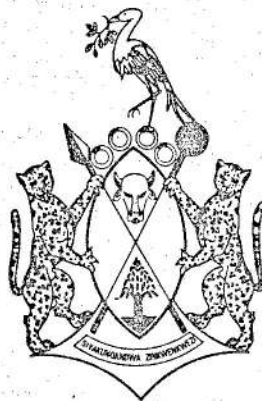


**IRIPHABLIKI
YECISKEI**



**REPUBLIC OF
CISKEI**

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**GOVERNMENT
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DEPARTMENT OF DEFENCE

GOVERNMENT NOTICE NO. 73

**IT IS HEREBY NOTIFIED THAT THE PRESIDENT HAS
ASSENTED TO THE FOLLOWING ACT WHICH IS HEREBY
PUBLISHED FOR GENERAL INFORMATION:-**

DEFENCE ACT, 1986

ACT NO. 17 OF 1986

DEFENCE ACT, 1986

ACT

To consolidate and amend the laws providing for the defence of the Republic of Ciskei and to provide for incidental matters.

(English text signed by the President. Assented to on 18 September 1986.)

ARRANGEMENT OF CHAPTERS AND SCHEDULES

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

CHAPTER 1

INTERPRETATION AND APPLICATION OF ACT AND PROVISIONS
RELATING TO LIABILITY FOR SERVICE AND TRAINING

1. Definitions. - (1) In this Act, unless the context otherwise indicates -

"auxiliary service" means an auxiliary service established in terms of section 40;

"Ciskei" means the Republic of Ciskei;

"citizen" means any person who is a citizen of Ciskei within the meaning of the Ciskeian Citizenship Act, 1984 (Act 38 of 1984);

"Commander of the Defence Force" means the chief military executive officer of the Defence Force appointed under section 8;

"court", in relation to any visiting force, means any person who or body which by the laws of the country to which such visiting force belongs, is empowered to investigate any matter or to try any member of that force for any offence under the military laws of that country or to review any proceedings in connection with any such investigation or trial; as the case may be;

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

"Department" means the Department of Defence;

"enrol", in relation to any person, means to accept and to record the enlistment of that person as a member of any part of the Defence Force;

"force" means a military force;

"member" includes an officer and an other rank and, in relation to a visiting force, any person other than a citizen who is engaged by that force outside Ciskei for attachment thereto or for employment therein as a civilian and who is subject to the military laws of the country of such visiting force;

"military court" includes an officer on whom jurisdiction to try an offence has been conferred under this Act;

"Military Discipline Code" means the Military Discipline Code prescribed in section 63;

"military force" includes an army, air and naval force and "military" shall be construed accordingly;

"Minister" means the Minister of Defence;

"officer", in relation to the Defence Force or the Reserve, means a member thereof who holds commissioned rank conferred on him under section 43(1) or any other law;

"other force" means a force of a country or state other than Ciskei;

"other rank" means a member of a force other than an officer;

"prescribed" means prescribed by or under this Act;

"registered address" in relation to a citizen, means the address of that citizen as notified to the proper authority from time to time in terms of this Act;

"regulation" means a regulation made and in force under this Act;

"service in defence of Ciskei" means military service -

- (a) in time of war; or
- (b) in connection with the discharge of the obligations of Ciskei arising from any agreement between Ciskei and any other State; or
- (c) for the prevention or quelling of internal disorder or subversion; or
- (d) for the prevention or combating of terrorism; or
- (e) for the prevention or suppression of any armed conflict outside Ciskei which, in the opinion of the President, is or may be a threat to the security of Ciskei;

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"terrorism" means terrorism as contemplated in section 2 of the National Security Act, 1982 (Act 13 of 1982);

"the Reserve" means the reserve forces referred to in section 6;

"this Act" includes any regulation or rule made and in force under this Act;

"time of war" means any time during which an actual state of war exists or may in the opinion of the President be expected;

"Treasury" means the Minister of Finance and Economic Development or any officer in his department acting under his authority;

"visiting force" means a force of another country which, with the consent of the Government of Ciskei, is present in Ciskei;

"voluntary nursing service" means the voluntary nursing service contemplated in section 41.

(2) Any reference in any law to the armed forces of Ciskei shall be construed as including a reference to the Defence Force and the Reserve established and constituted as provided in this Act.

(3) For the purposes of this Act the liability to render service in the Defence Force or the Reserve means the liability to serve in any part of the Defence Force or the Reserve and includes the liability to undergo training therein.

2. Application of Act. - This Act shall not apply -

(a) in so far as it relates to liability for training and service, to any member of the National Assembly or to any Minister or Deputy Minister; or

(b) except in so far as it relates to any auxiliary service or voluntary nursing service, to females: Provided that the President may, with the approval by resolution of the National Assembly and by proclamation in the *Gazette*, apply the provisions of this Act to females or to any specified class of females.

3. Liability for training and service and functions of Defence Force. - (1) Except as elsewhere in this Act provided every citizen of or above the age of eighteen years but below the age of sixty-five years shall be liable to undergo training and to render service in the Defence Force.

(2) The Defence Force and any part or member thereof may at any time be employed -

(a) on service in defence of Ciskei;

(b) on service in the preservation of life, health or property or the maintenance of essential services; and

(c) on such police duties as the President or the Minister may from time to time direct or as may be prescribed.

(3) (a) A member of the Defence Force may, subject to such limitations or restrictions as may be prescribed, be required to serve in any part of the Defence Force.

(b) Any such member, who is serving in an armed service, formation, corps or unit or performing any duty in respect of which a special allowance is prescribed for such service, shall not be entitled to such allowance while serving elsewhere or performing any other duty.

(4) A member of the Defence Force employed on police duties as contemplated in subsection (2)(c) shall have the power and authority which by or under any law are conferred upon or entrusted to a member of the Ciskeian Police of the same or corresponding rank and shall, in respect of any act or omission in the performance of such duties be subject to the same liabilities and be entitled to the same indemnities and immunities as would, in like circumstances, attach or accrue to a member of the Ciskeian Police.

4. Duties of employers. - (1) An employer shall afford a person in his employ all reasonable facilities to carry out any service which such person is obliged to render under this Act.

(2) Subject to the provisions of subsections (3) and (4) any employer -

(a) who fails to comply with the provisions of subsection (1), or

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(b) who penalizes any employee by dismissing him, reducing his remuneration or altering his position to his disadvantage in any way on account of his obligation to perform or to have performed any service under this Act, or

(c) who by word, conduct or otherwise, directly or indirectly compels, induces or prevails upon, or attempts to compel, induce or prevail upon, any person in or seeking to enter his employment, to evade or to refrain from carrying out any service under this Act, shall be guilty of an offence.

(3) (a) Nothing in this section contained shall be construed as obliging any employer to pay his employee any salary or wages for any period during which the employee is absent from work for the purpose of carrying out any service under this Act.

(b) Notwithstanding the provisions of subsections (1) and (2), an employee rendering service under this Act who in terms of any law or condition of employment would ordinarily qualify for increased remuneration, paid sick leave or other paid leave of absence or like benefit upon completion of a fixed period or successive fixed periods of employment shall -

- (i) have no right to reckon in respect of any one unbroken period of such service more than four months of the absence from his employment occasioned by such service as employment for the purposes of the determination of such increased remuneration or any paid sick leave or other paid leave of absence or like benefit as may accrue to him in respect of such employment: Provided that this subparagraph shall not be so construed as to decrease any longer period which may be determined or fixed by or under any law relating to his employment;
- (ii) not be entitled to the grant to him by his employer of paid sick leave in respect of any period falling within a period of such service during which he is incapacitated as a result of any injury or illness; and
- (iii) not be competent to claim any such paid sick leave or other paid leave of absence or other benefit before he has lawfully resumed his employment.

(4) Whenever in any proceedings under subsection (2)(b) it is proved that the employer dismissed the employee concerned or reduced his salary or wages or altered his position to his disadvantage or in any other manner penalized such employee, such employer shall be deemed, until the contrary is proved, to have dismissed such employee or to have so reduced his salary or wages or to have so altered his position or to have so penalized him, as the case may be, by reason of such employee's having carried out the service in question.

CHAPTER 2

ESTABLISHMENT AND COMPOSITION OF THE DEFENCE FORCE AND THE RESERVE

5. Establishment and composition of Defence Force. - There is hereby established for Ciskei a Defence Force which shall consist of -

- (a) the Permanent Force; and
- (b) the Citizen Force.

6. Establishment and composition of the Reserve. - There shall also be a Reserve force consisting of -

- (a) the Reserve of Officers;
- (b) the Active Reserve; and
- (c) the National Reserve.

7. Organization of Defence Force and the Reserve. - The Defence Force and the Reserve shall be organized from amongst the members of any one or more of the forces and reserves mentioned in sections 5 and 6, in such armed services, arms, corps, formations and units as the President may from time to time determine or as may be prescribed.

8. Executive command. - Subject to the provisions of this Act, the executive military command of the Defence Force and the Reserve or of any part thereof shall vest in the officer or officers of the Defence Force appointed to such command by the President.

CHAPTER 3

THE PERMANENT FORCE

9. Composition and organization of Permanent Force. - (1) The Permanent Force shall consist of the officers appointed to, and the other ranks engaged for service in, authorized posts on the fixed establishment of that Force, whether in a permanent or temporary capacity, and shall be organized in such manner as the President may determine or as may be prescribed.

(2) (a) Subject to the provisions of this Act and the Government Service Pensions Act, 1981 (Act 7 of 1981), the procedure for and the conditions of appointment or engagement in any post in the Permanent Force shall be as prescribed.

(b) The said conditions may differ in respect of different categories or classes of members of the Permanent Force and may provide for the payment of gratuities upon discharge to certain members who were appointed or engaged in a temporary capacity.

(3) Every person enrolled in the Permanent Force shall be bound to serve therein until he has been lawfully discharged.

10. Qualifications for appointment in Permanent Force. - No person shall be enrolled for service in the Permanent Force unless -

(a) he is a citizen; and

(b) he complies with such other requirements as may be prescribed:

Provided that the Minister may authorize the temporary enrolment in the Permanent Force, for a period not exceeding three years at any one time, of any person who is not a citizen.

11. Officers of Permanent Force. - The officers of the Permanent Force shall be appointed from amongst the members of that Force and, to the extent to which it is practicable, from amongst persons who have been trained at a military institution established under section 37.

12. Resignation of Officer and purchase of discharge of other rank. - (1) Save as hereinafter provided and subject to the provisions of section 46 -

(a) an officer of the Permanent Force (other than the Commander of the Defence Force) may by notice in writing resign from that Force; and

(b) an other rank in the Permanent Force may at any time prior to his lawful discharge obtain his discharge by purchase upon compliance with such conditions as may be prescribed.

(2) An officer or other rank who has received special training after having signed an undertaking to remain in the Permanent Force for a specified period after the completion of such training shall not be entitled to release or to be discharged from that Force until such period has expired or he has made good to the State the amount mentioned in such undertaking to be the cost to the State of such special training.

(3) Except with the prior consent of the Minister, no member of the Permanent Force shall be entitled to be released or discharged therefrom in time of war, disturbance of the peace, riot or other emergency.

(4) The Commander of the Defence Force shall at no time resign his appointment without the consent of the President first had and obtained.

13. Conditions of service. - Subject to the provisions of this Act the conditions of service generally of members of the Permanent Force shall be as prescribed.

14. Members of Permanent Force not eligible for political and other offices. - Notwithstanding anything in any other law contained, a member of the Permanent Force shall not be eligible -

(a) for nomination or election as a member of the National Assembly; or

(b) for appointment as a Minister or Deputy Minister; or

(c) for nomination, election or appointment as a member of such other body, board or institution as may be prescribed.

15. Liability to serve in Citizen Force. - A citizen who has served in the Permanent Force shall, on the termination of such service, be liable to serve in the Citizen Force until he is no longer liable for service under section 3.

CHAPTER 4

THE CITIZEN FORCE

16. Composition of Citizen Force. - The Citizen Force shall consist of -

- (a) the officers appointed thereto under this Act;
- (b) any citizens liable to render service under section 3 who engage to serve in the Citizen Force, including any person engaged in terms of section 19;
- (c) citizens who are called up for service under Chapter 7 and are posted to the Citizen Force; and
- (d) any persons who become liable to serve in the Citizen Force under the provisions of section 15.

17. Officers in Citizen Force. - (1) The officers of the Citizen Force shall, as far as practicable, be appointed from the ranks of that Force but, save as provided in subsection (3), a member of that Force shall not be eligible for appointment to commissioned rank unless -

- (a) the prescribed authority is satisfied as to his capacity for leadership, his military knowledge and experience and his educational qualifications; and
- (b) such member has successfully completed such courses of instruction as may be prescribed, and the prescribed authority is satisfied as to his ability and fitness to exercise command.

(2) The age limits (if any) for, and the ages of retirement of, officers in the various ranks of the Citizen Force shall be as prescribed.

(3) Notwithstanding the foregoing provisions of this section, any person who by reason of his professional qualifications or civilian position is specially fitted for enrolment in the Citizen Force may be appointed as an officer in that Force.

18. Promotion of officers in Citizen Force. - A person appointed as an officer in the Citizen Force shall not be promoted to higher rank until such time as he has proved, in the prescribed manner, that he is fully qualified to perform all the duties attaching to that higher rank.

19. Voluntary part-time engagement. - (1) Any citizen liable but not then obliged to render service under section 3(1) may make application to serve in the Citizen Force and may be engaged for such service under such conditions as may be prescribed.

(2) Any person so engaging or re-engaging for service in the Citizen Force shall be enrolled in the prescribed manner and shall be bound to serve in the said Force until lawfully discharged.

20. Voluntary whole-time service. - (1) Any person liable to render service under section 3(1) may apply to be appointed or engaged for temporary whole-time service in the Citizen Force and may be so appointed or engaged on such conditions as may be prescribed.

(2) No such person shall, except in time of war, be so appointed or engaged for longer than two years at a time but may be re-appointed or re-engaged from time to time for a like period.

(3) Persons appointed or engaged as contemplated in this section shall be liable to undergo the same training and to be employed in the same manner as members of the Permanent Force and shall be subject to the Military Discipline Code as if they were members of that Force.

21. Nature of service in Citizen Force. - Except as provided in section 20 or in Chapter 7, a member of the Citizen Force shall be liable to render such continuous and non-continuous service as the Minister may from time to time determine.

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22. Conditions of service. - (1) Subject to the provisions of this Act, the conditions of enrolment, service and training of members of the Citizen Force and the method of their discharge shall be as prescribed.

(2) Such conditions may differ in respect of different categories or classes of members of the Citizen Force or in relation to the nature of their service or training.

23. Change of address. - (1) Every member of the Citizen Force shall, in such manner and at such times or within such periods as may be prescribed, notify the prescribed officer of his address and of any change therein.

(2) In any proceedings for a contravention of any provision of subsection (1), the accused shall be presumed to have failed to comply with such provision until the contrary is proved.

24. Discharge from service in Citizen Force. - Subject to the provisions of section 56 a member of the Citizen Force shall be entitled to his discharge upon completion of the service for which he is liable or for which he was engaged, as the case may be: Provided that the regulations may provide for the discharge at any time of a member of the Citizen Force on such grounds as may be prescribed.

25. Liability to serve in Active Reserve. - A citizen who has served in the Citizen Force shall on the termination of his service therein be liable to serve in the Active Reserve for the period and subject to the conditions prescribed in Chapter 5.

CHAPTER 5

THE RESERVE

26. Reserve of Officers. - The Reserve of Officers shall consist of persons liable to render service under section 3 who hold commissions but who are no longer members of the Defence Force or the Active Reserve and who, with the approval of the Minister and with their consent, are appointed to the Reserve of Officers in accordance with the regulations.

27. Active Reserve. - The Active Reserve shall consist of persons who, having served in the Defence Force, are with the approval of the Minister and in accordance with the regulations required to serve in the Active Reserve for such period as may be prescribed: Provided that no such person shall be required to serve in the Active Reserve beyond his sixty-fifth year.

28. National Reserve. - The National Reserve shall consist of all persons contemplated in section 3(1) who are not members of the Permanent Force, the Citizen Force, the Reserve of Officers or the Active Reserve, and shall include any other persons who are domiciled in Ciskei and are citizens of such country or countries as may be specified by the President by proclamation in the *Gazette*.

29. Organization of Reserves. - The Reserve of Officers, the Active Reserve and the National Reserve shall respectively be organized in such manner as the Minister may determine or as may be prescribed.

30. Training of reserves. - The members of the respective Reserves shall be liable to render such service and to undergo such training and instruction as may be prescribed.

31. Liability to report. - (1) Every member of the Reserve shall, in such manner and at such times or within such periods as may be prescribed, report in writing or in person to a prescribed officer and shall also advise such an officer in writing of any change in his address within fourteen days after such change has occurred and furnish him with such other information as may be prescribed.

(2) In any proceedings for a contravention of any provision of subsection (1), the accused shall be presumed to have failed to comply with that provision until the contrary is proved.

32. Liability to maintain uniform and equipment. - A member of the Active Reserve shall, subject to the regulations, keep in good order and condition any uniform and equipment which may have been issued to him and shall, when called up for service or at such other times as may be prescribed, bring such uniform and equipment with him and produce the same for inspection.

CHAPTER 6

ADMINISTRATION GENERALLY

33. Council of defence. - The President may establish a Council of Defence which shall be constituted in such manner and perform such functions as he may determine.

34. Defence staff council. - (1) The President may cause to be constituted a defence staff council consisting of such officers of the Defence Force, or of such officers of the Defence Force and such officers of the public service as he may from time to time determine and, if such a council is constituted, the President shall designate one of its members as chairman and another such member as secretary thereof and may make such rules for the conduct of its business as he may deem necessary.

(2) The defence staff council, if any, shall deal with, and make recommendations concerning any matters relating to the defence of Ciskei which the President may refer to it.

35. Command areas, armed services, corps and units. - The President may establish and name -

- (a) military commands, areas and districts;
- (b) armed services; and
- (c) corps and units, whether of the Permanent Force or of the Citizen Force, or of members of both such forces.

36. Powers generally of Minister. - (1) The Minister may do or cause to be done all things whatsoever which in his opinion are necessary for the defence and protection of Ciskei or any part thereof.

(2) For the purposes of this Act and out of moneys duly appropriated by the National Assembly the Minister may -

- (a) acquire or hire land or buildings or construct and maintain defence works, ranges and training areas;
- (b) acquire armaments, aircraft, vehicles, military clothing or other stores and equipment and establish workshops or other facilities for the manufacture, maintenance or repair of any of the same;
- (c) construct, maintain, manage and control harbours, docks, quays, jetties and airfields, as well as other facilities for vessels and aircraft;
- (d) sell or otherwise dispose of anything (other than land) acquired as hereinbefore contemplated, which is no longer required for defence purposes;
- (e) do all such other things which may be required for the proper discharge of the obligation imposed upon him by subsection (1).

37. Military training institutions. - (1) For the purpose of providing military training and instruction for members of the Defence Force the Minister may establish training institutions and may assign a name to any such institution.

(2) The appointment of the staff on the authorized establishment of a military training institution, the description and duration of the courses of instruction and training at such an institution, the requirements for the admission of students (including students from other forces), the service obligations of graduates and all matters relating to the management and control of any such institution shall be as prescribed.

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

38. Expropriation of land for defence purposes. - The Minister to whom the administration of the provisions of the Expropriation Act, 1975 (Act 63 of 1975) has been assigned may expropriate any land or right or interest in or over land which he considers to be necessary for defence purposes.

39. Areas for training. - (1) (a) Subject to the provisions of paragraph (b) the Minister may from time to time appoint areas in which any part of the Defence Force may, with or without the consent of any person affected or likely to be affected thereby, carry out military exercises and may prescribe the conditions under which compensation may be claimed by and paid to any owner or occupier of land in any such area for damage or loss sustained by him as a result of the exercises on such land: Provided that for the purpose of any such exercises, no military camp shall be located within a radius of five hundred metres of a private dwelling except with the consent of the owner or occupier of such dwelling.

(b) No area shall be appointed by the Minister as contemplated in paragraph (a) unless and until the Commander of the Defence Force has published in a newspaper circulating in the district or districts in which such area is situated a notice disclosing the Minister's intention and calling upon any person who has any objection to such appointment of the area concerned (which shall be defined in the notice) to lodge such objection with the Department within a specified date, and the Minister has duly considered every such objection.

(2) The officer in command of any part of the Defence Force which is carrying out military exercises as aforesaid or any range practice or other training may temporarily stop all traffic by land, air or water in or in the vicinity of the area concerned if in his opinion such action is necessary for reasons of public safety or the proper execution of the exercises, and any person who disobeys or disregards any order or signal to stop given under this subsection shall be guilty of an offence.

40. Auxiliary services. - (1) To assist the Defence Force or any part thereof the Minister may establish and name auxiliary services consisting of persons engaged to serve as guards or watchmen or to perform other non-combatant duties.

(2) The organization, management and control of an auxiliary service and the conditions of service of the persons employed therein, including their attestation, ranks, remuneration, leave privileges, dress and discipline, shall be as prescribed.

41. Voluntary nursing service. - (1) The Minister may establish and assign a name to a voluntary nursing service for tending the sick and wounded.

(2) The organization of such a service and the conditions of employment of the persons engaged therein, including their training and duties, and all other matters relating to such a service shall be as prescribed.

42. Salaries and allowances. - Members of the Defence Force and the Reserve and of any auxiliary or nursing service shall, out of moneys appropriated by the National Assembly for the purpose, receive such salaries and allowances in respect of their service, training or duty under this Act as the President may from time to time determine.

43. Commissioned rank. - (1) The President may confer commissioned rank in the Defence Force on any person who is or is eligible to become a member of such Force and shall issue to every person on whom he has conferred such rank a commission bearing his signature.

(2) A person on whom commissioned rank has been conferred under subsection (1) shall, subject to the provisions of subsection (3), retain his commission on being transferred to the Reserve.

(3) (a) Subject to the provisions of paragraphs (b) and (c), an officer shall hold his commission during the pleasure of the President.

(b) Except as hereinafter in this Act provided the commission of an officer shall not be withdrawn unless and until he has been notified in writing of such intention and afforded a reasonable opportunity of showing cause why his commission should not be withdrawn and, if any complaint or charge has been lodged against him, of answering such complaint or charge, whether in writing or otherwise: Provided that no such notification or other action shall be necessary in the case of an officer who has been absent from duty without leave or who has failed to perform the duties of his office for three months or longer or in the case of an officer of the Reserve who has failed to comply with any provision of section 31(1).

(c) Upon the confirmation under Schedule 1 of any sentence of death, cashiering or dismissal from the Defence Force imposed on any officer, the commission of the officer concerned shall *ipso facto* become null and void.

44. Retirement of members. - (1) (a) Subject to the provisions of paragraph (b) the regulations shall prescribe the age at which a member of the Defence Force who is a contributor to a fund established by the Government Service Pensions Act, 1981 shall have the right to retire or shall be retired.

(b) If it is in the public interest to retain the services of any such member of the Defence Force beyond the age at which in accordance with the regulations he shall be retired, his services may be so retained from time to time with the approval of the Minister for further periods which shall not, except with the approval by resolution of the National Assembly, exceed two years in the aggregate.

(2) An officer of the Defence Force who is not appointed to the Reserve or required to complete a period of service therein and an officer of the Reserve shall, at the termination of his service in the Defence Force or the Reserve (whichever occurs later), be placed on a retired list and, subject to the provisions of this Act, shall retain his commission and be entitled to wear uniform and the badges of his rank on such occasions as may be prescribed: Provided that the President may direct that any particular officer shall not be placed on a retired list or, if his name already appears on such list, that it be removed therefrom.

45. Termination of service of member of Defence Force by President. - Notwithstanding anything elsewhere in this Act contained it shall be competent for the President to terminate the services in the Defence Force of any serving member thereof: Provided that nothing in this section contained shall be construed as exempting any citizen from his liability to render any service which he may be obliged to render under any provision of this Act.

46. Resignation of officers. - (1) Subject to the provisions of section 12(2); (3) and (4) an officer may by notice in writing tender the resignation of his commission or his appointment.

(2) Any such notice shall, in the event of its acceptance, take effect upon the expiration of a period of three months after the date on which it was lodged with such officer's commander or on such earlier date as may be approved by the competent authority: Provided that the resignation of an officer shall not render him exempt from any service or training for which he is otherwise liable under this Act.

47. Regulations. - (1) The President may make regulations, not inconsistent with any provision of this Act, relating to -

- (a) the training and inspection of the Defence Force, the Reserve and any auxiliary service or nursing service;
- (b) the establishment of training camps;
- (c) courses of instruction for persons undergoing training or engaged for service under this Act;
- (d) the seniority and precedence of services, corps and units and of members of the Defence Force, the Reserve and any auxiliary service or nursing service;
- (e) the conditions of service of members of the Defence Force, including any matter affecting the salaries, pay, allowances and leave of absence of such members;
- (f) the establishment, management and control of a fund to provide for medical, dental and hospital treatment of members of the Permanent Force and their families;
- (g) the performance of police duties by members of the Defence Force;
- (h) the registration of citizens liable or called up for service;
- (i) the exemption of any member of the Defence Force or the Reserve from carrying out any course of training;
- (j) the standards of physical fitness and the medical examination of citizens liable to render service or of members of the Defence Force and the Reserve and authorizing medical authorities to determine such standards;
- (k) the design, award, use, care and custody of colours, standards and flags for military use and all matters pertaining to military ceremony;
- (l) honorary appointments and ranks in the Defence Force;

(m) the furnishing by the employers of persons engaged in specified occupations or industries of specified particulars in respect of such persons, the furnishing by such persons of their addresses to a specified officer and the notification by them to such an officer of any changes in their address;

(n) the furnishing by any person in Ciskei of full and accurate information as to buildings, premises, vehicles, aircraft, vessels, animals, foodstuffs, forage, fuels, oils, materials, articles or things in his possession or under his control;

(o) the issue and care of arms, accoutrements, ammunition, including ammunition to be held in reserve for use in cases of emergency, supplies, animals, transport, clothing and equipment;

(p) the government and management of, and the discipline which may be enforced in, places appointed as prisons under this Act;

(q) the registration of motor vehicles which are the property of the State in its Department of Defence and the licensing of drivers of such vehicles;

(r) all other matters which are by this Act required or permitted to be prescribed or which are necessary or expedient to be prescribed for securing the discipline and good government of the Defence Force, the Reserve or any auxiliary service or nursing service; and

(s) the penalties which may be imposed for breaches of the regulations, not exceeding a fine of three hundred rand or imprisonment for a period of three years.

(2) Different regulations may be made under subsection (1) for male and female persons.

(3) Regulations under paragraph (f) of subsection (1) may provide for benefits in respect of medical, dental and hospital treatment subject to payment for such benefits from a fund established by or under such regulations, on such basis as may be specified in or determined in accordance with such regulations.

(4) For the purposes of subsection (1) "motor vehicle" means any vehicle which is self propelled by mechanical or electrical power and is intended or adapted for the conveyance of persons or goods.

48. Protection of defence stores. - (1) The Minister may from time to time by notice in the *Gazette* designate a mark or marks to be applied to animals or articles to denote the ownership of the State or of any visiting force in those animals or articles.

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

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

49. Prohibition of access to military premises. - (1) The Minister may, by order published in the *Gazette* or made known in any other manner which he considers sufficient in the circumstances, prohibit or restrict the access of all persons to any military camp, barracks, dockyard, installation or other premises or any land or stretch of water used for military or defence purposes or which is under military control.

(2) The officer in command of any such camp, barracks, dockyard, installation, premises, land or area may, by order in writing and made known in such manner as he considers sufficient in the circumstances, temporarily prohibit or restrict the access of all persons to such camp, barracks, dockyard, installation, premises, land or area.

(3) Any person who enters or is within or on any such camp, barracks, dockyard, installation, premises, land or area contrary to any prohibition or restriction contained in any order under subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding fifteen years or to both such fine and such imprisonment.

(4) The Minister or any such officer in command as aforesaid may further take or cause to be taken such measures as he considers necessary for the defence or protection of any such camp, dockyard, installation, premises, land or area and shall, in connection with any measures so taken, cause such notices to be published or such warning notices to be erected as he may in each particular case consider necessary.

(5) The State or any person in the service of the State shall not be liable (except in the case of any negligent or wilful act or omission on the part of any such person) for any loss or damage resulting from any bodily injury, loss of life or damage to property or livestock caused by or arising out of or in connection with any measures taken or works erected for the defence or protection of or the prohibition or restriction of access to any such camp, barracks, dockyard, installation, premises, land or area.

CHAPTER 7

PROVISIONS APPLICABLE IN TIME OF WAR, INTERNAL DISORDER OR OTHER EMERGENCY.

50. Employment of Permanent Force. - Subject to the provisions of this Act the whole or any part of the Permanent Force and all or any members of the Citizen Force appointed or engaged for temporary whole-time service in terms of section 20 may at any time be employed as contemplated in section 3(2).

51. Mobilization of Citizen Force and the Reserve. - (1) In time of war the President may, by proclamation in the *Gazette* or in such other manner as he may deem expedient, call up for mobilization for service in defence of Ciskei -

(a) the whole or any part of the Citizen Force or all or any citizens liable to render service therein under section 3(1); and

(b) the whole or any part of the Reserve.

(2) If action is taken under subsection (1) at a time when the National Assembly is in session, the President shall forthwith communicate the reason for such action to the National Assembly or, if the Assembly is not then in session, the President shall summon the Assembly to meet as soon as possible but not later than thirty days after the day on which such action was taken and shall, at the first sitting of the Assembly thereafter, communicate to it the reason for such action.

52. Mobilization of Citizen Force in time of internal disorder or other emergency. - The President may by proclamation in the *Gazette* or in such other manner as he may deem expedient call up -

(a) the whole or any part of the Citizen Force or all or any citizens liable to render service therein under section 3(1), and

(b) the whole or any part of the Reserve,

for mobilization for service in the prevention or suppression of internal disorder in Ciskei or in the preservation of life, health or property or the maintenance of essential services.

53. Notification to persons called up. - Any member of the Citizen Force or the Reserve or any citizen who has been called up for mobilization for service under section 51 or 52 may be notified of the time and place at which he is to present himself by the Commander of the Defence Force, or an officer authorized thereto by him, by radio or telecommunication or through the press or by letter or by word of mouth or by public notice or in such other manner as the Commander of the Defence Force or such officer may deem appropriate.

54. Interpretation of certain expressions. - For the purposes of sections 50, 51 and 52 the expressions "any part" and "any citizens" include persons who are of or below or above a specified age and are resident in a particular area or are engaged in a specified profession, trade, occupation or calling or in a profession, trade, occupation or calling other than a specified one.

55. Defence Force to serve anywhere in time of war. - In time of war a member of the Defence Force may be required to perform service against any enemy anywhere within or outside Ciskei.

56. Release or discharge from service. - (1) Every person called up for service in terms of section 51 or 52 may be held to that service until such time as the President has declared by proclamation in the *Gazette* that the part of the Defence Force in which he is serving is released from that service.

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

57. Exemption from service. - (1) No person shall be liable to be called up for service in terms of section 51 or 52 -

- (a) if he has been certified by the prescribed medical authority to be medically unfit for that service;
- (b) if he is an officer of the National Assembly;
- (c) if he is a judge of the Supreme Court of Ciskei or an officer thereof (other than an advocate, attorney, notary or conveyancer) or a judicial officer of any other court of law in Ciskei;
- (d) if he is a minister of religion of a prescribed denomination;
- (e) if he is a member of the Ciskeian Police;
- (f) if he is a member of the Prisons' Service;
- (g) if he is the Director-General or other head of a department of State; or
- (h) if he is engaged in any prescribed employment or occupation.

(2) All applications for or claims to exemption from service arising from the provisions of this section shall be determined by the Commander of the Defence Force and the burden of proving any claim to exemption shall lie on the claimant.

(3) Any exemption from service under this section shall hold good only during the continuance of the employment, occupation, condition, status, public interest or other consideration on which it is based.

58. Security of harbours and air-fields. - (1) In time of war or during operations for the prevention or suppression of internal disorder the President may issue orders and instructions (to be made known in such manner as he may direct) -

- (a) forbidding or restricting the entrance to or egress from or the movement within any harbour of vessels or providing for the examination of any vessel within or seeking to enter or to leave any harbour or the taking of any other steps which are needed to secure the safety of any harbour;
- (b) forbidding or restricting entrance to, egress from or the movement within any airfield of any aircraft or providing for the examination of any aircraft on or about to depart from any airfield or the application of any other measures which are necessary for securing the safety of any airfield; or
- (c) authorizing any such action as may be necessary to require or to force any aircraft within the airspace above Ciskei to land within Ciskei for the purpose of being examined; or
- (d) relating generally to the safeguarding of any harbour or airfield.

(2) In this section -

"airfield" means any area of land or water (together with any building or other structure or installation thereon and the airspace there-above) intended to be used, whether wholly or in part, for the landing, movement, take-off or storage of aircraft and which has been set aside as such by competent authority or declared to be such by the President by proclamation in the *Gazette*; and

"harbour" means any harbour established as such by competent authority and includes any other area of land and water declared by the President by proclamation in the *Gazette* to be a harbour for the purposes of this Act.

(3) The President may vest in any person any powers which he deems necessary for the execution of any order or instruction issued under this section.

59. Commandeering. - (1) In time of war or during operations for the prevention or suppression of internal disorder the President may authorize and appoint officers of the Defence Force or of the public service to obtain (in the prescribed manner and subject to the prescribed conditions) from any person or any public or other body, whether corporate or incorporate, and without the consent of such person or body to take possession of buildings or other premises, vehicles, aircraft, vessels, machinery, equipment, animals, foodstuffs, forage, fuels, oils or any other materials, articles or things necessary for the mobilization or the maintenance of the Defence Force or of any part thereof or of other forces acting in co-operation with the Defence Force.

(2) Reasonable compensation shall be paid to the person or body concerned in respect of anything obtained or taken under subsection (1).

60. Censorship. - (1) In time of war or during operations for the prevention or suppression of internal disorder the President may by proclamation in the *Gazette* or in such other manner as he deems expedient establish and provide for the doing of all things necessary to enforce censorship over all or any description of postal, telegraphic, telephonic or radio matter or communications passing within, into or from Ciskei, and over all or any description of letters, written or printed matter, parcels, pictures, drawings, sketches, photographs, gramophone records or magnetic or other tapes (including any article, apparatus or device upon which or by means of which intelligence or sounds of any kind have been recorded and can be reproduced) addressed to or intended to be delivered or conveyed to any person, and may prescribe the conditions under which the postal, telegraph, telephone or radio or television services may be used.

(2) The conditions so prescribed, and any regulation, order or instruction relating to the establishment or enforcement of censorship in terms of this section shall override any provision of any law or regulation relating to the management of the postal, telegraph, telephone or radio or television service.

(3) Any person who contravenes or fails to comply with any regulation, order or instruction issued in terms of this section shall be guilty of an offence.

(4) In addition to the powers vested in him under any law, the Postmaster-General shall be competent to delay the transmission of any telegraphic or radio communication which in his opinion improperly discloses or deals with information relating to defence, the publication of which is prohibited under section 75 and may with the sanction of the Minister or a person acting under his authority refuse to transmit any such communication in whole or in part.

(5) No person shall be entitled to the refund of any charges paid in respect of any postal article, telegram, radio-telegram or telephone call which is detained, delayed, diverted or interrupted under any provision of this section.

61. Control and use of transport systems. - (1) The President may in time of war or during operations for the prevention or suppression of internal disorder, authorize any officer of the Defence Force to assume control over any railway, road, inland water or sea transport system or any air service or any part thereof within Ciskei.

(2) The Minister may in time of war or during operations for the prevention or suppression of internal disorder, require the authorities controlling any transport system or air service contemplated in subsection (1) to supply suitable engines and rolling stock, vehicles, vessels or aircraft for the conveyance of members of the Defence Force or other forces acting in co-operation with the Defence Force or any auxiliary service or voluntary nursing service and their guns, armament, ammunition, baggage, stores, supplies, vehicles, vessels and animals and to convey the same by rail, road, water or air to or from any place within or outside Ciskei.

62. Emergency regulations. - In time of war the President may by proclamation in the *Gazette* make such regulations as appear to him to be necessary or expedient for providing for the defence of Ciskei, the safety of the public, the maintenance of public order and the effective prosecution of the war and for making adequate provision for dealing with circumstances which in his opinion have arisen or might arise as a result of the war.

CHAPTER 8

DISCIPLINE, LEGAL PROCEDURE AND OFFENCES

63. Military Discipline Code. - (1) The provisions of Schedule 1 together with the rules made under subsection (3) of this section shall comprise, and for all purposes be cited as, the Military Discipline Code.

(2) The President may, with the approval by resolution of the National Assembly and by proclamation in the *Gazette*, amend or repeal any provision of Schedule 1 or insert any new provision therein.

(3) The President may, by notice in the *Gazette* and in consultation with a rules board consisting of the Minister, the Commander and the senior legal officer (if any) of the Defence Force and such other persons as he may select, make, alter or repeal such rules for giving effect to the provisions of Schedule 1 as he may deem necessary or expedient or as may be provided for in the said Schedule.

(4) No rule or amendment or repeal of a rule made in terms of subsection (3) shall come into operation or take effect until a period of 30 days has elapsed from the date of publication thereof.

(5) The Military Discipline Code shall to the extent and subject to the conditions prescribed therein apply -

(a) to all members of the Permanent Force;

(b) to members of the Citizen Force and the Reserve in relation to any service, training or duty undertaken or to be undertaken by them in pursuance of this Act;

(c) to all persons (other than members of a visiting force) lawfully detained by virtue of or serving sentences of detention or imprisonment imposed under the Military Discipline Code;

(d) to members of any auxiliary service who are on service in the defence of Ciskei.

64. Jurisdiction of ordinary courts. - (1) The Supreme Court of Ciskei, or subject to the laws governing its jurisdiction a magistrate's court, may try any person for any offence under the Military Discipline Code and may impose any punishment which may be imposed for that offence under that Code and which is within the jurisdiction of that court including, in the case of a magistrate's court, a sentence of detention: Provided that no person shall be sentenced to corporal punishment in respect of any offence under the said Code.

(2) In the imposition of any punishment for an offence under this Act or the Military Discipline Code the court shall take cognizance of the gravity of the offence in relation to its military significance and shall have due regard to the necessity for the maintenance in the Defence Force of a proper standard of military discipline.

(3) If a non-commissioned officer is convicted of an offence under this Act or the said Code he may in addition to any penalty imposed by the court, be reduced to the ranks or to a lower rank or grade by the prescribed authority.

65. Jurisdiction of ordinary and military courts. - (1) Any person subject to military law who has been tried for an offence by the Supreme Court of Ciskei or a magistrate's court shall not be liable to be tried in respect of the same offence by a military court.

(2) Whenever any person who has been sentenced by a military court for any offence, is convicted of the same offence by the Supreme Court of Ciskei or a magistrate's court, such court shall, when it imposes punishment for such offence, have regard to the punishment imposed for the offence by the military court.

66. No right of appeal from military court. - There shall be no appeal from the finding or sentence of a military court but nothing in this Act contained shall be construed as derogating from the right of the Supreme Court of Ciskei to review the proceedings of any military court.

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67. Military court may try offence under Act. - A military court may try any person to whom the Military Discipline Code applies for any offence under this Act as if that offence were an offence under the Military Discipline Code: Provided that a military court shall not impose in respect of any such offence a penalty which is beyond the jurisdiction of such a court in terms of the Military Discipline Code or exceeds the penalty prescribed for that offence by this Act.

68. Arrest and trial. - (1) Any member of the Citizen Force or the Reserve charged with an offence under this Act including any offence under the Military Discipline Code may -

(a) if he is on service or undergoing training or on duty with any part of the Defence Force, be arrested and taken into military custody by any other member of the Defence Force acting under prescribed authority, pending the investigation and disposal of the charge; or

(b) if he is not so on service or undergoing training or on duty, be summoned to appear or be arrested and brought before a magistrate's court in accordance with law for the hearing of any charge brought against him under the Military Discipline Code.

(2) If the charge brought against any such member taken into military custody is not disposed of by the military court before the expiry of the period of his service, training or duty, he shall upon the expiry of that period be released from military custody and may thereupon be summoned to appear or be arrested and brought before a magistrate's court on that charge.

69. Warrants. - The prescribed officer may issue a warrant for the detention in any prison of a member of the Defence Force charged with an offence triable by a military court or for the imprisonment in any prison of any person sentenced to imprisonment by a military court, and the head of any such prison to whom any such warrant is addressed shall act in accordance therewith.

70. Place of imprisonment for military offence. - Any person sentenced under the Military Discipline Code to imprisonment or detention may be ordered to undergo the sentence of imprisonment or detention in any place which the President may appoint for such purpose in lieu of a place established as a prison under the law relating to prisons, and whenever a court orders that any person be imprisoned for any offence under this Act, including any offence under the Military Discipline Code, for a period not exceeding 14 days, the court may at its discretion order the offender to be imprisoned in a place so appointed.

71. Limitation of actions. - No civil action shall be capable of being instituted against the State or any person in respect of any thing done or omitted to be done in pursuance of this Act, if a period of six months, or where the cause of action arose outside Ciskei and outside the territorial waters thereof a period of two years, has elapsed since the date on which the cause of action arose, and notice in writing of any such civil action and of the cause thereof shall be given to the defendant one month at least before the commencement thereof.

72. Misuse of uniforms. - (1) Any person who wears any uniform of the Defence Force or any dress having the appearance or bearing the regimental badge or other distinctive marks of any such uniform, or who in time of war wears a uniform of any force of a country which is allied to Ciskei or any dress having the appearance or bearing the regimental badge or other distinctive marks of any such uniform, shall be guilty of an offence, unless -

(a) he is a member of the Defence Force or of a force of such country, as the case may be, who by reason of his rank is entitled to wear such uniform; or

(b) he has been granted permission by the proper authority to wear such uniform.

(2) Any person who wears or displays any uniform of the Defence Force or any dress having the appearance or bearing the marks of any such uniform, or who in time of war wears or displays a uniform of any force of a country which is allied to Ciskei, or any dress having the appearance or bearing the marks of any such uniform, in such a manner and in such circumstances as to bring or to be likely to bring contempt or ridicule upon the uniform or service of any such force, or who employs any other person so to wear or display that uniform or dress, shall be guilty of an offence.

(3) Any person who, without due authority, uses as a crest or other distinctive mark, any representation of a badge or of any distinctive mark of the Defence Force or of any service, corps or unit thereof, shall be guilty of an offence.

73. Unauthorized use of decorations. - (1) Any person who -

- (a) wears or uses any military decoration or the distinctive ribbon thereof, or
- (b) represents himself to be a person who is or has been entitled to wear or use any such decoration or ribbon,

shall be guilty of an offence, unless he is a person to whom such decoration has been awarded or he has been authorized by competent authority to wear or use such decoration or ribbon.

(2) Any person who for gain supplies or offers to supply any military decoration, or the distinctive ribbon thereof, to a person who is not entitled to wear or to use such decoration or ribbon, shall be guilty of an offence.

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

74. Use of name, title etc. indicating connection with Defence Force. - (1) No organization, association or other body of persons, corporate or unincorporate, shall without the approval of the Minister take, use or in any manner whatever publish any name, title, description or symbol indicating or purporting to indicate or calculated or likely to lead persons to infer that it has been established under or in pursuance of any provision of this Act or in or by the Defence Force or any arm, service, corps or unit therein or that it is in any manner connected or associated with such force, arm, service, corps or unit, if it has not been so established or is not so connected or associated.

(2) Any approval granted under subsection (1) may in the discretion of the Minister be withdrawn by notice sent by registered post to the chairman, secretary or other executive officer of the organization, association or body concerned as from a date specified in such notice which shall not be earlier than three months after the date of the notice.

75. Improper disclosure of information. - (1) No person shall publish in any newspaper, magazine, book or pamphlet or by radio or any other means -

- (a) any information relating to the composition, movements or dispositions of -
 - (i) the Defence Force or any auxiliary service or voluntary nursing service or any force of a country which is allied to Ciskei; or
 - (ii) any Ciskeian or allied ships or aircraft used for naval or military purposes; or
 - (iii) any engines, rolling stock, vehicles, vessels or any railway, road, inland water or sea transport system or air service over which an officer of the Defence Force has assumed control in terms of section 61(1), or anything which has been supplied on requisition by the Minister in terms of section 61(2),

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

(b) any statement, comment or rumour relating to any member of the Defence Force or any activity of the Defence Force or any force of a foreign country, calculated to prejudice or embarrass the Government in its foreign relations or to alarm or depress members of the public, except where publication thereof has been authorized by the Minister or under his authority.

(2) No person shall publish in any manner whatsoever any secret or confidential information relating to the defence of Ciskei or any information relating to any works proposed, undertaken or completed for or connected with the fortification or defence of Ciskei except where the information has been furnished or the publication thereof has been authorized by the Minister or under his authority.

(3) Any proprietor, printer, publisher or editor of any newspaper, magazine, book or pamphlet in which any such information as aforesaid is published, and any person responsible for the publication of such information by such or any other means, shall be guilty of an offence, and proceedings in respect thereof may be taken against all or any of such persons.

(4) Any person who discloses to any other person any secret or confidential information relating to the defence of Ciskei which came to his knowledge by reason of his membership of the Defence Force or by reason of his employment in the public service or in any other office, post, appointment or capacity under the Government or by reason of any contract relating to the defence of the Ciskei or any employment by a contractor under such a contract, or which was given to him in confidence by any person who was authorized or whose duty it was to give him such information, shall be guilty of an offence, unless such disclosure was authorized by the Minister or under his authority or by order of a competent court or it was the duty of such person in the interests of the State to disclose such information to such other person.

(5) In any proceedings in respect of a contravention of subsection (2) or (4), it shall be presumed, until the contrary is proved -

(a) that any information relating to the defence of Ciskei is secret or confidential; and

(b) where the accused is proved to be or to have been a member of the Defence Force or to be or to have been employed in the public service or in any other office, post, appointment or capacity under the Government, or to hold or to have held any contract relating to the defence of Ciskei or to be or to have been employed by a contractor under such a contract, that the secret or confidential information came to his knowledge by reason of such membership, employment or contract.

(6) For the purposes of this section any information relating to military equipment shall be deemed to be secret or confidential unless publication of such information has been authorized by the Minister or under his authority.

(7) Nothing in this section contained shall be construed as preventing any person from being prosecuted and punished under any other law relating to the unlawful disclosure of information.

76. Prohibition on taking of photographs or making sketches, etc. in defined areas. -

(1) No person shall unless authorized thereto by the Minister or on his authority -

(a) take any photograph or make any sketch, plan, model or note of any area defined by the Minister by notice published in the *Gazette* or in any other manner which he considers sufficient in the circumstances or any part of any such area or any object therein; or

(b) have in his possession in any area so defined any camera or other apparatus which may be used for the taking of photographs.

(2) Any photographs taken or sketch, plan, model or note made in contravention of paragraph (a) of subsection (1), any camera or other apparatus in the possession of any person in contravention of paragraph (b) of that subsection, and any film or negative used or prepared in connection with a photograph taken in contravention of paragraph (a) of subsection (1), may be seized by any member of the Defence Force and may, after investigation by and on the authority of the Minister, be declared by him to be confiscated to the State.

77. Obstructing Defence Force. - Any person who wilfully obstructs or interferes with any part of the Defence Force or of any auxiliary service or voluntary nursing service or any member of any such Force or service in the performance of any service or duty shall be guilty of an offence.

78. Prohibition of certain acts in connection with liability to render service. - Any person who -

(a) agrees with or induces, or attempts to induce, any member of the Defence Force or any auxiliary service or voluntary nursing service to neglect or to act in conflict with his duty in that Force or service, or

(b) is a party to or aids or abets or incites to the commission of any act whereby any lawful order given to any member of that Force or service or any law or regulation with which it is the duty of any member of that Force or service to comply, may be evaded or infringed, or

(c) uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any other person or any category of persons or persons in general to refuse or fail to render any service for which such other person or a person of such category or persons in general is or are liable or may become liable in terms of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

79. Offences relating to intoxicating liquor. - Any person who supplies or is a party to supplying any member of the Defence Force or any auxiliary service or voluntary nursing service with intoxicating liquor when that member is on duty and is prohibited under any regulation, order or instruction from receiving or taking intoxicating liquor shall be guilty of an offence.

80. Personation. - Any person who by word, conduct or demeanour, falsely represents himself to be a member of the Defence Force or any auxiliary service or voluntary nursing service or a particular member thereof or a person holding a particular rank or appointment therein, shall be guilty of an offence.

81. Offences in connection with commandeering. - Any person, who falsely represents himself to be an officer authorized and appointed in terms of section 59 or who in any manner contravenes the regulations made for the purpose of that section, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

82. Wrongful disposal of property. - (1) Any member of the Defence Force or the Reserve or any auxiliary service who without authority gives away, sells, pledges, lends or otherwise disposes of any moneys, animals, arms, ammunition, accoutrements, clothing, supplies or any other articles entrusted to or held by him for the service of the Defence Force or the Reserve or any auxiliary service, or who as a result of his negligence loses any such articles so entrusted to or held by him, shall be guilty of an offence and may, apart from any penalty which may be imposed upon him for such an offence under this Act, be ordered by the court or other competent authority which imposes that penalty to make good any loss or deficiency caused by the commission of such offence, and every such gift, sale, pledge, loan or other disposition shall be null and void.

(2) Whenever it is proved on a charge under this section for the loss of any article as a result of negligence, that the said article was entrusted to or held by the accused for any service referred to in subsection (1), and that he has failed to produce such article on demand to any person holding rank superior to his, it shall be presumed, until the contrary is proved, that the accused had lost the said article as a result of his negligence.

83. Neglect of duty. - Any member of the Defence Force or the Reserve who without just cause, the burden of proof whereof shall lie on him, fails to attend at any time and place appointed for instruction, training or exercise, or who evades or fails to perform duly and with proper zeal the full course of training allotted to him shall be guilty of an offence.

84. Refusal of service in Citizen Force. - (1) Any person liable to render service in terms of section 21 and who -

(a) when called upon, refuses to report for such service, or

(b) having reported for service, refuses to render military service or to undergo military training, shall be guilty of an offence and liable on conviction to be sentenced to detention for a period of not more than fifteen months and not less than twelve months: Provided that a person who is serving or has served not less than twelve months' detention for a contravention of this section may not again be charged with such contravention.

(2) Notwithstanding anything to the contrary contained in any other law, a court martial shall have jurisdiction to impose the sentence provided for in subsection (1).

85. Offences and penalties. - Any person who contravenes or fails to comply with any provision of this Act for which no penalty is specially prescribed, shall be guilty of an offence and liable on conviction -

(a) in the case of an offence referred to in section 48, 60, 72, 75, 77 or 80, to a fine not exceeding five hundred rand or imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or

(b) in the case of any other offence, to a fine not exceeding two hundred rand or imprisonment for a period not exceeding six months.

CHAPTER 9

GENERAL

86. Decorations and medals. - (1) The President may, in respect of conduct or service in peace or war which in his opinion requires or deserves suitable recognition, institute orders, decorations and medals which he may award, subject to such rules as he may in the case of every such order, decoration or medal consider necessary to members of the Defence Force or any auxiliary service or voluntary nursing service established under this Act or any armed force attached to or serving with or rendering any service to the Defence Force.

(2) No order, decoration or medal instituted under subsection (1) shall be awarded to a member of any armed force other than the Defence Force, unless the government of the force to which such member belongs has signified its concurrence in the award of such order, decoration or medal to such member.

(3) The President may, in respect of every order, decoration or medal instituted under subsection (1), make regulations relating to the grant, forfeiture and restoration thereof and such other matters concerning such order, decoration or medal as he may deem expedient.

87. Places for training or service. - Any training, required to be undergone and any service to be performed under this Act shall be undergone or performed at such place, whether within or outside Ciskei, as the Minister may direct.

88. Exemption from registration and licensing of defence vehicles and drivers. - Nothing in any law relating to the registration and licensing of motor vehicles or the licensing of drivers of such vehicles shall apply in respect of any such vehicle which is the property of the State in its Department of Defence.

89. Exemption from laws relating to conveyance of firearms. - The provisions of any law relating to the conveyance of firearms shall not apply with reference to the conveyance of firearms by any person where such conveyance takes place in connection with training, service or duty under this Act.

90. Exemptions from tolls, etc. - (1) At any wharf, landing place, bridge, pont, ferry, toll-bar or parking meter where the payment of a toll, due or parking fee may lawfully be demanded, that toll, due or parking fee shall not be payable by any member of the Defence Force if he is proceeding to or from any place on the service of that Force, or in respect of any animal or vehicle when employed on any such service.

(2) Any person duly authorized to collect tolls or dues at any such place aforesaid who wilfully subjects a member of the Defence Force, or any animal or vehicle on service as aforesaid, to unreasonable delay or detention shall be guilty of an offence.

91. Compulsory immunization and prophylaxis. - (1) Any member of the Defence Force or any auxiliary service or voluntary nursing service may be required to submit to and if so required shall submit to immunization or prophylaxis against such communicable, infectious or epidemic illness as may be determined from time to time by a prescribed authority.

(2) Such immunization or prophylaxis may be carried out by means of vaccination or injection with, or oral administration of, the specific antigen or prophylactic medicament determined for the purpose by a registered medical officer.

92. Payment of the remuneration of a missing member of the Defence Force. - (1) If a member of the Defence Force, who has a spouse or other dependant, is missing and the Commander of the Defence Force is satisfied that his absence arose from the performance of his duties or functions while he was rendering service in terms of this Act, such member shall for all purposes be deemed to be still serving in the Defence Force from the first day after the day on which such absence commenced until the day on which he again reports for duty or, in the opinion of the commander of the Defence Force, should again have reported for duty or on which a competent court issued an order whereby the death of such member is presumed.

(2) The salary or wages and allowances accruing to a member during the absence contemplated in subsection (1) shall, subject to the provisions of subsection (4), be paid to his spouse or, if he has no spouse, to his other dependants, or to any person who, in the opinion of the Commander of the Defence Force, is competent to receive and administer such salary or wages and allowances on behalf of his spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) shall for all purposes be deemed to be payment thereof to the member concerned, and an amount so paid shall not be recoverable by the State from any person.

(4) Notwithstanding the provisions of subsection (2) the commander of the Defence Force may in his discretion direct that only a portion of the salary or wages and allowances of a member be paid in terms of the said subsection or that no portion thereof be so paid.

93. Injuries received or illness contracted on service or training. - (1) A member of the Defence Force or the Reserve who receives a wound or injury or contracts an illness while on military service or undergoing training may, under such conditions and for such period as may be prescribed, be provided with any medical or other treatment necessary for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond the period of the service, camp, course, parade or other training on which he was engaged when he received the wound or injury or contracted the illness.

(2) Any member while receiving the treatment referred to in subsection (1) may, for such period and under such conditions as may be prescribed, be paid the emoluments of his rank, provided the wound, injury or illness was not due to the member's own misconduct.

94. Conveyance of members of Defence Force. - The means of conveyance of any member of the Defence Force in connection with or for the purposes of his service, training or duty shall be as prescribed.

95. Clubs, messes, etc. - Clubs, messes, trading institutions, recreation institutions and funds for the exclusive use or benefit of members of the Defence Force or other forces or any auxiliary service, the families of such members and other prescribed persons or classes of persons may be established and conducted under such conditions and in such manner as may be prescribed.

96. Exemption from licences, etc. - (1) No licence money, tax, duty or fee (other than customs or excise duty or sales tax where leviable by law, but including any tax on or in respect of property, whether movable or immovable) under any law shall be payable by or in respect of any club, mess, trading institution, recreation institution or fund established under section 95 in or in connection with any base, camp, station or ship for any part of the Defence Force or in respect of any article on sale at such club, mess, institution or fund.

(2) A certificate under the hand of the Minister stating that a club, mess, trading institution, recreation institution or fund specified therein has been established under section 95 in or in connection with any base, camp, station or ship for any part of the Defence Force shall on its mere production by any person in any proceedings in any court of law be conclusive proof of the correctness of the statements contained therein.

(3) Clubs, messes, institutions and funds certified under subsection (2) shall be deemed to be bodies corporate.

97. Non-liability of Department. - The State or any servant of the State shall not be liable (except in the case of any wilful act or omission on the part of any such servant) to any person (except a servant of the State acting in the execution of his duty as such) who makes use of any vehicle, aircraft or vessel which is the property of the State in its Department of Defence or to whom services are rendered by the said Department or who makes use of any other property of the State in its Department of Defence or to the spouse or any parent, child or other dependant of such person for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of any such vehicle, aircraft or vessel or the said services or the use of any such other property.

98. Indemnity in respect of trespass and nuisance. - No action shall lie in respect of trespass or nuisance by reason only of the flight of aircraft, the property of the State in its Department of Defence over any property at a height which, having regard to wind, weather and all the circumstances of the case, is reasonable or in respect of the ordinary incidents of such flight.

99. Presumption as to delivery of notices. - (1) Any notice sent by registered post to any person's registered address shall, unless the contrary is proved, be deemed to have been delivered to him at the time when it would have reached him in the ordinary course of post, and any notice issued under this Act relating to any person and exhibited at a prescribed public office in the magisterial district in which his registered address is, shall be deemed to have been duly served on such person.

(2) All magistrates, postmasters and officers in charge of police stations are required to exhibit such notices issued under this Act and to keep on hand and issue on request to applicants such forms as are sent to them by the prescribed authority.

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

101. Repeal of laws and savings. - (1) Subject to the provisions of subsection (2), the laws mentioned in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any regulation or appointment made or anything else done under any provision of a law repealed by subsection (1) shall be deemed to have been made or done under the corresponding provision of this Act.

102. Short title and commencement of certain sections. - (1) This Act shall be called the Defence Act, 1986.

(2) Sections 5 and 6 shall be deemed to have come into operation on 4 December 1981.

SCHEDULE 1

MILITARY DISCIPLINE CODE

1. Definitions. - In this Code any word or expression to which a meaning has been assigned in the Act bears that meaning and, unless the context otherwise indicates -

"board of inquiry" means a board of inquiry convened under section 123 or 124;

"board of review" means a board of review established under section 134;

"capital offence" means any offence, whether under this Code or otherwise, in respect of which sentence of death may be imposed;

"chief disciplinary officer" means the chief disciplinary officer appointed under section 135(1) and includes an assistant disciplinary officer;

"civil court" means any court of record exercising criminal jurisdiction in Ciskei;

"civil offence" means any offence in respect of which any penalty may be imposed by a court of law, not being an offence under sections 4 to 51 inclusive, of this Code;

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"convening authority" means any person empowered by warrant to convene courts martial;

"council of review" means the council of review established under section 133;

"counsel" means any advocate entitled to practise and appear before the Supreme Court of Ciskei, and includes any attorney entitled to practise and appear in a magistrate's court in Ciskei and any defending officer;

"court martial" means a court martial convened by virtue of the provisions of section 65;

"defending officer" means an officer subject to this Code appointed by the Commander of the Defence Force or his deputy to undertake the defence at a trial by court martial of an accused not represented by any other counsel;

"desert", in relation to any person, includes, without in any way limiting its ordinary meaning -

(a) to be absent without authority while on service from the unit or formation of such person with the intention of avoiding service;

(b) to miss any form of transport, by which such person has been warned to travel, with the intention of not accompanying his unit or formation on service or not proceeding on service; or

(c) to fail to report for any service under the Act within seven days after having been called up for such service;

"detention" means detention in a detention barracks;

"enemy" includes any armed rebels or mutineers;

"field punishment" means the performance in custody in the field of such labour and extra duties as may be prescribed;

"hospital" includes any military medical institution for the treatment of patients;

"imprisonment" means imprisonment with or without compulsory labour;

"institution" means a club, mess or trading or other institution or fund established or conducted under the Act;

"member", when used in relation to a court martial or board of inquiry, includes the president;

"military court" means any court or officer deriving jurisdiction from this Code or from an officer, to try persons subject to this Code who are charged under this Code with offences and to impose punishment;

"oath" includes a solemn declaration or affirmation;

"pay", in relation to any person, includes all amounts to which such person is entitled in respect of any training, duty or service undergone or performed by him as a member of the Defence Force, except amounts payable to him under the Government Service Pensions Act, 1981 (Act 7 of 1981);

"prescribed", except in the definition of "prescribed apparatus", means prescribed in the rules made under the Act;

"prescribed apparatus" means any apparatus (prescribed by the Minister by notice in the *Gazette*) by means of which the breath of any person is tested or analysed in order to determine whether or not the alcohol content of the blood of such person exceeds a given limit;

"President" means the President of Ciskei;

"public property" means any property belonging to or in the possession or under the control of the Government or belonging to any force acting in co-operation with the Defence Force;

"safeguard" means a party of soldiers detached for the protection of any person or of any place, including any village or house or other property;

"service", means service in terms of section 3(2) of the Act;

"shorthand writer" includes the operator of any recording device;

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"superior court" means the Supreme Court of Ciskei;

"superior officer", in relation to a person subject to this Code, means any officer, warrant officer or non-commissioned officer subject to this Code who holds a higher rank than such person, or who holds the same or an equivalent rank but is in a position of authority over such person;

"the Act" means the Defence Act, 1986;

"trial officer" means any commanding officer who has been authorized in writing by the appropriate convening authority or the Commander of the Defence Force.

(2) Any reference in this Code to the Defence Force shall be construed as including a reference to any part of that Force.

2. Application of Code. - Save as is otherwise provided therein, the provisions of this Code shall apply only to the persons who are in terms thereof or in terms of the Act subject to those provisions.

3. Application of Code beyond area of compulsory service. - Any person subject to this Code who in time of war and owing to circumstances connected with such war is moved or taken beyond the area in which he may be required to render service, shall at all times remain subject to this Code as if he were within the said area until his return thereto can reasonably be effected.

4. Offences endangering safety of forces punishable with death - Any person who, being on service -

(a) shamefully abandons or surrenders or induces or compels any other person on service shamefully to abandon or surrender any garrison, place, post, guard, aircraft or vessel which it was the duty of such person or, as the case may be, such other person to defend,

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

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

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

(e) gives to the enemy or assists the enemy to acquire arms or ammunition or any material or equipment,

(f) knowingly commits any act calculated to imperil the success or safety of the Defence Force or any forces co-operating with the Defence Force or any part of any such forces, or

(g) conspires with any other person to mutiny or cause mutiny in the Defence Force or joins in any such mutiny,

shall be guilty of an offence and liable on conviction to be sentenced to death.

5. Offences by a person in command of troops, vessels or aircraft. - Any person in command of troops of the Defence Force or any vessel or aircraft who -

(a) when his duty requires him to engage the enemy, fails to do so expeditiously or effectively as circumstances permit,

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

(c) improperly fails to pursue an enemy or to consolidate any position gained,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

6. Offences in relation to conduct in action. - Any person who -

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

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

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

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(d) improperly does or omits to do anything which results or is calculated to result in the capture by the enemy of any member of the Defence Force or of any forces co-operating with the Defence Force, or endangers or is calculated to endanger any such member, or which results or is calculated to result in the capture or destruction by the enemy of any aircraft, vessel, arms, ammunition or other war material,

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

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

(g) knowingly harbours or protects an enemy, not being a prisoner of war, or

(h) is taken prisoner of war through want of precaution, neglect of duty or disobedience to orders, or having been taken prisoner of war fails to rejoin the Defence Force when able to do so,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

7. Offences relating to failure to report activities likely to endanger safety of force. - Any person who, being aware or having reasonable suspicion that any other person -

(a) is communicating with the enemy or giving intelligence to the enemy,

(b) is giving to the enemy or is assisting the enemy to acquire arms, ammunition or any material or equipment, or

(c) is about to commit any act calculated to imperil the success or safety of the Defence Force or any forces co-operating with the Defence Force or any part of any such force,

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

8. Offences relating to signals, watchwords and disclosure of information. - Any person who -

(a) without authority or contrary to his duty in any way uses, alters, adjusts or interferes with any instrument, machine or device designed or used for signalling, directing or detecting,

(b) without authority or contrary to his duty alters, mutilates or delays any signal,

(c) makes known the parole, watchword or countersign to any person not entitled to receive it,

(d) wilfully or negligently gives or conveys to a person entitled to receive it, any parole, watchword or countersign different from that which he has received,

(e) without proper authority discloses any information concerning the numbers, movements, location or preparation of the Defence Force or any forces co-operating therewith, or concerning any weapons, aircraft, vessels, stores, machines, instruments, devices or signal codes used or intended for use by such Force or forces, to the prejudice of such Force or forces, or

(f) contrary to his duty discloses the contents of any document or is negligent in the performance of any duty, in consequence of which an unauthorized person becomes or might become aware of the contents of any document, to the prejudice of the Defence Force,

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

9. Interference with aircraft, vehicles, vessels, etc. - Any person who, in circumstances not amounting to an offence under any other provision of this Code, contrary to his duty or without proper authority alters, adjusts or interferes with any aircraft, motor vehicle, vessel, weapon, machine or instrument used or intended for use by the Defence Force or any part or accessory of any such aircraft, motor vehicle, vessel, weapon, machine or instrument shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

10. Mutiny. - Any person who, in circumstances not amounting to an offence under any other provision of this Code, conspires with any other person to mutiny or joins in any mutiny or being present at a mutiny fails to do his utmost to suppress it, or being aware or suspecting that any other person is conspiring to cause any mutiny or has joined in any mutiny, fails to report without delay to his superior officer all the facts within his knowledge in that regard, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

11. Interference with guards, sentries, etc. - Any person who -

- (a) forces or evades any safeguard,
- (b) assaults any sentry or watchkeeper,
- (c) in any manner whatever prevents a sentry or watchkeeper from doing his duty, or
- (d) occasions false alarm,

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

12. Dereliction of duty by sentry, watchkeeper, etc. - Any person who -

- (a) while on sentry duty or on duty as a watchkeeper leaves his post before he is regularly relieved or sleeps or is under the influence of intoxicating liquor or a narcotic drug, or
- (b) while on duty with his unit or at a post or guard leaves such unit, post or guard without orders or good and sufficient cause,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

13. Desertion. - Any person who deserts from the Defence Force shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

14. Absence without leave and non-attendance where required to attend. - Any person who -

- (a) absents himself without leave,
 - (b) fails to appear at a place of parade or duty or at any other place appointed by his commanding officer, or leaves any such place without good and sufficient cause,
 - (c) without good and sufficient cause goes into any prohibited area or beyond the fixed confines of his camp, or
 - (d) being required to attend any school or other educational institution, whether civilian or otherwise, fails to attend thereat or absents himself therefrom without leave,
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

15. Assaulting superior officer. - Any person who assaults or points a firearm at or draws any weapon against his superior officer, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

16. Assaulting or ill-treating subordinate - Any person who assaults or points a firearm at or draws any weapon against or ill-treats any person who is by reason of rank or appointment subordinate to him, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three years.

17. Using threatening, insubordinate or insulting language. - Any person, who uses threatening or insulting language to, or by word or conduct displays insubordination or behaves with contempt towards his superior officer, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

18. Malingering, feigning or producing disease, maiming, etc. - Any person who -

- (a) malingers or feigns or produces disease or infirmity,
- (b) maims or injures himself with the intention of avoiding any service or duty,
- (c) wilfully commits or omits to perform an act, in consequence whereof he becomes or is likely to become unable to perform any service or duty, or

(d) wilfully maims or injures any other person subject to this Code, whether at the request or with the connivance of such other person or otherwise, thereby rendering such person unfit for service or duty,
shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

19. Disobeying lawful command or order. - (1) Any person who in wilful defiance of authority disobeys any lawful command given personally by his superior officer in the execution of his duty, whether orally, in writing or by signal, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.

(2) Any person who disobeys any lawful command given by his superior officer in circumstances not amounting to an offence under subsection (1), shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(3) Any person who disobeys any lawful direction of the commander of any aircraft or vessel in which he is being conveyed, whether such commander is a member of any armed force or a civilian, and irrespective of the rank or status of such commander, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(4) Any person who, being a patient in any hospital, wilfully disobeys any lawful direction concerning his hospital or medical treatment, given to him by any member of the hospital staff within whose hospital duty and authority it is to give such a direction, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

(5) Any person who neglects to obey any unit, formation or force order of which it is his duty to have knowledge, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

20. Theft of public property or property belonging to a comrade, mess, etc. - Any person who -

- (a) steals any public property or property belonging to any institution of the Defence Force, or
- (b) steals any property belonging to a person subject to this Code, or
- (c) receives any property referred to in paragraph (a) or (b) knowing it to have been stolen,

shall be guilty of an offence and liable on conviction, in the case of -

- (i) an offence referred to in paragraph (a), to imprisonment for a period not exceeding ten years;
- (ii) an offence referred to in paragraph (b), to imprisonment for a period not exceeding two years; and
- (iii) an offence referred to in paragraph (c), to the punishment provided in subparagraph (i) or in subparagraph (ii), according as to whether the property received was property referred to in paragraph (a) or property referred to in paragraph (b).

21. Offences in relation to the acquisition or disposal of public property. - Any person who -

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

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

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

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

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years.

22. Causing or allowing a vessel or aircraft to be hazarded, stranded or wrecked. - Any person who wilfully or negligently causes or allows a vessel or aircraft to be hazarded, stranded or wrecked, shall be guilty of an offence and, where no other penalty is prescribed in this Code, liable on conviction to imprisonment for a period not exceeding five years.

23. Abandoning or diverting public property or supplies. - Any person who -

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

(b) improperly diverts or detains supplies,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

24. Negligently losing kit, equipment, arms, etc. - (1) Any person who -

(a) negligently loses his kit, arms or equipment or any public property issued to him at public expense for personal use in the execution of his duties, or

(b) negligently damages or destroys any public property or any property issued to him at public expense for personal use in the execution of his duties,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(2) If in any proceedings for a contravention of paragraph (a) of subsection (1), it is proved that any article or property mentioned in that paragraph which is alleged in the charge to have been lost, was issued to the accused and that on a date subsequent to such issue the accused was found not to be in possession of such article or property, it shall be presumed, unless the contrary is proved, that such article or property was negligently lost by the accused.

25. Negligently or wilfully causing damage to or destruction of public property. - Any person who -

(a) negligently or wilfully commits any act which causes or is likely to cause damage to or destruction of public property or property belonging to any institution, or

(b) negligently or wilfully omits to take action to prevent damage to or destruction of public property or property belonging to any institution,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

26. Deficiencies in stores, etc. - (1) Any person who, being responsible for stores, stocks or moneys in any Defence Force store, office or institution, so negligently performs his duties as to cause any deficiency in such stores, stocks or moneys, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(2) If in any prosecution for a contravention of subsection (1) it is proved that the accused as alleged in the charge was responsible for stores, stocks or moneys in any Defence Force store, office or institution and that while he was so responsible a deficiency in such stores, stocks or moneys was caused, it shall be presumed, unless a satisfactory explanation to the contrary is given by the accused, that he so negligently performed his duties that the said deficiency was caused.

27. Using or taking article issued to or under control of another person. - Any person who -

(a) improperly uses or takes or removes from the possession or control of any other person subject to this Code any article issued to such other person for personal use in the execution of his duties or the personal property of such other person without the permission of the said person, or

(b) without proper authority takes or removes any article of public property from its appointed place, or uses such article for any purpose otherwise than in the public interest, or

(c) without proper authority uses or takes or removes from its appointed place any article belonging to any institution,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

28. Offences in relation to the driving of vehicles and the flying of aircraft. - Any person who -

(a) drives any motor vehicle being public property in a negligent or reckless manner or at an excessive speed or while he is under the influence of intoxicating liquor or a narcotic drug, or

(b) flies any aircraft being public property in a negligent or reckless manner or at an unauthorized altitude or while he is under the influence of intoxicating liquor or a narcotic drug,

shall be guilty of an offence and liable on conviction, where no other penalty is prescribed in this Code, to imprisonment for a period not exceeding two years.

29. Fraudulent enlistment. - (1) Any person who -

(a) being a member of any part of the Defence Force and not having been regularly discharged therefrom, enrolls in any other part of that Force,

(b) having been discharged from the Defence Force or from a military, naval or air force of any country, enrolls in the Defence Force without disclosing such discharge at the time of enrolment, or

(c) wilfully gives a false answer to any question set forth on any enrolment or enlistment paper, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

(2) Any person who, having given a false answer to any question set forth on an enlistment or enrolment paper, is thereupon enrolled as a member of the Defence Force, shall be deemed to have been subject to this Code at the date upon which such false answer was given.

30. False statement in official documents. - Any person who -

(a) knowingly or negligently makes a false statement or entry in a document made or signed by him that is required or made for official purposes;

(b) orders any other person to make or sign a statement or entry in a document that is required or made for official purposes, well knowing such statement or entry to be false,

(c) when signing a document that is required or made for official purposes leaves in blank any material part for which his signature is a voucher,

(d) with intent to deceive, alters, defaces, suppresses or makes away with any document required, made, kept or issued for official purposes, or

(e) forges any signature upon any document required, made, kept or issued for official purposes or uses any document for official purposes knowing the signature thereon to be forged,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

31. False accusations or statements. - Any person who makes any false accusation or statement against or concerning any other person subject to this Code, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

32. Scandalous Behaviour. - Any officer who behaves in a scandalous manner unbecoming the character of an officer and a gentleman, shall be guilty of an offence and shall on conviction be discharged from the Defence Force.

33. Drunkenness. - Any person who -

(a) is drunk whether on or off duty, or

(b) is under the influence of intoxicating liquor or a narcotic drug whilst on duty, or

(c) unfits himself for the proper performance of his duty by excessive use of alcohol or a narcotic drug, or

(d) has a blood alcohol content, expressed in grams per 100 millilitres of blood of not less than 70 milligrams (0.07%) whilst on duty,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

34. (1) A superior officer may require any person whom he suspects on reasonable grounds to be guilty of a contravention of section 12 or 28 or 33 -

(a) to breathe into the prescribed apparatus for such period as he may direct; or

(b) to undergo examination by a medical practitioner, including any blood test which such medical practitioner may deem necessary in order to determine the alcohol content of the blood of such person; or

(c) to breathe into the prescribed apparatus and to undergo the examination referred to in paragraph (b).

(2) If -

(a) any person fails or refuses to breathe into the prescribed apparatus or to undergo any examination when so required under subsection (1), or

(b) the prescribed apparatus records that the alcohol content of the blood of such person exceeds a limit specified by the Minister by notice in the *Gazette* in respect of that particular make of prescribed apparatus,

such person shall be deemed conclusively to be guilty of contravening section 12 or 28 or 33.

35. Offences in relation to a court martial. - (1) Any person who -

(a) having been duly summoned or warned to attend as a witness before a court martial, fails to attend or to remain in attendance until authorized to leave,

(b) being present at a court martial after having been duly summoned or warned to attend as a witness, refuses to be sworn or to affirm,

(c) when giving evidence at a court martial, refuses to answer any question which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his possession or under his control which in law he could be compelled to produce, or

(d) uses threatening or insulting language at a court martial or wilfully causes a disturbance or interruption thereof or wilfully commits any other act calculated or likely to bring such court martial into contempt, ridicule or disrepute,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

(2) The court martial at a sitting whereof an offence mentioned in paragraph (d) of subsection (1) is committed, may summarily order the offender to be imprisoned for a period not exceeding twenty-one days, or to undergo any less severe punishment to which a person convicted of an offence under this Code by a court martial could be sentenced, and any such order shall have the same effect and may be executed in the same manner as if it were a sentence imposed by a court martial in the course of a trial in respect of an offence under this Code before such court, and the provisions of section 90 shall apply in connection with any such order.

36. False evidence before a court martial. - Any person who at a court martial wilfully gives false evidence, shall be guilty of an offence and liable on conviction to the punishment prescribed by law for the crime of perjury.

37. Refusing to answer questions or produce documents or giving false evidence at preliminary investigation, summary trial or board of inquiry. - (1) Any person who -

(a) having been duly summoned or warned to attend as a witness before a preliminary investigation, summary trial or board of inquiry, fails to attend or to remain in attendance until authorized to leave,

(b) being present at a preliminary investigation, summary trial or board of inquiry after having been duly summoned or warned to attend as a witness, refuses to be sworn or to affirm,

(c) when giving evidence at a preliminary investigation, summary trial or board of inquiry, refuses to answer any question which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his possession or under his control which in law he could be compelled to produce, or

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(d) uses threatening or insulting language at a preliminary investigation, summary trial or board of inquiry or wilfully causes a disturbance or interruption thereof or wilfully commits any other act calculated or likely to bring the recording officer, trial officer or board of inquiry into contempt, ridicule or disrepute,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

(2) Any person who at any board of inquiry, preliminary investigation or summary trial under this Code or before a trial officer wilfully gives false evidence, shall be guilty of an offence and liable on conviction to the punishment prescribed by law for the crime of perjury.

38. Obstruction in relation to the arrest, custody or confinement of a person subject to the Code. - Any person who -

(a) resists or wilfully obstructs any member of the Defence Force in the performance of any duty relating to the arrest, custody or confinement of a person subject to this Code,

(b) when called upon by any such member, refuses or neglects to assist that member in the performance of any such duty, or

(c) when called upon by an appropriate civil authority to deliver over any person under his control accused of an offence punishable by a civil court, fails or neglects to do so, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

39. Offences in relation to arrest. - Any person who -

(a) without due and just cause orders any person into arrest or custody,

(b) unnecessarily detains a person in arrest or custody,

(c) contrary to his duty fails to bring the case of a person in arrest or custody before the proper authority within the prescribed time, or

(d) having committed a person to the custody of any authorized person, fails to deliver to such authorized person within twenty-four hours of such committal an account in writing signed by himself of the offence with which the person so committed is charged,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

40. Resisting arrest. - Any person who -

(a) being ordered into arrest, refuses to obey such order or assaults the person ordering him into arrest,

(b) being ordered into arrest, resists the person whose duty it is to apprehend him or have him in charge,

(c) assaults any person in whose custody he had been placed,

(d) escapes from custody, or

(e) hinders or obstructs any person lawfully carrying out a search of his person, personal kit or belongings or his living quarters,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

41. Offences in relation to a person in custody. - Any person who -

(a) without reasonable excuse allows any person committed to his custody or charge to escape,

(b) without proper authority releases any person committed to his custody or charge, or

(c) uses unnecessary violence to any person in custody or otherwise ill-treats such person,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

42. False complaint in writing. - Any person who in any complaint made and lodged by him or in any document made or signed by him relating to the Defence Force or any member thereof or affecting any interest of such Force or any such member, knowingly makes a false statement, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

43. Offences in relation to the redress of wrongs. - Any person who -

(a) when a complaint by another person subject to this Code has been made to him, unduly delays in redressing the wrong complained of or sending the complainant to higher authority in accordance with this Code, or

(b) complains to higher authority or to the President when it is his duty to direct his complaint to his commanding officer or other authority as directed in this Code, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.

44. False representations concerning rank. - Any person who holds himself out to be the holder of a rank other than his own rank in the Defence Force, whether such holding out is by the wearing of rank badges, rank stripes or other insignia of rank or in any other manner, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

45. Offences in relation to decorations or medals. - Any person who knowingly wears -

(a) any decoration, medal or clasp or any decoration or medal ribbon or wound stripe to which he is not entitled, or

(b) any badge, emblem, colours or other insignia of a political organization, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.

46. Riotous or unseemly behaviour. - Any person who -

(a) at any time behaves in a riotous or unseemly manner, or

(b) when able to do so, does not suppress any riotous or unseemly behaviour by any person subject to this Code, or

(c) assaults or fights with anyone,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months.

47. Conduct to the prejudice of military discipline. - Any person who by any act or omission causes actual or potential prejudice to good order or military discipline, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year.

48. Civil offences committed outside Ciskei. - Any person who beyond the borders of Ciskei commits or omits to do any act in circumstances under which he would, if he had committed or omitted to do that act in Ciskei, have been guilty of a civil offence, shall be guilty of an offence under this Code and liable on conviction to any penalty which could under section 85 be imposed by a court martial in respect of such offence: Provided that no such penalty which is of such a nature that it could, if the offence in question had been committed within Ciskei, have been imposed by any competent civil court, shall exceed the maximum penalty that could be imposed in respect of such offence by that civil court.

49. Aiding, abetting, inciting, etc. - Any person who aids, abets, induces, incites, instigates, instructs or commands any person to commit an offence under this Code, or who procures the commission of such an offence, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the principal offence.

50. Defeating the course of justice. - Any person who, with intent to defeat or obstruct the course of justice, assists or harbours any person who to his knowledge has committed an offence under this Code, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the offence committed by the person he so assisted or harboured.

51. Attempt. - Any person who attempts to commit an offence under this Code, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the offence he so attempted to commit.

52. Alternative punishments. - The court convicting any person -

(a) of an offence under section 4 may, instead of imposing sentence of death on that person, impose upon him any other punishment within the jurisdiction of that court;

(b) of any other offence under this Code may, instead of imposing upon that person any penalty prescribed herein in respect of such offence, impose upon him any other penalty within the court's jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed.

53. Arrest. - (1) Any person who, in the presence of his superior officer commits or who is on reasonable grounds suspected by his superior officer of having committed an offence under this Code, may be arrested or ordered into arrest by such superior officer.

(2) Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits a capital civil offence or any offence under section 4 of this Code or any other prescribed offence, may be arrested by any person subject to this Code in whose presence he is so engaged or commits any such offence: Provided that an officer shall not be liable to arrest by any person other than an officer.

(3) Any person who, in terms of this section, arrests any other person or orders any other person into arrest, shall forthwith inform the person arrested or ordered into arrest of the cause of the arrest.

54. Search. - (1) Whenever it appears to the Commander of the Defence Force from information contained in at least one sworn statement that there are reasonable grounds for suspecting that there is upon any person under his command who is subject to this Code, or upon or at any premises, place, vehicle, vessel, aircraft or receptacle of whatever nature belonging to or occupied by or under the control of the Defence Force within the area in which he exercises command -

(a) stolen property or anything with respect to which any offence under this Code has been or is suspected on reasonable grounds to have been committed, or

(b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence, or

(c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence,

he may in writing authorize any superior officer of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which such property or thing is suspected to be, to search such person, premises, place, vehicle, vessel, aircraft or receptacle or any person found in or upon such premises, place, vehicle, vessel, aircraft or receptacle, to seize any such property or thing, if found, and to deliver it safely to the commanding officer of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which such property or thing was found.

(2) If an officer believes on reasonable grounds that the delay in obtaining written authority in terms of subsection (1) would defeat or prejudice the object of a search, he may, if he is the superior officer of the person upon whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which such property or thing is suspected to be, authorize the search without such authority.

(3) Any search in terms of subsection (1) or (2) shall be conducted in the presence of the person upon whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which the property or thing in question is suspected to be: Provided that, if the delay in securing the presence of such person is likely to prejudice the object of the search or if his presence cannot with due regard to the exigencies of the service be readily secured, the search may be made in his absence but in the presence of one or more other persons subject to this Code.

55. Jurisdiction of civil courts. - Nothing in this Code shall affect the jurisdiction of any civil court in Ciskei to try a person for any offence within its jurisdiction.

56. Person convicted or acquitted not to be tried again. - No person who has been convicted or acquitted by a civil or military court of any offence shall be triable by a military court for any offence of which he might have been found guilty by the court which tried him in the first instance.

57. Civil offence may be tried under Code. - A person subject to this Code may be tried by a military court having jurisdiction for any civil offence (other than treason, murder, rape or other capital offence or culpable homicide committed by him within Ciskei), and may in respect of such offence be sentenced to any penalty within the jurisdiction of the court convicting him.

58. Territorial jurisdiction of military court. - Any person charged with an offence in respect of which a military court has jurisdiction, may be tried and punished for such offence at any place by such a court having jurisdiction in respect of such person at the time of the commencement of the trial.

59. Prescription of offences. - No person shall be triable by a military court for any offence in respect of which such a court has jurisdiction unless the trial is commenced within three years after the date of the commission of the offence: Provided that a person charged with a capital civil offence or an offence under section 4 or 13 of this Code may be tried by a military court at any time after the commission of the offence.

60. Trial under code when accused no longer subject to code. - (1) Any person who, while he is subject to this Code, commits an offence under this Code, may be tried and punished for that offence at any time within a period of three months after he has ceased to be so subject, and any person who commits an offence under section 4, 10, 13 or 29, may be tried and punished for such offence at any time after he has ceased to be subject to this Code.

(2) For the purpose of effecting the arrest of any such person, bringing him to trial and imposing punishment, such person shall be deemed to be subject to this Code in the rank and status he had at the time of the commission of the offence.

61. Offender to be brought before trial officer. - (1) Any person charged with an offence other than an offence which in terms of section 57 may not be tried by a military court, shall within the prescribed period be brought before a trial officer who, subject to the provisions of section 62, shall try the accused summarily or direct that a preliminary investigation be held.

(2) Any preliminary investigation shall be held by a prescribed officer in the manner prescribed.

(3) Notwithstanding the preceding provisions of this section, any member of the Defence Force who has committed an offence which is subject to the jurisdiction of a military court may in writing admit that he is guilty of such offence and undertake to pay such fine, not exceeding one hundred rand, as the Commander of the Defence Force may at his discretion have fixed (as he is hereby empowered to fix) for such offence and thereupon -

(a) such member shall be deemed to have been duly convicted by a trial officer of such offence and to have been sentenced to pay such fine under the provisions of section 62; and

(b) such sentence shall be deemed to have been duly endorsed by the appropriate convening authority in terms of section 64.

62. Jurisdiction of trial officer. - Subject to the provisions of section 63 a trial officer may in such manner, under such conditions and for such offences as may be prescribed try summarily any member of the Defence Force who is of a rank lower than his own and may on conviction sentence the offender -

(a) to detention or field punishment for a period not exceeding ninety days: Provided that no officer or warrant officer may be sentenced to detention or field punishment; or

(b) to a fine not exceeding two hundred rand (in the case of an officer or non-commissioned officer) or one hundred rand (in the case of a private); or

(c) to confinement to barracks for a period not exceeding thirty days; or

(d) to extra duties for a period not exceeding thirty days; or

(e) to a reprimand,

or to such other punishment as may be prescribed: Provided that field punishment may be imposed only beyond the borders of the Republic.

63. Objections to trial officer. - (1) No person charged with an offence in respect of which a military court has jurisdiction, shall have the right to object to being tried by a trial officer, except on the ground that the trial officer in question has such knowledge concerning the facts of the case that his decision is likely to be prejudiced thereby.

(2) Any objection under subsection (1) shall be heard and determined by the officer against whom the objection is raised, and such person shall record such objection and his finding thereon, and -

(a) if he overrules the objection he shall proceed with the trial of the accused; or

(b) if the objection is upheld, the appropriate convening authority or the Commander of the Defence Force shall authorize some other officer to try the accused.

64. Review of sentences passed by trial officer. - Whenever a trial officer has convicted an offender, he shall as soon as possible cause the record of the proceedings to be sent for review to the appropriate convening authority or, if the Commander of the Defence Force was the trial officer, to the Minister, who may after the expiration of a period of not less than three days after the conviction -

(a) endorse the finding or the finding and the sentence; or

(b) quash the finding and set aside the sentence; or

(c) substitute for the finding any other lawful finding; or

(d) if he has endorsed the finding, vary the sentence but so that the varied sentence is not either in itself or in its consequences more unfavourable to the offender than the sentence of the trial officer.

Provided that a sentence of a fine exceeding one hundred rand imposed by a trial officer other than the Commander of the Defence Force shall in any event be subject to confirmation by the Commander of the Defence Force.

65. Power to convene courts martial. - The President may -

(a) convene courts martial, or

(b) issue a warrant to the Minister to convene courts martial, and

(c) delegate power by warrant to the Commander of the Defence Force to issue warrants to officers under his command, of rank and command not below that of a colonel or its equivalent, to convene courts martial,

for the trial of persons subject to this Code for any offence triable by a court martial.

66. Convening of court martial for trial of more than one person. - Where two or more persons are charged jointly with the same offence, the officer having power to convene a court martial for the trial of the most senior in rank of such persons may convene a court martial for the joint trial of all such persons.

67. Jurisdiction of court martial. - A court martial shall have jurisdiction to try any person subject to this Code for any offence other than an offence which in terms of section 57 is not triable by a military court and may, subject to the provisions of this Code, impose in respect of any such offence -

(a) in the case of an offence under this Code any penalty prescribed therein in respect of such offence, or

(b) in the case of a civil offence, any penalty that might under section 85 be imposed in respect of an offence under this Code by a court martial: Provided that no such penalty, which is of such a nature that it could be imposed in respect of such offence by any competent civil court, shall exceed the maximum penalty that could be imposed in respect of that offence by that civil court.

68. Composition of court martial. - A court martial shall consist of not less than three or (in the case of a trial for a capital offence) not less than five members, all of whom shall be officers in the Defence Force who have held commissioned rank for not less than two years, and shall be constituted and convened as may be prescribed: Provided that -

(a) the president of a court martial shall not be below the rank of colonel or its equivalent, or less than one rank above that of the accused or the most senior in rank of the accused in a joint trial;

(b) no member thereof shall be of a lower rank than the accused or the most senior in rank of the accused in a joint trial, and not more than one member shall be of the same rank as the accused or the most senior in rank of the accused in a joint trial;

(c) subject to the provisions of paragraphs (a) and (b), any officer who has held commissioned rank for not less than one year may be appointed as president or as another member of such court martial, if he holds a degree in law which qualifies him for admission as an advocate in the Supreme Court of Ciskei or has passed the Public Service Senior Law Examination or holds a degree or has passed an examination deemed by the Minister for the purposes of this paragraph to be equivalent to the first-mentioned degree or examination.

69. Disqualifications for service on court martial. - (1) No officer shall be qualified to serve on a court martial as president or member, if he -

- (a) convened that court martial;
- (b) investigated the charge or any of the charges to be tried by that court martial;
- (c) being the commanding officer of the accused, applied for his trial by court martial;
- (d) is the prosecutor or defending officer or a witness; or
- (e) has personal knowledge of any material facts or evidence relating to the charge or any of the charges.

(2) The provisions of paragraph (d) of subsection (1) shall not be deemed to prevent any member of a court martial which has convicted an offender of any offence from being called by the defence as a witness to give evidence in respect of the offender's character or his service in the Defence Force or any other military force or in mitigation of sentence.

(3) Any officer appointed to serve as president or member on any court martial, who is not qualified to serve on such court martial, or who has any doubt as to whether he is so qualified, shall report to the convening authority or the president of the court martial as soon as he becomes aware that he is not qualified or of the fact giving rise to his doubt, and shall not serve or continue to serve on such court martial unless the convening authority or the president is satisfied that he is qualified to serve.

70. Accused may object to members of court martial. - When a court martial has assembled, the names of the members shall be read out to the accused who shall be asked if he objects to be tried by any of them, and any objection by the accused shall be decided by the court in the manner prescribed.

71. Members of court martial to be sworn. - (1) A court martial composed of members in respect of whom no objection has been made and sustained, shall be sworn in, and for that purpose the president shall administer the prescribed oath to each of the members and the most senior in rank of the members of the court shall administer the prescribed oath to the president.

(2) The president of a court martial shall administer the prescribed oath to every witness at a trial before that court martial and to any interpreter or shorthand writer employed at or during the trial.

72. Vacancies in membership of court martial. - (1) If after the commencement of a trial by court martial -

(a) the number of members thereof is, through death or otherwise, reduced below the minimum number required in terms of this Code, the court martial shall be dissolved;

(b) the president dies or is for any other reason unable to attend, and the number of members is not reduced below the said minimum number, the convening authority may appoint the most senior in rank of the members of the court, if of sufficient rank, to be president, and if that member is not of sufficient rank, the court shall be dissolved.

(2) If on account of the illness of the accused before the finding or for any other reason it is impossible to continue the trial, the court martial shall be dissolved.

(3) Where a court martial is dissolved under any provision of this section, the accused may be tried again, and in that event his trial shall commence *de novo* before a new court martial.

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73. Trial to be in open court in presence of accused. - (1) Save as provided in subsection (2), (3) or (4), the trial of any person by court martial shall be in open court in the presence of such person.

(2) If an accused person so conducts himself at his trial that the continuance of the proceedings in his presence is impracticable, the court martial may after due warning to the accused, order his removal and continue the trial in his absence.

(3) Whenever it appears to a convening authority or a court martial that, in the interests of good order or public morals or the administration of justice or for reasons of security, a trial ought not to be conducted or continued in open court, the convening authority or the court martial may at any time either before the commencement or during the course of the trial order that persons other than the accused, his counsel and the necessary court officials, or females, juveniles or other classes of persons, shall not be permitted to be present at the trial.

(4) A court martial may at any time order any witness, whether for the prosecution or the defence, to leave the courtroom.

74. How charge to be framed. - Every charge and every charge sheet shall be framed as prescribed, but so that every charge shall disclose the nature of the offence, the time and place of the commission of the offence and sufficient particulars to enable the accused to identify the act or omission with which he is charged.

75. More than one charge may be joined in the same charge sheet. - (1) Any number of charges, including alternative charges, may be brought against an accused either separately or on the same charge sheet.

(2) Where an accused is charged with more than one offence in the same charge sheet, except in the alternative, the court may, on the application of the accused, dispose of each charge or some of the charges separately if it is satisfied that the accused will be prejudiced in his defence if the trial were to proceed on all the charges simultaneously.

76. Joinder of persons. - (1) Any number of persons may be charged jointly in one charge sheet with the same offence.

(2) Any person, who is charged jointly with one or more other persons and whose defence is likely to be prejudiced by a joint trial, may apply to be tried separately.

(3) A court martial may in the case of a joint trial in its discretion direct that the trial of the accused persons or any of them shall be held separately from the trial of the other or others of such persons.

77. Accused entitled to make his defence. - Every person charged with an offence before a court martial shall be entitled to make his defence at his trial and to be represented thereat by his counsel.

78. Rules of evidence applicable in civil courts to apply also in military courts. - The rules of evidence as applied by the civil courts of Ciskei shall be followed in and by military courts, and no person shall be required to answer any question or to produce any document or thing which he could not be compelled to answer or produce in similar proceedings before a civil court.

79. Evidence must be given *viva voce* and in open court. - (1) Every witness appearing to give evidence at a trial by a court martial shall give his evidence *viva voce* and on oath.

(2) If through incapacity a witness is unable to attend court to give evidence, the court martial may hear the evidence of such witness at any place where the witness may be, in the presence of the accused, his counsel and the prosecutor.

80. Proceedings must be recorded. - The president of a court martial shall be responsible for the proper recording as may be prescribed of the proceedings at any trial.

81. Court martial may adjourn from time to time and place to place. - (1) A court martial may adjourn from time to time and from place to place: Provided that, if the adjournment is for a period longer than fourteen days, the accused may be released from custody for the period of the adjournment: Provided further that, if the accused is not released from custody for such period, the president of the court martial shall immediately report that fact to the appropriate convening authority who may give such directions in the matter as he may deem necessary, including the release or otherwise of the accused without prejudice to re-arrest.

(2) A court martial may adjourn to view any place or any object which cannot conveniently be brought to the court, but such viewing shall be in the presence of the accused, his counsel and the prosecutor.

82. Alternative verdicts. - (1) An accused who is charged :

- (a) with desertion, may be found guilty of having been absent without leave;
- (b) with having used threatening language to his superior officer, may be found guilty of having used insulting language to or of having by word or conduct displayed insubordination or of having behaved with contempt towards his superior officer;
- (c) with having by word or conduct displayed insubordination or of having behaved with contempt towards his superior officer, may be found guilty of having used insulting or threatening language to his superior officer;
- (d) with malingering, may be found guilty of feigning or producing disease or infirmity;
- (e) with feigning disease or infirmity, may be found guilty of producing disease or infirmity;
- (f) with producing disease or infirmity, may be found guilty of feigning disease or infirmity;
- (g) with maiming, may be found guilty of injuring;
- (h) with an offence under section 19(1), may be found guilty of having committed an offence under section 19(2);
- (i) with theft, may be found guilty of receiving stolen property, knowing it to have been stolen;
- (j) with any other offence under this Code, may, failing proof of the commission of an offence in circumstances involving a higher degree of punishment, be found guilty of the same offence as having been committed in circumstances involving a lesser degree of punishment;
- (k) with any offence under this Code, may be found guilty of having attempted to commit that offence or of having aided, abetted, induced, incited, instigated, instructed or commanded any person to commit that offence or having procured the commission of that offence.

(2) If an accused is charged before a court martial with an offence under section 48 and the charge is one on which he could, if he had been tried by a civil court for such offence committed in Ciskei have been found guilty of any other offence, the court martial may find him guilty of the other offence.

(3) Where an accused is charged before a court martial with a civil offence, and the charge is one on which he could, if he had been tried by a civil court in Ciskei for such an offence, have been found guilty of any other offence, the court martial may find him guilty of that other offence.

83. How findings and sentences of court martial to be arrived at. - (1) The finding of a court martial shall be determined by the vote of a majority of its members all of whom shall vote, and in the event of an equality of votes the accused shall be acquitted: Provided that a finding of guilty of a capital offence shall require the votes of at least two-thirds of the members of a court martial.

(2) The sentence of a court martial and all other questions arising for decision at a trial shall be determined by the vote of the majority of the members, all of whom shall vote, and in the event of an equality of votes the president shall have and exercise a casting vote: Provided that sentence of death shall not be imposed unless at least two-thirds of the members of the court martial vote in favour of that sentence.

84. Finding and sentence to be announced in open court. - The finding and sentence and the decision on any other question arising at a trial shall be announced by the president of the court martial to the accused in open court.

85. Punishments. - (1) Whenever a court martial convicts any person of an offence, it may, subject to the maximum punishment provided in this Code for that offence, the limits of its own penal jurisdiction, and the provisions of sections 32 and 87, impose upon the person convicted a penalty of -

- (a) death;
- (b) imprisonment;
- (c) cashiering (in the case of an officer);
- (d) dismissal or discharge from the Defence Force;
- (e) detention for a period not exceeding two years (in the case of any person other than an officer);
- (f) reduction to any lower rank;
- (g) reduction in seniority in rank;
- (h) field punishment for a period not exceeding three months (in the case of a private serving beyond the borders of Ciskei);
- (i) a fine not exceeding five hundred rand (in the case of an officer), two hundred rand (in the case of a warrant officer or a non-commissioned officer) and one hundred rand (in the case of a private);
- (j) a reprimand.

(2) Any penalty provided for in any paragraph of subsection (1) shall for the purposes of this Code be deemed to be less severe and less serious in its consequences than any penalty provided for in any preceding paragraph.

86. One sentence may be imposed in respect of all the charges. - Whenever an accused is convicted by court martial of more than one offence alleged in the same charge sheet, such court may, subject to the provisions of section 87, impose only one sentence in respect of all the charges, and if such sentence is a valid sentence in respect of any one of the charges on which the accused has been convicted, it shall be deemed to be a valid sentence in respect of all the charges on which he has been convicted.

87. Certain provisions to apply in case of particular punishments. - (1) No other punishment may be combined with the punishment of death.

(2) (a) Save as provided in subsection (2) of section 35, no sentence of imprisonment shall be for a shorter period than thirty days.

(b) The punishment of imprisonment shall not be combined with the punishment of detention.

(3) An officer sentenced to imprisonment shall also be sentenced to be cashiered, and the latter sentence shall be executed before the officer concerned is lodged in any prison or other place to serve the sentence of imprisonment.

(4) (a) A warrant officer, non-commissioned officer or private who is sentenced to imprisonment shall also be sentenced to be discharged with ignominy.

(b) A warrant officer or non-commissioned officer who is sentenced to detention, shall also be sentenced to reduction to the ranks and may also be sentenced to be discharged from the Defence Force.

(5) (a) Any person, whose trial commences or is concluded after he has ceased to be subject to this Code, may on conviction if a sentence of a fine is imposed, be sentenced to a period of imprisonment not exceeding two months in default of the payment of the fine.

(b) A sentence of imprisonment or detention shall continue to run even though the offender ceases to be subject to this Code during the currency of the sentence.

88. Suspension of sentence. - (1) Whenever a military court sentences an offender to any sentence, it may order the operation of the whole or any portion of the sentence to be suspended for a period not exceeding three years on such conditions as it may specify in the order.

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(2) A confirming or reviewing authority may when considering any sentence for confirmation or on review, or at any later stage during the currency of the sentence, order the operation of the whole or any portion of the sentence or the unexpired portion thereof to be suspended for a period not exceeding three years on such conditions as may be specified in the order.

(3) If the operation of any sentence or the unexpired portion of a sentence has been suspended under subsection (1) or (2), and the offender has, during the period of suspension, observed all the conditions of suspension or is promoted to a higher rank in terms of the regulations, the sentence or the unexpired portion of the sentence shall not be enforced.

(4) Any authority empowered by this Code to suspend a sentence may cause investigation to be made in the prescribed manner during the period of suspension of a sentence, concerning any complaint or allegation that the offender has not fulfilled any conditions of the suspension of his sentence, and may, if satisfied that the offender has not fulfilled any such condition which he could reasonably have fulfilled, order that he be committed to serve the unexpired portion of his sentence.

(5) An offender who during the period of suspension of his sentence ceases to be subject to this Code, shall be absolved from the sentence and from compliance with the conditions, if any, of suspension of the sentence.

89. Court may, where applicable, order deductions or forfeitures of pay. - Whenever a military court imposes upon any person any punishment consisting of a fine, it may order that the fine be recovered by such deductions from or forfeitures of the pay of such person as may be authorized by this Code.

90. Sentence may not be enforced unless it has been confirmed. - Subject to the provisions of sections 95, 96 and 101 the sentence of a court martial shall not be enforced or executed unless and until the finding and the sentence have been confirmed in accordance with the applicable provisions of this Code.

91. Acquittal is not subject to confirmation. - A finding of "not guilty" shall not be subject to confirmation and shall become effective when announced in open court.

92. Convening authority may confirm sentences and findings of courts martial convened by him. - (1) Subject to the provisions of subsection (2), every convening authority may confirm the findings and sentences of courts martial convened by him.

(2) It shall not be competent for any officer who has served on or at a court martial as a member, defending officer or prosecutor or has given material evidence thereat, to confirm the sentence or the finding and the sentence of that court martial, but such officer shall reserve such finding and sentence for confirmation by the authority under whose warrant he convened such court martial.

93. Offender may make representations to confirming authority. - Any offender may within three days of his sentence by a court martial, lodge any written representations he may wish to make concerning the validity of justice of the findings or the sentence with the authority who has power to confirm the finding and the sentence, and such authority shall take cognizance of such representations when considering the confirmation or otherwise of the finding and the sentence.

94. Powers of confirming authority. - (1) Any authority with powers of confirmation may, within the limits of his powers, in respect of a court martial -

- (a) confirm the finding or some of the findings;
- (b) refuse to confirm the finding or any of the findings;
- (c) if he confirms the finding or any of the findings, confirm the sentence;

or

(d) vary the sentence, but so that such varied sentence is not either in itself or in its consequences more unfavourable to the accused than the sentence of the court martial.

(2) Whenever a confirming authority has, under paragraph (b) of subsection (1), refused to confirm any finding of a court martial, the accused shall be deemed to have been acquitted of the charge to which that finding relates.

(3) A confirming authority may, if satisfied that a finding is invalid or is not supported by the evidence on record but that the evidence on record fully supports any other finding which the court martial could have brought under this Code, either set aside the first-mentioned finding and sentence and refer the case back to the court martial to bring in some other finding and impose sentence afresh if that other finding calls for a sentence or substitute such other finding and sentence, if any, for the finding and sentence of the court martial.

(4) A confirming authority may correct any patent error in any finding or sentence, but so that the result will not be more unfavourable to the accused.

(5) Where a finding or sentence of a court martial has been ambiguously expressed or seemingly incorrectly recorded, the confirming authority may refer the case back to the court martial to record an unambiguous or correctly worded finding or sentence, but in doing so the confirming authority shall give the offender the benefit of any reasonable doubt arising out of the finding or sentence as recorded by the court.

(6) Where a court martial has imposed an invalid sentence, the confirming authority may, if he confirms the finding, refer the sentence back to the court martial to impose and record a valid sentence: Provided that, where through death or other reason it is not reasonably possible to re-assemble the court, the confirming authority may record a valid sentence.

95. Certain sentences to be reviewed. - Notwithstanding anything to the contrary in this Code, a sentence of cashiering or of dismissal of an officer or of discharge with ignominy of a warrant officer or a non-commissioned officer holding the substantive rank of sergeant or a higher rank or of imprisonment for a period of three months or more shall not be executed, although confirmed, unless and until the proceedings of the case have been reviewed by the council of review or a board of review.

96. Sentence of death must be endorsed by council of review and approved by president. - Notwithstanding anything to the contrary contained in this Code, a sentence of death, although confirmed by a confirming authority shall not be executed unless and until the finding and the sentence have been endorsed by the council of review as being in accordance with real and substantial justice and have been approved by the President.

97. Custody and execution of person sentenced to death. - An offender sentenced to death shall be kept in military custody until executed, which shall be by shooting.

98. When sentence to be executed. - Subject to the provisions of sections 95 and 96, any sentence shall be executed as soon as possible after it has been confirmed.

99. Reasons for judgment. - (1) A confirming or reviewing authority, the council of review or a board of review may direct a court martial to give written reason for any ruling or finding of such court, which reasons shall show -

- (a) the facts the court found to be proved;
 - (b) the grounds upon which the court arrived at the finding;
 - (c) the reasons for any ruling of law or for the admission or rejection of any evidence,
- as may be specified in the direction.

(2) Such reasons shall be furnished within such period as the direction may stipulate, not being less than four days from the date of receipt of the direction by the court martial.

(3) The reasons shall be prepared and signed by the full court martial: Provided that, if all the members are not reasonably available, such member or members as are available shall prepare and sign the reasons, indicating the reasons which precluded the other member or members from signing.

(4) An offender shall, if he so requests, be supplied with a copy of any reasons for judgment furnished in terms of this section.

100. Offender may make representations to reviewing authority. - Whenever the record of the proceedings in any case is required to be sent for review, the person convicted may not later than three days after the date of the conviction or promulgation of the sentence, as the case may be, furnish the authority to whom the case must be sent for review, with such representations in writing concerning the facts of law of the case, as he may wish to make, and such representations shall together with the record of the proceedings be duly considered by the reviewing authority.

101. Offender may ask for review by council of review. - An offender may within the prescribed time and in the prescribed manner, apply for the review of the proceedings of his case by the council of review.

102. Prosecutor may make representations to council of review. - Whenever the record of the proceedings of a case is referred for review to the council of review on the application of an offender, the officer who prosecuted at the trial may submit written representations in the prescribed manner and time to the council of review.

103. Council of review to hear argument in certain cases. - In any case in which sentence of death or a sentence of twelve months' imprisonment or more or of cashiering has been imposed, or where application has been made by the offender in terms of section 101 for the review of the proceedings of his case, the council of review shall at the request of the offender, allow the offender or his counsel and the officer who prosecuted at the trial or any other person appointed for the purpose by the Commander of the Defence Force in his stead, to appear before it and hear argument on the issues in the case.

104. Powers of council of review. - (1) The council of review may, after due consideration of the record of the proceedings of any case and of any representations submitted to it in terms of this Code -

- (a) endorse the finding or the finding and the sentence;
- (b) quash the finding and set aside the sentence;
- (c) substitute for the finding any finding which the evidence on record supports beyond a reasonable doubt and which could have been brought on the charge by the court martial under section 82; or
- (d) if it has endorsed the finding or substituted a finding, vary the sentence, but (subject to the provisions of subsection (4)) so that the varied sentence is not either in itself or in its consequences more unfavourable to the offender than the sentence of the court martial.

(2) The council of review may correct any patent error in the finding or sentence as recorded in respect of any case referred to it, but so that the consequences will not be more unfavourable to the offender.

(3) The council of review may refer back to a court martial any finding or sentence not clearly or correctly recorded or any invalid sentence, to be clearly and correctly recorded or to impose a valid sentence, and where it is not reasonably practicable in the opinion of the council of review so to refer back to the court martial, the council of review may itself record a finding or sentence or impose a valid sentence: Provided that in so doing the council of review shall give the benefit of any reasonable doubt to the offender in regard to both the finding and the sentence.

(4) The council of review may in its discretion increase any sentence of imprisonment, detention, field punishment, fine, reprimand or of reduction in rank, when the review is held on the application of the offender.

(5) For the purposes of subsections (1), (2) and (3) "sentence" includes an order under subsection (1) of section 117.

105. Finding and Sentence as confirmed, substituted or varied, deemed to be sentence of court martial. - Any finding or sentence, as confirmed, substituted or varied by a confirming or reviewing authority or the council of review shall be deemed to be the finding or sentence of the court which passed the original sentence.

106. The president may remit, mitigate or commute any sentence. - The Commander-in-Chief of the Defence Force may at his discretion mitigate, remit or commute any sentence imposed upon an offender by a military court.

107. When sentence commences. - (1) Save as otherwise provided or prescribed, every sentence shall commence or be deemed to commence immediately after the sentence has been announced in open court.

(2) Where a sentence is varied to one of imprisonment or detention, such imprisonment or detention shall be deemed to have commenced on the date of commencement of the sentence which is so varied.

108. Where sentences of imprisonment or detention to be served. - The whole or any portion of any sentence of imprisonment imposed by a military court may by order of the Commander of the Defence Force, and any sentence of detention shall, be served in a detention barracks.

109. President may establish prisons and detention barracks and make regulations in regard thereto. - (1) The President may establish one or more prisons in Ciskei to which offenders sentenced to imprisonment under this Code may be committed to serve such sentences, or may direct that offenders so sentenced be committed to any prison established or deemed to have been established under the Prisons Act, 1983 (Act 36 of 1983).

(2) The Minister may establish one or more detention barracks in Ciskei to which offenders sentenced to detention may be committed to serve such sentences, or may direct that certain premises or portions of premises be deemed to be detention barracks to which such offenders may be so committed.

(3) The President may make regulations, not inconsistent with the Act, relating to all or any of the following matters or things in regard to any prisons or detention barracks established or premises or portions thereof deemed to be detention barracks under this section, namely -

- (a) supervision and management;
- (b) discipline of the staff, offenders and inmates;
- (c) the admission, safe custody and release of offenders and inmates;
- (d) the remission of sentences for good behaviour;
- (e) the labour or compulsory labour that may or shall be performed by offenders;
- (f) the punishments, not including corporal punishment, which may be imposed for offences in such establishments and the persons by whom and the manner in which such punishments may be imposed or executed;
- (g) the powers of the officers in charge of such establishments;
- (h) the restraint which may be applied to offenders;
- (i) visitors;
- (j) inspections;
- (k) death of offenders and inmates;
- (l) the extent to which all or any of the provisions of or regulations under the Prisons Act, 1983 (Act 36 of 1983) may be applied to such prisons;
- (m) any matters which he considers necessary or expedient for the purposes for which such prisons or barracks are established or such premises or portions thereof are intended.

110. How sentences of imprisonment and detention imposed outside Ciskei to be served. - (1) The Commander of the Defence Force may authorize any officer in command of troops on service beyond the borders of Ciskei to establish such detention barracks as may be deemed necessary by such officer, to which offenders sentenced to detention under this Code may be committed to serve such sentence.

(2) Any offender sentenced beyond the borders of Ciskei to imprisonment under this Code, shall be removed to Ciskei to serve such sentence: Provided that if, owing to distance, lack of means of conveyance or other circumstances, such removal is not reasonably practicable, the offender may serve his sentence or any portion thereof in detention barracks established under subsection (1).

(3) The Minister may direct that offenders sentenced beyond the borders of Ciskei to imprisonment or detention under this Code may serve any such sentence or portion thereof in any prison, detention barracks or like place of confinement established or controlled or supervised by any country or by the commander of any force serving in co-operation with the Defence Force.

(4) Any person beyond the borders of Ciskei who is charged or to be charged with an offence under this Code, which offence would normally be tried by a court martial, may be committed to and detained in any prison, detention barracks or like place of confinement mentioned in subsection (3), while such offender is awaiting trial or confirmation of sentence: Provided that no officer shall be so committed or detained unless the consent of the convening authority under whose command such officer is serving has been obtained.

(5) The regulations applicable to detention barracks in Ciskei shall apply to detention barracks established under subsection (1): Provided that the officer in general command of the Defence Force in the area in which such detention barracks are situated may in writing authorize such amendments or additions to the regulations for such detention barracks as local or service conditions render necessary or advisable: Provided further that such amendments or additions shall not make the conditions more severe for offenders or inmates.

111. Persons in charge of prison, etc. must receive and detain person charged under code. - Every person in charge of any prison, police cell or lock-up in Ciskei shall receive, admit, keep in custody or release from custody any person charged with an offence or committed or sentenced under this Code, in accordance with the laws in force in respect of such prison, cell or lock-up and in compliance with the warrant of committal or release given to him by the commanding officer of the person charged or sentenced or by any other prescribed officer.

112. Unsoundness of mind at time of commission of offence. - Whenever a military court trying an accused for an offence is satisfied from evidence (including medical evidence) given before it that at the time of the commission of the offence the accused was mentally ill so as not to be responsible according to law for the act or omission constituting the offence, it shall find the accused not guilty.

113. Unsoundness of mind in Ciskei. - If, at a trial before a military court in Ciskei, an accused person appears to be incapable of understanding the proceedings at the trial, the court shall report the condition of the accused to the magistrate of the district and order that the accused be detained in proper custody until the decision of the magistrate is known.

114. Unsoundness of mind upon arraignment or during trial outside Ciskei. - (1) If when an accused is arraigned before a military court beyond the borders of Ciskei on a charge of an offence under this Code, or at any time during the trial and before the finding, it appears to the court that the accused is not capable of understanding the proceedings at the trial, the court shall hear evidence, including medical evidence, to determine whether the accused is capable of understanding the proceedings at the trial so as to make a proper defence.

(2) If the court finds that the accused is so capable the trial shall proceed.

(3) If the court finds that the accused is not so capable, it shall order -

(a) that the accused be removed to Ciskei and there detained in detention barracks or some other prescribed place pending the signification of the President's decision; and

(b) that pending his removal to Ciskei, he be detained in a hospital, prison, detention barracks or other place as circumstances may permit.

(4) If an accused so found incapable of understanding the proceedings becomes fit to stand his trial, whether before removal to Ciskei or thereafter, he may be charged and tried for the offence.

115. Only authorized deductions may be made from pay. - (1) The pay of any member of the Defence Force shall be paid without any deductions other than -

(a) such deductions as are authorized by the Act or this Code or as may be required to be made by virtue of any provision of the Exchequer and Audit Act, 1985;

(b) deduction in settlement of a debt due to the Government; or

(c) deductions in pursuance of an emoluments attachment order issued in terms of any law in force in Ciskei.

(2) Any deductions from the pay of a member of the Defence Force made in terms of subsection (1), at the date of death, termination of appointment, retirement or discharge of the member concerned, shall be made in the order in which the paragraphs under which those deductions are made, appear in that subsection.

116. Forfeitures of pay. - (1) Every person subject to this Code shall forfeit his full pay for every period during which -

(a) he has been absent from duty, whether on desertion or without leave, in respect of which he has been convicted by a competent court;

(b) he has been detained under arrest or in custody for an offence in respect of which -

(i) he has been sentenced to imprisonment; or

(ii) a sentence referred to in paragraph (d) has been imposed upon him;

(c) he has been imprisoned in pursuance of a sentence of a competent court;

(d) he has been under detention in pursuance of a sentence of a competent court with which there has been combined a sentence of discharge;

(e) he is in hospital in consequence of an offence under paragraph (b) of section 18 of which he has been convicted by a competent court;

(f) he was detained under arrest by or in the custody of a police force established by or under any law for an offence in respect of which he has been convicted by a competent court;

(g) he is absent from duty as a prisoner of war due to his own wilful act or omission;

(h) he voluntarily serves the enemy;

(i) he has been on bail or released on his own recognizance by a civil court but failed to return to duty; or

(j) he is not on duty owing to his having been ordered not to return to duty during any period subsequent to his release from arrest or custody pending or during trial, whether on bail or on his own recognizance or otherwise in respect of an offence of which he has thereafter been convicted: Provided that the provisions of this paragraph shall also apply to a person who has been convicted and intends appealing against his conviction or applying for the review of the proceedings of his case.

(2) Any person subject to this Code shall in respect of any period of detention under arrest or in custody for an offence in respect of which a sentence other than imprisonment or a sentence referred to in paragraph (d) of subsection (1) has been imposed upon him, or any period of detention served on him in pursuance of a sentence of a competent court other than a sentence referred to in paragraph (d) of subsection (1), forfeit -

(a) if he is married or is a widower or divorced person who has a child, stepchild or legally adopted child who lives with and is maintained by him, one-third of his pay; or

(b) if he is unmarried, two-thirds of his pay.

(3) For the purpose of this section the full pay of any person subject to the Code or such portion thereof as the Commander of the Defence Force, or an officer authorized by him, may determine, shall be withheld as from the date upon which such person has been absent without leave, was arrested or taken into custody or detained as prisoner of war or admitted to hospital or released from arrest or custody, whether on bail, his own recognizance or otherwise, for the period during which he is so absent, under arrest or in custody, a prisoner of war, in hospital or released from arrest or custody, until such time as it has been established whether he shall forfeit his pay in terms of subsection (1) or (2).

(4) The full amount withheld under subsection (3) shall be paid to the person from whom it has been withheld if he is exonerated by any court of competent jurisdiction or if, in the opinion of the Commander of the Defence Force, he is not charged before any such court within a reasonable time.

117. Deductions from pay. - (1) Whenever a competent court convicts any person subject to this Code of an offence, other than an offence relating to the driving of a motor vehicle, and any act or omission constituting such offence has caused any loss of or damage to public property or property belonging to any institution, the court shall, subject to the provisions of subsection (3), order that the accused be placed under deductions of pay to the amount of the loss or damage: Provided that where the court is satisfied that the offence was not committed wilfully, it may order that the accused be placed under deductions of pay to such lesser amount as it may in its discretion determine.

(2) Any amount deducted from a member's pay in pursuance of an order made under subsection (1) in respect of loss of or damage to property belonging to any institution shall be paid to the institution concerned.

(3) Where more than one person has been so convicted, the court shall for the purpose of making an order under subsection (1), order that all the offenders be placed under deductions of pay in such a manner as to ensure that the amount in question will be recovered from them jointly and severally.

(4) Whenever a competent court convicts a person subject to this Code of having in contravention of section 24 negligently lost, damaged or destroyed his equipment, arms, kit or any other property issued to him at public expense for personal use in the execution of his duties, it shall order that such equipment, arms, kit or other property be replaced or repaired and that the costs involved in such replacement or repair be recovered from the person concerned: Provided that no such order shall be made in the case of a sentence of discharge from the Defence Force, if the said equipment, arms, kit or other property has at the time of sentence become the property of the accused pursuant to the regulations.

118. Fine may be deducted from pay. - Whenever a military court sentences any person subject to this Code to pay a fine, it may order that such person be placed under deductions of pay in the amount of the fine, and such amount may thereupon be deducted from such person's pay in such monthly instalments as may be determined by the Commander of the Defence Force.

119. Maintenance orders. - (1) If the Commander of the Defence Force is satisfied -

(a) that a magistrate's court has made an order against any other member of the Defence Force performing service in defence of Ciskei for the regular payment of a specified amount towards the maintenance of such member's wife or child, he may order that the member concerned be placed under deductions of pay for the amount of the order of court;

(b) that any member of the Permanent Force or any other member of the Defence Force performing service, in defence of Ciskei, is not maintaining or adequately maintaining his wife or child, he may order that the member concerned be placed under deductions of pay for such amount as, in all the circumstances of the case, he considers to be reasonable.

(2) Any amount deducted from a member's pay in pursuance of an order made under subsection (1), shall be paid to the wife of the member concerned or to the legal guardian of the child concerned or to the magistrate of the district in which such wife or guardian resides for distribution to or on behalf of such wife or child as such magistrate may determine.

120. Garnishee orders. - (1) Notwithstanding anything to the contrary in any other law contained no garnishee order shall be issued in terms of any law in force in Ciskei in respect of the pay of any member of the Defence Force while he is on service beyond the borders of Ciskei or before the expiration of a period of three months after his return to Ciskei.

(2) The provisions of paragraph (c) of subsection (1) of section 115 shall not apply to the pay of any such member while he is on service or during the said period in respect of any garnishee order issued while such member was not on such service.

121. Minister may remit deductions or forfeitures. - Whenever the Minister is satisfied that any forfeiture of the pay of a member of the Defence Force, made under section 116, will, having regard to the member's pay and the nature of the offence, if any, create or result in undue hardship, he may remit the whole or any portion of such forfeiture.

122. Redress of wrongs. - (1) Any person subject to the Code (hereinafter in this section referred to as "the complainant") who is aggrieved by any act or omission of any other person subject to this Code, may complain in writing to his commanding officer, and if such complaint is against the commanding officer or such commanding officer is unable to redress the wrong or otherwise to satisfy the complainant within a reasonable time, such commanding officer shall refer the complaint to the officer under whose command he is serving.

(2) Such latter officer shall, if he is unable to redress the wrong or otherwise to satisfy the complainant without unreasonable delay, transmit the complaint to the Commander of the Defence Force.

(3) If the Commander of the Defence Force is unable to redress the wrong or otherwise to satisfy the complainant, he shall, if requested by the complainant to do so, transmit the complaint to the Minister, who shall if he cannot satisfy the complainant, refer the complaint to the President whose decision shall be final.

(4) If an officer who has received a complaint transmits such complaint to higher authority in terms of this section, he shall notify the complainant of such transmission at the time thereof.

(5) Any person who has lodged a complaint with his commanding officer and whose wrong is not redressed or who is not otherwise satisfied within a reasonable time, or who has not been advised within a reasonable time that his complaint has been sent to higher authority, may complain directly to such higher authority and ultimately to the Minister: Provided that such complainant shall send a copy of such further complaint to his commanding officer at the same time as he complains to higher authority or to the Minister.

123. Board or inquiry in relation to absence without leave. - (1) When any person has been absent without leave for more than thirty days, a board of inquiry may be convened to inquire into such absence and into any deficiencies there may be in his kit, arms and equipment or any articles of public property whatsoever on issue to him.

(2) Such board of inquiry shall be convened and shall conduct its inquiry in the prescribed manner and take evidence on oath, for which purpose the president may administer the prescribed oath to witnesses, interpreters and shorthand-writers.

(3) If the board of inquiry finds that such person has been so absent for more than thirty days and is still so absent, it shall record such finding, including the date of the commencement of the absence without leave, as also its finding on any deficiencies of his kit, arms and equipment and any articles of public property on issue to him and the estimated value thereof.

(4) If such person is not thereafter arrested, or until he is arrested, the finding of the board of inquiry shall have the force and effect of a finding of guilty by a court martial on a charge of desertion, and if there is any finding by the board of inquiry of any deficiencies, such finding shall have the force and effect of a finding of guilty on a charge of an offence under section 24(1)(a).

(5) A copy of any finding of a board of inquiry under this section, if duly certified to be a true copy of the original by the president, shall on its mere production be admissible in evidence against such person on a charge of desertion or absence without leave or on a charge under section 24(1)(a) as proof of his absence without leave and of any deficiencies and the value thereof: Provided that such proof shall be rebuttable by such person.

124. Boards of inquiry. - (1) The Minister or the Commander of the Defence Force or any prescribed officer may at any time or place convene a board of inquiry to inquire into any matter concerning the Defence Force, any member thereof or any public property or the property or affairs of any institution or any regimental or sports funds of the said Force, and to report thereon or to make a recommendation as may be directed.

(2) The president of any such board of inquiry is hereby empowered to administer the prescribed oath to witnesses, interpreters and shorthand-writers at such inquiry.

125. Attendance of witnesses at and composition of board of inquiry. - (1) The president of any board of inquiry convened under section 123 or 124, may summon any person in Ciskei, whether or not otherwise subject to this Code, to attend such board of inquiry and to give evidence thereat: Provided that no person shall be required to answer any question at such inquiry which he could not in a civil court be compelled to answer.

(2) The composition of boards of inquiry, the method of convening such boards and the procedure to be followed by such boards shall be as prescribed.

126. Attendance of witnesses at military courts, preliminary investigations or board of inquiry. - (1) Any person not subject to this Code who is required to give evidence or to produce any document or thing at any military court, a preliminary investigation or board of inquiry in Ciskei, may be summoned in the prescribed manner to attend such court, preliminary investigation or board and to give such evidence or produce such document or thing.

(2) Any person not subject to this Code who has been summoned in the prescribed manner to attend any military court, preliminary investigation or board of inquiry to give evidence or to produce any document or thing, and who fails to attend or to remain in attendance until authorized to leave or refuses to be sworn or to affirm or to answer any question which in similar proceedings in a civil court he could be compelled to answer, or fails or refuses to produce any document or thing which in similar proceedings in a civil court he could be compelled to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or to imprisonment for a period not exceeding three months.

127. Competent but not compellable witness giving evidence outside Ciskei. - If at any trial by a military court beyond the borders of Ciskei a competent but not compellable witness gives evidence but refuses to answer any question put to him by the court, or by the defence if he has been called by the prosecution, or by the prosecutor if he has been called by the defence, to which question he would be bound in law to reply if he were a witness at such a trial in Ciskei, the court shall, if satisfied that the answer to the question is material, order the witness to stand down and strike the whole of his evidence from the record of the proceedings.

128. Evidence. - (1) Whenever a person subject to this Code is required to produce at the trial before a civil or military court of any person for an offence, any document made or intended for official use, such a person may in lieu of the original document, produce a copy certified by him to be a true copy of the original and such copy shall be admissible in evidence as proof of its existence and of its contents as if it were the original: Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of such document shall be produced.

(2) A photographic reproduction of a document, if certified by the officer having the custody of the original to be a photographic reproduction of the original, shall be admissible in evidence before a military or civil court trying an offence as proof of its existence and of its contents as if it were the original: Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of the document shall be produced.

(3) Any entry in the records of the Defence Force concerning the pay or any allowances of any person subject to this Code may, unless objection is made by any interested party, be proved in a civil or military court trying an offence by the production of a copy or a photographic reproduction of such entry if such a copy or reproduction purports to be certified by the officer having charge of the original record to be a true copy or reproduction, as the case may be, of such entry.

(4) Any attestation or enrolment paper purporting to have been signed by any person, shall be evidence of such person having given the answers to questions which he is therein represented as having given, and the existence and contents of such attestation paper may, unless objection is made by any interested party, be proved in evidence before a civil court or military court by the production of a copy or a photographic reproduction thereof, if certified to be a true copy or reproduction of the original by the officer having charge of the original.

(5) A certificate purporting to be signed by an officer having charge of the records of any person charged with an offence, stating -

- (a) the rank or appointment held by such person at any time during his service,
- (b) the date of his enrolment or discharge,
- (c) the decorations, medals, clasps, good conduct or long service badges or wound stripes or other emblems of merit to which such person is or is not entitled, or
- (d) the rate of pay or any allowances to which such person is or was at any time entitled,

shall upon its mere production be admissible as evidence of the contents thereof at the trial of such person for an offence by a civil or military court: Provided that the accused shall have the right to require such officer to be called to give oral evidence.

129. How persons arrested for desertion or absence without leave to be dealt with.

(1) (a) Whenever a person surrenders himself to or is arrested by a military policeman, a superior officer or a member of the Ciskeian Police on a charge under this Code of desertion or absence without leave, the person to whom he surrenders himself or who arrests him shall prepare and sign a certificate stating the fact of such surrender or arrest and the time, date and place thereof.

(b) A certificate prepared and signed in terms of paragraph (a) of this subsection shall at the trial of such person on such charge by a civil or military court on its mere production be admissible in evidence as proof of the surrender or arrest, as the case may be, and of the time, date and place thereof as stated in the certificate.

(2) (a) Where a person is arrested by, or surrenders himself to, a member of the Ciskeian Police on a charge of desertion or absence without leave, and such person cannot be delivered over within forty-eight hours to his commanding officer, he shall without delay be brought before a magistrate of the district in which he then is and such magistrate, if satisfied after due enquiry that such person is a deserter or an illegal absentee or that there are reasonable grounds for suspecting that such person is a deserter or an illegal absentee, may order that he be delivered over to his commanding officer and that he be committed to custody in a prison, police cell or lock-up or other place of confinement until such delivery over can be effected: Provided that, if such person is not so delivered over within fourteen days of his committal to custody by the magistrate, he shall again be brought before a magistrate who may order his committal for a further period not exceeding fourteen days.

(b) If there is not sufficient evidence available to the magistrate when such person is brought before him to enable the magistrate to determine whether such person is a deserter or an illegal absentee or whether there are reasonable grounds for so suspecting him, the magistrate may remand him in custody from time to time not exceeding seven days at a time.

(c) Where such person on being brought before a magistrate voluntarily confesses to being a deserter or an illegal absentee, the magistrate shall record such confession and obtain the signature of such person thereto, if he is willing to sign it, and shall thereafter himself sign such record and cause a true copy thereof to be made and certified by himself or the clerk of the court, and such certified copy shall be admissible in evidence on its mere production at the trial of such person by a civil or military court on a charge of desertion or absence without leave as proof of such confession.

130. Certain orders may be signified by order, instruction or letter. - (1) Where any order is authorized by this Code to be made by the Commander of the Defence Force, or any other commanding officer, such order may be signified by an order, instruction or letter under the hand of any officer authorized to issue such orders on behalf of the Commander of the Defence Force or other commanding officer, and an order, instruction or letter purporting to be signed by any officer appearing therein to be so authorized shall be evidence of his being so authorized.

(2) An order deviating from any form that may be prescribed for it shall not be rendered invalid merely because of such deviation.

131. Registrar or clerk of a civil court must furnish particulars of trial by civil court of persons subject to Code. - Whenever any person subject to this Code has been tried by a civil court, the registrar or clerk of such court shall transmit to the commanding officer of such person a certificate setting forth the offence for which such person was tried, the judgment and the sentence and any order of the court or, if he was acquitted, a statement to that effect, and such certificate shall for all purposes be proof of the conviction and the sentence, or of the order of the court or of the acquittal of such person.

132. Members of Defence Force deemed to have been properly attested or enrolled in certain circumstances. - (1) Every person who has served as a member of the Defence Force for a period of not less than one month, or who has accepted pay as a member of the said Force, shall be deemed to have been properly attested or enrolled and shall have no right to claim his discharge or release on the ground of any error, illegality or misunderstanding in his attestation or enrolment.

(2) If a person claims his discharge or release within one month of engagement for service on the ground of any error, illegality or misunderstanding in his attestation or enrolment, and obtains his discharge as a result of such claim, he shall nevertheless be deemed to have been properly attested or enrolled to the date of his claim.

133. Council of review. - (1) The President shall establish a council of review consisting of a chairman who shall be a judge or a retired judge of the Supreme Court of Ciskei, one magistrate or retired magistrate and one officer of the Permanent Force.

(2) The members of the council of review may be employed on a part-time basis and may, in the case of members who are not in the full-time employment of the Government, be paid such allowances as may be determined by the Minister in consultation with the Treasury.

134. Board of review. - (1) The Commander of the Defence Force may during service establish so many boards of review in the field as he may deem necessary.

(2) A board of review shall consist of not less than three members, one of whom shall be appointed as chairman.

(3) The duties, powers, qualifications and status of members of a board of review shall be as prescribed.

135. Appointments and powers of chief disciplinary officer and assistants. - (1) The Commander of the Defence Force or an officer authorized thereto by him may appoint an officer as chief disciplinary officer of the Defence Force and so many assistant disciplinary officers as he may deem necessary.

(2) The chief disciplinary officer or, subject to the provisions of section 53(2) any assistant disciplinary officer, may at any time or place arrest any person subject to this Code for an offence and detain such person as prescribed.

(3) The chief disciplinary officer or any assistant disciplinary officer may under warrant take such steps as may be prescribed for the execution of any sentence of death, imprisonment or detention imposed by a military court: Provided that the provisions of this subsection shall also apply in respect of a sentence of detention imposed by a civil court.

136. Restitution or confiscation of property. - (1) When any person is convicted by a military court of theft, or any other offence whereby he has unlawfully obtained any property, and such property or any portion thereof is found in the possession or under the control of such person, the court may order that such property or such portion thereof be restored to the lawful owner.

(2) A military court convicting any person of an offence which was committed by means of any weapon, instrument or other article produced to the court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the State.

137. Field punishment. - (1) Any offender undergoing field punishment may be required to perform any or all of his normal military duties.

(2) Field punishment may be carried out regimentally when the unit to which the offender belongs is on the move or about to move or when the chief disciplinary officer or an assistant disciplinary officer is not reasonably available, and to prevent the escape of the offender he may be handcuffed or otherwise secured.

(3) When a unit is not on the move or about to move and the chief disciplinary officer or an assistant disciplinary officer is available to the unit, an offender sentenced to field punishment shall be handed over to such disciplinary officer to undergo the sentence.

138. Exercise of powers vested in holders of military office. - Any power of jurisdiction given to and any act or thing to be done by, to, or before any person holding any office in the Defence Force, may be exercised or done by or before any other person for the time being authorized in that behalf according to the customs of the service or as may be prescribed.

139. Contempt of military court by person not subject to the Code. - (1) Any person not subject to this Code who in Ciskei wilfully causes any disturbance or interruption at any military court or wilfully commits any act calculated or likely to bring such court into contempt, ridicule or disrepute, shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or in default of payment to imprisonment for a period not exceeding two months.

(2) Any person who, within the precincts of a military court, commits any act or causes any disturbance or interruption mentioned in subsection (1) may be ordered by the court to be removed from the precincts of the court by any member of the Permanent Force and to be taken into custody and handed over to the Ciskeian Police.

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140. Corporal punishment may not be imposed. - Notwithstanding anything to the contrary contained in any other law, no civil or military court may in respect of any offence under this Code sentence an offender to any form of corporal punishment.

141. Defending officer as a witness. - No defending officer appointed in terms of this Code to defend an accused person shall be competent to give evidence against such person at his trial without the consent of such person, concerning any fact, matter or thing which came to his knowledge after and by reason of his appointment and duties as the defending officer of such person.

SCHEDULE 2

LAWS REPEALED

No. and year of law	Short title	Extent of repeal
Act 1 of 1981	Defence Act, 1981	The whole
Act 35 of 1983	National Security Amendment Act, 1983	Sections 35 & 36
Act 11 of 1985	Defence Amendment Act, 1985	The whole

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