dismissal from the Defence Force;
- (b) reduction in rank to a rank lower than his or her substantive rank, except that an officer appointed directly from cadet training shall not be reduced to a rank below that of second lieutenant;
- (c) forfeiture in the prescribed manner of seniority;
- (d) a fine of a sum not exceeding the equivalent of 45 days' pay; or
- (e) where the offence has occasioned any expense, loss or damage, stoppages, except that the authority may not award both reduction in rank or forfeiture of seniority and a fine.

(8) Notwithstanding the provision of subsection (5), where the appropriate superior authority has determined that the accused is guilty and if the charge is dealt with summarily will award dismissal from the Defence Force, the appropriate superior authority shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial; and, if the accused so elects, the appropriate superior authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

164. (1) Notwithstanding the provisions of sections 162 and 163, where a charge —

- (a) has been referred to the Director of Military Prosecutions with a view to its being tried by court-martial; or
- (b) has been referred to the Director of Military Prosecutions for determination of how it is to be proceeded with,

he or she may, subject to this section, refer the charge back to the commanding officer of the accused with a direction that it shall be dismissed, and in any such case the commanding officer shall dismiss the charge.

(2) The referral back of a charge in pursuance of this section shall be without prejudice to the preferring of another charge if the commanding officer thinks fit.

165. Regulations made by the President under this Part may confer on the commanding officers power to delegate the powers of commanding officers, in such cases and to such extent and to such officer or class of officers as may be specified in the regulations.

166. (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by the appropriate superior authority, shall be such as may be specified by regulations made by the President.

(2) In such cases as may be specified in that behalf by regulations made by the President, the powers of a commanding officer to award punishment shall be subject to such limitations as may be so specified.

167. (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding or award and where necessary order a retrial.

Dismissal of charges referred to Director of Military Prosecutions

Power of commanding officers to delegate powers

Limitation of powers of summary dealing with charges

Review of summary findings and awards

- (2) The authority to review findings or awards shall lie with —
- (a) an officer, within the chain of command, two ranks above the officer dealing summarily with the charge, or an officer not lower than the rank of Brigadier; or
 - (b) any officer appointed by the Defence Council for the purposes of this section, who shall be superior in command to the officer who dealt summarily with the charge.

(3) Where on a review under this section it appears to the said authority expedient to do so by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding.

(4) If a finding in any proceedings is quashed under subsection (3) and the award made in those proceedings relates only to the finding quashed, the authority shall also quash the award; and if the award relates also to any other finding and it appears to the authority that the award was not warranted by this Act in respect of that other finding, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award in relation to that other finding, and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

(5) Where on a review under this section it appears to the said authority that a punishment awarded was invalid, or too severe, or (where the award included two or more punishments) that those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe, the authority may vary the award by substituting such punishment or punishments as the authority may think proper, being a punishment or punishments which could have been included in the original award and not being in the opinion of the authority more severe than the punishment or punishments included in the original award.

(6) Without prejudice to the preceding provisions of this section, where on a review under this section it appears to the said authority that a punishment awarded was too lenient the authority may vary the award by substituting such punishment as may be deemed appropriate in the circumstances.

Trial by Court-Martial
(ss 168 – 192)

168. (1) There is hereby established a court, to be known as the court-martial.

- (2) Notwithstanding the generality of subsection (1) —
 - (a) a general court-martial may be constituted for any offence; or
 - (b) for offences with a maximum punishment of imprisonment not exceeding two years, a special court-martial may be constituted.
- (3) The court-martial may sit in any place, whether within or outside Botswana.

169. Subject to this Act, the court-martial shall have power to try any person subject to this Act for any offence which is triable by court-martial and to award any punishment authorised by this Act for that offence.

Trial by, and power of, the court-martial

170. (1) There shall be a court administration officer for the court-martial.

Court administration officer

(2) The court administration officer shall be appointed by the Defence Council.

(3) The court administration officer shall be responsible for the administration of the court and for appointing the members of the court-martial.

Constitution of a General Court-Martial

171. (1) In the case of any proceedings, a general court-martial shall consist of —

- (a) a presiding officer, who shall be appointed;
- (b) at least three but not more than six other members; and
- (c) a judge advocate who does not vote but advises the court on law and procedures.

(2) Notwithstanding the provisions of subsection (1), the rules of the court-martial may provide that, in the case of proceedings of a prescribed description, there shall be —

- (a) at least five but not more than seven members; or
- (b) no members.

(3) In the case of proceedings where the court-martial consists of a judge advocate and members —

- (a) a prescribed number of the members must be officers or warrant officers qualified for membership under section 172 and not ineligible by virtue of section 173; and
- (b) the rest must be officers so qualified and not so ineligible.

(4) Subsection (3) is subject to any provision made by court-martial rules.

(5) The judge advocate for any proceedings is to be detailed by or on behalf of the Judge Advocate General.

(6) The members for any proceedings are to be appointed by the court administration officer.

(7) The number of members appointed under subsection (6) is to be the minimum required unless a judge advocate, in accordance with the rules of the court-martial, directs otherwise.

(8) In subsection (7) “the minimum required” means —

- (a) the minimum required by subsection (1) (b); or
- (b) where rules made by virtue of subsection (2) (a) apply instead of subsection (1) (b), the minimum required by those rules.

A.112

Officers and warrant officers qualified for membership of a General court-martial

172. (1) Subject to subsections (2) to (4), an officer or Warrant Officer is qualified for membership of the court-martial if he or she is subject to the Act.

(2) An officer is not qualified for membership of the court-martial if —

- (a) the officer holds the minimum rank of Captain; or
- (b) the officer held the rank of Warrant Officer immediately before receiving his or her commission.

(3) A Warrant Officer is not qualified for membership of the court-martial if the officer is an acting Warrant Officer.

(4) An officer or Warrant Officer is not qualified for membership of the court if —

- (a) the officer is a member of staff of the court;
- (b) the officer is a member of staff of the court administration;
- (c) the officer is a member of the military police or is a provost officer; or
- (d) the officer is a member of the Chaplaincy or similar vocation.

Officers and warrant officers ineligible for membership of the court-martial

173. (1) An officer is ineligible for membership of the court-martial for proceedings after the arraignment of an accused if —

- (a) the officer was the commanding officer of the accused at any time in the period beginning with the date of commission of the offence to which the arraignment relates and ending with the arraignment;
- (b) the officer has taken part in investigating the subject matter of any charge against the defendant; or
- (c) the officer has conducted (whether alone or with other persons) an inquiry into the subject matter of any charge against the defendant.

(2) A Warrant Officer is ineligible for membership of the court-martial for proceedings after the arraignment of a defendant if the officer falls within subsection (1) (b) or (c).

(3) Where a defendant is arraigned for more than one offence, the reference in subsection (1) (a) to the date of commission of the offence there mentioned is to the date of commission of the earliest such offence.

(4) The Rules of the court-martial may provide that an officer or Warrant Officer of a description prescribed by the rules is ineligible for membership of the court-martial for a description of proceedings so prescribed.

Constitution of a Special court-martial

174. (1) In the case of any other proceedings a special court-martial shall consist of —

- (a) a judge advocate who shall preside over the court and decide what the facts of the case are and the law that is to be applied, determine the guilt or innocence of the accused and if he or she finds the person guilty impose an appropriate sanction;
- (b) a court bailiff or provost officer who shall attend to the needs of the court;

- (c) a court reporter or a recorder who shall be responsible for producing a complete, accurate and secure legal transcript of the proceedings of the court to include witness testimonies and depositions both manually and electronically; and
- (d) a court orderly who shall be responsible for the routine orders of the court.

175. There shall be a Judge Advocate at each court-martial, who shall —

Appointment
of Judge
Advocate

- (a) be an attorney of the High Court of Botswana of not less than five years standing;
- (b) be appointed by the President acting in accordance with the advice of the Defence Council; and
- (c) satisfy any other requirements as may be prescribed.

176. (1) An accused about to be tried by court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another officer.

Challenges by
accused

(2) For the purpose of enabling an accused to avail himself or herself of the right conferred by subsection (1), the names of the members of the court shall be read over in the presence of the accused before they are sworn, and the accused shall be asked whether he or she objects to any of those officers.

(3) Every objection made by the accused to any officer shall be considered by the other officers appointed members of the court.

(4) If objection is made to the presiding officer, and not less than one third of the other members of the court allow it, the court shall adjourn and the court administration officer shall appoint another presiding officer.

(5) If objection is made to a member of the court other than the presiding officer, and not less than one-half of the other members allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced to below the legal minimum shall, be filled in the prescribed manner by another officer.

177. (1) An oath shall be administered to every member of the court-martial and to any person in attendance on the court-martial as judge advocate, officer under instruction, court reporter or interpreter.

Administration
of oaths

(2) Every witness before the court-martial shall be examined on oath:

Provided that where any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, the child's evidence may be received, though not given upon oath, if in the opinion of the court such a child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth, so however that, where the evidence is given on behalf of the prosecution, the accused shall not be liable to be convicted unless it is corroborated by some other material evidence in support thereof implicating the accused.

A.114

Court-martial
to sit in open
court

(3) An oath required to be administered under this section shall be in the prescribed form and shall be administered at the prescribed time by the prescribed person and in the prescribed manner.

178. (1) Subject to this section, the court-martial shall sit in open court and in the presence of the accused.

(2) Nothing in subsection (1) shall affect the power of the court-martial to sit in camera on the ground that it is necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power, the court-martial may order that, subject to any exceptions the court may specify an exclusion of the public from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or may be —

- (a) directly or indirectly useful to an enemy;
- (b) prejudicial to national security;
- (c) expose classified military information; or
- (d) expose a sexual offence involving a minor.

(3) The court-martial shall sit in closed court while deliberating on its finding or sentence on any charge.

(4) The court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where the court-martial sits in closed court, no person shall be present except the members of the court and such other persons as may be prescribed.

Rulings and
directions of
court-martial

179. (1) In the case of proceedings where the court-martial consists of a judge advocate and other persons, rulings and directions on questions of law, procedure or practice are to be given by the judge advocate.

(2) Any rulings or directions given under subsection (1) shall be binding on the court.

Decisions of a
General
court-martial

180. (1) Subject to this section, every question to be determined on a trial by court-martial shall be determined by a majority of votes of the members of the court.

(2) In the case of an equality of votes on the finding, the presiding officer shall have the casting vote in addition his or her deliberative vote.

(3) Where the accused is found guilty and the court has power to sentence him or her either to death or to any less punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

(4) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the presiding officer shall have a casting vote in addition to his or her deliberative vote.

Finding and
sentence of
court-martial

181. (1) Without prejudice to section 178 (2), the finding of the court-martial on each charge shall be announced in open court.

(2) Any sentence of the court-martial, shall be announced in open court by the court president in the case of a general court martial and the judge advocate in the case of a special court martial and a sentence of the court-martial shall stand.

182. (1) An accused charged before the court-martial with an offence under this Act, may, on failure by the prosecution to prove that offence, be found guilty of a less included offence.

Power to
convict of an
offence other
than that
charged

(2) An accused charged before the court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before the court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he or she actually committed that offence.

(4) Where an accused is charged before the court-martial under section 155 for attempting to commit a civil offence, the accused may be convicted on that charge notwithstanding that it is proved that he or she actually committed the civil offence.

(5) Where an accused is charged before the court-martial with an offence against section 155 and the corresponding civil offence is one in proceedings for which, if the accused had been tried by a civil court for committing the offence in Botswana, the accused might have been found guilty of another civil offence, then, if the court finds that the accused has committed that other civil offence, the accused may be convicted of an offence against section 155 in respect of the commission of that other civil offence.

(6) An accused charged before the court-martial with an offence specified in the first column of Schedule 2 may be found guilty of an offence specified in relation thereto in the second column of the said Schedule.

183. (1) Subject to this Act, the rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in Botswana, and no person shall be required in proceedings before the court-martial to answer any question or to produce any document which the person could not be required to answer or produce in similar proceedings before a civil court in Botswana.

Rules of
evidence

(2) Notwithstanding anything in subsection (1), a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the facts stated in the declaration in a case where, and to the extent to which, oral evidence to the like effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in any such trial on behalf either of the prosecution or of the defence —

- (i) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the accused,

- (ii) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused, or the Commanding Officer of the accused has given his or her agreement in writing to its admission,
- (iii) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration, or
- (iv) in any case, if the court-martial is of the opinion that it is desirable in the interests of justice that oral evidence should be given in *lieu* of the declaration and declares that it is of that opinion.

(3) The court-martial shall take judicial notice of all matters of notoriety including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in Botswana.

Privilege
of witnesses

184. A witness before the court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court.

Punishments
available to
court-martial

185. (1) The court-martial may award punishments as set out in Schedule 2.

(2) For the purposes of this Part a punishment specified in any paragraph in the scale in subsection (2) shall, if that paragraph is preceded or followed by paragraphs containing specified punishment, be treated as less than the punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the said scale:

Provided that, in the case of Warrant Officers, non-commissioned officers and soldier of the rank of private, detention shall not be deemed to be any less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(3) Except as expressly provided in this Act not more than one punishment shall be awarded by the court-martial or by the High Court for one offence.

(4) Stoppages may be awarded by the court-martial or by the High Court either in addition to or without any other punishment.

(5) In the case of an officer, a Warrant Officer or non-commissioned officer, a severe reprimand or reprimand may be awarded by the court-martial or the High Court in addition to forfeiture of seniority of rank or a fine.

(6) Where an officer is sentenced by the court-martial or by the High Court to imprisonment, the officer shall also be sentenced to be cashiered:

Provided that if the court-martial or the High Court fails to sentence the officer to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

(7) A soldier sentenced by the court-martial to imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from the Defence Force, and a Warrant Officer sentenced by the court-martial to imprisonment may, in addition thereto, be sentenced to dismissal from the Defence Force.

(8) Where a Warrant Officer or non-commissioned officer is sentenced by the court-martial to imprisonment, detention or field punishment, the officer shall also be sentenced to be reduced to the ranks:

Provided that if the court-martial fails to sentence the officer to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.

(9) Where an offender being a Warrant Officer, non-commissioned officer or a soldier of the rank of private is on active or operational service when sentence of the court-martial is announced, a fine may be awarded in addition to field punishment.

(10) Where an offender being a Warrant Officer, non-commissioned officer or a soldier of the rank of private has been sentenced by the court-martial to detention, then, if the offender is subsequently sentenced by the court-martial to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.

(11) Without prejudice to the validity of any award, an offender being a Warrant Officer, non-commissioned officer or a soldier of the rank of private shall not be kept continuously in detention under this Act for more than two years.

186. Where in Botswana a person not subject to this Act —

- (a) having been duly summoned to attend as a witness before the court-martial, fails to comply with the summons;
- (b) refuses to swear an oath when duly required by a court-martial to do so;
- (c) refuses to produce any document in his or her custody or under his or her control which a court-martial has lawfully required him or her to produce;
- (d) when a witness, refuses to answer any question which the court-martial has lawfully required him to answer;
- (e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court;
- (f) wilfully interrupts the proceedings of the court-martial or otherwise misbehaves before the court; or

Offences by
civilians in
relation to
court-martial

(g) does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been in contempt of that court,

the presiding officer of the court-martial may certify the offence of that person under his or her hand to the High Court, and the High Court may thereupon enquire into the alleged offence and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement which may be offered in defence, punish or take steps for the punishment of that person in like manner as if they had been guilty of contempt of the High Court.

Affirmations

187. (1) If —

(a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to being sworn, and states the ground of the person’s objection in terms of a religious belief or a lack thereof; and

(b) it is not reasonably practicable to administer an oath to such a person in the manner appropriate to the person’s religious belief, the person shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

(2) A person permitted under this section to make his or her solemn affirmation shall thereafter be required to do so, and for the purposes of this section “reasonably practicable” means reasonably practicable without inconvenience or delay.

Approval of death sentence

188. A sentence of death awarded by the court-martial shall not be carried into effect unless it has been approved by the President.

Petition against finding or sentence

189. After the court-martial has sentenced the accused, the accused may in the prescribed manner present to the President a petition against the finding or sentence or both within 14 days of the issuance of the sentence.

Review of finding and sentence of court-martial

190. (1) A finding or sentence which has been confirmed by the court-martial may at any time be reviewed by the President if a petition is duly presented under section 189 against the finding or sentence,

(2) If an application for leave to appeal is received by the Registrar of the High Court under Part VIII, any pending appellate action by the court-martial shall be abated.

(3) On a review under this section the President may —

(a) quash any finding and any sentence related to that finding;

(b) quash any sentence; or

(c) substitute findings, substitute valid for invalid sentences, and remit or commute any punishment and any substituted finding or sentence:

Provided that a substituted finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(4) Where the President exercises any of the powers conferred by subsection (3), the determination shall be promulgated and shall have effect as from the promulgation thereof.

191. (1) Sentences of imprisonment and detention passed by courts-martial may be reconsidered by the Commander, and if on any such reconsideration it appears that the conduct of the offender since the offender's conviction has been such as to justify remission of the sentence, whether in whole or in part, it shall be remitted accordingly.

Reconsideration
of sentences of
imprisonment
and detention

(2) Remission for sentences of imprisonment passed by courts martial and served in civil prisons shall be considered by the Commissioner of Prisons.

(3) The power to reconsider a sentence may be exercised at any time after confirmation, and where after the review a sentence remains effective it shall be reconsidered at intervals of six months:

Provided that delay in complying with this subsection shall not invalidate the sentence.

192. (1) This section shall apply when the question arises as to whether the defendant is physically or mentally fit to stand trial.

Fitness to
stand trial

(2) For the purposes of this Act a person is unfit to stand trial if the person is under a disability such that apart from the provisions of the Penal Code or Criminal Procedure and Evidence Act it would constitute a bar to the person's being tried on indictment in a civil court in Botswana.

(3) Subject to subsections (5) and (6), the question of fitness to stand trial must be determined as soon as it arises.

(4) The question of fitness to stand trial is determined by the judge advocate.

(5) If having regard to the nature of the supposed disability the judge advocate is of the opinion that it is expedient to do so and in the interests of the accused, the judge advocate may postpone consideration of the question of fitness to stand trial until any time up to the opening of the case for the defence.

(6) If before the question of fitness to stand trial fails is not determined before the court finds the defendant not guilty on the charge or each of the charges on which the person is being tried, that question shall not be determined.

(7) A judge advocate may not make a determination under subsection (4) except on the written or oral evidence of two or more registered medical practitioners.

(8) Where, in the court-martial, it appears to the court that the accused is by reason of insanity unfit to stand trial, the court shall so find; and if the finding is confirmed in accordance with subsections (9) and (10), the accused shall be kept in custody in such manner as the court may determine until the directions of the President are known, or until a time at which the accused is fit to stand trial.

(9) Where, in the court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of an offence, but at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as the court may determine until the directions of the President are known.

(10) In the case of any such findings referred to in subsection (9), the President may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the President thinks fit.

Commencement, Suspension and Duration of Sentences
(ss 193 – 205)

Commencement of sentences

193. Notwithstanding the requirement for review of sentences in certain cases, sentences shall take effect immediately.

Commencement of sentences of imprisonment, detention or field punishment

194. (1) A military sentence of imprisonment, detention, or field punishment shall begin to run from the beginning of the day on which the sentence was pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by the Commanding officer of the accused person.

(2) A sentence of imprisonment or detention passed by the court-martial on a soldier which is suspended pursuant to section 196 before the soldier has been committed to prison or a military establishment shall not begin to run until the beginning of the day on which the suspension is determined.

Duration of sentence of imprisonment, detention or field punishment

195. (1) Where a soldier has been sentenced to imprisonment or detention by the court-martial, and the sentence is suspended pursuant to section 196 after the soldier has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which that soldier is released in accordance with the provisions of section 196 until the beginning of the day on which the suspension is determined.

(2) Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during service of the sentence, the time period of unlawful absence shall not be credited toward the service of a sentence by that person and no account shall be taken of time elapsing during the period beginning with the day on which the person became at large and ending with the day on which that person is returned to military or civilian custody.

(3) If a person serving a military sentence of imprisonment or detention was in the custody of a civil authority, otherwise than on account of an offence committed by him or her while unlawfully at large, the last-mentioned time shall not be disregarded in calculating the period for which the person is liable to be imprisoned or detained pursuant to serving a military sentence of imprisonment or detention.

(4) In subsection (2) the expression “civil authority” means a civil authority authorised by law to detain persons, and includes a police officer.

(5) Without prejudice to subsection (2), where any person serving a military sentence of imprisonment or detention has in accordance with the Imprisonment and Detention Regulations been temporarily released on compassionate grounds, then, in calculating the period for which the person is liable to be imprisoned or detained pursuant to the sentence, no account shall be taken of time elapsing during the period beginning with the day after that on which the person is released and ending with the day on which the person is required to return to custody.

(6) A person who for any period is released from military custody for any period or subject to any condition, and then fails to return at the expiration of that period or to comply with the condition, shall be treated for the purposes of subsection (2) as being unlawfully at large.

(7) A person serving a military sentence of imprisonment or detention in civil custody who fails to return to custody following a temporary release, required by term or order, shall be deemed to be unlawfully at large.

(8) References in subsection (7) to release or recall under civil law are references to release or recall under the Prisons Act.

196. (1) A sentence of imprisonment, detention or field punishment, ordered by a court or commanding officer, may be suspended for a period of time (hereinafter referred to as “the operational period”).

Suspension of sentence of imprisonment, detention or field punishment

(2) If the accused commits another service offence, a court or officer may order the sentence to take effect under the terms of section 197 or 198.

(3) The operational period must be a period of at least three months and not more than twelve months beginning with the date of the order made under this section.

(4) “suspended sentence of detention” means a sentence to which an order under this section relates.

197. (1) The court-martial may make an order under subsection (3) where it convicts a person of an offence committed during the operational period of a suspended sentence of detention passed on him or her.

Activation by court-martial of suspended sentence of detention

(2) The court-martial may also make an order under subsection (3) if —

- (a) the court-martial has passed a suspended sentence of detention on a person;
- (b) the person has been convicted of another service offence committed during the operational period of the suspended sentence; and
- (c) the person appears or is brought before the court-martial following the issue of a summons or warrant under subsection (6).

(3) An order under this subsection shall be that —

Activation by
Commanding
Officer of
suspended
sentence of
detention

- (a) the suspended sentence shall take effect with the original term unaltered; or
 - (b) the suspended sentence shall take effect with the substitution of a lesser term from the original term.
- (4) An order under subsection (3) may provide either —
- (a) that the suspended sentence shall take effect immediately; or
 - (b) that the suspended sentence shall take effect from the end of another sentence of detention which has been passed on the person on a previous occasion or which the court passes on the person on the same occasion as it makes the order.
- (5) Where —
- (a) by virtue of subsection (2) the court-martial orders that a suspended sentence shall take effect, and
 - (b) the conviction mentioned in subsection (2) (b) is a conviction by a commanding officer,
- any unserved part of any supervision and punishment order or minor punishment awarded by the officer is remitted by the making of the order.
- (6) If it appears to the court-martial that —
- (a) subsection (2) (a) and (b) apply; and
 - (b) the offender has not been dealt with for the suspended sentence,
- the court may issue a summons requiring him or her to appear at the time and place specified in it, or a warrant for the person's arrest.
- (7) In subsection (2) (a) the reference to the court-martial includes the High Court on an appeal brought from the court-martial.
- 198.** (1) This section applies in relation to a suspended sentence of detention passed on an offender by a commanding officer or the court-martial.
- (2) If —
- (a) an officer records a guilty finding that a charge against the offender is committed during the operational period of a suspended sentence, or
 - (b) the offender is convicted of an offence in Botswana which was committed during that operational period, and subsequently appears before the offender's commanding officer,
- the officer may subject to section 199, make an order under subsection (3).
- (3) An order under this subsection is an order —
- (a) the suspended sentence shall take effect with the original term unaltered; or
 - (b) the suspended sentence shall take effect with the substitution of a lesser term for the original term.
- (4) An order under subsection (3) may provide either —
- (a) that the suspended sentence shall take effect immediately; or
 - (b) that the suspended sentence shall take effect from the end of another sentence of detention which has been passed on the offender on a previous occasion or which the officer passes on the offender on the same occasion as the person makes the order.

(5) Any provision included by virtue of subsection (4) in an order made by an officer has effect subject to the Imprisonment and Detention Regulations

199. (1) The term of a suspended sentence, issued under the provisions of section 196 must not exceed 45 days unless the commanding officer has extended powers for the purposes of this section.

Activation by
Commanding
Officer:
maximum term

(2) If —

- (a) section 196 applies and the officer awards detention for the offence mentioned there (hereinafter referred to as “the new sentence”), and
- (b) the commanding officer makes an order under section 201 and the order provides for the suspended sentence to take effect from the end of the new sentence,

the aggregate of the terms of the two sentences must not exceed 45 days or, if the commanding officer has extended powers for the purposes of this section, 90 days.

(3) An officer has extended powers for the purposes of this section if, —

- (a) he or she is of or above the rank of Brigadier; or
- (b) within the relevant time, he or she has applied to higher authority for extended powers for the purpose of this section and has been informed authority has been granted.

(4) In subsection (3) “the relevant time” means —

- (a) where section 196 applies, the beginning of the summary hearing of the charge mentioned there; or
- (b) where section 196 applies, the beginning of the hearing as to whether an order under section 196 should be made.

200. A person shall not be required to serve a military sentence of detention in a military or civil prison:

Restriction on
serving of
sentence of
detention in
prisons

Provided that in such cases and subject to such conditions as may be specified by or under the Imprisonment and Detention Regulations a person serving such a sentence may be temporarily detained in a military or civil prison for a period not exceeding seven days.

201. If a sentence of imprisonment or detention for an offence under Part X, that person’s commanding officer shall cause the person to be sent to a prison or military establishment and the superintendent or provost officer in charge of the prison or military establishment shall receive and imprison the person until the sentence has been served, or the person is otherwise lawfully required to be delivered from the prison or military establishment.

Service of
sentence of
imprisonment

202. A person sentenced to death or imprisonment and committed or transferred to a civil prison pursuant to regulations made under section 226 or of the Imprisonment and Detention Regulations shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

Special
provisions as
to civil prisons
in Botswana

A.124

Special provisions as to carrying out or serving sentences outside Botswana

Country in which sentence of imprisonment or detention to be served

203. The President may from time to time make arrangements with the authorities of any country or territory outside Botswana whereby sentences passed by courts-martial except death in such countries may in accordance with regulations made under this Part be carried out in establishments under the control of those authorities.

204. (1) A person who is serving a military sentence of imprisonment or detention in Botswana may (insofar as may be specified by or under the Imprisonment and Detention Regulations) be removed out of Botswana to any place where the unit or any part thereof to which for the time being the person belongs is serving or is under orders to serve, but not to any other place.

(2) Subject to the following provisions, a person sentenced by the court-martial held outside of Botswana to imprisonment or detention, when desirable or practicable be removed to Botswana.

(3) Where a person has been sentenced by a court-martial held out of Botswana to imprisonment or detention the Commander or the President may, notwithstanding anything in subsection (2), direct that the person shall not be required to be removed to Botswana.

(4) Any direction of the Commander under this section may be revoked by the Commander or by the President, or superseded by any direction of the Commander or the President which the Commander or the President could have given under subsection (3); and any direction of the President under this section may be revoked or superseded by the President.

(5) Any direction given under this section, and the revocation of any such direction, shall be promulgated.

(6) In ascertaining for the purposes of this section, the nature or length of a sentence, regard shall be had to any commutation or remission of the sentence previously directed.

Duties of officers in charge of prisons and others to receive prisoners

205. (1) It shall be the duty of the superintendent or other person in charge of a prison (not being a military prison), consistent with regulations made under this Part or the Imprisonment and Detention Regulations so provide, to receive any person duly sent to that prison pursuant to such regulations and to confine him or her until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

(2) Where a person is in military custody in pursuance of a military sentence of imprisonment or detention, then, on receipt of a written order from the person's commanding officer, it shall be the duty of any such superintendent or other person as aforesaid or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

*Trial of Persons ceasing to be subject to this Act and
Time Limits for Trials (ss 206 – 208)*

206. (1) Subject to section 207, where an offence triable by court-martial has been committed, or is reasonably suspected of having been committed by any person then subject to this Act, but having since left the service for a reason other than retirement, court-martial jurisdiction shall remain in effect for three (3) years from the date of separation.

Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto

(2) If a person being held in military custody by virtue of this section commits, or is reasonably suspected of having committed, a new offence, they are deemed to be under jurisdiction of this Act; and they will be subject to investigation and disciplinary action to include trial by court-martial even if they would otherwise have been separated from the Defence Force.

(3) Where, under the provisions of either subsection (1) or (2), a person is treated as being at any time subject to this Act for the purpose of any provision of this Act, the following provisions shall apply to him —

- (a) if they hold any military rank, as to a person having that rank; or
- (b) if they previously held a military rank, as to a person having the last rank held when previously subject to this Act,

if then convicted, such person will be held as a soldier of the rank of private.

(4) Where any provision of this Act would under subsection (3) apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to them as to a person having the lower or lowest of those ranks.

207. (1) No person shall be tried by court-martial for any offence, other than one against section 67, section 68, section 69, desertion, or any offence punishable by death, unless the trial is begun within six years after the commission of the offence, there being disregarded any time during which the person was a prisoner of war and any time during which the person was illegally absent:

Limitation of time for trial of offences under this Act

Provided that:

- (i) in the case of an offence against section 155 where proceedings for the corresponding civil offence must, by virtue of any law, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section 155 in substitution for the foregoing provisions of this subsection,
- (ii) subject to any such limit of time as is mentioned in paragraph (i), a person may be tried by court-martial for a civil offence committed outside Botswana notwithstanding that it was committed more than three years before the beginning of the trial, if the Director of Public Prosecutions consents to the trial.

(2) Where a person who has committed an offence of desertion, other than desertion on active or operational service, has since the offence served as a member of the Regular Force continuously in an exemplary manner for not less than three years, the person shall not be tried for that offence.

(3) A person shall not be triable by virtue of section 207 (1) unless the person's trial is begun within six years after the person ceases to be subject to this Act, or the trial is for a civil offence committed outside Botswana and the Director of Public Prosecutions consents to the trial:

Provided that this subsection shall not apply to an offence against section 67, section 68, section 69, or to desertion.

(4) A person shall not be arrested or kept in custody by virtue of section 207 for an offence after the person has ceased to be triable for the offence.

Postponement of discharge or transfer pending proceedings for offences

208. (1) A member of the Regular Force shall not be entitled to be discharged or transferred to the Reserve Force at a time when the member has become liable to be proceeded against for an offence against any provision of this Act if it is determined that the offence shall be tried by court-martial or dealt with summarily.

(2) Notwithstanding anything in this Part, a member of the Regular Force who is serving a sentence of imprisonment or detention awarded by the court-martial or by the member commanding officer shall not be entitled to be discharged or transferred to the Reserve Force during the execution of the sentence.

Relations between Military and Civil Courts and Finality of Trials (ss 209 – 212)

Powers of civil courts

209. (1) Except as provided in section 231, nothing in this Act shall restrict the offences for which persons may be tried by any civil court or the jurisdiction of any civil court to try a person subject to this Act for any offence.

(2) Where a person is tried by a civil court for any offence, and the person has previously been sentenced by court-martial to punishment for any act constituting (whether wholly or in part) that offence pursuant to this Act the person has been punished for any such act by the person's commanding officer or the appropriate superior authority, the civil court shall, in awarding punishment, have regard to the person's punishment pursuant to this Act.

Persons not to be tried under this Act for offences already disposed of

210. (1) Where a person subject to this Act —
(a) has been tried for an offence by a competent civil court or the court-martial;
(b) has been charged with an offence under this Act, and has had the charge dismissed, or has been found guilty on the charge, by his or her commanding officer or the appropriate superior authority;
(c) has had the offence condoned by his or her commanding officer,

the person shall not be liable for that offence to be tried by court-martial or to have the case dealt with summarily by the person's commanding officer or the appropriate superior authority.

(2) An offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him or her to act in relation to the alleged offence has with knowledge of all relevant circumstances informed him or her that the person will not be charged therewith;

(3) A person ordered under section 116 to be imprisoned or to undergo detention for an offence against that section shall be deemed to have been tried by court-martial for the offence.

(4) Except as provided in the foregoing provisions, proceedings for an offence against this Act (whether before a commanding officer, an appropriate superior authority or before the court-martial) shall not be barred on the ground of condonation.

211. (1) The decision as to whether an offence shall be dealt with by the military authorities under this Act or by the civil authorities shall be determined by the Attorney-General or Director of Public Prosecutions depending on the nature of the offence in accordance with this section.

(2) The civil authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Botswana not referred to in subsections (3) and (4).

(3) The military authorities shall have the right to exercise jurisdiction in relation to offences under this Act at all times when the person alleged to have committed an offence against this Act is serving outside Botswana.

(4) The military authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Botswana —

- (a) if the offence is against the property or security of the Defence Force;
- (b) if the offence is against the property or person of a person subject to this Act;
- (c) if the offence is against the property or person of a dependant of a person subject to this Act when such dependant is residing with such person;
- (d) if the offence arises out of an act or omission in the course of official duty; or
- (e) without derogation from the foregoing, where sanctioned operations or military operations result in the allegation of the commission of an offence,

there shall be conducted a joint investigation and determination by the Director of Public Prosecutions and the Director of Military Prosecutions as to whether such an offence has been committed.

Resolution of
conflict of
jurisdiction

(5) Notwithstanding the primary right of the military authorities to exercise jurisdiction in relation to any offence specified in subsections (3) and (4), the Director of Military Prosecutions may, if he or she considers that the military authorities have neither the facilities nor the personnel adequately to exercise jurisdiction over any such offence, refer it to the Director of Public Prosecutions who may deal with it as he or she considers fit.

(6) In cases where the civil authorities and military authorities have primary right to jurisdiction in relation to specific or general offences, such authority shall give sympathetic consideration to any request from such other authority for a waiver by the other authority of jurisdiction in any particular case or general class of cases; and in particular the civil authorities shall consider waiving their right of jurisdiction in the case of minor offences where the military authorities can impose a suitable punishment by disciplinary action under this Act without recourse to a civil court.

(7) The Director of Public Prosecutions may delegate to the Commissioner of Police or any person, appointed by him or her under section 8 of the Criminal Procedure and Evidence Act as a prosecutor before any court, the exercise of any function conferred on him or her under subsection (1).

Criminal
proceedings
against a
member of
Defence Force

212. (1) Where a person subject to this Act is under investigation, with a view to the institution of criminal proceedings against him or her, either before a civil court or the court-martial, the Commander, or any officer so authorised by the Commander, may interdict such person from the performance of prescribed duties, or assign him or her other duties pending the outcome of such investigation, or the outcome of the proceedings arising therefrom.

(2) A person interdicted under subsection (1) from such prescribed duties shall, during the period of interdiction, be paid such portion of his or her salary as may be determined by the Commander or any officer so authorised by the Commander.

(3) If proceedings are not instituted against such person, or if at the end of proceedings the person is acquitted, the person's interdiction shall be lifted and be paid the whole of his or her emoluments which were withheld.

(4) If a person is convicted by a civil court and sentenced to a term of imprisonment, the person may be required by the Commander to resign from the Force with effect from the date of the person's conviction, or, in the event of an appeal against the person's conviction or sentence, with effect from the date of dismissal of such appeal.

(5) If a person is convicted by a civil court or by the court-martial, and is awarded a sentence other than a sentence of imprisonment, or that the person be discharged or dismissed, the Commander may require the person to resign from the Force.

Enquiries (ss 213 – 214)

213. (1) Subject to and in accordance with rules made under section 225 (hereinafter referred to as “Board of Enquiry Rules”), the Commander, or any officer empowered by or under such rules to do so, may convene a board of enquiry to investigate and report on the facts relating to —

Boards of enquiry

(a) the absence of any person subject to this Act;
 (b) the capture of any such person by the enemy;
 (c) the death of any person where an enquiry into the death is not required to be held by any civil authority; or
 (d) any other matter of a class specified in such rules or referred to such a board by the Commander or any such officer as afore-said, and a board of enquiry shall, if directed to do so, express its opinion on any question arising out of any matters referred to the board.

(2) A board of enquiry shall consist of such number of persons, as may be provided for by the Board of Enquiry Rules, who shall be persons subject to this Act and the presiding officer of a board of enquiry shall be an officer not below the rank of Lieutenant.

(3) Evidence given before a board of enquiry shall not be admissible against any person in proceedings before the court-martial or a commanding officer, other than proceedings for an offence against section 117 or 155.

214. (1) Where a board of enquiry enquiring into the absence of an officer or soldier of the Defence Force reports that the person has been absent without leave or other sufficient cause for a period specified in the report, not being less than 14 days, a record of the report shall in accordance with the Board of Enquiry Rules be entered in that person’s Defence Force record.

Enquiries into absence

(2) A record entered pursuant to subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of enquiry is annulled by the Commander or a subsequent board of enquiry, have the like effect as a conviction by the court-martial for desertion.

Miscellaneous Provisions (ss 215 – 222)

215. (1) The following provisions shall have effect where a person has been convicted by court-martial of unlawfully obtaining any property, whether by stealing it, receiving it knowing it to have been stolen, fraudulently misapplying it or otherwise.

Restitution or compensation for theft, etc.

(2) In this section the expression “appearing” means appearing to the court.

(3) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.

(4) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him or her by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

(5) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as maybe specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far as not otherwise made good or by the recovery of the property unlawfully obtained.

(6) Where any of the property unlawfully obtained has been sold or given in pledge to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid, there shall be paid to the said other person, out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pledge), such sums as may be specified in the order as or towards compensation for the loss caused to him or her in consequence of the sale or giving in pledge.

(7) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(8) An order under this section shall be made by the court-martial by which the offender is convicted.

(9) The operation of any order under this section shall be suspended —

(a) in any case, until the expiration of any period within which an application for leave to appeal to the High Court against the conviction must be lodged;

(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned, and where the operation of such an order as aforesaid is suspended under this section —

(i) it shall not take effect if the conviction is quashed on appeal,

(ii) the High Court may by order annul or vary the order although the conviction is not quashed,

(iii) such steps shall be taken for the safe custody, during the period, which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court.

(10) Notwithstanding anything in subsection (9), an order under this section shall not, so far as it relates to the delivery of property to the person appearing to be the owner thereof, be suspended if the court, making the order directs to the contrary in any case in which, in the opinion of the court, the title to the property is not in dispute.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him or her, to recover any property delivered or paid pursuant to such an order from the person to whom it is delivered or paid.

216. (1) There shall be a Director of Military Prosecutions who shall be appointed by the Defence Council.

Director of
Military
Prosecutions

(2) A person shall not be appointed as the Director of Military Prosecutions unless the person is —

- (a) an officer of at least the rank of Colonel with ten years standing as an attorney in the High Court of Botswana; or
- (b) an attorney of the High Court of Botswana of not less than ten years standing.

(3) A person appointed as the Director of Military Prosecutions under this section shall exercise powers of prosecution under this Act and shall undertake prosecutions at the court-martial against any person subject to this Act for any alleged offence under Part X.

(4) The Director of Military Prosecutions shall have power in any case in which he or she considers it desirable to do so —

- (a) to institute and undertake criminal proceedings against any person before the court-martial in respect of any offence alleged to have been committed by that person; and
- (b) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(5) The Director of Military Prosecutions shall not discontinue proceedings before a courts martial unless with the permission of the judge advocate.

(6) Except as provided for in this Act, the Director of Military Prosecutions shall not require the consent of any person or authority for prosecutions and, in the exercise of the powers or functions under subsection (3) of this section.

(7) In the exercise of the functions vested in him or her the Director of Military Prosecutions shall not be subject to the direction or control of any person or authority.

217. (1) The powers of the Director of Military Prosecutions, except the power to discontinue proceedings before the court-martial, may be exercised in person, or by any legal officer, appointed by the Defence Council and acting under the Director of Military Prosecutions.

Delegation of
powers and
function by the
Director of
Military
Prosecutions

(2) A delegation or assignment under subsection (1) shall not prevent the Director of Military Prosecutions from exercising the power in question in person.

- (3) A delegation under this section —
 - (a) shall not divest the Director of Military Prosecutions of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
 - (b) may be withdrawn, and any decision made by the person so delegated, may be withdrawn or amended by the Director of Military Prosecutions.

Appointment of prosecuting officers

218. (1) The Director of Military Prosecutions may appoint officers or persons to be prosecuting officers.

(2) The Director of Military Prosecutions may appear personally or be represented by any person delegated by him or her to conduct any prosecution before the court-martial provided the person has the prescribed minimum qualification;

(3) A prosecuting officer may, unless the Director of Military Prosecutions otherwise directs, exercise any function of the Director of Military Prosecutions.

Promulgation

219. Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be prescribed.

Custody of proceedings of courts-martial and right of accused to copy thereof

220. (1) The record of the proceedings of the court-martial shall be kept in the custody of the court administration officer for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) shall be capable of being exercised.

(2) Subject to this section, any person tried by the court-martial shall be entitled to obtain from the court administration officer on demand within the relevant period and on payment thereof of such fee as may be prescribed copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, the person's personal representatives or any person who in the opinion of the court ought to be treated for the purposes of this subsection as the person's personal representative shall, subject to this section, be entitled to obtain from the court administration officer on demand within a period of 12 months from the death and on payment thereof of such fee as may be prescribed a copy of the record of the proceedings of the court.

(4) If on an application pursuant to either subsection (2) or (3) for a copy of the record of any proceedings, the court certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.

(5) In this section the expression "the relevant period", in relation to any person tried by court-martial, means the period of five years beginning with the date of the person's acquittal or, when the person was convicted, of the promulgation of the findings and sentence, or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

Provided that where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the relevant period shall be the period of five years beginning with the date of the promulgation of the finding or findings of guilty and the sentence thereon or of the withholding of confirmation of that finding or those findings.

(6) Any reference in this section to the record of the proceedings of the court-martial includes a reference to a record of the proceedings with respect to the confirmation or revision of the findings and sentence of the court-martial.

221. No action shall lie in respect of anything done by any person pursuant to a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

Indemnity for
prison officers,
etc.

222. (1) The Commissioner of Police or any other prosecuting authority, shall inform the Commander immediately he or she knows that a member of the Defence Force is investigated or to be prosecuted.

Notification of
prosecution of
members of the
Defence Force

(2) The Commissioner of Police or any prosecuting authority shall provide the officer's or soldier's full name his or her appointment and the details of the alleged offence.

(3) A judicial officer who tries any criminal case against a member of the Defence Force shall, immediately the proceedings are completed, inform the Commander of the outcome.

(4) Notwithstanding the provisions of subsection (1), a member of the Defence Force shall have the responsibility to report any criminal investigations against him or her and the details of such investigations to the commanding officer.

Rules of Procedure, etc. (ss 223 – 226)

223. (1) Subject to this section, the President may make rules (in this Act referred to as "Rules of Procedure") with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers or appropriate superior authorities.

Rules of
procedure

(2) Without prejudice to the generality of subsection (1), Rules of Procedure may make provision with regard to all or any of the following matters;

- (a) the procedure to be observed in bringing charges before the appropriate superior authorities and commanding officers;

- (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purpose of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules of Procedure shall make provision for the application of section 177 in any case where the accused requires that evidence shall be taken on oath;
 - (c) in addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;
 - (d) the constitution of courts-martial;
 - (e) the sittings of courts-martial;
 - (f) the procedure to be observed in courts-martial;
 - (g) the representation of the accused at courts-martial;
 - (h) procuring the attendance of witnesses before courts-martial and at the taking of evidence pursuant to Rules of Procedure;
 - (i) applying in relation to proceedings before commanding officers and otherwise in relation to proceedings prior to trial by courts-martial all or any of the provisions of sections 183, 184, 186 and 187;
 - (j) empowering the court-martial or the Director of Military Prosecutions, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;
 - (k) empowering the court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his or her defence; and
 - (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or the Rules of Procedure.
- (3) Rules of Procedure shall secure that the power to amend charges referred to in subsection (2) (j) shall not be exercisable in circumstances substantially different from those in which charges or information are amendable by a civil court in Botswana, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which charges or information are so amendable, and shall not be exercisable by the court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.
- (4) Rules of Procedure may make provision as to the exercise by a judge advocate of his or her functions at the court-martial, and without prejudice to the generality of this provision may make provision as to the effect of advice or rulings given to the court by a judge advocate on questions of law.

(5) In subsection (4) reference to questions of law includes references to questions as to the joinder of charges and as to the trial of persons jointly or separately.

(6) Rules of Procedure may make provision for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he or she is convicted, at the request of the accused, take into consideration other offences against this Act committed by him or her.

(7) Where Rules of Procedure make such provision as provided by subsection (6), they may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if the accused had been found guilty of the offence or offences taken into consideration as well as of the offence of which the accused was in fact found guilty.

224. The President may make regulations (in this Act referred to as the "Imprisonment and Detention Regulations") with respect to all or any of the following matters —

Imprisonment
and detention
Regulations

- (a) the places in which and the establishments or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them under this Act;
- (b) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention.
- (c) the provision, classification, regulation and management of military establishments;
- (d) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody;
- (e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and their mission of part of any such sentence for good conduct and industry; and
- (f) the appointment, powers and duties of inspectors, visitors and superintendents, and of officers and other members of the staff of military establishments.

225. (1) The President may make rules with respect to the convening, constitution and procedure of boards of enquiry.

Board of
Enquiry Rules

(2) Without prejudice to the generality of subsection (1), Board of Enquiry Rules may make provision with respect to all or any of the following matters —

- (a) the rules of evidence to be observed by boards of enquiry and the taking of evidence before such boards, so however that the Rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at the court-martial an oath could be dispensed with; or
 - (b) without prejudice to the provisions of section 214, the making in service books or records of findings of boards of enquiry in such cases as may be provided by the Rules.
- (3) Board of Enquiry Rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of enquiry shall have an opportunity of being present, and re-presented, at the sittings of the board or such part thereof as may be specified by or under the Rules.

226. The President may make regulations with respect to all or any of the following matters —

- (a) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out, and the custody, treatment and removal of persons under sentence of death;
- (b) field punishment;
- (c) any matter which by this Part is required or authorised to be prescribed or for which regulations may be made; and
- (d) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 223, 224 and 225 and in this section.

Interpretation of Part X
(s 227)

227. (1) In this Part —

“civil prison” means a prison in Botswana in which a person sentenced by a civil court to imprisonment can for the time being be confined;

“military establishment” means a military prison or any other establishment under the control of the Commander where persons may be required to serve military sentences of imprisonment or detention;

“military prison” means separate premises designated by the Commander or persons serving military sentences of imprisonment; and

“prison” means a civil prison or a military prison;

(2) References in this Part to a military sentence of imprisonment are references to a sentence of imprisonment passed by the court-martial.

(3) References in this Part to a military sentence of detention are references to a sentence of detention passed by the court-martial or awarded by the offender’s commanding officer.

(4) References in this Part to Warrant Officers does not include references to acting Warrant Officers.

(5) References in this Part to non-commissioned officers include references to acting non-commissioned officers and also to acting warrant officers.

PART XI

Appeals (ss 228 – 234)

228. A person convicted by the court-martial may appeal against his or her conviction to the High Court in accordance with rules made under section 95 (6) of the Constitution and section 28 of the High Court Act.

Appeal from court-martial

229. An appeal shall lie to the Court of Appeal from a decision of the High Court in accordance with rules made under section 16 of the Court of Appeal Act.

Appeal to Court of Appeal

230. (1) A person found guilty of a charge dealt with summarily under sections 162 and 163 may appeal to the reviewing authority within 30 days from date of confirmation of the finding of guilt.

Appeal on charges dealt with summarily

(2) The commanding officer shall advise the accused of his or her right to appeal.

(3) Appeals to the Defence Council may only be made after appeal to the reviewing authority has been exhausted.

231. Where the conviction of a person by the court-martial for an offence has been quashed under this Part, he or she shall not be liable to be tried again for that offence by court-martial or any other court.

Person not to be tried again where conviction quashed

232. Imprisonment and Detention Regulations may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at and brought back from any place at which he or she is entitled to be present for the purposes of this Part.

Removal of prisoners for purposes of this Part

233. In the case of every appeal under this Part to the High Court against a conviction by court-martial, it shall be the duty of the court administration officer to furnish to the Registrar of the High Court, in accordance with rules of court, the proceedings of the court-martial.

Furnishing, on appeal, of documents relating to trial

234. Nothing in this Part shall affect the exercise by the President of the powers conferred by section 189 for a conviction by the court-martial so far as regards the exercise thereof at a time before the lodging with the Registrar of the Court of Appeal of an appeal or an application for leave to appeal to that Court against the conviction, and nothing in this Part shall affect the exercise by the President of the prerogative of mercy.

Saving of powers of reviewing authorities

PART XII

Forfeitures and Deductions (ss 235 – 240)

235. (1) No forfeiture of the pay of a person subject to the Act shall be imposed unless authorised by or under this Act or any other Act.

Forfeiture and deductions: general provisions

(2) No deduction from the pay of a person subject to the Act shall be made unless authorised by or under this Act or any other Act.

(3) Subsections (1) and (2) do not prevent the making of regulations —

(a) for the imposition of any forfeiture authorised by or under any Act;

(b) for the making of any deduction so authorised;

(c) for the time at which and the way in which amounts may be deducted from pay to give effect to authorised deductions;

(d) as to the appropriation of amounts deducted; or

(e) for the determination of questions relating to forfeitures and deductions.

(4) A person subject to this Act shall, notwithstanding any deduction from his or her pay but subject to any forfeiture, remain in receipt of pay at not less than such minimum rate as may be prescribed.

(5) Notwithstanding the forfeiture of the pay of a person subject to this Act for any period, he or she may remain in receipt of pay at such minimum rate as may be prescribed; but the amount received for that period may be recovered from him or her by deduction from pay.

(6) Any amount authorised to be deducted from the pay of a person subject to this Act may also be deducted from any allowance or grant which may be due to him or her.

Forfeiture of
pay for absence
from duty

236. (1) The pay of an officer or soldier of the Defence Force may be forfeited —

(a) for any day of absence in such circumstances as to constitute an offence under section 81 or 82 or, if the Commander so directs, of other absence without leave;

(b) for any day of imprisonment, detention or field punishment awarded under this Act by a court-martial or commanding officer, or of imprisonment or detention of any description to which he or she is liable in consequence of an order or sentence of a civil court; or

(c) where he or she is found guilty (whether by court-martial, the High Court or his or her commanding officer) of an offence under this Act, for any day (whether before or after he or she is found guilty) on which he or she is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence.

(2) The pay of an officer or soldier of the Defence Force may be forfeited for any day of absence by reason of having been made a prisoner of war if the Commander or an officer authorised by him or her is satisfied that —

(a) he or she was made a prisoner of war through disobedience to orders or wilful neglect of his or her duty;

(b) having been made a prisoner of war he or she failed to take any reasonable steps available to him or her to re-join the Defence Force; or

(c) having been made a prisoner of war he or she served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage, but, except as aforesaid, nothing in subsection (1) (a) shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations or orders of the President may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

(4) For the purposes of this section “a day” shall be deemed to be any period over six hours but not more than 24 hours.

237. Where a person sentenced or ordered by a civil court (whether within or without Botswana) to pay a sum by way of a fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes, an officer or soldier of the Defence Force, then, if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment maybe deducted from his or her pay.

Deductions for
payment of civil
penalties

238. (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations made by the President, it appears to the Commander or an officer authorised by him or her that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or soldier of the Defence Force (hereinafter referred to as “the person responsible”).

Compensation
for loss
occasioned by
wrongful act
or negligence

(2) The Commander or authorised officer, as the case may be, may order the person responsible to pay, as or towards compensation for the loss or damage, such sum taking into account the degree of negligence, as may be specified in the order; and any such sum, in so far as not otherwise paid by the person responsible, may be deducted from the person’s pay.

(3) No order shall be made under the provisions of subsection (2) if, in proceedings before the court-martial, the commanding officer of the person responsible, that person:

- (a) has been acquitted in circumstances involving a finding that the person was not guilty of the wrongful act or negligence in question; or
- (b) has been awarded stoppages for the same loss or damage, but, except as aforesaid, the fact that any such proceedings have been brought for the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2).

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Deductions for
barrack damage

239. (1) Where damage occurs to any premises in which one or more units or parts of such units of the Defence Force are quartered or billeted or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with regulations made by the President, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof, but that the said persons cannot be identified, any person belonging to any of such units or parts of units may be required to contribute towards compensation for the damage or loss, such amount as may in accordance with such regulations be determined to be just, and the amount may be deducted from his or her pay.

(2) Subsection (1) shall extend to vessels, trains, motor vehicles and aircraft: in which units or parts of units are being transported, and references to premises, quartering and occupation shall be construed accordingly.

Remission of
forfeitures, etc.

240. Any forfeiture or deduction imposed under this Part or under regulations may be remitted by the President or in such manner and by such authority as may be provided by such regulations.

PART XIII

*Governmental and General Provisions
Redress of Complaints and Individual Grievances
(ss 241 – 244)*

Redress of
individual
grievances

241. (1) If —

- (a) a person subject to this Act thinks himself or herself aggrieved in any matter relating to his or her service, or
- (b) a person who has ceased to be subject to this Act thinks himself or herself aggrieved in any such matter, which occurred while he or she was so subject, (hereinafter referred to as a “service complaint”),

may make a complaint about the matter under this section

(2) A person may not make a service complaint about a matter of a description specified in regulations made by the President.

(3) The President may by regulations make provision with respect to the procedure for making and dealing with service complaints.

(4) The regulations shall make provision requiring —

- (a) a service complaint to be made to an officer of a prescribed description and rank;
- (b) the officer to whom a service complaint is made to decide whether to consider the complaint himself or herself or to refer it to a superior officer of a prescribed description and rank, Defence Complaints and Appeals Panel or to the Defence Council;

- (c) a service complaint considered by the officer to whom the complaint is made to be referred, on the application of the complainant, to a superior officer of a prescribed description and rank or (if the officer considers it appropriate) to the Defence Council;
 - (d) a superior officer to whom a service complaint is referred by virtue of paragraph (b) or (c) to decide whether to consider the complaint himself or herself or to refer it to the Defence Council; and
 - (e) a service complaint considered by a superior officer to whom the complaint is referred by virtue of paragraph (b) or (c) to be referred, on the application of the complainant, to the Defence Council.
- (5) Without prejudice to the generality of subsections (3) and (4), the regulations may also make provision —
- (a) as to the way in which a service complaint is to be made (including provision as to the information to be provided by the complainant);
 - (b) that a service complaint, or an application of a kind mentioned in subsection (4) (c) or (e), may not be made, except in prescribed circumstances, after the end of a prescribed period.
- (6) A period prescribed under subsection (5) (b) shall not be less than three months beginning with the day on which the matter complained of occurred.
- (7) If, under provision made by virtue of subsections (3) and (4) —
- (a) an officer decides to consider a service complaint himself or herself, or
 - (b) a service complaint is referred to the Defence Council,
- the officer or the Defence Council (hereinafter referred to as “the appropriate person”) must decide whether the complaint is well founded.
- (8) If the appropriate person decides that the complaint is well-founded, the person shall —
- (a) decide what redress (if any), within the person’s authority, would be appropriate; and
 - (b) grant any such redress.
- 242.** (1) The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a panel of persons (hereinafter referred to as a “service complaints and appeals panel”) all or any of the functions conferred on the Defence Council.
- (2) The delegation under subsection (1) of a function may relate to —
 - (a) a particular service complaint;
 - (b) any service complaint of a description determined by the Defence Council; or
 - (c) an appeal from summary trials.
 - (3) The members of a service complaints and appeals panel, shall be appointed by the Defence Council.
 - (4) The Defence Council may, to such extent and subject to such conditions as they consider appropriate, delegate to a person employed in the civil service of the Government or an officer —

Service complaints and summary appeals: Role of Defence Council and service complaints and appeals panel

- (a) their function of deciding whether, and if so to what extent and subject to what conditions, they should delegate any of their functions to a service complaints and appeals panel under subsection (1);
 - (b) their function of appointing members of service complaints and appeals panels under subsection (3).
 - (5) The delegation under subsection (4) of a function may relate to —
 - (a) a particular service complaint;
 - (b) any service complaint of a description determined by the Defence Council; or
 - (c) all service complaints.
 - (6) The Defence Council may require a service complaints and appeals panel to assist them in carrying out any of the functions conferred on them by or under section 241 (1).
 - (7) The Defence Council may authorise a person (whether or not a service complaints and appeals panel or a member of such a panel) to investigate on their behalf —
 - (a) a particular service complaint;
 - (b) any service complaint of a description determined by them; or
 - (c) an appeal from summary trials.
 - (8) In this section “service complaint” has the same meaning as in section 241 (1).
- 243.** (1) A person may not be a member of a service complaints and appeals panel unless the person is —
- (a) a senior officer; or
 - (b) a person employed in the civil service of the Government; but this is subject to any regulations made by virtue of subsection (6) (a) (appointment of independent members).
- (2) A service complaints and appeals panel shall consist of at least two members.
- (3) At least one member of the service complaints and appeals panel must be a senior officer.
- (4) In this section “senior officer” means an officer who is—
- (a) subject to the Act; and
 - (b) of or above the rank of colonel.
- (5) The President may by regulations —
- (a) with respect to the composition of service complaints and appeals panel; and
 - (b) to make provision as to the procedure of service complaints and appeals panel (either generally or in prescribed circumstances).
- (6) The regulations may in particular —
- (a) require, in the case of any service complaint or summary appeal of a prescribed description, a service complaints and appeals panel to include one independent member;

- (b) impose, in the case of all service complaints, any service complaint of a prescribed description, or any summary appeal, any requirement in addition to those imposed by subsections (1) to (4); or
- (c) impose, in the case of any service complaint of a prescribed description, or any appeal, a greater requirement than that imposed by any provision of those subsections (for example, requiring an officer to be of or above a higher rank than those specified in subsection (4) in order to be a senior officer for the purposes of this section).
- (7) In this section —
 - “independent member” means a person appointed by the President who is not —
 - (a) a member of the regular or Reserve Force; or
 - (b) a person employed in the civil service of the Government.

244. An officer may refer his or her grievance to the President provided that —

- (a) a decision on the complaint was taken by the Defence Council;
- (b) that the complaint is made in the prescribed manner in terms of regulations;
- (c) the Defence Council’s function of taking that decision was not delegated to a service complaints and appeals panel to any extent; and
- (d) the complainant made an application to the Defence Council stating why, in the person’s view -
 - (i) he or she should be given redress, or
 - (ii) he or she should be given different or additional redress.

(2) The Defence Council must make a report on the complaint to the President, in order to receive the directions of the President on the complaint.

Referral of officers grievances to the President

Inspector-General
(ss 245 – 247)

245. (1) There shall be an Inspector-General of the Defence Force, to be known as the Inspector-General.

(2) The Inspector General shall be appointed by the Commander.

246. The Inspector-General shall perform the following functions —

- (a) readiness inspections;
- (b) inquire into or investigate matters concerning the military justice system;
- (c) conduct performance reviews, including internal audits, at the times and in the manner the Inspector-General considers appropriate;
- (d) advise on matters concerning the military justice system, including making recommendations for improvements;
- (e) promote military justice values across the Defence Force;
- (f) do anything incidental or conducive to the performance of any of the preceding functions;

Inspector-General

Functions of the Inspector-General

A.144

When
Inspector-
General can
conduct
inquiries or
investigations

- (g) enquire into and reports upon the discipline, effectiveness, efficiency and economy of the Defence Force; and
- (h) receive reports of impropriety in accordance with the Whistleblowing Act.

- 247.** The Inspector-General may conduct an inquiry or an investigation —
- (a) on his or her own initiative;
 - (b) on the direction of the Commander;
 - (c) at the request of a command commander; or
 - (d) at the request of any other individual, but is not required to comply with the request.

*Provisions with respect to Office of Judge Advocate General
(ss 248 – 250)*

Appointment
and functions
of Judge
Advocate
General

248. (1) There shall be a Judge Advocate General who shall be the head of the military justice system and an officer not below the rank of brigadier.

(2) The Judge Advocate General shall be appointed by the President acting in accordance with the advice of the Defence Council.

- (3) The Judge Advocate General shall —
- (a) act as a senior legal advisor to the Defence Force;
 - (b) oversee the administration of military justice;
 - (c) provide attorneys and other persons required by the military courts;
 - (d) command all legal officers, non commissioned officers and all other persons under his or her command; and
 - (e) provide legal services to the Defence Force.

Qualifications
of Judge
Advocate
General

249. (1) No person shall be qualified for appointment as a Judge Advocate General unless —

- (a) the person is an attorney or an advocate of the High Court of Botswana of not less than ten years standing; and
- (b) the person is an officer in the Defence Force.

(2) No person shall be qualified for appointment as an Assistance Judge Advocate General unless —

- (a) the person is an attorney or an advocate of the High Court of Botswana of not less than seven years standing; and
- (b) the person is an officer in the Defence Force.

Tenure of
office of
Judge
Advocate
General

250. (1) The Judge Advocate General shall be removable by the President on the ground of inability or misbehaviour upon a recommendation in that behalf made by the Defence Council.

(2) The Judge Advocate General shall vacate the office at the end of the completed year of service in the course of which the person attains the age of sixty-five years:

Provided that, where the President considers it desirable in the interest of the Defence Force to retain the Judge Advocate General in office after the time when the person's office is required to be vacated under the foregoing provisions of this subsection, the President may, from time to time authorise the continuance of the Judge Advocate General up to such age not exceeding seventy years.

(3) A person appointed Deputy Judge Advocate General under this Act to assist the Judge Advocate General in the exercise and performance of the person's powers and duties shall hold and vacate office in accordance with the terms of his or her appointment.

Military Police (s 251)

251. (1) The military police shall enforce this Act or any other law, including the common law, traffic law in so far as it applies to the Defence Force, any member, employee or property of the Defence Force, or to any person, area, land, premises or property under the protection or control of the Defence Force, a provost officer may at any time and in any place perform any police functions, which includes —

- (a) the prevention and combating of crime;
- (b) the investigation of any offence or alleged offence;
- (c) the maintenance of discipline, law and order;
- (d) the regulation and management of military establishments and prisons;
- (e) any combat or operational functions of the Military Police; and
- (f) any other function that may be determined by the Commander.

(2) In exercise of their functions under this Act, all members of Military Police shall have like powers and privileges as are by law accorded to Botswana Police Officers.

(3) A provost officer may, without a warrant, arrest a person if the provost officer reasonably suspects that the person has contravened or is contravening a law.

(4) A provost officer may use such force as is reasonable in the circumstances in effecting an arrest under this section; and for the purpose of effecting an arrest, enter and search any premises or place if the provost officer has reason to believe that there is in the premises or place a person who is to be arrested.

(5) A provost officer shall not enter any premises or place unless he or she has first stated that he or she is a provost officer and the purpose for which he or she seeks entry and produces his or her identity card to any person requesting its production.

Functions and
powers of
military police

A.146

*Practice by Combat Paramedics, Combat Medics,
Combat Lifesavers
(ss 252 – 256)*

Purpose of this part

252. This part regulates practice by combat paramedics, combat medics and combat lifesavers by persons subject to this Act

Interpretation

253. In this Part —

“combat lifesavers” means officers and soldiers trained to provide advanced first aid or lifesaving procedures beyond the level of self-aid or aid to another soldier or other person with the intention to slow deterioration of the wounded person until trained medical personnel arrive;

“combat medic” means a military emergency medical technician who has been trained to provide intermediate emergency medical care or intermediate life support care. Their services are rendered up to the level of a field hospital or in pre-hospital care environment both in combat and non-combat emergency situations;

“combat paramedic” means a military paramedic, who beyond the training of a paramedic, is trained to cope with combat related injuries as well as function in a combat environment; and

“medic” means personnel involved in the provision of medical care. It encompasses all health care providers to include medical practitioners, allied health professionals, associate health professionals, paramedics, combat paramedics and combat medics.

Practice by medical practitioners, combat paramedics, combat medics, combat lifesavers, etc.

254. (1) Practice by medical practitioners, combat paramedics and combat medics shall be in accordance with the Botswana Health Practitioners Act.

(2) Notwithstanding the restrictions of the Botswana Health Practitioners Act, medical practitioners, combat paramedics, combat medics are authorised to conduct lifesaving procedures in combat and emergency situations on persons subject to this Act, and on other persons as exigencies of the situation may require or under the supervision of qualified medical practitioners. Such practice must be within the scope of their training and qualification.

(3) Combat lifesavers are authorised to conduct lifesaving procedures in combat and emergency situations on persons subject to the Act, and on other persons as exigencies of the situation may require or under the supervision of qualified medical practitioners.

(4) The President may make regulations for the better carrying out of this part.

Status of medical practitioners, Combat lifesavers, Combat Medics and Combat Paramedic personnel, etc. of allied military forces

255. Medical practitioners, Combat lifesavers, Combat Medics and Combat Paramedic personnel of allied military forces shall be permitted to practice under conditions stipulated in section 254 provided they have similar or equivalent qualifications.

256. A combat lifesaver shall —

- (a) stabilise casualties;
- (b) prevent casualties dying from wounds and related injuries;
- (c) attend to battlefield casualty conditions;
- (d) attend to any other casualty under the supervision of qualified and registered medical personnel and attend to other casualties in an emergency situation in the absence of qualified medical personnel;
- (e) perform above tasks in accordance with prescribed standards;
- (f) be trained to prescribed standards; and
- (g) be re-certified every twelve months:

Provided that the combat lifesaver performs tasks within these provisions, the combat lifesaver shall not be held liable.

Duties,
training and
liability of
Combat
Lifesavers

Administrative Actions (s 257)

257. (1) Administrative actions means —

- (a) non punitive corrective measures used to correct minor infraction, deficiencies and inappropriate conduct aimed at promoting good order, discipline and effectiveness in the Defence Force; or
- (b) punishments used to correct minor infraction, deficiencies and inappropriate conduct aimed at promoting good order, discipline and effectiveness in the Defence Force.

(2) The President may make regulations for the better carrying out of this section in accordance with Section 325 of the Act

Administrative
actions

*Exemptions for Officers and Soldiers
(ss 258 – 259)*

258. An officer or soldier of the Regular Force shall be exempt from serving as an assessor in any civil court.

Exemption
from service
as assessor

259. No judgment, decree or order given or made against an officer or soldier of the Defence Force by any court in Botswana shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon.

Exemption from
execution of
property used
for military
purposes

*Provisions relating to Deserters and Absentees without Leave
(ss 260 – 264)*

260. (1) A police officer may arrest any person whom he or she has reasonable cause to suspect of being an officer or soldier of the Defence Force who has deserted or is absent without leave.

(2) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his or her jurisdiction, an officer or soldier of the Defence Force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his or her arrest.

Arrest of
deserters and
absentees
without leave

Proceedings
before a civil
court for
persons
suspected of
illegal absence

(3) Any person in custody pursuant to this section shall as soon as practicable be brought before a magistrate's court.

(4) Notwithstanding any other law to the contrary a person arrested and brought before a magistrate's court under this section or section 261 or 262 shall not be admitted to bail.

261. (1) Where a person who is brought before a magistrate's court is alleged to be an officer or soldier of the Defence Force who has deserted or is absent without leave, the following provisions shall have effect.

(2) If the person admits that he or she is illegally absent from the Defence Force and the court is satisfied of the truth of the admission, then —

(a) unless the person is in custody for some other cause, the court shall; and

(b) notwithstanding that the person is in custody for some other cause, the court may,

forthwith either cause him or her to be delivered into military custody in such manner as the court may think fit or commit him or her to some prison, police station or other place provided for the confinement of persons in custody, to be kept there or such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him or her to be delivered into military custody) or until sooner delivered into such custody.

(3) Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary to do so for the purpose aforesaid.

(4) If he or she does not admit that he or she is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that the person is subject to this Act and if of opinion that there is sufficient evidence to justify the person's being tried under this Act for an offence of desertion or absence without leave, then, unless the person is in custody for some other cause, the court shall cause him or her to be delivered into military custody or commit him or her as aforesaid, but otherwise shall release him or her:

Provided that if the person is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

Deserters and
absentees
without leave
surrendering
to police

262. (1) Where a person surrenders to a police officer as being illegally absent from the Defence Force, the police officer shall (unless the person surrenders at a police station) bring him or her to a police station.

(2) The police officer in charge of a police station at which a person has surrendered as aforesaid, or to which a person who has so surrendered himself or herself is brought, shall forthwith enquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid the person may cause him or her to be delivered into military custody without bringing him or her before a magistrate's court or may bring him or her before such a court.

263. (1) Where a magistrate's court in pursuance of section 261 deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him or her a certificate set out in Part I of Schedule 3, signed by a magistrate, containing the particulars as to the person's arrest or surrender and the proceedings before the court.

Certificate of arrest or surrender of deserters and absentees

(2) Where a person is delivered into military custody without being brought before a court, whether under section 262 or under any other lawful power, there shall be handed over with him or her a certificate set out in Part II of Schedule 3, signed by the police officer who caused him or her to be delivered into military custody, containing the particulars relating to the person's surrender.

(3) In any proceedings for an offence against section 81 or 82 –

- (a) a document purporting to be a certificate under either subsection (1) or (2) and to be signed as thereby required, shall be evidence of the matters stated in the document; and
- (b) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate set out in Part III of Schedule 3 to be signed by a provost officer or by any officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the facts, date, time and place of arrest or surrender, shall be evidence of the matters stated in the certificate.

264. (1) It shall be the duty of the officer in charge of a civil prison to receive any person duly committed to that prison by a magistrate's court as illegally absent from the Defence Force and to detain him or her until in accordance with the directions of the court the person is delivered into military custody.

Duties of officers in charge of prisons and others to receive deserters and absentees

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, as it applies to the superintendent of a person.

Offences Relating to Military Matters Punishable by Civil Courts (ss 265 – 273)

265. This Part shall apply to civilians and any other person not otherwise subject to this Act.

Application of this part

266. A person who falsely represents to any military or civil authority to be a deserter from the Defence Force commits an offence and shall be liable to a fine not exceeding P2000 or to imprisonment for a term not exceeding three months, or to both.

Punishment for pretending to be a deserter

267. A person who –

- (a) procures or persuades any officer or soldier of the Defence Force to desert or to be absent without leave;
- (b) knowing that any such officer or soldier is about to desert or be absent without leave, assists the officer or soldier in so doing; or

Punishment for procuring and assisting desertion

A.150

Punishment for obstructing officers or soldiers in execution of duty

(c) knowing any person to be a deserter or absentee without leave from the Defence Force, conceals or assists the person in concealing himself or herself or assists in the person's rescue from custody,
commits an offence and shall on conviction be liable to a fine not exceeding P5000 or to imprisonment for a term not exceeding 12 months, or to both.

268. Any person who—
(a) wilfully obstructs or otherwise interferes with any officer or soldier of the Defence Force acting in the execution of the officer or soldier's duty; or
(b) engage in political campaigns or in activities of a political nature in the premises of the Defence Force or military installations,
commits an offence and shall on conviction be liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding three months, or to both”.

Punishment for aiding malingering

269. A person who —
(a) produces in an officer or soldier of the Defence Force any sickness or disability; or
(b) supplies to or for an officer or soldier any drug or preparation calculated or likely to render the officer or soldier, or lead to the belief that the officer or soldier is, permanently or temporarily unfit for service, with a view to enabling the officer or soldier to avoid military service, whether permanently or temporarily,
commits an offence and is liable to a fine not exceeding P2500 or to imprisonment for a term not exceeding six months, or to both.

Unlawful purchase, etc., of military stores

270. (1) A person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall, unless the person proves —
(a) that the person did not know, and could not reasonably be expected to know, that the goods in question were military stores;
(b) that the goods had (by the transaction with which the person is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom the person had reasonable cause to believe to have, power to give the order or consent; or
(c) that the goods had become the property of an officer of the Defence Force who had retired or ceased to be an officer, or of a soldier of the Defence Force who had been discharged or of the personal representative of a person who had died,
commits an offence and shall on conviction be liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding two years, or to both.

(2) A police officer may arrest without warrant any person whom he or she has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he or she has reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with an offence may, if satisfied by evidence on oath that a person within his or her jurisdiction has, or is reasonably suspected of having, in his or her possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a magistrate's court.

(4) In this section the expressions —

“acquire” means buy, take in exchange, take in pledge, or otherwise receive (whether a part from this section the receiving is lawful or not);

“dispose” means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not); and

“military stores” means any goods of any description belonging to the Government which have been issued for use for military purposes or are held in store for the purpose of being so issued when required, and includes any goods which had belonged, and had been issued or held as aforesaid at some past time.

(5) For the purposes of subsection (3) property shall be deemed to be in the possession of a person if the person has it under his or her control, and whether the person has it for his or her own use or benefit or for the use or benefit of another.

271. (1) A person who —

(a) as a pledge or a security for a debt; or

(b) with a view to obtaining payment from the person entitled thereto of a debt due either to the person or to any other person, receives, detains or has in the person's possession any official document issued in connection with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of the person's or any other person's military service,

commits an offence.

(2) A person who has in the person's possession without lawful authority or excuse (the proof whereof shall lie on that person any such document as aforesaid, or any official document issued in connection with the mobilisation or demobilisation of the Defence Force or any member thereof, commits an offence.

(3) A person who contravenes a provision of this section shall on conviction be liable to a fine not exceeding P2500 or to imprisonment for a term not exceeding six months, or to both.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if the person has it under the person's control and whether or not the person has it for the person's own use or benefit or for the use or benefit of another.

Illegal dealings
in documents
relating to pay,
pensions,
mobilisation,
etc.

Unauthorised use of, and dealing in, uniform, decorations, etc.

- 272.** A person who —
- (a) without authority, uses or wears any service decoration, uniform, or any badge, insignia of rank, wound stripe or emblem supplied or authorised by the President or the Defence Council;
 - (b) uses or wears any uniform, decoration, badge, insignia of rank, wound stripe or emblem so nearly resembling any service decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorised, as to be calculated to deceive;
 - (c) falsely represents himself or herself to be a person who is or has been entitled to use or wear any service uniform, decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorised as;
 - (d) purchases or takes in pawn any service uniform, decoration awarded to any member of the Defence Force, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof; or
 - (e) uses equipment in the form that it portrays equipment used by the Defence Force,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding two years.

Unauthorised taking of pictures and making of sketches in military installations

273. A person who without authority makes a sketch, plan, model, note or takes pictures of military structures, arms, armaments and equipment in or outside military installations commits an offence and shall on conviction be liable to a term of imprisonment not exceeding two years.

Provisions as to Evidence (ss 274 – 276)

General provisions as to evidence

274. (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before the court-martial, a civil court or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on the person's enlistment shall be evidence of having given the answers to questions which the person is therein recorded as having given.

- (4) A letter, return or other document stating that any person —
- (a) was or was not serving at any specified time or during any specified period in any part of the Defence Force or was discharged from any part of that Force at or before any specified time;
 - (b) held or did not hold at any specified time any specified rank or appointment in that Force or had at or before any specified time been attached, posted or transferred to any part of that force, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or

(c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem, shall, if purporting to be issued by or on behalf of the Defence Council, or a person authorised by it, be evidence of the matters stated in the document.

(5) A record made in any prescribed service book or any other prescribed document, being a record made pursuant to the provisions of this Act, or otherwise pursuant to military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document as aforesaid purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

(6) A document purporting to be issued by order of the Commander or the Defence Council and to contain instructions or orders given or made by the Commander or the Defence Council shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be issued by or on behalf of the President or the Defence Council, or by a person authorised by him or her or it, and stating —

- (a) that a decoration of a description specified in or annexed to the certificate is a military decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the President or the Defence Council,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him or her to give the certificate, and stating the contents of, or any part of, standing orders or other routine orders of a continuing nature made for —

- (a) any formation or unit or body of troops;
- (b) any command or other area, garrison or place; or
- (c) any vessel, train or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate.

(9) A certificate purporting to be signed by the Defence Council that any unit is a unit of the Defence Force shall be conclusive evidence of the facts stated therein.

(10) A certificate purporting to be signed by a person's commanding officer stating that such person is or is not a member of any unit of the Defence Force shall, in proceedings against such person, be evidence of the facts stated in such certificate.

A.154

Proof of
outcome of
civil trial

275. (1) Where a person subject to this Act has been tried before a civil court (whether at the time of the trial the person was so subject or not) a certificate signed by the clerk of the court or by a judge or a magistrate and stating all or any of the following matters —

- (a) that the said person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) what judgment or order was given or made by the court;
- (d) that other offences specified in the certificate were taken into consideration at the trial,

shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by the clerk of the court, a judge or a magistrate shall, unless the contrary is shown, be deemed such a certificate.

(3) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer authorised by him or her, furnish a certificate under this section.

(4) References in this section to the clerk of the court include references to his or her deputy, to the Registrar of the High Court and to any other person having the custody of the records of the court.

Evidence of
proceedings of
court-martial

276. (1) The original record of the proceedings of the court-martial purporting to be signed by the presiding officer of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the original record of the proceedings of the court-martial and to be certified by the person having the lawful custody of the proceedings to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates.

(3) This section applies to evidence given in any court, whether civil or criminal.

Miscellaneous Provisions (ss 277 – 281)

Temporary
reception in
civil custody
of persons
under escort

277. (1) Where a person is in military custody when charged with, or with a view to the person's being charged with, an offence against Part X, it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him or her of a written order purporting to be signed by the commanding officer of the person in custody to receive him or her in to the person's custody for a period not exceeding seven days.

(2) In subsection (1) "civil prison" has the meaning assigned to it in section 227.

278. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person for his or her or any other person's service in the Defence Force shall be void.

Avoidance of assignment of, or charge on, military pay, pensions, etc.

(2) Except as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section the person is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

279. (1) An officer of the Defence Force not below field rank (hereinafter referred to as an "authorised officer") may, outside Botswana, take statutory declarations from persons subject to this Act.

Power of certain officers to make statutory declarations

(2) A document purporting to have subscribed thereto the signature of an authorised officer in testimony of a statutory declaration being taken before him or her pursuant to this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

280. Notwithstanding the provisions of any other law, if a member of the Defence Force disappears or is lost at sea, land or air under circumstances that, after due enquiry, in the opinion of the Commander or any officer so authorised by him or her, raise a reasonable presumption that a member is dead, the Commander or any officer so authorised by him or her, may issue a certificate, in the prescribed form in Schedule 3, declaring that the member is deemed to be dead and stating the date on which the death is presumed to have occurred, and the member shall henceforth, for the purposes of this Act and the regulations, and in relation to the member's status and service in the Defence Force, be deemed to have died on that date.

Presumption of death of missing persons

281. (1) A person who wishes to be engaged or enlisted into the Botswana Defence Force shall be subjected to mandatory comprehensive medical examination for purposes of —

Medical evaluation

- (a) determining that person's eligibility for employment and for carrying out military duties; and
- (b) determining the person's ability to contribute to the readiness of the Defence Force,

and the final determination of medical suitability for employment shall be made by a military medical officer.

(2) For purposes of certifying the medical fitness for purposes of subsection (1), the military medical officer shall issue a military medical fitness certificate in accordance with Schedule 4.

(3) The Commander or any officer so authorised by him or her may order any person subject to this Act to present himself or herself for and to submit to a medical examination at the expense of the Government by —

- (a) a military medical officer;
- (b) a medical practitioner; or
- (c) a medical board.

(4) A person subject to this Act may be subjected to a medical examination or medical board under one or more of the following circumstances —

- (a) pre-training medical assessment;
- (b) drug test;
- (c) routine medical examination; or
- (d) assessment for retention or employability status.

(5) The commanding officer may subject any person under his or her authority other than an officer of field rank to the medical examination on any of the circumstances listed under subsection (3) above.

PART XIV
Billeting and requisitioning of vehicles
(ss 282 – 303)

Billeting orders	<p>282. When this section is in operation by virtue of an order under section 284, if an officer not below the rank of major or corresponding rank commanding a unit of the Defence Force, considers it necessary for the purpose of securing accommodation for members of the Defence Force or their vehicles, the officer may issue a billeting order requiring the police officer or local authority in charge for a specified area to provide billets at specified places in that area for a specified number of members of the Defence Force, or for a specified number of vehicles of the Defence Force, or for both.</p>
Compensation for billets	<p>283. (1) Billeting in this Act shall be subject to the Bill of Rights under the Constitution.</p> <p>(2) A person who has been deprived of property under an order made pursuant to this Part shall be entitled to compensation.</p>
Instances where billeting orders may be issued	<p>284. Billeting orders shall only be issued and take effect during —</p> <ul style="list-style-type: none">(a) a state of emergency;(b) war; or(c) armed conflict.
Premises in which billets may be required	<p>285. (1) Billets for persons may be required to be provided —</p> <ul style="list-style-type: none">(a) in any hotel (whether licensed or not) or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward;(b) in any other building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of public funds; or(c) in any dwelling, outhouse, warehouse, barn or stables, but not in any other premises. <p>(2) Billets for vehicles may be required to be provided in any building or on any land.</p>

286. (1) If a billeting order has been produced to a police officer in charge of police or local authority for the specified area, the officer or local authority, on the demand of the officer commanding a unit of the Defence Force, or on the demand of an officer or service member authorised in writing by such an officer, shall billet on the occupiers of premises which fall within section 285, and are at one of the places specified in the billeting order, such number of persons, or vehicles as may be required by the officer or service member, not exceeding the number specified in the billeting order.

Billeting

(2) The police officer in charge of police or the local authority shall exercise the functions under this section in such manner as the police officer or the local authority considers will cause least hardship to persons on whom billeting takes place.

(3) The police officer in charge of police or the local authority may, to such extent and subject to such restrictions as the police officer or the local authority thinks proper, authorise any police officer to exercise functions under this section, and the provisions of this section shall apply accordingly.

287. (1) If persons are billeted under a billeting order, the occupier on whom they are billeted shall furnish such accommodation and meals as the officer or service member demanding the billets may require and are available, not exceeding such accommodation and meals as may be prescribed.

Accommodation to be provided, and payment thereof

(2) If vehicles are billeted under a billeting order, the occupier on whom they are billeted shall furnish standing room for the vehicles.

(3) If persons or vehicles have been billeted under billeting order, they may, so long as section 282 is in operation, continue to be billeted for such period as is requisite, and the allotment of the billets among the persons or vehicles concerned may be varied from time to time.

(4) The occupier on whom any person or vehicle is billeted shall be entitled to receive the prescribed payment for the billeting, but no payment shall be required for vehicles billeted otherwise than in a building unless the land on which they are billeted —

- (a) has its surface made up for the passage or parking of vehicles; and
- (b) is not land where vehicles are normally allowed to stand free of charge irrespective of the persons by whom they are owned or driven.

(5) Payment for billeting shall be made —

- (a) at least once in every seven days, if the billeting continues for more than seven days; and
- (b) before the persons billeted finally leave, or the vehicles are finally removed from the premises where they are billeted.

288. In relation to premises of which there is no occupier, this Part shall apply as if the person entitled to possession thereof were the occupier.

Where there is no Occupier

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Appeals against
billeting

289. (1) Any person who —
(a) is aggrieved by having an undue number of persons billeted upon the person under a billeting order; or
(b) claims that by reason of special circumstances the person should be exempted from having persons so billeted, either generally or on a particular occasion,

may apply to a committee consisting of a person or persons appointed by the Minister.

(2) On an application under subsection (1) (a), the committee may direct that such number of persons billeted as may seem just shall be billeted on some other occupier, or may dismiss the application.

(3) On an application under subsection (1) (b), the committee may grant such exemption as may seem just, or may dismiss the application.

(4) An application under subsection (1) shall not affect billeting pending the determination of the application.

(5) The President shall make regulations to give effect to this section.

Compensation
for damages

290. (1) If any damage is caused to any premises by the billeting of persons or vehicles under a billeting order, the occupier shall recover from the Government, compensation of an amount equal to the cost of repair to the premises caused by the damage.

(2) A court of competent jurisdiction, as the Chief Justice shall determine, shall have jurisdiction to deal with any claim arising under subsection (1), irrespective of the amount of the claim.

(3) In awarding compensation under this Part the Court shall respect and uphold the right to property under Section 8 of the Constitution.

Application to
civilians
employed with
Defence Force
and to aircraft,
vessel and boats

291. (1) In relation to persons employed with the Defence Force and not entitled under the provisions of this Part to be billeted being persons of such descriptions as may be prescribed, those provisions shall apply as they apply in relation to members of the Defence Force.

(2) The provisions of this Part apply in respect of aircraft, vessel and boats as they apply in respect of vehicles and in relation to vessels and boats, land shall include water.

Requisitioning
orders

292. This section is in operation by virtue of an order made under section 301, if an officer not below the rank of Major, commanding any part of the Defence Force considers it is necessary in the interest of defence or public safety and the necessity is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the vehicles, may issue a requisitioning order authorising the requisitioning of specified vehicles, or of a specified number of vehicles of a specified description from among the vehicles in a specified area for meeting the needs of any specified unit of the Defence Force or any part thereof.

Requisitioning
direction

293. (1) A requisitioning order may be issued to the officer commanding any part of the Defence Force, and that officer, or any officer or service member authorised in writing, may give directions for the provision —

- (a) in so far as the requisitioning order authorises the requisitioning of specified vehicles, of all or any of those vehicles; or
 - (b) in so far as the order authorises the requisitioning of vehicles of a specified description, of the number of vehicles of that description specified in the order or any lesser number of such vehicles.
- (2) A direction under subsection (1), given in respects of a vehicle, shall be a direction given to the person having possession of the vehicle either —
- (a) to furnish it immediately at the place where it is; or
 - (b) to furnish it at a place within one hundred kilometres from the premises of that person, at a time specified by the officer or service member giving the direction, but no direction shall be given under this paragraph as respects either a vehicle that is not mechanically propelled, or a trailer normally drawn by a mechanically propelled vehicle.
- (3) If the officer to whom the requisitioning order was issued, or any officer or service member authorised in writing —
- (a) is satisfied that a person who has been directed to furnish a vehicle under subsections (1) and (2) has refused or failed to furnish it in accordance with that direction; or
 - (b) has reasonable grounds for believing that it is not practicable without undue delay to give such a direction to the person having possession of the vehicle,
- the person may take, or authorise any officer or service member to take, possession of the vehicle and, if possession is taken of a vehicle under this subsection, this Part shall, with the necessary modifications, apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefore as if it had been so furnished.
- (4) The police officer in charge of police for any area specified in a requisitioning order or local authority shall, on being so requested by or on behalf of the officer to whom the requisitioning order was issued, give instructions for securing that so far as practicable police officers will be available, if required, for accompanying officers or service member requisitioning vehicles under the requisitioning order.

294. If a vehicle has been furnished under a requisitioning order, it may be retained, so long as section 292 is in operation, for a period for which it is required for any purpose connected with the needs of the Defence Force.

Period for which vehicles are to be requisitioned

295. A requisitioning order may require any person to furnish a vehicle for its being purchased by the Government.

Provision of vehicles for purchase

296. (1) The person by whom a vehicle is furnished under a requisitioning order, otherwise than for the purpose of its being purchased, shall be entitled to be paid —

Payment for vehicles requisitioned

- (a) a sum for the use of the vehicle calculated, by reference to the period for which possession of the vehicle is retained, at the rate of payment commonly recognised or generally prevailing in the area at the time at which the vehicle is furnished or, if no such rate is readily ascertainable, at such rate as may be just;
 - (b) a sum equal to the cost of making good any damage caused to the vehicle, not being damage resulting in its total loss or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and which has not been made good during that period by the Government; and
 - (c) if, during the said period, a total loss of the vehicle occurs, a sum equal to the value of the vehicle immediately before the occurrence of the damage which caused the loss.
- (2) For purposes of subsection (1), “fair wear and tear” means such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.
- (3) The person by whom a vehicle is furnished under a requisitioning order for the purpose of its being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.
- (4) If a vehicle is furnished under a direction given under section 295 —
- (a) for the purposes of subsection (1) (a) and (b) (if that subsection applies), the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and for the purposes of subsection (3) (if that subsection applies), the vehicle shall be deemed to have been furnished at that time;
 - (b) in addition to the payments provided for by subsection (1) or subsection (3), the person by whom the vehicle is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him or her in complying with the direction.
- (5) If a direction to furnish a vehicle is given under section 295, and after the giving of the direction any damage occurs to the vehicle (whether or not resulting in its total loss), if the damage prevents the vehicle being furnished in accordance with the requisitioning order, the foregoing provisions of this section shall apply as if the vehicle had been furnished and had been furnished otherwise than for the purpose of its being purchased (despite the fact that it may have been required to be furnished for the purpose of its being purchased), subject however to the following modifications —
- (a) subsection (1) shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage; and

- (b) subsection (4) shall have effect as if the expression “in complying with” were replaced by the expression “by reason of anything done for the purpose of complying with”.
- (6) If a person is required by a direction to furnish a vehicle —
- (a) the person shall notify the details of the requisitioning and of any payment thereof to any person known to that person to have an interest in the vehicle; and
- (b) any person having an interest shall be entitled to recover from the person giving notice the part, if any, of the payment received by that person for the vehicle as may be just.
- (7) If, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then —
- (a) for the purposes of subsection (1), that period shall be deemed to have come to an end immediately after the occurrence of the loss; and
- (b) no claim shall be made for the return of the vehicle, if it still exists, or for any payment in respect thereof other than what is provided for by subsection (1).
- (8) The Court shall have jurisdiction to deal with any claim arising under this section irrespective of the amount of the claim.

297. In deciding which of alternative vehicles is to be specified in a requisitioning order, or is to be the subject of a direction under section 295, the person issuing the direction given shall act in such manner as that person consider will cause the least hardship.

Avoidance of hardship in requisitioning vehicles

298. If a Judge or a magistrate is satisfied that a person has failed to afford facilities for inspection as required by or under regulations made under section 328 of this Act, the Judge or magistrate may issue a search warrant authorising an armed police officer to enter any premises within which the facilities are required, accompanied by that person, between six o'clock in the morning and nine o'clock in the evening, and to inspect anything that may be found therein.

Issue of search warrant in relation to billets

299. A person who is using a vehicle for the purpose of its being furnished under a direction under section 292 shall be deemed, as respects any claim in respect of injury or damage to any other person or property, to be using the vehicle as a servant of the Government.

Damage by vehicles being delivered for requisitioning

300. (1) Subject to this section, the provisions of this Part, except the provisions which relate to mechanically propelled vehicles and trailers normally drawn thereby, apply to aircraft, vessels, boats, horses, mules, donkeys, camels and other animals, food, forage, fuel and stores as they apply to vehicles.

Application to aircraft, vessels, horses, etc., food, forage and stores

(2) Where stores are required and can be conveyed with, a vehicle with respect to which a direction is given under section 295, direction may also be given in relation to the stores and the foregoing provisions of this Part shall apply accordingly but section 296 shall not apply and if after the direction is given the furnishing of the stores is prevented by damage to them or to the vehicle, such payment, if any, shall be made to the stores as may be just in all the circumstances.

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(3) For the purposes of this section, “stores” means any chattel (other than a vehicle, aircraft, ship, boat, horse, mule, donkey or camel, or food, forage or fuel) that is required for, or is for use in connection with —

- (a) persons, vehicles, aircraft, ships or boats billeted or to be billeted under a billeting order or otherwise temporarily accommodated or to be temporarily accommodated; or
- (b) vehicles, aircraft, ships, boats, horses, mules, donkeys or camels and other animals furnished or to be furnished under a requisitioning order.

Bringing into operation sections 282 and 292

301. Following a declaration of a state of emergency pursuant to section 17 of the Constitution, if it appears to the President that, in the interest of national security or public interest, the provisions of either or both sections 282 and 292 come into operation for a specified period, either generally or in respect of a specified area, the President may, by order in the *Gazette*, direct that section or those sections, thereupon come into operation and remain in operation for the period specified in the *Gazette*.

Refusal to receive persons billeted, etc.

302. A person who —

- (a) refuses to receive any person billeted under a billeting order, or without reasonable excuse fails to furnish the required accommodation;
- (b) gives or agrees to give to any person billeted under a billeting order any money or reward in place of receiving any person or vehicle or of furnishing required accommodation properly; or
- (c) obstructs the billeting of any vehicle, aircraft, ship or boat in the person’s building or on any land or water under the person’s control, commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

Enforcement of requisitioning

303. (1) A person who —

- (a) fails to furnish any vehicle or specified thing as directed to furnish under a requisitioning order, or fails to furnish any such vehicle or specified thing at the time and place as directed to furnish it;
- (b) fails to comply with any regulations made under section 325; or
- (c) obstructs any officer or other person in the exercise of any functions under Part XIV in relation to the inspection or requisitioning of vehicles or specified things,

commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

(2) For the purposes of subsection (1), “specified thing” means one of the things, animals and commodities specified in section 300.

PART XV
Visiting Forces (ss 304 – 308)

304. In this Part —

- “appropriate authority”, in relation to a country, means such authority as is appointed by the government of that country for the purposes of this Part;
- “civilian component” means the civilian personnel accompanying a visiting force, who are employed in the service of the visiting force or are employed by an authorised service organisation accompanying a visiting force, and who are not stateless persons or citizens of Botswana or persons ordinarily resident in Botswana;
- “dependant” means a person who is not ordinarily resident in Botswana and who is the wife, husband or a child of a member of a visiting force who is under the age of eighteen years or is wholly dependent on the member;
- “designated country” means a country designated under section 305;
- “forces”, in relation to a country, means the naval, military or air force of that country;
- “member”, in relation to a visiting force, includes a member of the civilian component of that visiting force, and a dependant;
- “sentence” includes any punishment awarded or imposed by a military court;
- “military court”, in relation to a country, means a court established under the Act of that country, or any authority empowered by that Act to investigate or try charges, or any authority empowered by that Act to review the proceedings of such a court or authority;
- “military law”, in relation to a country, means the laws governing the forces of that country; and
- “visiting force” means any body of the forces of a designated country which for the time being is lawfully present in Botswana in time of peace under a treaty, agreement to which the Government is party to.

Interpretation
of this Part

305. (1) If it appears to the Defence Council that it is expedient that this Part should have effect in relation to any particular country, the Minister responsible for international relations of the Republic of Botswana may, by order, designate that country as a country to which this Part applies.

(2) An order under subsection (1) may provide that it shall have effect subject to limitations or conditions, or that this Part shall apply with modifications or adaptations.

(3) The Defence Force, representing the Government of the Republic of Botswana, may enter into an agreement with and any other State or international institution or organisation regarding the use or provision of military forces of either party, with regard to the use and status of forces.

Power to apply
this Part

(4) In case of operational emergencies, such agreements shall be put in place as soon as possible after deployment.

(5) The provisions of this section shall not be applicable in case of war or any other emergencies where agreements may not be feasible.

(6) An agreements made under this section shall be published in the Government *Gazette* as soon as practicable.

Powers of
military courts
of visiting
forces

306. (1) The military courts and authorities of a designated country may, within Botswana or on board any vessel or aircraft belonging to the Government, exercise over members of a visiting force that belongs to that country all such powers as are exercisable by them according to the law of the country, subject to the Constitution of Botswana.

(2) If a sentence has been passed, whether within or outside Botswana, by a military court of a designated country upon a member of a visiting force then, for the purposes of proceedings in a court of Botswana —

(a) the military court shall be deemed to have been properly constituted;

(b) the sentence shall be deemed to have been within the jurisdiction of the military court and to have been in accordance with the law of the designated country; and

(c) the sentence, if executed according to the tenor of the sentence, shall be deemed to be lawfully executed.

(3) Any person who is detained in custody under a sentence contemplated in subsection (2) is in lawful custody.

(4) Notwithstanding the provisions of this section, a sentence of death passed by a military court of a designated country shall not be carried out in Botswana.

Prosecution
and trial for
civil offences

307. (1) The Botswana civil courts shall have exclusive jurisdiction and primary right to try any member of a visiting force for any civil offence committed in contravention of any Botswana law,

(2) If a member of a visiting force has been tried by a court of the country to which the force belongs —

(a) the member shall not be tried for the same offence by a Botswana court; and

(b) notwithstanding (a) above, if the member is subsequently convicted by a Botswana court and it appears to that court that the conviction is wholly or partly for acts or omissions which the person was convicted by the court of the visiting force, the Botswana court in sentencing shall have regard to any sentence passed by that court.

Proof of
certain facts

308. (1) For purposes of this Part, a certificate issued by or on behalf of the appropriate authority of a designated country —

(a) that a body of the forces of that country is or was at a particular time present in Botswana shall, in proceedings in a Botswana court, be conclusive evidence of the fact certified;

- (b) that a named person at a particular time either was or was not a member (whether as a member of the force or as a member of the civilian component or as a dependant) of a visiting force of that country shall, in proceedings in a Botswana court, be sufficient evidence of the fact, unless the contrary is proved; or
- (c) that a named person —
 - (i) on particular date was sentenced by a military court of that country to a particular punishment,
 - (ii) is, or was at a particular time, detained in custody under a sentence passed by a military court of that country, or
 - (iii) at a particular time and place, was tried by a military court of that country for a particular offence,

shall, in proceedings in a Botswana court, be conclusive evidence of the fact certified.

(2) If —

(a) in a certificate issued for the purposes of this section reference is made to a person by name; and

(b) in proceedings in a Botswana court, reference is made to a person by that name (whether as a party to the proceedings or otherwise),

the reference in the certificate and the reference in the proceedings shall be presumed to be references to the same person, unless the contrary is proved.

(3) A document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of a particular authority, shall be presumed to be a certificate issued by or on behalf of that authority, unless the contrary is proved.

(4) If a document purporting to be a certificate issued for the purpose of this section —

(a) is one which under this section may be issued by or on behalf of the appropriate authority of a designated country; and

(b) purports to be signed by or on behalf of an authority of that country, that authority shall, in any proceedings in a Botswana court, be presumed to be the appropriate authority of that country for the purposes of this section, unless the contrary is proved.

(5) If in proceedings in a Botswana court it is admitted or proved (whether by means of a certificate or otherwise) that a body of the forces of a designated country is or was at a particular time present in Botswana, it shall be presumed in those proceedings that the body is or was at that time lawfully present in Botswana, unless the contrary is proved.

(6) The President may make Regulations for the better carrying out of this Part.

PART XVI

Reserve Force (ss 309 – 322)

Composition of Reserve Force	<p>309. The Reserve Force shall consist of such officers and soldiers of the following categories —</p> <ul style="list-style-type: none"> (a) regular reserve; (b) individual or voluntary ready reserve; (c) sponsored reserve; and (d) retired reserve who shall be appointed therein upon separation from the Regular Force.
Transfer to Reserve Force	<p>310. (1) An officer holding a regular commission who resigns, retires or is discharged from the Defence Force shall thereupon be transferred to the reserve and shall serve in it for a period of five years.</p> <p>(2) An officer of the rank of Lieutenant Colonel and above who resigns, retires or is discharged from the Defence Force may thereupon with the approval of the President be transferred to the reserve and shall serve therein for a period of five years or longer as may be determined by the President.</p> <p>(3) An officer of the rank of Major and below who resigns, retires or is discharged from the Defence Force may thereupon with the approval of the Commander be transferred to the reserve and shall serve therein for a period of five years or longer as may be determined by the Commander.</p> <p>(4) Every soldier of the Regular Force shall, on resigning, retiring or being discharged under section 39, with the approval of the Commander, be transferred to the Reserve Force and shall serve in the Reserve Force for a period of five years from such discharge or longer as may be determined by the Commander.</p>
Calling out reservist for annual training	<p>311. (1) A reservist may be called out for training for a period not exceeding, or for periods not exceeding in the aggregate, one month in any one year.</p> <p>(2) During any training the reservist may be posted or attached to and trained with any unit of the Defence Force.</p>
Calling out reservists temporarily	<p>312. (1) At any time the President may by Directive, temporarily call out reservists, whether by class or by name to —</p> <ul style="list-style-type: none"> (a) strengthen the Defence Force in time of war; or (b) support the civil authorities in the maintenance of law and order in the event of disturbances, insurrection, hostilities or public emergency for a period not exceeding three hundred and sixty five days. <p>(2) In a Directive issued under subsection (1), the President may give or authorise the Minister to give such directions as may be necessary or proper for facilitating the calling out of the reservists.</p> <p>(3) Every reservist called out by the Directive shall attend at the place and time appointed in the Directive, and after that time shall be deemed to be called out on temporary service.</p>

313. (1) When Section 17 of the Constitution applies or is in operation (whether generally or in a part of Botswana), the President may, by proclamation, call out reservists, whether by class or by name, on permanent service, either generally or in that part of Botswana.

Calling out
reservist on
permanent
service

(2) In a proclamation issued under subsection (1), the President may give or authorise the Minister to give such directions as may seem necessary or proper for facilitating the calling out of the reservists.

(3) Every reservist who is an officer called out on permanent service is liable to serve until the officer's services are no longer required, but in any case not beyond the age limits specified in this Act, irrespective of whether the officer held a regular commission or a short term commission, together with such further period as the Minister may determine.

(4) Every reservist who is a soldier called out on permanent service is liable to serve as a soldier until the soldier's services are no longer required, but in any case not longer than the remainder of the soldier's period of service in the reserve together with such further period as the Minister may determine.

314. (1) Any reservist who, without leave lawfully granted or other reasonable excuse, fails to report when called out under this Part shall if —

Punishment
for non-
attendance

- (a) called out under sections 311, 312 or 319 commits an offence of absence without leave within the meaning of section 82; or
- (b) called out under section 313, commits an offence, according to the circumstances, of desertion within the meaning of section 81, or of absence without leave within the meaning of section 82.

(2) Section 212 shall apply to reservists who commit an offence under this section as it applies to persons otherwise subject to this Act.

315. Where a reservist fails to report when called out and the absence continues for at least fourteen days, an entry of such absence shall be made by an officer in the service books, and the entry shall be prima facie evidence of the fact of absence.

Record of
illegal absence

316. (1) Upon completion of a reservist's period of service in the reserve, the reservist shall be released from the reserve, unless —

Release from
reserve during
active or
operational
service

- (a) the reservist is on active or operational service;
- (b) the reserve has been called out on permanent service; or
- (c) at the expiration of the period, the reservist stands charged as a person subject to this Act with the commission of, or is undergoing punishment for, an offence under this Act.

(2) If the reservist stands charged or is undergoing punishment as provided under subsection (1) (c), the service shall be prolonged and release deferred until the reservist has been tried and undergone any punishment awarded for the offence, or until the punishment is completed.

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Discharge from Reserve Force	<p>317. A soldier of the Reserve Force may be discharged by the competent military authority during any term of service in the Reserve Force if —</p> <ul style="list-style-type: none">(a) the person is pronounced by a medical officer to be mentally or physically unfit for further service; or(b) the person's services for any reason are no longer required.
Reporting of Reserve Force	<p>318. Officers and soldiers of the Reserve Force shall be required to report to such authority and to attend such examinations before a medical board as may be prescribed.</p>
Embodiment	<p>319. (1) Whenever it appears to the President necessary or desirable in the public interest, he or she may, by order published in the <i>Gazette</i> or otherwise —</p> <ul style="list-style-type: none">(a) order the employment of the whole or any part of the Reserve Force; and(b) authorise the Commander or the Defence Council to order the employment of any officer or soldier of the Reserve Force for service within or outside of Botswana. <p>(2) An officer or soldier of the Reserve Force employed in terms of subsection (1) by reason of an order issued by the President shall remain so employed until released by the President.</p> <p>(3) Every officer and soldier of the Reserve Force may, when called out for service under this section, be posted or attached to any unit of the Regular Force or the Reserve Force.</p>
Postponement of discharge	<p>320. Where the time at which a soldier of the Reserve Force would otherwise be entitled to be discharged occurs at a time when the Reserve Force, or any part thereof, is employed in terms of section 319, the person may be required to prolong the person's service for such further term as the President may order.</p>
Failure to attend on embodiment	<p>321. (1) Any officer or soldier of the Reserve Force who, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed in accordance with directions given under section 318, commits an offence, according to the circumstances, of desertion or absence without leave, and shall on conviction by court-martial be punishable as for an offence under section 81 or 82.</p> <p>(2) A person who, by any means whatsoever —</p> <ul style="list-style-type: none">(a) procures or persuades any officer or soldier of the Reserve Force to commit an offence of desertion contrary to subsection (1), or attempts to procure or persuade any such soldier to commit such an offence;(b) knowing that any such officer or soldier is about to commit such an offence, aids or assists him or her in so doing; or(c) knowing any such officer or soldier to be a deserter contrary to subsection (1), conceals the officer or soldier, or aids or assists him or her in concealing himself or herself, or employs or continues to employ him or her, or aids or assists in the person's rescue,

commits an offence and shall on conviction be liable to a fine not exceeding P2500 or to imprisonment for a term not exceeding six months, or to both.

(3) Sections 260 and 261 shall apply to a deserter or an absentee without leave contrary to subsection (1).

(4) Any person who, knowing any officer or soldier of the Reserve Force to be a deserter within the meaning of this Act, employs or continues to employ the officer or soldier, shall be deemed to aid him or her in concealing himself or herself within the meaning of section 267.

322. Subject to the foregoing provisions of this Part, the President may make regulations for the better carrying out of this Part and generally for the good government and organisation of the Reserve Force and for providing for matters required by this Part to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with regard to all or any of the following matters —

- (a) the transfer of persons into, and the discharge of persons from the Reserve Force;
- (b) the pay, allowances, pensions and gratuities of officers and soldiers of the Reserve Force and of their dependants surviving them and the deductions therefrom and the forfeiture thereof;
- (c) the calling out of officers and soldiers of the Reserve Force for service in accordance with section 319, including prescribing the manner in which notification of the places and times appointed is to be given; and
- (d) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

Power to make regulations under this Part

PART XVII

Application of Act and Supplementary Provisions

(ss 323 – 331)

323. A person who enlisted in that part of the Botswana Police Force known as the Police Mobile Unit after 1st January, 1977, shall be deemed to be a member of the Defence Force and to be enlisted therein in terms of this Act.

P.M.U. members enlisted in Defence Force

324. Notwithstanding any provisions in any written law a member of the Defence Force is exempted from —

- (a) any provisions relating to the licensing of drivers or operators of any specified military vessels, vehicles, equipment or machinery used by the Defence Force if the Defence Force ensures that the said drivers or operators are adequately trained and tested in accordance with prescribed minimum military standards and are issued with appropriate military permits, licences, etc.;

Exemption from certain licences, permits to operate certain equipment in certain cases

- (b) any provisions relating to the licensing of pilots, aircrew and aerospace-related persons of any aircraft or air vessel used by the Defence Force if the Defence Force ensures that such pilots, aircrew and aerospace-related persons are adequately trained and tested in accordance with prescribed military standards to ensure their competency and certification; and
- (c) any provisions for the licencing requirements to operate any maritime or waterborne vessels used by the Defence Force if the Defence Force ensures that such members are adequately trained and tested in accordance with prescribed military standards to ensure their competency and certification.

Power to make
regulations

325. Subject to the foregoing provisions of this Act, the President, may make regulations for the better carrying out of the provisions of this Act and generally for the good governance and organisation of the Defence Force and for providing for matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with regard to all or any of the following matters —

- (a) the commissioning and appointment of officers, and their terms of service, retirement, resignation, precedence and similar matters;
- (b) the administration of oaths and affirmations;
- (c) the enlistment of persons into, and the discharge of persons from, the Regular Force and generally for the carrying into effect of Part IX, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (d) the pay, allowances, pensions and gratuities of officers and soldiers and their dependants surviving them, and the deductions therefrom and the forfeiture thereof;
- (e) the establishment of Boards as required from time to time for better carrying out of the provisions of this Act;
- (f) the description, supply, use, disposal of and accounting for military equipment, vessels, arms, property, uniforms, badges, insignia, accoutrements, clothing and other stores including investigation into losses thereof;
- (g) prohibiting, restricting and regulating the holding of meetings, within the limits of any camp or other military establishment, and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;
- (h) providing for appointments and promotions to positions within the Defence Force;
- (i) the convening, composition and procedure of a medical board and the dealing with the reports thereof;
- (j) the application of administrative action;
- (k) the periods and terms of service in the volunteer reserve and other matters concerning service in the volunteer reserve;
- (l) the governance, discipline, pay and conditions of service of officer cadets;

- (m) the distribution, posting, transfer, attachment and inspection of personnel;
- (n) the delegation of any or all of the functions of a commanding officer under this Act, in specified cases and to a specified extent, to officers of a specified class;
- (o) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;
- (p) the execution of sentences of imprisonment under this Act, including the prisons in which they are to be served, and the classification, treatment, employment, discipline, control, removal and temporary release on compassionate grounds of persons serving such sentences, and the appointment, powers and duties of inspectors, visitors, governors and members of staff of military prisons, and the removal of prisoners;
- (q) active service punishment;
- (r) participation in sports;
- (s) the administration, discipline and pay of the Reserve Force, including calling out reservists and requiring reservists to report themselves from time to time and to obtain the permission of the competent military authority before leaving Botswana;
- (t) the convening, constitution and procedure of boards of inquiry, the rules of evidence to be observed and the taking of evidence by such boards, including the administration of oaths and affirmations to witnesses;
- (u) fees and forms;
- (v) the making of inquiries regarding members of the Defence Force missing in action and the giving of awards and decorations, the promotion of, and the disposal of pay and allowances of, such persons;
- (w) the re-employment, appointment and terms and conditions for retired officers and soldiers on contract, temporary terms and part time;
- (x) the attachment and secondment of officers and soldiers under Part I;
- (y) rules for the use of force and rules of engagement for the Defence Force when on operations;
- (z) rewards and fines fund;
- (aa) imprisonment and detention;
- (bb) rules of procedure for courts martial and summary proceedings;
- (cc) compulsory drug testing;
- (dd) field punishment;
- (ee) redress of individual grievances;
- (ff) military land; and
- (gg) categories of security classification.

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Power to issue standing orders, orders and instructions
Powers exercisable in subsidiary legislation

326. A commander at any level from independent sub unit upwards may issue standing orders, orders and instructions for his or her command for the proper functioning of the Defence Force.

327. (1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases and to make different provision for different cases or classes of cases as may be defined by reference to any circumstances specified in the instrument.

(2) Any regulations, rules, orders or other instruments made under this Act may —

- (a) impose conditions, or require acts or things to be performed or done to the satisfaction of any person named therein, whether or not the person is a member of the Defence Force;
- (b) empower such a person to issue directions, either orally or in writing, requiring acts or things to be performed or done, or prohibiting acts or things from being performed or done; or
- (c) prescribe periods or dates within, upon or before which such acts or things shall be performed or done or such conditions shall be fulfilled, and providing for appeal against any such imposition, requirement, or directions.

Execution of orders, instruments, etc.

328. Except as expressly provided by any regulations, any order, determination, direction or appointment required or authorised to be made under this Act by any military officer or authority may be signified under the hand of any officer authorised in that behalf, and any instrument signifying such an order, determination, direction or appointment and purporting to be signed by an officer stated therein to be so authorised shall, unless the contrary is proved, be deemed to be signed by an officer so authorised.

Uniforms and decorations not part of estate

329. Uniforms and decorations shall not be treated as part of the estate of a deceased member of the Defence Force in relation to claims or creditors or for any of the purposes of administration under this Act or otherwise, and they shall be delivered to the Commander and thereafter disposed of in the manner to be prescribed by regulations.

Property of deserter

330. (1) In every case of desertion, the movable property of the deserter in the charge or control of the commanding officer or any other officer, including any money belonging or due to the deserter, shall be disposed of in a manner prescribed by regulations.

(2) The President may make regulations for the better carrying out of this section.

(3) Regulations contemplated under subsection (1) shall not arbitrarily deny a person of entitlements or benefits.

Compensation for members and claims against the Defence Force

331. (1) Where there has been damage to property —

- (a) and the property is either in the custody of or under the responsibility of the Defence Force; and
- (b) the damage may be associated with the Defence Force,

an investigation shall be conducted to determine the cause of damage, and the Defence Force shall make a determination as to the reasonable compensation.

(2) Where damage has been occasioned to the property of a member of the public, similarly as in subsection (1) above an investigation shall be conducted to determine the cause of damage, and the Defence Force shall make a determination as to the reasonable compensation.

Defence Force Morale, Welfare and Recreation Programmes
(ss 332 – 345)

332. In this part —

“appropriated funds” means funds appropriated to the Defence Force and available for morale, welfare, and recreation programme;

“authorised persons” means members of the Defence Force, units, retirees, civilian employees and dependants;

“Commissaries” means any military retail sales outlets operated under the authority of the Act;

“Messes” means facilities where military personnel of authorised or prescribed ranks are provided with meals, accommodation and entertainment;

“Non-Appropriated Fund Instrumentalities” means a Botswana Defence Force organisational entity, which performs an essential defence support function, using predominantly non-appropriated funds to sustain its non-capital operations. It provides morale, welfare, and recreational programmes for authorised persons, and as a fiscal entity, it maintains custody and control over non-appropriated funds; and

“Non-Appropriated Funds” means funds and other assets received from sources other than monies appropriated by Government.

Interpretation
of this part

333. (1) The Botswana Defence Force may establish morale, welfare and recreation programmes to support mission readiness, morale, welfare and recreation of the Defence Force to promote fitness and esprit de corps of members of the Defence Force, a strong sense of military community, and beneficial quality of life for authorised persons.

(2) Notwithstanding the provision of such facilities through non-appropriated fund instrumentalities, nothing in these provisions precludes or removes the obligation of Government to provide for support, morale, welfare and recreation for the Defence Force through the use of appropriated funds.

Establishment
of morale,
welfare and
recreation
programmes

334. The objectives of the morale welfare and recreation programmes are to —

- (a) maintain a high level of esprit de corps;
- (b) maintain physical and mental well-being;
- (c) encourage the constructive use of time;

Objectives of
morale,
welfare and
recreation
programmes

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- (d) aid in recruitment and retention;
- (e) assist in the adjustment to military life;
- (f) provide a community support environment;
- (g) create a self-sustaining military community;
- (h) reinforce unit cohesion and increase combat readiness; and
- (i) generate funds to sustain and expand morale welfare and recreation programmes.

Composition of Non-Appropriated Fund Instrumentalities

335. Non-Appropriated Fund Instrumentalities comprise of the Defence Force Commissaries, Messes, the Defence Force Welfare Funds, other welfare programmes or schemes or any other instrumentality under the jurisdiction of the Defence Force which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Defence Force and authorised persons.

Payment of employees of non-appropriated fund instrumentalities

336. Employees of the non-appropriated funds instrumentalities shall be paid with appropriated funds.

Buildings and utilities for non-appropriated fund instrumentalities

337. (1) Buildings to be used for purposes of running non-appropriated fund instrumentalities shall be provided by the Defence Force.

(2) The Defence Force shall be responsible for the payment of utilities and other necessary expenses for running such instrumentalities.

Commissaries and Messes (ss 338 – 343)

Power to authorise establishment of commissaries and messes

338. The Commander may authorise the establishment and operation of commissaries or messes at any Botswana Defence Force installation, temporary cantonment or operational areas within or outside Botswana for the sale or provision to authorised persons of goods of the categories set out in Regulations. Such commissaries or messes may sell to members of the Defence Force and their dependants and other authorised persons on active duty.

Sale of goods without licence at commissaries and messes

339. Notwithstanding anything in any other law, it shall be lawful for any person engaged in operating a commissary or a mess under the control of the Commander, to sell without any licence at such commissaries or messes to authorised persons goods of any of the categories set forth in the Regulations.

Purpose of the commissaries and messes system

340. The commissary and mess systems are intended to enhance the quality of life of members of the Defence Force, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

Oversight of commissaries and messes system

341. (1) The Commander shall designate a committee or a senior officer of the Defence Force or such other person as he or she may deem appropriate to oversee the operation of the commissary and mess systems

(2) The Commander shall establish an executive governing body to provide advice to the senior official designated under subsection (1) regarding the operation of the commissary and mess systems.

(3) Privileges at commissary and mess systems may be revoked or suspended, as prescribed by regulations, for persons found to be abusing these privileges.

(4) Operations and funds generated in support of morale welfare and recreation programmes may be subject to audit as prescribed by regulations.

342. (1) Appropriated funds shall be used to cover the expenses of operating commissary stores, messes and central product processing facilities of the defence commissary and mess systems.

Operating expenses of commissaries and messes

(2) For purposes of subsection (1), operating expenses include the following —

- (a) salaries and wages of employees in Botswana, host nations, and contractors supporting commissary stores and mess operations;
- (b) utilities;
- (c) communications;
- (d) operating supplies and services; and
- (e) any cost associated with above-store-level management or other indirect support of a commissary store, mess or a central product processing facility, including equipment, maintenance and information technology costs.

343. Merchandise to be sold in the commissaries and messes shall consist of categories set out in the Regulations.

Merchandise that may be sold at commissaries and messes

Membership of Messes (s 344)

344. The Commander may establish a mess or other institution, organisation or association of members at any military garrison, base, camp or post and may order all members at that military garrison, base or camp to be members of that mess, institution, organisation or association and to pay such subscriptions as are due by the members thereof.

Establishment of messes and authority to order membership and payment of subscriptions

Botswana Defence Force Welfare Trust Fund (s 345)

345. The Commander may establish and maintain a Welfare Trust Fund with the aim of, among other things, assisting authorised persons by the utilisation of the Fund for the general improvement of the welfare of such persons, and shall designate an accountable officer or board to be accountable for such funds.

Establishment of Welfare Trust Fund

Rewards and Fines Fund (s 346)

346. (1) All fines imposed under this Act for any offence against discipline, or other funds as may be authorised shall be placed to the credit of a fund called the Defence Force Rewards and Fines Fund.

Establishment of Rewards and Fines Fund

(2) No payment shall be made from the Fund except upon the authority of the Commander.

Other Welfare Programmes and Schemes (ss 347 – 349)

Other welfare programmes and schemes

347. The Commander may operate, in accordance with the provisions of this Part and other provisions of law, other welfare programmes and schemes within and outside Botswana as appropriate in support of morale, welfare and recreation of members of the Defence Force on active duty, members of the Defence Force entitled to retired pay, dependents of such members, and persons authorised to use the system.

Contributions to morale, welfare and recreation programmes

348. (1) Where morale, welfare and recreation programmes are established, the Commander may order all members of the Defence Force to pay such subscriptions as may be prescribed.

(2) Any other person who wishes to be a beneficiary of such programmes referred to in subsection (1) may, with the authority of the Commander or a person so authorised by the Commander, be permitted to be a beneficiary provided that they pay required subscription.

Powers to make Regulations for this Part

349. The President may make regulations for better carrying out of this part.

PART XVIII

*Repeals, Transitional and Savings Provisions
(ss 350 – 351)*

Repeal of Cap. 21:05

350. The Botswana Defence Force Act is hereby repealed.

Transitional and savings

351. (1) Notwithstanding the repeal of the Botswana Defence Force Act under section 350 –

- (a) any reference to the Defence Force Act, under any written law shall be construed as a reference to this Act; and
- (b) any regulations, directives, orders, or instructions or other administrative measures taken or issued under the repealed Act, in force immediately before the commencement of this Act, shall be deemed to have been made and issued under this Act;

(2) Until the orders, regulations, rules, circulars, notices, proclamations, or other instruments made in exercise of a power conferred by a written law applicable and having the force of law are amended in accordance with this section, they shall apply and be construed with alterations, qualifications, and exceptions necessary to bring them in conformity with the Constitution and this Act.

(3) A person who immediately before the commencement of this Act was serving as an officer or a soldier of the Defence Force enrolled under the repealed Act shall, at the commencement of this Act, be deemed to be an officer or soldier of the Defence Force under this Act.

(4) All disciplinary proceedings commenced under the repealed Act shall be continued under this Act.

(5) All court-martial proceedings commenced under the repealed Act shall be continued under this Act.

(6) Decisions of the court-martial made under repealed Act shall be deemed to be made under this Act.

(7) A person who immediately before the commencement of this Act was an employee of the Government seconded or attached to the Defence Force shall, upon the commencement of this Act, be deemed to have been seconded or attached in terms of this Act.

(8) A person who immediately before the commencement of this Act was serving as a member of the Reserve Force under the repealed Act shall be regarded as having been enrolled as a member of the Reserve Force under this Act for the remainder of the predetermined period of the said service.

(9) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Defence Force under the repealed Act, shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Defence Force to the same extent as they were enforceable by or against the Defence Force before under the repealed Act.

SCHEDULES

SCHEDULE 1 CONDUCT OF BUSINESS AND AFFAIRS OF THE DEFENCE COUNCIL

Section (25)

1. The Defence Council shall meet as often as may be necessary for the conduct of its business and shall hold at least four meetings in a year.

2. A meeting of the Defence Council shall be held on such date and at such time as the Defence Council shall decide from time to time.

3. The Chairperson shall, on the written request of at least one-third of the members, convene a special meeting of the Defence Council.

4. The quorum for the conduct of business at a meeting of the Defence Council shall be a simple majority of the membership but the quorum of the Defence Council shall not be properly constituted in the absence of both the Chairperson and the Secretary.

5. Unless a unanimous decision is reached, a decision on any matter before the Defence Council shall be by concurrence of a majority of all the members.

6. Unless otherwise provided by or under any law, all instruments made by and decisions of the Defence Council shall be signified in writing under the hand of the Chairperson and the Secretary.

7. The Defence Council shall cause minutes of all its proceedings to be recorded.

8. If any person is present at a meeting of the Defence Council or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in his or her private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Defence Council or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

9. A disclosure of interest made under paragraph 9 shall be recorded in the minutes of the meeting at which it is made.

10. A member of the Defence Council who is the subject of discussion at a meeting of the Defence Council shall be disqualified from attending, participating and voting on the matter.

SCHEDULE 2
PUNISHMENTS AVAILABLE TO THE COURT-MARTIAL
(Section 185)

S/No.	Punishment	Limitation
1.	Death	
2.	Imprisonment	
3.	Discharge	
4.	Forfeiture in the prescribed manner of seniority of rank	Applies to officers only
5.	Detention for a term not exceeding two years	Applies to warrant officers, non-commissioned officers and soldiers of the rank of private only.
6.	Field punishment for a period not exceeding 90 days	Applies to warrant officers, non-commissioned officers and soldiers of the rank of private only.
7.	Reduction in rank	
8.	Where the offence is desertion, forfeiture of service	
9.	Fine of a sum not exceeding the equivalent of 90 days' pay;	only if the person being sentenced is an officer, warrant officer or non-commissioned officer
10.	Severe reprimand or reprimand;	
11.	Where the offence has occasioned any expense, loss or damage, stoppages.	

A.180

SCHEDULE 3
PART I
CERTIFICATE OF ARREST OR SURRENDER OF
DESERTERS AND ABSENTEES
(Section 263 (1))

I certify that on the..... day of..... 20.....there was brought before the Magistrate's Court at (place)

ForceNumber:.....

Rank:

Name:

Unit:

Formation:.....

Command:.....

a member of the Botswana Defence Force, alleged to be an illegal absentee who had been arrested by/surrendered to*

(insert the name of the person who effected the arrest or to whom surrender was made) at(place) at(time) on the dayof 20.....(date) and that he or she was dealt with in accordance with the provisions of section 172 of the Act.

The said member of the Botswana Defence Force admitted that he or she had been illegally absent from the said unit at(place from which he absented himself or herself if known)

DATED this day of 20.....

Signature of Magistrate

Delete as necessary
Delete this paragraph if no admission made

PART II
CERTIFICATE OF ARREST OR SURRENDER OF
DESERTERS AND ABSENTEES
(Section 263 (2))

I certify that.....(full name) surrendered himself or herself at
..... (place) at(hour) on theday of
.....20..... as being illegally absent from (unit) at
(place) on(date)and gave the following particulars:

Force Number:

Rank:

Name:

Unit:

Formation:.....

Command:.....

Dated this.....day of 20.....

.....
Signature of officer or police in charge
of police station where the above
named person surrendered or was
taken on surrender.

A.182

PART III
CERTIFICATE OF ARREST OR SURRENDER OF
DESERTERS AND ABSENTEES
(Section 263 (3))

I,.....(force number, rank, name, unit) certify that, (number, rank, name and unit) [was arrested][surrendered himself or herself] at(place) at.....o'clock on the20.....

DATED this day of 20.....

Signature

[Provost Officer]
[Officer of a force raised under the law of any country corresponding to a provost officer]
[Officer in charge of a guard room] [.....]
at.....
where the person [arrested] 1 [surrendering]' was confined on being taken into custody]'

Delete words not appropriate.

Note: If the absentee was confined in a place other than a guard room. the place in Which he was confined should be inserted.

SCHEDULE 4
CERTIFICATE OF PRESUMPTION OF DEATH
(Section 280)

By virtue of the Powers vested in me under Section 280 of the Botswana Defence Force Act, I.....
(Judge Advocate General) having perused the findings and report of the Board of Inquiry dated 20.....convened to investigate the circumstances under which
(Force Number, Rank and Name) disappeared on land or in air, or was lost at sea on 20 and having satisfied myself in that respect and having regard to all the prevailing circumstances which in my opinion raise a beyond reasonable doubt presumption that the said
..... (Force Number, Rank and Name) is dead, therefore;
I.....
(Judge Advocate General) **HEREBY DECLARE** that the said
(Force Number, Rank and Name) of..... unit be presumed dead and the person shall be deemed to have died on
day of 20.....
Dated 20.....
.....
(Judge Advocate General)

A.184

SCHEDULE 5
MILITARY MEDICAL FITNESS CERTIFICATE (FOR PURPOSES
OF ENTRY, ANNUAL ASSESSMENT, DEPLOYMENT,
EXIT AND OTHER)
(Section 281)

1. Force Number:..... 2. Rank:.....

3. Forenames:.....

4. Surname.....

5. Gender:

6. Date of Birth:.....

7. Blood Group:.....

8. Unit:..... 9. Formation:.....

10. Command:.....

11. Details of Savingram requesting for Medical Examination:
.....

12. It is certified that the above named member of the BDF has received a thorough and complete physical examination on.....at.....

13. The member was/was not* tested for HIV/Hepatitis B (as per requirements of the training institution).

14. The member has undergone/not undergone* Chest X-ray examination.

15. It is certified that the member is free/not free of communicable disease and other medical defects that might require long-term treatment or hospitalisation during training.

16. The member is found FIT/UNFIT for undertaking training in Botswana/abroad*
..... (specify country).

Signature of Examining Medical Officer:
.....

Name and Rank:.....

Date:

DENTAL EXAMINATION

17. It is certified that the above named member of the BDF has received a thorough and complete dental examination on.....at.....

18. It is certified that:

(a). no treatment will be required for any chronic dental condition while the member is undergoing training;

OR*

(b). the member will require dental treatment during training.

Signature of Examining Dental Officer:.....

Name and Rank:.....

Date:

(* delete whichever is not applicable)

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PASSED by the National Assembly this 13th day of December, 2017.

BARBARA N. DITHAPO,
Clerk of the National Assembly.