

Zimbabwe

## Defence Act

### Chapter 11:02

Legislation as at 31 December 2016

There may have been updates since this file was created.

PDF created on 18 December 2024 at 10:21.

*Collection last checked for updates: 31 December 2017.*

[View online](#)



#### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

[www.laws.africa](http://www.laws.africa)  
[info@laws.africa](mailto:info@laws.africa)

FRBR URI: /akn/zw/act/1972/27/eng@2016-12-31

There is no copyright on the legislative content of this document.

This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

## Defence Act (Chapter 11:02)

### Contents

Part I – Preliminary .....	2
1. Short title .....	2
2. Interpretation .....	2
Part II – Organisation, command and administration of Defence Forces .....	4
3. Defence Forces .....	4
4. Constitution of Army and Air Force .....	4
5. Units of Defence Forces .....	4
6. Reserve Forces .....	5
7. Appointment of Commander of Defence Forces .....	5
8. Conditions of service of Commander .....	5
9. Functions of Commander .....	5
10. Delegation of Commander's functions .....	5
11. Commanders of Army and Air Force .....	6
12. Appointment of boards .....	6
13. Defence Council .....	6
Part III – Appointment, promotion, discharge and conditions of service of members of the Defence Forces .....	7
14. Oath on attestation .....	7
15. Appointment and promotion of officers .....	7
16. Retirement of officers .....	7
17. Resignation of officers .....	8
18. Cancellation of commission and discharge of officer .....	8
19. Appointment, promotion, reduction in rank and dismissal of non-commissioned members .....	8
20. Appointment or promotion for distinguished service .....	8
21. Acting rank .....	8
22. Policy directive and general considerations re appointments and promotions .....	9
23. Reduction in rank of non-commissioned officers .....	9
24. Suspension of members .....	9
25. Discharge on redundancy .....	9
26. Discharge or dismissal of members other than officers .....	10
27. Conditions of service of members .....	10
28. Attachment and posting of persons to and from other Military Forces .....	10
29. Attachment and secondment of members to Public Service .....	10
30. National Service .....	10

Part IV – Defence Forces Service Commission .....	11
31. Terms of office of commissioners .....	11
32. Resignation of commissioners .....	11
33. Conditions of service of commissioners .....	11
34. Functions of Commission .....	11
35. Procedure of Commission .....	12
36. Staff of Commission .....	12
37. Reports of Commission .....	12
38. Validity of acts and decisions of Commission .....	13
Part V – Military offences, powers of arrest, search and detention .....	13
39. Application of First Schedule .....	13
40. Power to arrest offenders .....	13
41. Search of members or premises .....	13
42. Arrest, search and trial of member of a Reserve Force .....	14
43. Provisions for avoiding delay after arrest .....	15
44. Remand warrants .....	15
Part VI – Jurisdiction of military courts and civil courts, procedure and evidence .....	15
45. Jurisdiction of military courts .....	15
46. Limitations of jurisdiction of military courts .....	15
47. Jurisdiction of civil courts .....	16
48. Courts martial .....	17
49. Convening general court martial .....	17
50. Convening district court martial .....	17
51. Place for sitting of courts martial and adjournment .....	17
52. Courts martial to sit in open court in presence of accused .....	18
53. Challenges by accused .....	18
54. Accused of unsound mind .....	18
55. Appointment and functions of judge advocate .....	19
56. Law to be observed by courts martial .....	20
57. Judicial notice .....	20
58. Decisions of courts martial .....	20
59. Finding and sentence .....	20
60. Restitution or confiscation of property .....	21
61. Conviction of offence other than that charged .....	21
62. Review of proceedings of courts martial .....	21

63. Powers of confirming authority .....	21
64. Reconsideration of findings of courts martial .....	22
65. Evidence of proceedings of courts martial .....	23
66. Proof of outcome of civil trial .....	23
67. Offences in relation to military courts .....	24
68. False evidence .....	24
Part VII – Punishment and execution of sentence .....	25
69. Interpretation in Part VII .....	25
70. Punishment of officers .....	25
71. Punishment of other ranks .....	26
72. Courts martial to impose one sentence only in respect of all charges .....	27
73. Reconsideration of sentences .....	27
74. Postponement or suspension of sentence by military courts .....	27
75. Execution of death sentence .....	28
76. Recovery of fines .....	28
77. Warrants of committal .....	29
Part VIII – Court Martial Appeal Court .....	29
78. Interpretation in Part VIII .....	29
79. Establishment, practice and procedure of Court Martial Appeal Court .....	30
80. Appeals .....	30
81. Determination of appeal against conviction .....	31
82. Powers of Appeal Court .....	31
83. Powers of Appeal Court to obtain further evidence .....	32
84. Written presentation of appellant's case .....	33
85. Attendance of appellant at hearing of appeal .....	33
86. Stay of execution of death sentence .....	33
87. No retrial where conviction quashed .....	33
88. Enforcement of orders, etc. ....	33
88A. *** .....	33
Part IX – Cantonments and protected areas .....	33
89. Declaration of cantonments .....	33
90. Prohibition of entry into cantonments .....	34
91. Authority to enter cantonments .....	34
92. Right of way and loitering .....	34
93. Cantonment police .....	35

94. Protected areas .....	35
Part X – Special powers in relation to defence .....	36
95. Commandeering and billeting .....	36
96. Expropriation of land for defence purposes .....	37
97. Protection of defence stores .....	37
Part XI – General .....	37
98. President may publish defence agreements .....	37
99. Unauthorized sale or wearing of uniforms, etc. ....	38
100. Forgery of military documents, impersonation and unlawful possession of such documents .....	38
101. Personation .....	39
102. Obstructing Defence Forces .....	39
103. Harboursing, aiding or inducing members of Defence Forces to dereliction of duty .....	39
104. Refusing information or giving false information .....	40
105. General penalties .....	40
106. Sale or supply of liquor at mess or canteen .....	40
106A. General offence: failure to comply with provisions of Act .....	41
107. General provisions as to evidence .....	41
108. Administration of oaths .....	42
109. Declaration of active service .....	42
110. Deductions for barrack damage .....	42
111. Establishment or declaration of detention barracks .....	42
112. Powers in connection with training .....	43
113. Regulations .....	43
114. Savings .....	45
First Schedule (Sections 39, 45, 46, 47, 61, 105 and 107) .....	45
Second Schedule (Section 61) .....	60

# Zimbabwe

## Defence Act Chapter 11:02

Published in Government Gazette

**Commenced on 3 November 1972**

*[This is the version of this document at 31 December 2016 and includes any amendments published up to 31 December 2017.]*

*[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe. This version is up-to-date as at 31st December 2016.]*

**AN ACT to consolidate and amend the law relating to the Defence Forces Service Commission and the Defence Council, the establishment, constitution, command, administration, organization, duties, training, co-operation with other Military Forces and discipline of the Defence Forces, the declaration of cantonments and protected areas, the requisitioning of buildings, vehicles and other things for the use of the Defence Forces in certain circumstances, the expropriation of land for defence purposes and the protection of defence stores; to provide for the publication of defence agreements and to create powers in connection with the training of units of the Defence Forces; and to provide for matters incidental to or connected with the foregoing.**

WHEREAS sections 96, 97 and 98 of the Constitution provide as follows—

96 (1) For the purpose of defending Zimbabwe, there shall be Defence Forces consisting of an Army, an Air Force and such other branches, if any, as may be provided for by or under an Act of Parliament.

(2) The supreme command of the Defence Forces shall vest in the President as Commander-in-Chief and, in the exercise of his functions as such, the President shall have power to determine the operational use of the Defence Forces.

(3) Subject to the provisions of subsection (2) and any Act of Parliament, the Defence Forces shall be under the command of a Commander:

Provided that an Act of Parliament may provide that the different branches of the Defence Forces, or any one or more of them, shall be under the command of different Commanders.

(4) The Commander of the Defence Forces, and every Commander of a branch of the Defence Forces, shall be appointed by the President after consultation with such person or authority as may be prescribed by or under an Act of Parliament.

(5) An Act of Parliament shall make provision for the organization, administration and discipline of the Defence Forces, including the appointment of persons to offices or ranks in the Defence Forces, their removal from office or reduction in rank, their punishment for breaches of discipline and the fixing of their conditions of service.

97 (1) There shall be a Defence Forces Service Commission which shall consist of—

(a) a chairman who, subject to the provisions of [section 74](#) (3), shall be the chairman of the Public Service Commission; and

(b) not less than two and not more than seven other members appointed, subject to the provisions of subsection (2), by the President.

(2) The persons to be appointed under paragraph (b) of subsection (1) shall be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment as members. and at least one such member shall be a person who has held senior rank in the Defence Forces for periods which in the aggregate amount to at least five years.

98 The functions of the Defence Forces Service Commission shall be to tender such advice and do such other things in relation to the Defence Forces as are provided for by this Constitution or by or under an Act of Parliament.;

AND WHEREAS it is desirable to make further provisions for the Defence Forces and the Defence Forces Service Commission:

NOW, THEREFORE, be it enacted as follows—

## Part I – Preliminary

### 1. Short title

This Act may be cited as the Defence Act [Chapter 11:02].

### 2. Interpretation

(1) In this Act—

"**active service**" means—

- (a) any operations undertaken by the Defence Forces or other Military Forces against the enemy, including the patrolling of the border areas of Zimbabwe in search of the enemy; and
- (b) any service declared by the Minister in terms of section one hundred and nine to be active service;

"**Air Force**" means the Air Force referred to in subsection (1) of section 96 of the Constitution;

"**Army**" means the Army referred to in subsection (1) of section 96 of the Constitution;

"**cantonment**" means an area or place declared in terms of section eighty-nine to be a cantonment for the purposes of Part IX;

"**civil court**" means the High Court or a magistrates court;

"**civil prison**" means any building or place declared to be a prison in terms of Part II of the Prisons Act [Chapter 7:11];

"**Commander**" means the Commander of the Defence Forces appointed in terms of subsection (3) of section 96 of the Constitution;

"**Commission**" means the Defence Forces Service Commission established by section 97 of the Constitution;

"**commissioned rank**" means the rank of—

- (a) second lieutenant or above in the Army; or
- (b) air sub-lieutenant or above in the Air Force;

"**commissioner**" means any member of the Commission, including the chairman;

"**confirming authority**" means, in relation to—

- (a) a sentence of death passed by a court martial—
  - (i) other than a sentence of death passed outside Zimbabwe on a member on active service, the President;
  - (ii) outside Zimbabwe on a member on active service, such authority as the President may designate;

- (b) any sentence, other than a sentence of death, passed by a general court martial—
  - (i) the President; or
  - (ii) to the extent that the President has delegated the powers conferred upon him by paragraph (c) of subsection (1) of section forty-nine to a qualified officer, that qualified officer;
- (c) any sentence passed by a district court martial—
  - (i) the qualified officer having power to convene the district court martial; or
  - (ii) to the extent that the qualified officer authorized to convene the district court martial has delegated the powers conferred upon him by paragraph (c) of subsection (1) of section fifty to an officer under his command, that officer;
- (d) any sentence, other than a sentence of death, passed by a field general court martial, such authority or officer or member of a class of officers as may be prescribed;

**"continuous National Service"** means National Service for a continuous period of more than twenty-four hours;

**"decoration"** means any medal, ribbon, clasp, bar or other insignia relating to any honour, award or other qualification;

**"Defence Forces"** means the Defence Forces established by subsection (1) of section 96 of the Constitution and constituted in terms of section three;

**"detention barracks"** means any detention barracks established in terms of section one hundred and eleven and any building or place declared by the Minister in terms of that section to be detention barracks for the purposes of this Act;

**"enemy"** includes all persons engaged in operations against the Defence Forces or any other Military Forces and all mutineers, rebels and rioters;

**"field rank"** means the rank of—

- (a) major or lieutenant-colonel in the Army; or
- (b) squadron leader or wing commander in the Air Force;

**"Force"** means the Army or the Air Force;

**"medical officer"** means—

- (a) a medical officer of the Defence Force; or
- (b) a medical practitioner appointed by the Minister for the purposes of this Act;

**"member"** means an officer, non-commissioned officer or soldier of the Defence Force;

**"military court"** means a court martial or an officer prescribed for the purposes of subsection (2) of section forty-five;

**"Minister"** means the Minister of Defence or any other Minister to whom the President may from time to time assign the administration of this Act;

**"National Service"** has the meaning given to it by subsection (1) of section 2 of the National Service Act [Chapter 11:08];

**"non-commissioned officer"** means any member of or above the rank of—

- (a) lance-corporal in the Army; or
- (b) corporal in the Air Force;



other than a member who holds commissioned rank, and includes a member acting or temporarily appointed as a non-commissioned officer;

"**oath**" includes affirmation or admonition;

"**officer**" means any member holding commissioned rank;

"**other Military Forces**" means any foreign naval, marine, army, air or police force which is co-operating with the Defence Force;

"**qualified officer**" means any officer of or above the rank of—

- (a) major in the Army; or
- (b) squadron leader in the Air Force;

"**Regular Force**" means the Regular Force of the Army or the Air Force referred to in section four;

"**Reserve Force**" means a Reserve Force established in terms of section six;

"**Secretary**" means the secretary of the Ministry for which the Minister is responsible;

"**soldier**" means any member other than an officer or non-commissioned officer;

"**unit**" means any contingent, corps, departmental service, detachment, force, regiment, battalion, company, squadron, military organization, formation or headquarters of the Army or the Air Force established in terms of paragraph (a) of section five.

- (2) Any reference to imprisonment or any lesser punishment shall, subject to subsection (2) of section forty-seven and section seventy or seventy-one, as the case may be, be construed as a reference—
  - (a) in relation to an officer, to any of the punishments prescribed in paragraphs (b) to (g) of subsection (1) of section seventy; or
  - (b) in relation to a non-commissioned officer or a soldier, to any of the punishments prescribed in paragraphs (b) to (l) of subsection (1) of section seventy-one.

## **Part II – Organisation, command and administration of Defence Forces**

### **3. Defence Forces**

The Defence Forces shall consist of the Army and the Air Force.

### **4. Constitution of Army and Air Force**

Subject to sections five and six, the Army and the Air Force shall each consist of—

- (a) a Regular Force; and
- (b) a Reserve Force, where such a force has been created in terms of section six;

constituted by members attested therein or posted thereto in terms of this Act.

### **5. Units of Defence Forces**

After consultation with the Commander, the Minister may—

- (a) establish such units of the Army or the Air Force as he may consider necessary; and
- (b) determine the style and designation of any unit; and
- (c) disband any unit.

## 6. Reserve Forces

After consultation with the Commander, the Minister may, by statutory instrument—

- (a) establish such Reserve Forces of the Army and the Air Force as he may consider necessary; and
- (b) divide the Reserve Forces into such classes as he may prescribe.

## 7. Appointment of Commander of Defence Forces

- (1) The President shall appoint the Commander of the Defence Forces in terms of subsection (4) of section 96 of the Constitution, after consultation with the Minister.
- (2) In tendering any advice or making any recommendation for the purposes of subsection (1), the Minister shall act in consultation with the Board referred to in subsection (1) of section eleven.

## 8. Conditions of service of Commander

- (1) The Commander shall be appointed for a period of four years or shorter period as the President may determine.
- (2) The President shall determine the rank, title and, subject to this Act, the functions of the Commander.
- (3) Subject to this Act, the terms and conditions of service of the Commander shall be fixed by the President.

## 9. Functions of Commander

- (1) It shall be the duty of the Commander, subject to this Act, to implement such measures as he may consider necessary for—
  - (a) commanding and controlling the members and equipment of the Defence Forces and using them to best advantage; and
  - (b) maintaining proper discipline within the Defence Forces; and
  - (c) improving or simplifying the organization, methods and procedures of the Defence Forces; and
  - (d) securing the most economic and efficient utilization of the resources provided for the maintenance of the Defence Forces.
- (2) The Commander shall—
  - (a) report to the Minister on all matters under his charge in the day-to-day discharge of his duties; and
  - (b) advise the Minister on matters of general policy relating to the Defence Forces; and
  - (c) carry out any other duties that the President, acting through the Minister, may require him to carry out.
- (3) The Commander shall account to the Secretary for the efficient and economic use of the funds and assets of the Defence Forces.

## 10. Delegation of Commander's functions

The Commander may delegate to any officer under his command such of his functions as he may consider expedient, other than the power of further delegating any such function.

## 11. Commanders of Army and Air Force

- (1) There shall be—
  - (a) a Commander of the Army; and
  - (b) a Commander of the Air Force;appointed by the President in terms of subsection (4) of section 96 of the Constitution, after consultation with the Minister.
- (2) In tendering any advice or making any recommendation for the purposes of subsection (1), the Minister shall act in consultation with the board referred to in subsection (1) of section eleven.
- (3) The Commander of the Army and the Commander of the Air Force shall be appointed for a period of four years or such shorter period as the President may determine.
- (4) The President shall determine the ranks and titles of the Commander of the Army and the Commander of the Air Force.
- (5) Subject to this Act, the terms and conditions of service of the Commander of the Army and the Commander of the Air Force shall be fixed by the President
- (6) The Commander of the Army shall command and control the Army and the Commander of the Air Force shall command and control the Air Force, and each shall carry out any directions given to him by the Commander and ensure that his branch fulfills its role within the Defence Forces.
- (7) The Commander of the Army and the Commander of the Air Force shall report to the Commander on all matters affecting the Army and the Air Force, respectively.

## 12. Appointment of boards

- (1) For the purpose of advising the Minister in the appointment of the Commander, there shall be a board consisting of the Chairman of the Commission, the Secretary, the retiring Commander and one other person appointed by the President:

Provided that, where there is no retiring Commander, the President shall appoint an additional member to the board.
- (2) For the purpose of advising the Minister in the appointment of the Commander of the Army and the Commander of the Air Force, there shall be a board consisting of the Chairman of the Commission, the Secretary, the Commander and one other person appointed by the President.
- (3) The Chairman of the Commission shall be the chairman of the boards referred to in subsections (1) and (2).
- (4) In tendering advice on the appointment of the Commanders, the board referred to in subsection (1) or (2), as the case may be, shall have regard to any general directions given by the President in terms of subsection (1) of section twenty-two.

## 13. Defence Council

There shall be a Defence Council which shall consist of such persons and shall perform such functions and duties as the President may determine.

### **Part III – Appointment, promotion, discharge and conditions of service of members of the Defence Forces**

#### **14. Oath on attestation**

- (1) Every person engaged for service or required to serve in the Defence Forces shall take the prescribed oath before an officer.
- (2) Any person who refuses to take an oath when required to do so in terms of subsection (1) shall be deemed, despite such refusal, to have been engaged for service with effect from the date of such refusal, and this Act shall apply to him as if he had taken the oath.

#### **15. Appointment and promotion of officers**

- (1) Subject to this section, the President may—
  - (a) appoint by commission a person to commissioned rank; or
  - (b) promote or temporarily appoint any officer to higher rank.
- (2) When appointing or promoting any person in terms of subsection (1), the President shall consider the advice of the Minister tendered after consultation with the Commander.
- (3) The Minister may, on the advice of the Commander, promote or temporarily appoint an officer to the rank of—
  - (a) major, in the case of an officer in the Army; or
  - (b) squadron leader, in the case of an officer in the Air Force;or any lower commissioned rank.
- (4) The Commander may promote or temporarily appoint an officer to the rank of—
  - (a) captain, in the case of an officer in the Army; or
  - (b) flight lieutenant, in the case of an officer in the Air Force;or any lower commissioned rank.

#### **16. Retirement of officers**

- (1) Subject to section twenty-five and to any regulations made in terms of section one hundred and thirteen, the President may place any officer on a retired list.
- (2) Subject to section twenty-five and to any regulations made in terms of section one hundred and thirteen, the Minister may place on a retired list any officer of the rank of—
  - (a) major, in the case of an officer in the Army; or
  - (b) squadron leader, in the case of an officer in the Air Force;or any lower commissioned rank.
- (3) Any officer placed on a retired list in terms of this section shall be entitled to retain his rank and wear uniform on appropriate occasions.

**17. Resignation of officers**

- (1) An officer may, in writing, tender the resignation of his commission to the Commander but shall not, unless otherwise ordered by the Minister, be relieved of the duties of his appointment until he has received notification in writing that his resignation has been accepted by the President.
- (2) An officer who resigns his commission in terms of subsection (1) and resigns from his employment in the Defence Forces in terms of any regulations shall not be exempt from any service in the Reserve Force to which he may be liable under this Act.

**18. Cancellation of commission and discharge of officer**

- (1) Subject to this section, an officer shall hold his commission during the pleasure of the President.
- (2) Except as provided in subsections (3) and (4), the President shall not cancel the commission of an officer unless the Commander—
  - (a) has notified the officer of any complaint or charge made against him and the action proposed to be taken and has given him an opportunity to make representations in regard thereto; and
  - (b) after considering any representations made in terms of paragraph (a) and conducting an inquiry, if he considers it necessary or expedient for the purpose, has recommended the cancellation of the officer's commission.
- (3) Subsection (2) shall not apply to an officer who—
  - (a) has been absent from duty without leave for a period of at least three months; or
  - (b) on attestation made any false statement or concealed any material fact; or
  - (c) was commissioned on attestation and has been commissioned for a period of less than one year.
- (4) The President shall cancel the commission of an officer if the officer has been sentenced to be cashiered or to have his commission cancelled in terms of paragraph (c) of subsection (1) of section seventy and the sentence has been confirmed by the confirming authority and has not been set aside on appeal in terms of section eighty-two.
- (5) A person who has had his commission cancelled in terms of this section shall be discharged by the Commander from the Defence Forces.

**19. Appointment, promotion, reduction in rank and dismissal of non-commissioned members**

The power to appoint, temporarily appoint, promote, reduce in rank or dismiss a non-commissioned officer shall vest, subject to this Act, in the Commander of the Army or the Commander of the Air Force, as may be appropriate.

**20. Appointment or promotion for distinguished service**

Notwithstanding anything to the contrary contained in this Act, the President may, on the advice of the Minister acting on the recommendation of the Commander, reward any member of the Defence Forces for distinguished service or gallant conduct on active service by appointing him to commissioned rank or, if he is an officer, by promoting him to higher rank.

**21. Acting rank**

The Commander may appoint any member to act in a higher rank in accordance with such conditions as may be prescribed.

## **22. Policy directive and general considerations re appointments and promotions**

- (1) The President may give general directions of policy to the Minister and the Commander with the object of achieving a suitable representation of the various elements of the population in the Defence Forces, and the Minister or the Commander, as the case may be, shall take all necessary steps to comply with any such direction.
- (2) Subject to subsection (1), when considering candidates for appointments and promotions in the Defence Forces, the Commander or the Minister, as the case may be, shall have regard to the performance of candidates in examinations and the results of performance appraisals.

## **23. Reduction in rank of non-commissioned officers**

- (1) Any non-commissioned officer who—
  - (a) is sentenced by a court martial to be reduced in rank shall be reduced in rank by the Commander in accordance with the sentence, if it has been confirmed by the confirming authority and has not been set aside on appeal in terms of section eighty-two; or
  - (b) is found guilty of any offence by a civil court or by a prescribed officer may, on the recommendation of his commanding officer, be reduced in rank by the Commander; or
  - (c) after due inquiry, is found to be negligent or inefficient in the discharge of his duty may, on the recommendation of his commanding officer, be reduced in rank by the Commander:

Provided that any member who has been reduced in rank in terms of paragraph (b) or (c) may, within such period and in such manner as may be prescribed, appeal against such reduction in rank to the Commission and the Commission may confirm, modify or set aside the reduction in rank.

- (2) Any decision by the Commission on an appeal in terms of this section shall be final.

## **24. Suspension of members**

The Commander may suspend any member from duty pending the result of an inquiry into or any trial by a military court or civil court of any offence alleged to have been committed by that member.

## **25. Discharge on redundancy**

- (1) The President may, on the advice of the Minister tendered after consultation with the Commander, at any time, place any officer on a retired list.
- (2) After consultation with the Commander, the Minister may at any time place on a retired list any officer of the rank of—
  - (a) major, in the case of an officer in the Army; or
  - (b) squadron leader, in the case of an officer in the Air Force;

or any lower commissioned rank, on the grounds that the abolition of his office or the reorganization of the Regular Force necessitates such action.

- (3) The Commander may at any time discharge any member of the Regular Force, other than an officer, on the grounds that the abolition of his office or the reorganization of the Regular Force necessitates such action:

Provided that the Commander shall not abolish any office or reorganize the Regular Force unless the Minister has approved the abolition or reorganization.

## **26. Discharge or dismissal of members other than officers**

- (1) Subject to subsection (1), a member, other than an officer, may be discharged by the Commander—
  - (a) if the member is found by a medical board, constituted in the manner prescribed, to be mentally or physically unfit for continued service; or
  - (b) if the Commander is satisfied, after the holding of such inquiry as the Commander may consider to be necessary or expedient for the purpose, that the member is inefficient or otherwise unfit to remain in the Defence Forces; or
  - (c) if on his form of attestation the member made any false statement.
- (2) Subject to subsection (4), a member, other than an officer, who has been found guilty of an offence by a civil court may be—
  - (a) discharged by the Commander with ignominy from the Defence Forces; or
  - (b) dismissed from the Defence Forces.
- (3) A member, other than an officer, shall be discharged by the Commander with ignominy from the Defence Forces or, as the case may be, dismissed from the Defence Forces, if he has been sentenced by a court martial to be so discharged or dismissed and the sentence has been confirmed by the confirming authority and has not been set aside on appeal in terms of section eighty-two.
- (4) Any member who has been discharged or dismissed in terms of subsection (1) or (2) may appeal against the discharge or dismissal to the Commission, within such period and in such manner as may be prescribed, and the Commission may confirm or set aside the discharge or dismissal.
- (5) Any decision by the Commission in terms of subsection (4) shall be final.

## **27. Conditions of service of members**

Subject to this Act, the conditions of engagement and service of members shall be prescribed by the Minister after consultation with the Commission.

## **28. Attachment and posting of persons to and from other Military Forces**

- (1) The Minister, after consultation with the Commander, may accept for duty with the Defence Forces officers, non-commissioned officers and members of other Military Forces and, while attached for duty with a unit of the Defence Forces, any such officer or non-commissioned officer shall have the same powers of command and discipline over members of that unit as an officer or, as the case may be, a non-commissioned officer of equivalent rank in the Defence Forces.
- (2) The Minister, after consultation with the Commander, may attach or second to any other Military Forces any member or unit of the Regular Force under such terms and conditions as may be fixed in any particular case by the Minister.

## **29. Attachment and secondment of members to Public Service**

The Minister may attach or second to the Public Service any member of the Regular Force under such terms and conditions as may be agreed upon by the Public Service Commission.

## **30. National Service**

A person who renders National Service in the Defence Forces shall serve in such Reserve Force as the Commander may determine.

## **Part IV – Defence Forces Service Commission**

### **31. Terms of office of commissioners**

- (1) Subject to this Part, a commissioner shall hold office for such period, not exceeding three years, as the President may fix on his appointment, and on the expiry of that period shall be eligible for reappointment.
- (2) If a person is appointed to the Commission to act in the place of a commissioner who is unable to exercise his functions by reason of illness, absence from Zimbabwe or other cause, the period of the acting appointment shall not exceed one year.

### **32. Resignation of commissioners**

- (1) A commissioner may resign his office at any time by giving the President, through the Minister, such notice of his intention to resign as may be fixed in his conditions of service in terms of section thirty-three or, if no such period has been fixed, after the expiry of thirty days from the date he gives such notice or after the expiry of such other period of notice as he and the President may agree.
- (2) A commissioner shall be deemed to have resigned his office as commissioner and his office shall become vacant if—
  - (a) he accepts nomination for election to Parliament or becomes a member of Parliament; or
  - (b) he accepts nomination for election as or becomes a member of a local authority or accepts employment as an employee of a local authority; or
  - (c) he accepts office as a member of a statutory body or employment as an employee of a local authority; or
  - (d) being a member of or employed by a local authority or statutory body at the time he becomes a commissioner, he fails to terminate his appointment or employment as such within fourteen days of the date on which he became a commissioner.

### **33. Conditions of service of commissioners**

- (1) Subject to this Part, the conditions of service of commissioners, including their remuneration, allowances and pension benefits, shall be fixed by the President either at the time of their appointment or, subject to subsection (5) of section 109 of and Schedule 6 to the Constitution, at any time thereafter.
- (2) When fixing conditions of service of a commissioner in terms of subsection (1), the President may direct that any enactment relating to the conditions of service of members of the Defence Forces or the Public Service shall apply to the conditions of service of the commissioner, subject to such modifications, exceptions or conditions as the President may specify, and thereupon the enactment concerned shall so apply to the conditions of service of the commissioner concerned.

### **34. Functions of Commission**

- (1) The functions of the Commission shall be to—
  - (a) make recommendations to the Minister regarding salaries and the general conditions of service of members of the Defence Forces;
  - (b) inquire into and deal with complaints, other than complaints relating to disciplinary action, by any member of the Defence Forces;



- (c) exercise any other functions that may be imposed or conferred upon the Commission in terms of this Act or any other enactment.
- (2) In the exercise of its functions in terms of this Act, the Commission, after consultation with the Commander, may—
  - (a) carry out any inquiry or investigation into the administrative or financial practices and procedures of the Defence Forces;
  - (b) require the production of any document, book or other record;
  - (c) summon and examine any witness who the Commission considers may be able to assist it in the conduct of any inquiry or investigation; and
  - (d) obtain information and advice from any member of the Defence Forces:

Provided that, without the consent of the Commander, no document, book or record may be examined or information or advice obtained in terms of this subsection if it relates solely to military dispositions or strategies adopted by the Defence Forces.

- (3) For the purposes of any inquiry or investigation carried out by it in terms of this Act, the Commission shall have the same powers as are conferred upon the commissioners in terms of the Commissions of Inquiry Act [Chapter 10:07], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to such an inquiry or investigation and to any person summoned to give or giving evidence at that inquiry or investigation:

Provided that no person shall be required by the Commission to disclose information or to produce an official document, book or other record if—

- (a) its disclosure or production is prohibited or restricted in terms of any enactment prohibiting or restricting the disclosure of information; or
- (b) the Minister certifies in writing that its disclosure or production would be contrary to the interests of the Defence Forces.

### 35. Procedure of Commission

The Commission shall meet at least once every month for the discharge of its business, or at such longer intervals as the chairman of the Commission may fix, and may adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit.

### 36. Staff of Commission

The Minister, in consultation with the Public Service Commission, may second to the Commission such members of the Public Service as may be necessary for the discharge of the Commission's functions.

### 37. Reports of Commission

- (1) The Commission—
  - (a) shall, as soon as possible after the 31st December in each year, submit to the Minister an annual report upon matters dealt with by the Commission during the previous year, save such matters as the Commission may consider inexpedient to publish;
  - (b) may at any time submit to the Minister a special report on any matter upon which the Commission considers it desirable to report.
- (2) The Minister shall lay before Parliament on one of the fourteen days on which Parliament next sits after the report is received by him—
  - (a) every annual report submitted to him in terms of paragraph (a) of subsection (1);

- (b) any special report submitted to him in terms of paragraph (b) of subsection (1) which the Commission requests be laid before Parliament.

### **38. Validity of acts and decisions of Commission**

No decision or act of the Commission or act done under the authority of the Commission shall be invalid solely because—

- (a) a person who was not entitled to do so acted as a commissioner when the decision was taken or the act was done or authorized; or
- (b) there were one or more vacancies on the Commission when the decision was taken or the act was done or authorized.

## **Part V – Military offences, powers of arrest, search and detention**

### **39. Application of First Schedule**

- (1) The First Schedule shall apply to members of the Regular Force, other than members attached or seconded to other Military Forces in terms of subsection (2) of section twenty-eight.
- (2) Subject to subsection (1) of section forty-six, the First Schedule shall apply to members of Reserve Force in relation to any National Service undertaken or to be undertaken.

### **40. Power to arrest offenders**

- (1) Subject to this section and subsection (1) of section forty-two, any member found committing an offence in terms of this Act or who is on reasonable grounds suspected of having committed any such offence may be arrested by a member and taken into military custody.
- (2) An officer may be arrested by an officer of superior rank or, if engaged in a quarrel or disorder, by an officer of any rank.
- (3) A member, other than an officer, may be arrested by any other member of superior rank.
- (4) A provost officer or any officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf may arrest—
  - (a) any officer on the order of another officer; or
  - (b) any non-commissioned officer or soldier.
- (5) Subject to any regulations, the power of arrest given to any member by this section may be exercised either personally or by ordering into arrest the member to be arrested or by giving orders for that member's arrest.
- (6) Any member who in terms of this section arrests or orders into arrest any other member shall forthwith inform such member of the cause of the arrest.

### **41. Search of members or premises**

- (1) In this section—

"premises" includes any place, vehicle, vessel, aircraft or receptacle whatsoever.
- (2) Subject to this section and subsection (1) of section forty-two, if it appears to a prescribed officer from information on oath that there are reasonable grounds for suspecting that there is upon any

member or upon or at any premises belonging to the State which are occupied by or are under the control of the Defence Forces—

- (a) stolen property or any thing with respect to which any offence in terms of this Act has been or is on reasonable grounds suspected to have been committed; or
- (b) any thing as to which there are reasonable grounds for believing—
  - (i) that it will afford evidence as to the commission of; or
  - (ii) that it is intended to be used for the purpose of committing; any offence in terms of this Act;

he may, in writing, authorize the search by any member of such person or premises and the seizure of any such property or thing.

- (3) Any member authorized in terms of subsection (2) to carry out any search or to seize any property or thing shall—
  - (a) be superior in rank to the member whose person is to be searched or in whose charge or control the said premises are; and
  - (b) deliver safely to the commanding officer of the member referred to in paragraph (a) any property or thing thus seized.
- (4) If an officer of field rank believes on reasonable grounds that the delay in obtaining written authority in terms of subsection (2) would defeat or prejudice the object of a search, he may, subject to subsection (3), authorize such search without such written authority.
- (5) Any search carried out in terms of this section shall be conducted in the presence of the member in whose charge or under whose control the premises which are being searched are:

Provided that—

- (a) if the delay in securing the presence of such member is likely to prejudice the object of the search; or
- (b) if, having regard to the exigencies of military operations, his presence cannot be readily secured;

the search may be made in such member's absence but in the presence of at least two other members.

#### **42. Arrest, search and trial of member of a Reserve Force**

- (1) Subject to subsection (2), no member of a Reserve Force shall be liable to arrest in terms of section forty or search in terms of section forty-one unless he is undergoing any continuous National Service.
- (2) If a charge brought against any member of a Reserve Force who is taken into military custody by virtue of section forty is not disposed of by a military court before the expiry of the period of any continuous National Service, he may on the expiry of that period be held in military custody until such charge is disposed of.
- (3) If any member of a Reserve Force is—
  - (a) undergoing any term of imprisonment or detention on the expiration of any period of continuous National Service; or
  - (b) by virtue of subsection (2) sentenced to a term of imprisonment or detention after the expiration of any period referred to in paragraph (a);

he may be held in such imprisonment or detention for the whole term thereof.

**43. Provisions for avoiding delay after arrest**

- (1) The allegations against any member who is in military custody shall be duly investigated without unnecessary delay and proceedings shall be instituted as soon as possible in relation to such allegations or he shall be released from arrest.
- (2) Where any member who is in military custody remains under arrest for more than eight days without a court martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner and a similar report shall be made every eight days until a court martial is assembled or the offence is dealt with summarily or he is released from arrest:

Provided that this subsection shall not apply in relation to a member who is on active service if such compliance is not reasonably practicable having regard to the exigencies of military operations.

**44. Remand warrants**

- (1) A prescribed officer may issue a remand warrant for the custody in any detention barracks or civil prison of any member awaiting trial for an offence in terms of this Act.
- (2) The member in charge of a detention barracks or the officer in charge of a civil prison to whom a warrant referred to in subsection (1) is addressed shall act in accordance with the terms of that warrant.

**Part VI – Jurisdiction of military courts and civil courts, procedure and evidence****45. Jurisdiction of military courts**

- (1) Subject to this Act, a court martial may, inside or outside Zimbabwe, try—
  - (a) any member for an offence in terms of this Act;
  - (b) any person—
    - (i) within the period of three months after he ceases to be a member of the Regular Force, for an offence in terms of this Act committed while he was a member; or
    - (ii) for an offence in terms of paragraph 2, subparagraph (1) of paragraph 3, paragraph 8, paragraph 9, subparagraph (1) of paragraph 15 or paragraph 30 of the First Schedule committed whilst he was a member;

and may impose the punishment prescribed by this Act.

- (2) A prescribed officer may, subject to such conditions and restrictions as may be prescribed, try and punish any member, whether inside or outside Zimbabwe, for an offence in terms of this Act.
- (3) For the purpose of effecting the arrest of any person referred to in paragraph (b) of subsection (1), bringing him to trial and imposing punishment, he shall be deemed to be a member in the rank and status he held at the time of the commission of the offence.

**46. Limitations of jurisdiction of military courts**

- (1) A member of a Reserve Force shall not be subject to any punishment—
  - (a) by a court martial for an offence in terms of this Act, other than—
    - (i) in the case of an officer, subject to section seventy, the punishments specified in paragraphs (c), (d), (f) and (g) of subsection (1) of that section;

- (ii) in the case of a non-commissioned officer, subject to section seventy-one, the punishments specified in paragraphs (g) and (h) of subsection (1) of that section;
- (iii) in the case of a non-commissioned officer or soldier, subject to section seventy-one, the punishments specified in paragraphs (i), (j) and (l) of subsection (1) of that section;
- (b) by a prescribed officer, other than the punishments specified in paragraph (a) which are prescribed for the purpose of subsection (2) of section forty-five:

Provided that if a member of a Reserve Force commits an offence in terms of this Act while he is undergoing continuous National Service he shall be liable to any punishment provided by this Act.

- (2) If a member has been tried for an offence by a competent civil court or military court or has had an offence committed by him taken into consideration by a competent civil court in sentencing him, he shall not be liable, in respect of that offence or any other offence of which he might have been found guilty by the competent civil court or military court, as the case may be, to be tried by a military court.
- (3) A member shall not be tried by a military court for an offence in terms of this Act if the Commander, being satisfied that a civil court will exercise jurisdiction with respect to that offence, directs that a military court shall not have jurisdiction to try that offence.
- (4) Subject to subsection (2), no member shall be tried by a military court for an offence in terms of this Act, other than an offence—
  - (a) which, on conviction, renders the accused liable to be sentenced to death; or
  - (b) in terms of subparagraph (1) of paragraph 15 of the First Schedule; or
  - (c) in terms of subparagraph (a) of subparagraph (2) of paragraph 15 of the First Schedule;
 unless the trial is commenced within three years after the date of the commission of the offence.
- (5) In respect of a member of the Regular Force, any period for which no pay is due to the member in terms of any regulations shall not be counted as forming part of the three years referred to in subsection (4).

#### 47. Jurisdiction of civil courts

- (1) Notwithstanding the jurisdiction conferred upon a military court by this Act, a civil court shall, subject to section eighty-seven, have jurisdiction to try a person for any offence, whether in terms of this Act or otherwise, within its jurisdiction:

Provided that, if a person has been sentenced by a military court for an offence and is convicted of the same or a similar offence by a civil court, the civil court shall take into account in imposing sentence for that offence any punishment awarded that person by a military court.

- (2) If a member is tried by a civil court for an offence in terms of the First Schedule or section sixty-seven or sixty-eight, the jurisdiction as to punishment shall be—
  - (a) in the case of the High Court, the punishment provided by this Act for the offence, other than any punishment provided in paragraph (c), (d) or (g) of subsection (1) of section seventy or, as the case may be, in paragraph (c), (d), (e), (f), (g), (h), (k) or (l) of subsection (1) of section seventy-one;
  - (b) in the case of magistrates court, a fine not exceeding five hundred dollars or imprisonment for a period not exceeding six months or both such fine and such imprisonment:

Provided that the punishment imposed shall not exceed the maximum penalty prescribed for that offence.

**48. Courts martial**

- (1) Subject to this Act, a charge which is to be tried by court martial shall be tried by a general court martial, a district court martial or a field general court martial.
- (2) Subject to this Act, the constitution, functions, duties, powers, rules of procedure and jurisdiction of a general court martial, a district court martial and a field general court martial shall be as prescribed.

**49. Convening general court martial**

- (1) The President may—
  - (a) convene a general court martial; and
  - (b) appoint officers to constitute a general court martial; and
  - (c) as confirming authority, review and deal with the finding and sentence of any general court martial as in section sixty-three and sixty-four is provided.
- (2) The President may, subject to such restrictions, reservations, exceptions and conditions as he may think fit, delegate all or any of the powers conferred upon him by subsection (1) to a qualified officer:

Provided that the President may not delegate the powers conferred upon him by paragraph (c) of subsection (1) in relation to a sentence of death.
- (3) Any delegation referred to in subsection (2) may be revoked by the President at any time and no such delegation shall prevent the exercise of any power by the President.
- (4) The revocation of any delegation in terms of subsection (3) shall not affect anything done under the delegation prior to its revocation.

**50. Convening district court martial**

- (1) Any qualified officer who is authorized to convene a general court martial may—
  - (a) convene a district court martial; and
  - (b) appoint officers to constitute a district court martial; and
  - (c) as confirming authority, review and deal with the finding and sentence of any district court martial as in sections sixty-three and sixty-four is provided.
- (2) Any qualified officer referred to in subsection (1) may, subject to such restrictions, reservations, exceptions and conditions as he may think fit, delegate all or any of the powers conferred upon him by that subsection to any other qualified officer under his command.
- (3) Any delegation referred to in subsection (2) may be revoked by the qualified officer who made that delegation at any time and no such delegation shall prevent the exercise of any power by that qualified officer.
- (4) The revocation of any delegation in terms of subsection (3) shall not affect anything done under the delegation prior to its revocation.

**51. Place for sitting of courts martial and adjournment**

- (1) Subject to this section, a court martial shall sit at such place or places, whether inside or outside the limits of the command of the convening officer, as may be specified in the order convening the court.

- (2) A court martial sitting at any place may, if it appears to the court requisite in the interests of justice to do so, adjourn for the purpose of sitting at some other place.

## **52. Courts martial to sit in open court in presence of accused**

- (1) Subject to this section, a court martial shall sit in open court and in the presence of the accused unless the accused so conducts himself as to render the continuance of the proceedings in his presence impracticable, in which event the court may order him to be removed and may direct the trial to continue in his absence.
- (2) If it appears to a court martial that it is necessary or expedient in the interests of justice to do so, the court may hold its proceedings *in camera* and, without prejudice to that power, a court martial may order that, subject to any exceptions it may specify, the public be excluded from all or any part of the proceedings if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or, as the case may be, that part of the proceedings might otherwise lead to the disclosure of any information which would or might be directly or indirectly prejudicial to the security of Zimbabwe.
- (3) A court martial shall sit in closed court while deliberating on its finding or sentence on any charge.
- (4) A court martial may sit in closed court on any other deliberation amongst the members.
- (5) If a court sits in closed court, no person shall be present except the members of the court and such other persons as may be prescribed.

## **53. Challenges by accused**

- (1) An accused who is about to be tried by a court martial shall be entitled to object on any reasonable grounds to any member of the court, whether appointed originally or in place of another officer.
- (2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1), the names of the members of the court shall be read over in the presence of the accused before they are sworn in and he shall be asked whether he objects to any of those officers.
- (3) Every objection made by an accused to any officer shall be considered by the other officers appointed members of the court.
- (4) If objection is made to the president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.
- (5) If objection is made to a member of the court other than the president and not less than one-half of the other members of the court allow it, the member of the court objected to shall retire and the vacancy may and, if the number of members of the court would otherwise be reduced below the prescribed minimum, shall be filled in the prescribed manner by another officer.

## **54. Accused of unsound mind**

- (1) In this section—

"mentally disordered or defective person" shall have the meaning assigned to it in section 2 of the Mental Health Act [Chapter 15:06].
- (2) Where an accused who is—
  - (a) awaiting trial; or
  - (b) being tried;by a military court is detained by order of a magistrate in an institution or other place in terms of section 12 of the Mental Health Act [Chapter 15:06], the charge may, in the discretion of the

Commander, be withdrawn or be proceeded with if the accused is released from the operation of that Act and regulations made thereunder and is fit to stand his trial.

- (3) Where it appears to a military court that an accused who is—

- (a) awaiting trial; or
- (b) being tried;

by that court in Zimbabwe is a mentally disordered or defective person, the court shall order the accused to be taken before a magistrate as soon as reasonably possible and the provisions of section 12 of the Mental Health Act [Chapter 15:06], shall thereafter apply, *mutatis mutandis*, as though the accused had been brought before the magistrate in terms of subsection (1) of that section.

- (4) If the magistrate declines to issue an order in terms of subsection (2) of section 12 of the Mental Health Act [Chapter 15:06] in respect of an accused referred to in subsection (3), the accused shall be tried or continue to be tried as if no order in terms of subsection (3) had been made.

- (5) Where it appears to a military court that an accused who is—

- (a) awaiting trial; or
- (b) being tried;

by that court outside Zimbabwe is a mentally disordered or defective person, the court shall order the detention of the accused in a hospital, prison or other suitable place until he can be removed to Zimbabwe to be dealt with in terms of the Mental Health Act [Chapter 15:06] or until he recovers and is fit to stand trial, whichever is the sooner.

- (6) If it appears to a military court that the accused did the act or omission charged against him but was a mentally disordered or defective person at the time that the act was done or the omission was made so as not to be responsible according to law for his actions, the military court shall return a special verdict to the effect that the accused is guilty of the act or omission charged but was mentally disordered or defective when he did the act or made the omission:

Provided that the court shall not return a special verdict in terms of this subsection without hearing medical evidence.

- (7) Where a special verdict is returned in terms of subsection (6), the military court shall order that the accused be kept in custody in a civil prison.

- (8) An order made in terms of subsection (7) shall be deemed to have been made by a magistrate in terms of subsection (1) of section 28 of the Mental Health Act [Chapter 15:06] and that Act shall thereafter apply, *mutatis mutandis*.

- (9) Where there is doubt whether an accused is a mentally disordered or defective person during a trial before a military court, the court shall, unless the exigencies of the circumstances demand otherwise, order the examination of the accused by two medical officers and shall hear the evidence of such medical officers on the question.

- (10) A prescribed officer may issue a warrant for the removal to and custody in any detention barracks or civil prison of any member in respect of whom an order in terms of subsection (3), (5) or (7) is made for the purposes of complying with that order.

- (11) The member in charge of a detention barracks or the person in charge of a civil prison to whom a warrant referred to in subsection (10) is addressed shall act in accordance with the terms of that warrant.

## 55. Appointment and functions of judge advocate

- (1) A judge advocate may be appointed for a court martial by the convening authority.



- (2) The functions of a judge advocate at a trial by a court martial shall be as prescribed and regulations may make provision—
  - (a) as to the effect of advice and rulings given to a court martial by a judge advocate on questions of law;
  - (b) for requiring or authorizing the president of a court martial in such cases as may be prescribed to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of the court martial.
- (3) Subject to subsection (7) of section sixty-three, in reviewing the proceedings of a court martial in terms of that section or section sixty-four a confirming authority may consult with the judge advocate appointed to that court.

## **56. Law to be observed by courts martial**

Except as is otherwise provided by this Act, the law which shall be observed in the trial of any charge before a court martial as to—

- (a) the onus of proof; and
- (b) the sufficiency or admissibility of evidence; and
- (c) the competency, compellability, examination and cross-examination of witnesses; and
- (d) any matter of procedure;

shall be the law in force in criminal proceedings in the civil courts.

## **57. Judicial notice**

A court martial shall take judicial notice of all matters of notoriety, including all matters within the general service knowledge of the court, and of all other matters which would be judicially noticed in the civil courts.

## **58. Decisions of courts martial**

- (1) Subject to this section, every question to be determined at a trial by court martial shall be determined by a majority of the votes of the members of the court.
- (2) In the case of an equality of votes on the finding, the court shall acquit the accused.
- (3) A finding of guilty on a charge where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all members of the court and, if on such a finding by a majority of the members of the court there is not such concurrence, the court shall be dissolved and the accused may be tried by another court.
- (4) If the accused is found guilty and the court has power to sentence him either to death or to some lesser punishment, sentence of death shall not be passed without the concurrence of all members of the court.
- (5) In the case of an equality of votes on the sentence or on any question arising after the commencement of a trial, except the finding, the president shall have a second or casting vote.

## **59. Finding and sentence**

- (1) Subject to section fifty-two and the proviso to subsection (7) of section sixty-four, the finding of a court martial on each charge shall be announced in open court.
- (2) Subject to section fifty-two and the proviso to subsection (7) of section sixty-four, any sentence of a court martial together with any recommendation of mercy shall be announced in open court.

- (3) The finding of guilty and sentence of a court martial shall be announced as being subject, in terms of section sixty-two, to confirmation.

## **60. Restitution or confiscation of property**

- (1) When any member is convicted of theft or any other offence whereby he has unlawfully obtained any property and such property or any portion thereof is found in his possession or under his control, a military court may order that such property or such portion thereof be restored to its lawful owner.
- (2) When any member is convicted of an offence which was committed by means of any weapon, instrument or other article produced to a military court, the court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the State.

## **61. Conviction of offence other than that charged**

- (1) If, upon the trial of any accused before a military court or civil court upon a charge of any offence in terms of the First Schedule specified in the first column of the Second Schedule, it appears upon the evidence that the accused did not commit that offence, he may be convicted of any offence in terms of the First Schedule specified opposite thereto in the second column of the Second Schedule, if the evidence establishes that he committed that offence.
- (2) Where an accused is charged before a court martial with an offence in terms of paragraph 39 of the First Schedule which involves the commission of a civil offence referred to in that paragraph and that civil offence is one in respect of which had he been tried before a civil court, he could on the facts proved have been convicted of another civil offence, the court martial may convict him of an offence in terms of that paragraph involving the commission of that other civil offence.
- (3) An accused charged before a court martial or civil court with any offence in terms of this Act involving two degrees of punishment may, failing proof of such offence having been committed in circumstances involving the higher degree of punishment, be convicted of the same offence as having been committed in circumstances involving the lower degree of punishment, if such are the facts proved.
- (4) An accused charged before a military court with any offence in terms of this Act may be convicted of having attempted to commit such offence or of having conspired with any other person to aid or procure the commission of or to commit such offence or of having incited any other person to commit such offence, if such are the facts proved.

## **62. Review of proceedings of courts martial**

- (1) If a court martial finds an accused guilty of any offence, the record of the proceedings of the court shall be transmitted to a confirming authority for review in terms of section sixty-three.
- (2) Subsection (1) shall not affect the operation of any sentence of a court martial, other than a sentence of death.

## **63. Powers of confirming authority**

- (1) Subject to this section and section sixty-four, a confirming authority shall, on review of the proceedings of a court martial—
  - (a) confirm the finding and sentence; or
  - (b) if it appears that the proceedings were not in accordance with real and substantial justice, quash the finding and sentence:

Provided that a confirming authority may, if—

- (a) a finding of guilty of some other offence could have been validly made by the court martial on the charge before it; and
  - (b) he is of the opinion that the court martial must have been satisfied of the facts which justify that other finding;
- substitute that other finding and, if he does so, he shall consider in what manner, if at all, the powers conferred by subsection (3) should be exercised.
- (2) If it appears to a confirming authority that the sentence of a court martial is invalid he may, instead of quashing it, substitute therefor any sentence which could have been awarded by the court not being more severe than the sentence of the court martial.
- (3) In confirming the sentence of a court martial, a confirming authority may—
  - (a) remit in whole or in part any punishment awarded by the court; or
  - (b) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.
- (4) In confirming any sentence a confirming authority may suspend or postpone the carrying out of a sentence and section seventy-four shall apply, *mutatis mutandis*, to such suspension or postponement.
- (5) A finding or sentence substituted by a confirming authority or any sentence having effect after a confirming authority has remitted or commuted the punishment shall be treated for all purposes as a finding or sentence of the court duly confirmed.
- (6) If a confirming authority determines to quash the finding and sentence of a court martial, the determination shall be promulgated and shall have effect as from the promulgation.
- (7) Except where a finding and sentence are confirmed, a confirming authority shall not exercise any of the powers conferred by this section without first having—
  - (a) called for and considered the court's statement of facts found proved and reasons for judgement; and
  - (b) consulted with the judge advocate where one was appointed to the court.

#### **64. Reconsideration of findings of courts martial**

- (1) Instead of dealing with the proceedings of a court martial in terms of section sixty-three, a confirming authority may, on review, direct that the court shall reconsider any finding of guilty arrived at by it if it appears after consultation with the judge advocate, where one was appointed to the court—
  - (a) that the finding was against the weight of evidence; or
  - (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.
- (2) Any direction in terms of subsection (1) shall be accompanied by the necessary instructions for the reassembly of the court and shall contain a statement of the reasons for the direction.
- (3) On reassembling in terms of this section the court shall reconsider the finding and, unless it adheres thereto, may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial instead of the finding under reconsideration.
- (4) On any reconsideration in terms of subsection (3) the court shall not have power to receive further evidence.

- (5) If, on any reconsideration, the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence which is more severe than the original sentence.

- (6) The confirming authority shall not have power to direct the reconsideration of any substituted finding come to by the court on a previous direction of the confirming authority or the reconsideration of the original finding if adhered to by the court on such previous direction.
- (7) Subject to this section, this Act shall apply to the proceedings of the court on any reconsideration in terms of subsection (3) as it applies to the deliberations of the court on the original finding or sentence and any substituted finding or sentence shall be treated for all purposes as an original or sentence of the court:

Provided that the decision of the court on the reconsideration shall not be required to be announced in open court.

## **65. Evidence of proceedings of courts martial**

- (1) The original proceedings of a court martial purporting to be signed by the president of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.
- (2) A document purporting to be a copy of the original proceedings of a court martial or any part thereof and to be certified by any person having the lawful custody thereof to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.
- (3) This section shall apply to evidence given in any court and whether in civil or criminal proceedings.

## **66. Proof of outcome of civil trial**

- (1) Where a member has been tried before a civil court, whether at the time of the trial this Act applied to him or not, a certificate signed by the clerk of the court and stating all or any of the following matters—
- (a) that the member has been tried before the court for an offence specified in the certificate;
  - (b) the result of the trial;
  - (c) what judgment or order was given or made by the court;
  - (d) that other offences specified in the certificate were taken into consideration at the trial;
- shall, for the purposes of this Act, be evidence of the matters stated in the certificate.
- (2) The clerk of a civil court shall, if required by the commanding officer of the person in question or any other officer, furnish a certificate in terms of subsection (1).
- (3) A document purporting to be a certificate in terms of subsection (1) and to be signed by a clerk of the civil court shall, unless the contrary is shown, be deemed to be such a certificate.
- (4) References in this section to the clerk of the civil court include references to his deputy, to the registrar of the High Court and to any other person having the custody of the records of a civil court.

## 67. Offences in relation to military courts

(1) Any person who—

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

shall be guilty of an offence and liable on conviction—

- (i) if he is a member, by a court martial, other than the court martial in relation to which the offence was committed, or a civil court, to imprisonment for a period not exceeding two years or any lesser punishment;
- (ii) if he is not a member, by a civil court, to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

*[subparagraph amended by section 4 of Act 22/2001]*

- (2) Notwithstanding anything in subsection (1), where an offence in terms of paragraph (e) or (f) of subsection (1) is committed in relation to any court martial, that court martial, if of the opinion that it is expedient that any offender who is a member should be dealt with summarily instead of being brought to trial before another court martial, may by order under the hand of the president order that member to be imprisoned for a period not exceeding twenty-one days or, in the case of a non-commissioned officer or soldier, either to be imprisoned for such a period or to undergo detention for such a period.
- (3) Subsection (1) shall apply, *mutatis mutandis*, to any proceedings at—
- (a) the taking of a summary or abstract of evidence; or
  - (b) a board of inquiry;
- in terms of any regulations.

## 68. False evidence

Any person who, having been lawfully sworn as a witness or interpreter in any proceedings before—

- (a) a military court; or
- (b) any board or person having authority under this Act to administer oaths;

makes in those proceedings any statement which he knows to be false or does not know or believe to be true, shall be guilty of an offence and liable on conviction—

- (i) if he is a member, by a court martial, other than the court martial in relation to which the offence was committed, or a civil court, to imprisonment for a period not exceeding two years or any lesser punishment;

- (ii) if he is not a member, by a civil court, subject to the Magistrates Court Act [Chapter 7:10], to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment:

*[subparagraph amended by section 4 of Act 22/2001]*

Provided that—

- (i) it shall not be competent for an accused to be convicted of such offence solely upon the evidence of one witness as to the falsity of the statement complained of;
- (ii) it shall be a sufficient defence on the trial of any such offence to prove that the false statement was not material to any issue in the original proceedings and was not to the prejudice of any person.

## Part VII – Punishment and execution of sentence

### 69. Interpretation in Part VII

In this Part—

"**field punishment**" means punishment which—

- (a) shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment; and
- (b) shall consist of such loss of privileges; and
- (c) may include confinement in such place and manner and such personal restraint to prevent the escape of the offender;

as may be prescribed;

"**stoppages**" means stoppages of pay.

### 70. Punishment of officers

- (1) Subject to this Act, the punishments which may be imposed on an officer by sentence of a court martial are—
  - (a) death;
  - (b) imprisonment, with or without labour and with or without solitary confinement and spare diet;
  - (c) cashiering or the cancellation of his commission;
  - (d) forfeiture in the prescribed manner of seniority of rank in the Defence Forces and additionally, or alternatively, in the corps to which the offender belongs;
  - (e) a fine or, in default of payment, imprisonment referred to in paragraph (b);
  - (f) severe reprimand or reprimand;
  - (g) where the offence has occasioned any expense, loss or damage, stoppages.
- (2) A punishment specified in any paragraph of subsection (1) shall, for the purposes of this Act, be treated as being less than the punishment specified in the preceding paragraphs and greater than those specified in the succeeding paragraphs.

- (3) Where an officer is sentenced by a court martial to imprisonment he shall also be sentenced to be cashiered:

Provided that—

- (i) if the court martial fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid and shall be deemed to include a sentence of cashiering;
  - (ii) where the operation of the sentence of imprisonment is, in terms of section seventy-four, wholly suspended, the court martial may specify that the sentence of cashiering shall only take effect if the offender is committed to undergo the sentence of imprisonment.
- (4) Stoppages shall not be imposed for any offence where a fine has been imposed.
- (5) Where an officer is sentenced by a court martial to pay a fine the court may order that the amount thereof be deducted from that officer's pay in such instalments or otherwise as it may determine.

## 71. Punishment of other ranks

- (1) Subject to this Act, the punishment which may be imposed on a non-commissioned officer or a soldier by sentence of a court martial are—
- (a) death;
  - (b) imprisonment with or without labour and with or without solitary confinement and spare diet;
  - (c) discharge with ignominy from the Defence Forces;
  - (d) in the case of a warrant officer, dismissal from the Defence Forces;
  - (e) detention for a term not exceeding two years;
  - (f) for an offence in terms of this Act committed on active service, field punishment for a period not exceeding ninety days;
  - (g) in the case of a non-commissioned officer, reduction to the ranks or any less reduction in rank;
  - (h) in the case of a non-commissioned officer, forfeiture in the prescribed manner of seniority of rank;
  - (i) a fine or, in default of payment, imprisonment or detention referred to in paragraph (b) or (e);
  - (j) in the case of a non-commissioned officer, severe reprimand or reprimand;
  - (k) where the offence was committed on active service, forfeiture of pay for a period beginning with the day of sentence and not exceeding ninety days;
  - (l) where the offence has occasioned any expense, loss or damage, stoppages.

- (2) A punishment specified in any paragraph of subsection (1) shall, for the purposes of this Act, be treated as being less than the punishment specified in the preceding paragraphs and greater than those specified in the succeeding paragraphs:

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

- (3) No sentence of discharge with ignominy from the Defence Forces or dismissal from the Defence Forces or reduction in rank shall take effect—
- (a) in the case of a sentence of discharge with ignominy or dismissal, unless the member has been discharged or dismissed, as the case may be, from the Defence Forces;

- (b) in the case of a sentence of reduction in rank—
  - (i) unless a reduction in rank has been made by the Commander; and
  - (ii) otherwise than in accordance with the reduction in rank referred to in subparagraph (i).
- (4) Where a non-commissioned officer is sentenced by a court martial to imprisonment, detention or field punishment, he shall also be sentenced to be reduced to the ranks:  
Provided that—
  - (i) if the court martial fails to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks;
  - (ii) where the operation of the sentence of imprisonment or detention is, in terms of section seventy-four, wholly suspended, the court martial may specify that the sentence of reduction to the ranks shall only take effect if the offender is committed to undergo the sentence of imprisonment or detention.
- (5) Stoppages shall not be imposed for any offence where a fine has been imposed.
- (6) Where any person has been sentenced by a court martial to detention and is subsequently sentenced by a court martial under this Act to imprisonment, any part of the sentence of detention which has not been served shall be remitted.
- (7) Without prejudice to the validity of any sentence of detention imposed, no person to whom the sentence relates shall be kept continuously in detention in terms of this Act for more than two years.
- (8) Where a member is sentenced by a court martial to pay a fine, the court may order that the amount thereof be deducted from that member's pay in such instalments or otherwise as it may determine.

## **72. Courts martial to impose one sentence only in respect of all charges**

A court martial shall impose one sentence only on an accused convicted before it of more than one charge on the same charge sheet and if such sentence is a valid sentence in respect of any one of the said charges, it shall be deemed to be a valid sentence in respect of all the charges upon which the accused has been convicted.

## **73. Reconsideration of sentences**

- (1) A sentence of detention imposed by a court martial may be reconsidered by such officers as may be prescribed and may be remitted in whole or in part.
- (2) The procedure for and the frequency of reconsideration in terms of subsection (1) shall be as prescribed.

## **74. Postponement or suspension of sentence by military courts**

- (1) When a member is convicted by a military court of any offence other than an offence punishable by death, the military court may—
  - (a) postpone for a period not exceeding five years the passing of sentence and release the offender on such conditions, whether as to compensation to be made by the offender for damage or pecuniary loss, good conduct or otherwise, as the military court thinks fit; or
  - (b) pass sentence of imprisonment or detention but order the operation of the whole or any part of the sentence to be suspended for a period not exceeding five years on such conditions as aforesaid as the military court thinks fit; or



- (c) pass sentence of a fine or, in default of payment, imprisonment or detention, but suspend the issue of the warrant committing the offender to prison or to a detention barracks in default of payment until the expiry of such period, not exceeding twelve months, as the military court may fix for payment, in instalments or otherwise, of the amount of the fine, or until default has been made by the offender in the payment of the fine or any such instalments, the amounts of any instalments and the dates of payment thereof being fixed by order of the military court, which may in respect of the suspension of the issue of the warrant impose such conditions as it considers necessary or advisable in the interests of justice.
- (2) If the offender has, during the period of any postponement ordered in terms of subsection (1), observed all the conditions specified in the order, the sentence shall not be passed or enforced, as the case may be.
- (3) If an offender fails to comply with any condition of postponement or suspension made under subsection (1), he may be brought before a confirming authority who may then—
  - (a) commit the offender to undergo the sentence which may then be or has been lawfully passed; or
  - (b) on good cause shown by the offender, grant a further postponement or suspension for a further period not exceeding that originally ordered in terms of subsection (1) on such conditions as might have been imposed at the time of the original postponement or suspension.
- (4) If it appears to any civil court or court martial that an offender who is appearing before it has failed to comply with any condition referred to in subsection (3), it may—
  - (a) exercise the powers conferred upon a confirming authority by that subsection; or
  - (b) in the case of a civil court, order the offender to be brought before a confirming authority and paragraph (b) of subsection (1) of section seventy-seven shall apply, *mutatis mutandis*, in respect of such order.
- (5) An offender who, during the period of any postponement or suspension ordered in terms of subsection (1), ceases to be a member shall be absolved from the passing or enforcement of the sentence, as the case may be, and from compliance with any conditions of postponement or suspension.

## 75. Execution of death sentence

- (1) Subject to subsection (2), where a sentence of death passed by a court martial is to be executed in Zimbabwe, that sentence shall be executed in the same manner as a sentence of death passed by the High Court.
- (2) A sentence of death passed by a court martial—
  - (a) which is to be executed outside Zimbabwe; or
  - (b) if the President so directs, which is to be executed inside Zimbabwe;shall be executed in private by a firing squad.
- (3) The constitution and functions of a firing squad referred to in subsection (2) shall be as prescribed.

## 76. Recovery of fines

- (1) When a member of a Reserve Force is sentenced by a military court to pay a fine, whether the sentence directs that in default of payment of the fine the member shall be imprisoned or not, a prescribed officer may issue a warrant addressed to a messenger of a magistrates court and

authorizing him to levy an amount by attachment and sale of any movable property belonging to that member sufficient to cover—

- (a) the fine; and
  - (b) the costs and expenses of—
    - (i) the warrant; and
    - (ii) the attachment and sale thereunder.
- (2) If the fine is not recovered or paid within thirty days of the date of issue of a warrant in terms of subsection (1) or such longer period as may be allowed, then in the case of an offender who—
- (a) has been sentenced to pay a fine only, the offender shall, if so ordered in writing by a prescribed officer, appear at such time and place and before such prescribed officer as is mentioned in the written order and that prescribed officer may sentence him to imprisonment or detention in lieu of the amount of the fine which has not been recovered or paid;
  - (b) has been sentenced in default of payment of a fine to a period of imprisonment or detention, a prescribed officer may issue a warrant authorizing a police officer to arrest the offender and deliver him to the civil prison or detention barracks, as the case may be, specified in the warrant, where the offender shall—
    - (i) if the whole of the fine has not been recovered or paid, be liable to undergo the whole of the period of imprisonment or detention; or
    - (ii) if part of the fine has been recovered or paid, be liable to undergo the period of imprisonment or detention reduced by a number of days bearing as nearly as possible the same proportion to the number of days to which the member was sentenced as the sum recovered or paid bears to the amount of the fine.

## 77. Warrants of committal

- (1) A prescribed officer may issue a warrant—
  - (a) for the committal of any member sentenced by a military court to—
    - (i) imprisonment in a civil prison; or
    - (ii) detention in a detention barracks;
  - (b) for the purposes of bringing an offender before a confirming authority in terms of subsection (3) of section seventy-four.
- (2) The member in charge of a detention barracks or the person in charge of a civil prison to whom the warrant referred to in paragraph (b) of subsection (2) of section seventy-six or subsection (1) is addressed shall act in accordance with the terms of that warrant.

## Part VIII – Court Martial Appeal Court

### 78. Interpretation in Part VIII

In this Part—

**"appeal certificate"** means a certificate as to the sufficiency of a ground of appeal issued in terms of paragraph (b) of subsection (1) or subsection (2) of section eighty;

**"Appeal Court"** means the Court Martial Appeal Court established in terms of section seventy-nine;

**"appellant"** means a person who has been convicted by a court martial and desires to appeal under this Part;

"**judges**" means the Chief Justice and other judges of the Supreme Court;

*[definition as substituted by section 16 of Act No. 6 of 2005]*

"**Registrar**" means the Registrar of the Appeal Court appointed in terms of subsection (2) of section seventy-nine;

"**rules of court**" means rules made in terms of subsection (4) of section seventy-nine.

## 79. Establishment, practice and procedure of Court Martial Appeal Court

- (1) There shall be a Court Martial Appeal Court which shall consist of such judges, not being less than two, as the Chief Justice may from time to time appoint.

*[subsection as amended by section 16 of Act No. 6 of 2005]*

- (2) There shall be a Registrar of the Appeal Court who shall be appointed by the Minister and have such duties as may be prescribed in rules of court.
- (3) The Appeal Court shall be a superior court of record and shall sit in such places as the Chief Justice may from time to time direct.

*[subsection as amended by section 10 of Act No. 9 of 1997]*

- (4) The Chief Justice may make rules of court with respect to all matters of practice and procedure relating to the exercise of the jurisdiction of the Appeal Court and such rules may provide for the summary determination of any appeal which appears to the Appeal Court to be frivolous or vexatious or to be brought for the purpose of delay.

*[subsection as amended by section 16 of Act No. 6 of 2005]*

## 80. Appeals

- (1) Subject to this section, an appellant may appeal against conviction to the Appeal Court—
  - (a) on any ground of appeal which involves—
    - (i) a question of law alone; or
    - (ii) a question of fact alone; or
    - (iii) a question of mixed law and fact; or
  - (b) on any other ground which is certified to be sufficient by—
    - (i) the Appeal Court, where the appellant is stationed in Zimbabwe: or
    - (ii) the confirming authority, where the appellant is stationed outside Zimbabwe.
- (2) Where an appeal certificate is refused by the confirming authority the appellant may apply to the Appeal Court for an appeal certificate and the Appeal Court may, if it thinks fit, issue such a certificate.
- (3) The procedure for—
  - (a) the noting of an appeal; and
  - (b) applying for an appeal certificate; and
  - (c) furnishing the Commander with a copy of—
    - (i) the notice of appeal; or
    - (ii) the application for an appeal certificate;shall be as prescribed by rules of court.

- (4) Subsection (1) shall not affect the operation of any sentence of a court martial, other than a sentence of death.

## 81. Determination of appeal against conviction

Subject to section eighty-two, on an appeal in terms of this Part against conviction the Appeal Court shall quash the conviction only if it thinks that the finding of the court martial is unreasonable or is not justified—

- (a) having regard to the evidence; or
- (b) on the ground of a wrong decision on any question of law; or that on any ground there was a miscarriage of justice:

Provided that the Appeal Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually accrued.

## 82. Powers of Appeal Court

- (1) If it appears to the Appeal Court that an appellant, though not properly convicted on some charge preferred against him before the court martial by which he was tried, was properly convicted on some other charge so preferred and if the sentence passed by the court martial on the appellant was not warranted for the offence of which he was convicted on the other charge, the Appeal Court shall pass on him, in substitution therefor, such sentence so warranted as it thinks proper.
- (2) Where an appellant has been convicted of an offence and the court martial by which he was tried could lawfully have found him guilty of some other offence and it appears to the Appeal Court that the court martial must have been satisfied of facts which prove him guilty of that other offence, the Appeal Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court martial, such sentence as it thinks proper, being a sentence warranted for the other offence but not being a sentence of greater severity than the sentence passed by the court martial.
- (3) Where an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment and it appears to the Appeal Court that the court martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment, the Appeal Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment, and pass on the appellant, in substitution for the sentence passed on him by the court martial, such sentence as it thinks proper, being a sentence warranted for the offence specified in the substituted finding but not being a sentence of greater severity than the sentence passed by the court martial.
- (4) If it appears to the Appeal Court that the accused did the act or omission charged against him but was a mentally disordered or defective person at the time the act was done or the omission made so as not to be responsible according to law for his actions, the Appeal Court may set aside the sentence passed at the trial and order that the appellant be kept in custody in a civil prison and subsection (7) of section fifty-four shall thereafter apply, *mutatis mutandis*.
- (5) The period of any sentence passed by the Appeal Court under this section shall, unless the Appeal Court otherwise directs, begin to run from the time at which it would have begun to run if it had been passed in the proceedings from which the appeal is brought and such sentence shall be deemed, for the purposes of this Act, to be a sentence that has been confirmed.

### 83. Powers of Appeal Court to obtain further evidence

- (1) For the purposes of this Part, the Appeal Court may, if it thinks necessary or expedient in the interests of justice, do all or any of the following—
  - (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
  - (b) order the president of the court martial by which the appellant was tried or the person who officiated as judge advocate at the trial to furnish a written report—
    - (i) setting forth the court's statement of the facts found to have been proved and its reasons for judgment and sentence; and
    - (ii) dealing with the grounds upon which the appeal is based;
  - (c) order any witness who would have been a compellable witness at the trial to attend and be examined before the Appeal Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in the manner required by rules of court before any person appointed by the Appeal Court for the purpose and allow the admission of any deposition so taken as evidence before the Appeal Court;
  - (d) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not a compellable witness and, if the appellant makes application for the purpose, of the wife of the appellant in cases where the evidence of the wife could not have been given at the trial except on such application;
  - (e) set aside the conviction and remit the case to the court martial by which the appellant was originally tried for further hearing with such instructions as regards the taking of further evidence or otherwise as appears to it necessary;
  - (f) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Appeal Court, conveniently be conducted before the Appeal Court, order the reference of the question in the manner required by rules of court for inquiry and report to a special commissioner appointed by the Appeal Court and act upon the report of any such commissioner as far as it may think fit to adopt it;
  - (g) appoint any person with special expert knowledge to act as an assessor to the appeal Court in an advisory capacity in any case where it appears to the Appeal Court that such special knowledge is required for the proper determination of the case;
  - (h) issue any warrant necessary for enforcing any order or sentence of the Appeal Court;
  - (i) assign to an appellant in any appeal or proceedings preliminary or incidental to an appeal such legal assistance as may be provided by rules of court:

Provided that, when the Appeal Court receives further evidence or gives instruction for the taking of further evidence, it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is taken.

- (2) There may be paid out of moneys appropriated for the purpose by an Act of Parliament—
  - (a) to a witness attending the Appeal Court in obedience to an order under paragraph (c) of subsection (1) or examined in pursuance of such an order before any person appointed in terms of that paragraph, such travelling and subsistence allowances; and
  - (b) to a special commissioner to whom a question is referred for inquiry and report under paragraph (f) of subsection (1) and to a person appointed under paragraph (g) of that subsection to act as an assessor to the Appeal Court, such remuneration and such travelling and subsistence allowances; and

- (c) to any person assigned by the Appeal Court to provide legal assistance to an appellant under paragraph (i) of subsection (1), such sums in respect of fees;

as may be provided by rules of court.

- (3) The Appeal Court may require and administer any necessary oath the form of which shall be the same, as nearly as may be, as that which is used in the High Court.

#### **84. Written presentation of appellant's case**

An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the form required by rules of court.

#### **85. Attendance of appellant at hearing of appeal**

- (1) An appellant shall not be entitled to be present at the hearing of an appeal under this Part or at any proceedings preliminary or incidental to such appeal except where rules of court provide he shall have the right to be present or when the Appeal Court gives him leave to be present.
- (2) The power of the Appeal Court under this Part to pass any sentence may be exercised notwithstanding that the appellant is for any reason not present.

#### **86. Stay of execution of death sentence**

In the case of a sentence of death by a court martial, the sentence shall not be executed until after the expiration of the time within which notice of intention to appeal against conviction may be given and, if notice of intention to appeal is so given, the sentence shall not be executed until the appeal has been determined or abandoned.

#### **87. No retrial where conviction quashed**

Where the conviction of a member by a court martial for an offence has been quashed under this Part, he shall not be liable to be tried again for that offence by a military court or a civil court.

#### **88. Enforcement of orders, etc.**

- (1) The process of the Appeal Court shall run throughout Zimbabwe and all authorities in Zimbabwe shall act in aid of the Appeal Court.
- (2) Any judgment, decision or order of the Appeal Court shall have full effect in Zimbabwe and shall be enforceable by all courts and authorities in Zimbabwe in like manner as if it were a judgment, decision or order of the High Court.

#### **88A. \*\*\***

*[subsection repealed by section 16 of Act [No. 6 of 2005](#)]*

### **Part IX – Cantonments and protected areas**

#### **89. Declaration of cantonments**

The Minister may, by notice in a statutory instrument, declare any area or place to be a cantonment for the purposes of this Part:

Provided that the powers conferred by this section shall not include the power to acquire, whether compulsorily or by agreement, any Communal Land or any interest in or right over Communal Land, otherwise than in accordance with the Communal Land Act *[Chapter 20:04]*.

## 90. Prohibition of entry into cantonments

- (1) No person shall enter a cantonment except a person who is—
  - (a) a member of the Regular Force or of any other Military Forces; or
  - (b) the wife or child of a person referred to in paragraph (a) who is residing in the cantonment or any other member of his family if such other member resides in the cantonment; or
  - (c) a member of a Reserve Force who enters a cantonment in the course of any service, duty or training under this Act; or
  - (d) employed by the State or acting under the orders of the Minister and who enters a cantonment in the course of his duty; or
  - (e) permanently residing within the cantonment at the time of the publication of the notice referred to in section eighty-nine; or
  - (f) a person or member of a class of persons authorized to enter the cantonment under subsection (1) of section ninety-one.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection amended by section 4 of Act 22/2001]*

## 91. Authority to enter cantonments

- (1) The officer in command of a cantonment may, in writing, authorize any person or class of persons to enter that cantonment on such conditions as shall be specified in such authority.
- (2) Any authority issued under subsection (1) may, in writing, at any time be amended or rescinded by the officer in command of the cantonment in respect of which the authority was issued.
- (3) Any person or member of a class of persons to whom authority has been granted in terms of this section who contravenes or fails to comply with any condition of such authority shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection amended by section 4 of Act 22/2001]*

## 92. Right of way and loitering

- (1) Notwithstanding anything to the contrary contained in this Part, where any road to which the public has right of access passes through a cantonment, any member of the public may use such road.
- (2) Any person, other than a person referred to in subsection (1) of section ninety, who, without reasonable cause, the proof whereof lies upon him—
  - (a) within a cantonment leaves, or loiters on, any road referred to in subsection (1); or
  - (b) loiters outside a cantonment within ten metres of the demarcated boundary thereof;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection amended by section 4 of Act 22/2001]*

- (3) In any prosecution for a contravention of subsection (2) it shall be presumed, unless the contrary is proved, that the accused was a person other than a person referred to in subsection (1) of section ninety.

### 93. Cantonment police

- (1) The officer in command of a cantonment may appoint members of the Defence Forces or other Military Forces as cantonment police.
- (2) Any member of the cantonment police shall, in respect of any offence committed within a cantonment, have the powers of arrest and detention conferred upon a peace officer under Part V of the Criminal Procedure and Evidence Act [Chapter 9:07].
- (3) In addition to the powers conferred upon him by subsection (2), any member of the cantonment police shall have power to arrest without warrant, within a cantonment or outside a cantonment within a distance of two kilometres of the boundary thereof, any person whom he has reasonable ground to suspect of having contravened any of the provisions of this Part.
- (4) The provisions of the Criminal Procedure and Evidence Act [Chapter 9:07] relating to the procedure after arrest without warrant shall apply in relation to any arrest made by any member of the cantonment police in pursuance of the powers conferred by this section.

### 94. Protected areas

- (1) The Minister may, by notice in a statutory instrument, declare any area to be a protected area and may by such notice do any or all the following—
- (a) prohibit any class of persons from entering or remaining in such area;
  - (b) impose on any person or class of persons entering or residing in such area such obligations, conditions or restrictions as he may think fit as to—
    - (i) the registration with or reporting to such authority as may be specified in such notice;
    - (ii) surveying or the making of sketches or taking of photographs in such area;
    - (iii) the use of possession in such area of any machine, apparatus or other article whatsoever;
    - (iv) the search of persons, vehicles or property;
  - (c) impose on any person the obligation to report to an authority referred to in subparagraph (i) of paragraph (b)—
    - (i) the presence in any premises in such area occupied by him or under his control of any person or member of a class of persons referred to in paragraph (a) or (b) and such other particulars with respect to any such person as may be specified in such notice;
    - (ii) the departure of any such person;
  - (d) exempt all or any of the persons referred to in paragraph (a) or (b) who pass through the area in the course of a continuous journey from all or any of the obligations, conditions and restrictions so imposed:

Provided that the powers conferred by this subsection shall not include the power to acquire, whether compulsorily or by agreement any Communal Land or any interest in or right over Communal Land, otherwise than in accordance with the Communal Land Act [Chapter 20:04].

- (2) Any person who enters or remains in a protected area in contravention of any notice issued under subsection (1) or who fails to comply with any obligation, condition or restriction imposed upon



him by such notice shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[subsection amended by section 4 of Act 22/2001]*

## Part X – Special powers in relation to defence

### 95. Commandeering and billeting

- (1) Subject to this section, in time of war or at any other time when in the opinion of the Minister there is an actual or threatened emergency, the Minister may authorize or appoint members of the Defence Forces or the Public Service by requisition—
  - (a) to obtain and take possession of buildings and other premises, supplies of foodstuffs, vehicles, aircraft, boats and any other article or thing whatsoever necessary for the maintenance in the field of the Defence Forces and of any other Military Forces or of any portion of such Forces; or
  - (b) to provide for the billeting of such Forces;subject to such terms and conditions as may be prescribed.
- (2) A requisition in terms of subsection (1) shall be served in the manner prescribed on any person owning or possessing the property affected and any such person may, if he objects to the requisitioning of the property, notify the Minister accordingly.
- (3) Where the Minister is notified in terms of subsection (2), he shall, within thirty days thereafter, apply to the Administrative Court for a determination of his entitlement to issue the requisition in terms of subsection (1) and on such application the Administrative Court shall, unless it is satisfied that the issue of the requisition is reasonable, in the circumstances of the situation existing, for the purposes of dealing with that situation, order the Minister to return the property wherever possible or, in the case of a requisition in terms of paragraph (b) of subsection (1), cancel the requisition.
- (4) When the possession of property taken possession of under a requisition in terms of subsection (1) is no longer reasonably justifiable as referred to in subsection (3), the property shall, wherever possible, be promptly returned in the condition in which it was at the time of such taking of possession.
- (5) The Minister shall pay fair compensation promptly for—
  - (a) the taking of possession of property under a requisition in terms of paragraph (a) of subsection (1), including any failure to return such property in terms of subsection (3) or (4) or any damage to such property; or
  - (b) the billeting of Forces in terms of paragraph (b) of subsection (1).
- (6) The owner or any other person entitled to the return of property in terms of subsection (4) or compensation in terms of subsection (5) may apply to the Administrative Court for the return of the property or for the determination of the right to or the amount of such compensation and the Court shall make such order in respect thereof as it thinks fit.
- (7) Parts V and VIII of the Land Acquisition Act *[Chapter 20:10]* shall apply, *mutatis mutandis*, in respect of a claim for compensation in terms of subsection (6):

Provided that—

- (i) any claim for compensation in terms of section 22 of that Act shall be submitted not less than thirty days before the hearing of the application in terms of subsection (6) for the determination of the amount of compensation;
- (ii) the Administrative Court, and the Supreme Court in any appeal from a decision of the Administrative Court, may make such order as to costs as it thinks fit.

## 96. Expropriation of land for defence purposes

- (1) When it appears to the President that any land or an interest in or right over any land is required for defence purposes, it shall be lawful for the Minister, on the authority of the President, to acquire such land, interest or right:

Provided that the powers conferred by this subsection shall not include the power to acquire, whether compulsorily or by agreement, any Communal Land or any interest in or right over Communal Land, otherwise than in accordance with the Communal Land Act [Chapter 20:04].

- (2) Parts III, V and VIII of the Land Acquisition Act [Chapter 20:10] shall apply, *mutatis mutandis*, to the exercise by the Minister of his rights in terms of subsection (1).

## 97. Protection of defence stores

- (1) The Minister may, by notice in a statutory instrument, declare and make known what mark or marks applied to any arms, clothing, equipment, animal, vehicle, aircraft or boat shall denote the property of the State therein.

- (2) Any person who—

- (a) with fraudulent intent, applies to any arms, clothing, equipment, animal, vehicle, aircraft or boat any mark referred to in subsection (1); or
- (b) fraudulently defaces or conceals any mark referred to in subsection (1) on any arms, clothing, equipment, animal, vehicle, aircraft or boat; or
- (c) unlawfully receives, possesses, sells or delivers any arms, clothing, equipment, animal, vehicle, aircraft or boat bearing any mark referred to in subsection (1) or forbidden by or under this Act to be sold, pledged or otherwise disposed of;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[subsection amended by section 4 of Act 22/2001]

- (3) In any prosecution for a contravention of subsection (2) the burden of proving that he had no fraudulent intent in applying, defacing or concealing any mark referred to in subsection (1) or, as the case may be, that the receipt, possession, sale or delivery of any arms, clothing, equipment, animal, vehicle, aircraft or boat was lawful shall lie upon the accused.

## Part XI – General

## 98. President may publish defence agreements

- (1) An agreement relating to defence matters which has been entered into by the President with the government of any country may be published in the *Gazette* and the provisions thereof shall be brought into operation by the President by notice in a statutory instrument as from such date as he may in such notice declare.
- (2) The President shall lay a copy of an agreement published in terms of subsection (1) before Parliament on one of the thirty days on which the Parliament next sits after the publication of the agreement in the *Gazette*.
- (3) If the Parliament does not by resolution approve an agreement a copy of which has been laid before it in terms of subsection (2) within twenty-one days of the date upon which it is so laid before it, the agreement shall lapse and cease to have effect from the date of the expiry of such period of twenty-one days.

- (4) The President may make such regulations as he considers necessary or desirable in order to give effect to any agreement published in terms of subsection (1).
- (5) Any agreement published in terms of subsection (1) or any regulations relative to such agreement shall have force notwithstanding anything inconsistent therewith in this Act or in any other enactment.

## 99. Unauthorized sale or wearing of uniforms, etc.

- (1) In this section—

"uniform" means any article or articles of wearing apparel and includes a badge, button, braid or insignia, worn in association with any particular item or items of clothing, and a tie.

- (2) Any person who, without authority—

- (a) sells, offers or exposes for sale, wears or uses any uniform supplied to or authorized for use by any member of the Defence Forces or other Military Forces; or
- (b) manufactures, sells, offers or exposes for sale, wears or uses any uniform so nearly resembling a uniform referred to in paragraph (a) as to be likely to deceive; or
- (c) wears or uses any decoration supplied to or authorized for use by any member of the Defence Forces or other Military Forces or any decoration so nearly resembling such decoration as to be likely to deceive;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment:

*[subsection amended by section 4 of Act 22/2001]*

Provided that this subsection shall not apply in relation to any uniform or decoration for the purposes of any *bona fide* stage, film or television production or military representation.

- (3) Any person who by act, words, conduct or otherwise falsely represents himself to be a person who is or has been entitled to wear or use any uniform or decoration referred to in subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

*[subsection amended by section 4 of Act 22/2001]*

- (4) In any prosecution for an offence in terms of this section relating to any act done without due or lawful authority it shall be presumed, unless the contrary is proved, that the accused had no such authority.

## 100. Forgery of military documents, impersonation and unlawful possession of such documents

Any person who—

- (a) forges, alters or defaces any discharge certificate, exemption certificate, medical certificate, official pass or document issued in connection with the Defence Forces or other Military Forces or uses or has in his possession any such discharge certificate, exemption certificate, medical certificate, official pass or document which has been forged, altered or defaced; or
- (b) personates or falsely represents himself to be or not to be the person to whom a discharge certificate, exemption certificate, medical certificate, official pass or document issued in connection with the Defence Forces or other Military Forces has been duly issued or makes a false statement with intent to obtain any such discharge certificate, exemption certificate, medical certificate, official pass or document, whether for himself or any other person; or

- (c) is found in unlawful possession of any discharge certificate, exemption certificate, medical certificate, official pass or document issued in connection with the Defence Forces or other Military Forces;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

*[subsection amended by section 4 of Act 22/2001]*

### 101. Personation

Any person who by word, conduct or demeanour—

- (a) falsely personates any other person as a member—
  - (i) at any parade; or
  - (ii) on any occasion when that other person is required by or under this Act to do anything or to attend any place; or
- (b) fraudulently personates or represents himself to be a member of the Defence Forces travelling on service for those Forces with intent to obtain conveyance by rail at special rates or to evade payment of any toll; or
- (c) falsely represents himself to be a member of the Regular Force charged with police functions and duties;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[section amended by section 4 of Act 22/2001]*

### 102. Obstructing Defence Forces

Any person who wilfully obstructs or interferes with any part of the Defence Forces or any member thereof in the proper performance of any military service or duty under this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[section amended by section 4 of Act 22/2001]*

### 103. Harbours, aiding or inducing members of Defence Forces to dereliction of duty

- (1) Any person, other than a member, who—
  - (a) assists or harbours any member who to his knowledge has committed an offence in terms of this Act; or
  - (b) induces or attempts to induce any member to neglect or to act in conflict with his military duty; or
  - (c) is a party to, aids or abets or incites to the commission of any act whereby—
    - (i) any lawful order given to any member; or
    - (ii) any law relating to the Defence Forces with which it is the duty of any member to comply;may be evaded or infringed; or
  - (d) whether in propagating religious beliefs or otherwise, uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise

cause any member of the Regular Force to refuse or fail to carry out any duties to which such other person is or may become liable in terms of this Act; or

- (e) supplies or is a party to supplying any member with intoxicating liquor when that member is on military duty and prohibited by or under this Act from receiving or taking intoxicating liquor;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

- (2) Any person who is not a member and who, whether in propagating religious beliefs or otherwise, uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any member of the Regular Force to refuse or fail to carry out any duties to which that member is or may become liable in terms of this Act, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

*[section amended by section 4 of Act 22/2001]*

#### **104. Refusing information or giving false information**

If information is required from any person in furtherance of the provisions of this Act relating to his liability or the liability of any resident for service or training in a Reserve Force, that person shall, if he fails without just cause, the burden of proof whereof shall lie upon him, to give such information or if he gives false information, be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

*[section amended by section 4 of Act 22/2001]*

#### **105. General penalties**

- (1) *[subsection repealed by section 4 of Act 22/2001]*

- (2) When a member of a Reserve Force is charged with having evaded or failed to attend or perform any instruction, training, exercise or inspection which it was his duty to attend or perform, the civil court before which he is charged may, on his conviction and on the application of the prescribed authority, commit such member, either in addition to or in lieu of any other penalty, to detention at a prescribed depot, training camp or station for the purpose of undergoing instruction, training or exercise during such detention:

Provided that, in the committal of an offender to detention under this subsection, the period of detention shall not necessarily be continuous nor shall it exceed in any one sentence or commitment a total number of days of detention in excess of twice the total number of days on which such member was in default.

- (3) Any member of a Reserve Force who, having been committed to detention under subsection (2), escapes therefrom or fails to return thereto or fails properly to carry out the instruction, training or exercise given under such detention, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

*[subsection amended by section 4 of Act 22/2001]*

- (4) While undergoing a sentence of detention under subsection (2), a member of a Reserve Force shall be subject to such training and disciplinary measures as shall be prescribed.

#### **106. Sale or supply of liquor at mess or canteen**

- (1) In subsection (2)—

"liquor" shall have the meaning assigned to it in subsection (1) of section 2 of the Liquor Act [Chapter 14:12].

- (2) Notwithstanding anything to the contrary in any enactment, liquor may, at any mess or canteen which is conducted under the authority of a Commander, be sold or supplied to any member, whether of the Force commanded by the Commander or not.

#### **106A. General offence: failure to comply with provisions of Act**

Any person who

- (a) fails or neglects to comply with any provision of this Act, other than the First Schedule, with which it is his duty to comply; or
- (b) when required in terms of this Act, other than the First Schedule, to do or to abstain from doing anything, makes default in so doing or, as the case may be, does not abstain from doing that thing;

shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

*[section inserted by section 4 of Act 22/2001]*

#### **107. General provisions as to evidence**

- (1) This section shall apply to the trial of any person for an offence in terms of this Act, whether before a military court or a civil court.
- (2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.
- (3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.
- (4) A letter, return or other document stating that any person—
  - (a) was or was not serving at any specified time or during any specified period in any part of the Defence Forces or other Military Forces or was discharged from any part of those Forces at or before any specified time; or
  - (b) held or did not hold at any specified time any specified rank or appointment in any of the Forces referred to in paragraph (a) or had at or before any specified time been attached, posted or transferred to any part of those Forces or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
  - (c) was or was not at any specified time authorized to use or wear any uniform, decoration, badge or emblem;

shall, if purporting to be issued by an authority of the Defence Force or other Military Forces and to be signed by such an authority, be evidence of the matters stated in the document.

- (5) A record made in pursuance of this Act or otherwise in pursuance of military duty and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein and a copy of any such record, including the signature thereto, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the record, shall be evidence of that record.
- (6) A document purporting to be issued by the Commander and to contain any decision, instruction or order made or given by the Commander shall be evidence of the making or giving of that decision, instruction or order and of the details thereof.

- (7) A certificate purporting to be signed by a member's commanding officer or any officer authorized by him to give the certificate and stating the contents of or of any part of standing orders or other routine orders of a continuing nature made for—

- (a) any formation or unit or body of troops; or
- (b) any command or other area, garrison or place; or
- (c) any ship, train or aircraft;

shall in proceedings against the said person be proof of the matters stated in the certificate.

- (8) On the trial of a member charged with any offence in terms of paragraph 15 of the First Schedule, a certificate signed by the person to whom the member who it is alleged deserted or was absent without leave surrendered himself or by whom he was arrested stating the time, date, place and other relevant details of the surrender or arrest shall be evidence of the matters stated therein.

### **108. Administration of oaths**

An officer may require and administer an oath in such form and in such circumstances as may be prescribed.

### **109. Declaration of active service**

The Minister may, by notice in a statutory instrument, declare any service to be active service for the purposes of this Act.

### **110. Deductions for barrack damage**

- (1) In this section—

"premises" includes any mess, canteen, vehicle, vessel, aircraft or train and "quartered", "billeted" or "occupation" shall be construed accordingly.

- (2) Where any—

- (a) damage occurs; or
- (b) fixtures, furniture or effects are damaged or lost which are at or belong;

to premises in which any unit or part thereof is quartered or billeted, a board of inquiry may be convened in the prescribed manner to investigate such damage or loss.

- (3) If, after the investigation by a board in terms of subsection (2), it appears that—

- (a) the damage or loss was occasioned—
  - (i) by any wrongful act or negligence of members of such unit; and
  - (ii) whilst such members were in occupation of the premises; and
- (b) such members cannot be identified;

any member of such unit may be required by the Commander to contribute towards compensation for such damage or loss in such amount as the board determines to be just.

- (4) Any amount of compensation determined under subsection (3) may be deducted from the member's pay and allowances.

### **111. Establishment or declaration of detention barracks**

The Minister may establish detention barracks and may, by notice in a statutory instrument, declare any building or place to be detention barracks for the purposes of this Act.

## 112. Powers in connection with training

- (1) Subject to this section, the Minister may, by notice in a statutory instrument, from time to time designate areas wherein any unit of the Defence Forces may, without the consent of any person affected or likely to be affected thereby, conduct military exercises as part of its training:

Provided that—

- (i) no camp shall be erected in pursuance of the powers conferred by this subsection within a radius of five hundred metres of a private dwelling without the consent of the owner or occupier thereof;
  - (ii) the powers conferred by this subsection shall not include the power to acquire, whether compulsorily or by agreement, any Communal Land or any interest in or right over Communal Land, otherwise than in accordance with the Communal Land Act [Chapter 20:04].
- (2) No area shall be designated by the Minister in terms of subsection (1) unless a notice in terms of subsection (3) has been published in a newspaper circulating in the area concerned.
- (3) A notice referred to in subsection (2) shall—
- (a) define the area which it is proposed to designate in terms of subsection (1); and
  - (b) state the period for which the area is to be so designated; and
  - (c) invite all interested persons to submit to the Minister, not later than a date to be specified in the notice, any representations which they may wish to make.
- (4) The Minister shall, before designating an area in terms of subsection (1), consider any representations referred to in paragraph (c) of subsection (3).
- (5) Parts III, V and VIII of the Land Acquisition Act [Chapter 20:10] shall apply, *mutatis mutandis*, to the exercise by the Minister of his powers in terms of subsection (1).
- (6) The commanding officer of any unit of the Defence Forces which is undergoing training may temporarily stop all traffic by land, air or water in or in the vicinity of any area referred to in subsection (1) or any other area in which military exercises are being conducted or which is being used for range practice or other training in so far as may, in his opinion, be necessary for the security of life or the proper conduct of the military exercises, range practice or other training.
- (7) Any person who disobeys or disregards any order, sign or signal erected, given or made in the exercise of the powers conferred by subsection (6) shall be guilty of an offence and liable to a fine not exceeding level five.

*[subsection amended by section 4 of Act 22/2001]*

## 113. Regulations

- (1) Subject to this Act, the Minister may make such regulations as, in his opinion, are necessary or convenient for securing the discipline and good government of the Defence Forces, providing for the conditions of service of members thereof and generally for the better carrying out of the objects and purposes of this Act.
- (2) The Minister may make regulations in terms of subsection (1)—
- (a) for any matter which by this Act is required or permitted to be prescribed or for which regulations may be made;



- (b) with respect to the investigation and trial of offences recognizable by a military court and with respect to the confirmation and revision of findings and sentences of a military court and in particular—
  - (i) the procedure to be observed in the bringing of charges before a prescribed officer;
  - (ii) the manner in which charges referred to in subparagraph (i) are to be investigated and the taking of evidence, whether orally or in writing, on oath or not, in full or in summary or in abstract form, for the purposes of investigating or dealing summarily with such charges or otherwise as a preliminary to the trial thereof by court martial;
  - (iii) the rules as to the sufficiency or admissibility of evidence and as to the competency, compellability, examination and cross-examination of witnesses to be observed in proceedings before a prescribed officer;
  - (iv) the addition to or substitution for a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;
  - (v) the convening and constitution of a court martial;
  - (vi) the sittings, adjournment and dissolution of a court martial;
  - (vii) the procedure to be observed in a trial by a court martial;
  - (viii) the representation of the accused at a trial by a court martial;
  - (ix) procuring the attendance of witnesses before a court martial and at the taking of evidence in pursuance of regulations referred to in subparagraph (ii);
  - (x) empowering a court martial or the convening officer in such cases and to such extent as may be prescribed to amend a charge which has been tried by the court martial;
  - (xi) the powers of a confirming authority and the duties of a court martial in relation to any directions given to it by a confirming authority and the right of an accused to make representations to the confirming authority;
  - (xii) the convening of a field general court martial;
- (c) providing for the establishment of boards of inquiry and such other boards as may be necessary or convenient for the purposes of this Act and prescribing the constitution, functions, duties, powers, rules of evidence and procedure and jurisdiction thereof;
- (d) for the ranks and appointments, including honorary ranks and appointments, and designations in the Defence Forces;
- (e) for the management and control of detention barracks and for the treatment of and method of treating prisoners lodged in detention barracks;
- (f) for the custody or disposal of the effects and property of, or pay, allowances and other benefits due to, members who desert or who are absent without leave;
- (g) for returns, books and forms relating to the Defence Forces;
- (h) for all matters relating to visiting forces, including the discipline and internal administration thereof, the relationship of visiting forces to the civil power and civilians, the attachment of personnel to and by such forces and the matter of powers of command;
- (i) for the patenting of inventions and designs by members;
- (j) for the payment of travelling and subsistence allowances to members and to any person who attends as a witness before a military court or a board;

- (k) prescribing penalties for contraventions of the provisions of any regulations not exceeding a fine of level four or, in default of payment, imprisonment or detention for a period not exceeding three months;

*[paragraph amended by section 4 of Act 22/2001]*

- (l) for the manner and circumstances in which any deficiency, loss, damage or expense caused to the State or to the Defence Forces by the wrongful act, negligence or carelessness of a member may be recovered from such member, and the manner in which, and the person or persons by whom, the amount to be recovered from such member shall be determined;
  - (m) relating to the arrest and custody of members before, during and after trial by court martial.
- (3) Different regulations may be made in terms of this section in respect of different—
- (a) classes of members;
  - (b) classes of prisoners lodged in detention barracks;
  - (c) military courts;
  - (d) exemption boards;
  - (e) units;
  - (f) boards and boards of inquiry;
  - (g) confirming authorities.

## 114. Savings

- (1) Any regulations which were made or deemed to have been made by the Defence Forces Service Commission before the 1st July, 1994, and which were in force immediately before that date shall be deemed to have been made by the Minister in terms of section one hundred and thirteen.
- (2) Anything which was lawfully made, done or commenced before the 1st July, 1994, by or on the authority of the Defence Forces Service Commission, the Commander of the Army or the Commander of the Air Force and which, immediately before that date, had or was capable of acquiring legal effect shall, on and after that date,

continue to have or be capable of acquiring, as the case may be, the same effect as if it had been made, done or commenced by the Commission, the Minister or the Commander, as the case may be, in terms of the appropriate provision of this Act as amended by Act [No. 8 of 1993](#).

## First Schedule (Sections 39, 45, 46, 47, 61, 105 and 107)

### Military offences

#### 1. Interpretation

- (1) In this Schedule—

"**mutiny**" means an agreement between persons two at least of whom are members—

- (a) to overthrow or to resist lawful authority in—
  - (i) the Defence Forces; or
  - (ii) any other Military Forces; or
  - (iii) any part of any of the Forces referred to in subparagraph (i) or (ii); or

- (b) to disobey any lawful authority referred to in paragraph (a) in such circumstances as to make disobedience subversive of discipline; or
- (c) with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or
- (d) to impede the performance of any duty or service in—
  - (i) the Defence Forces; or
  - (ii) any other Military Forces; or
  - (iii) any part of any of the Forces referred to in subparagraph (i) or (ii);

**"paragraph"** means a paragraph of this Schedule;

**"requisition"** means a requisition referred to in subsection (1) of section ninety-five;

**"service property"** means any property of any mess or other institution, organization or association whatsoever of members of the Defence Forces;

**"State property"** means any property belonging to the State or any other Military Forces;

**"unfit"** includes temporarily unfit.

(2) For the purposes of this Schedule, a member deserts who—

- (a) leaves the Defence Forces or, when it is his duty to do so, fails to join or rejoin the Defence Forces or any other forces to which he is attached or seconded in terms of this Act with, in either case, the intention, subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty:

Provided that, in the case of a member who is absent without leave for a continuous period of thirty days or more, it shall be presumed, unless the contrary is proved, that he has formed the intention of remaining permanently absent from his duty; or

- (b) being an officer, enlists in or enters any other Military Forces without having resigned his commission; or
- (c) being a non-commissioned officer or soldier, enlists in or enters any other Military Forces without having been discharged from the Defence Forces; or
- (d) absents himself without leave with intent to avoid serving at any place outside Zimbabwe or to avoid service or any particular service when before the enemy;

and "desertion" or "to desert" shall be construed accordingly.

## 2. Aiding the enemy

Any member who—

- (a) abandons or delivers up any place or post which it is his duty to defend against the enemy or induces any person to abandon or deliver up any place or post which it is that person's duty to defend against the enemy; or
- (b) does any act calculated to imperil the success of operations of—
  - (i) the Defence Forces; or
  - (ii) any other Military Forces; or
  - (iii) any part of any of the Forces referred to in subparagraph (i) or (ii);
 against the enemy; or

- (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale or aids the enemy in any other manner whatsoever not authorized by international usage; or
- (d) furnishes the enemy with arms or ammunition or with supplies of any description; or
- (e) harbours or protects an enemy not being a prisoner of war;

shall be guilty of an offence and liable—

- (i) if the offence was committed with intent to assist the enemy, to suffer death or imprisonment or any lesser punishment;
- (iii) in any other case, to imprisonment or any lesser punishment.

*[Please note: numbering as in original.]*

### **3. Communications with the enemy and injurious disclosures**

- (1) In this paragraph—

"information useful to the enemy" means information which is or purports to be information as to any matter which is of such a nature that information about that matter would or might be directly or indirectly useful to the enemy and in particular, but without prejudice to the generality of the foregoing, means information as to—

- (a) the number, description, armament, equipment, disposition, movement or condition of—
    - (i) the Defence Forces; or
    - (ii) any other Military Forces; or
    - (iii) any part of the Forces referred to in subparagraph (i) or (ii) or any ships or aircraft belonging thereto; or
  - (b) any operations or projected operations of any Forces, ships or aircraft referred to in subparagraph (a); or
  - (c) any code, cipher, call sign, password or countersign; or
  - (d) any measures for the defence or fortification of any place; or
  - (e) the number, description or location of any prisoners of war; or
  - (f) munitions of war.
- (2) Any member who communicates with or gives to the enemy information useful to the enemy shall be guilty of an offence and liable—
- (a) if the offence was committed with intent to assist the enemy, to suffer death or imprisonment or any lesser punishment;
  - (b) in any other case, to imprisonment or any lesser punishment.
- (3) Any member who, without authority, discloses, whether orally, in writing, by signal or by any other means whatsoever, any information useful to the enemy shall be guilty of an offence and liable to imprisonment or any lesser punishment.

### **4. Failure to report contraventions of paragraph 2 or 3**

Any member who, being aware or having reasonable grounds to suspect that any other person is committing or intends to commit any—

- (a) offence in terms of paragraph 2; or

- (b) offence in terms of subparagraph (2) of paragraph 3;

fails to report without delay to a superior officer the facts within his knowledge concerning the activities or suspected activities of such other person shall be guilty of an offence and liable to imprisonment or any lesser punishment.

## 5. Cowardly behaviour

Any member who—

- (a) when before the enemy—

- (i) leaves the post, position or other place where it is his duty to be; or
  - (ii) abandons or throws away his arms, ammunition, equipment or tools;

in such a manner as to show cowardice or otherwise behaves in such a manner as to show cowardice; or

- (b) when before the enemy, induces any other member who is before the enemy to contravene subparagraph (a);

shall be guilty of an offence and liable to imprisonment or any lesser punishment.

## 6. Becoming prisoner of war through disobedience or wilful neglect and failure to rejoin forces

Any member who—

- (a) through disobedience to orders, want of precaution or wilful neglect of his duty, is captured by the enemy; or
- (b) having been captured by the enemy, fails to take or prevents or discourages a member or any other person captured by the enemy from taking any reasonable steps which are available to him, or as the case may be, to that person to rejoin the Defence Forces or any other Military Force;

shall be guilty of an offence and liable to imprisonment or any lesser punishment.

## 7. Offences against morale

Any member who spreads, whether orally, in writing or by any other means whatsoever, reports relating to the operations against the enemy of—

- (a) the Defence Forces; or
- (b) any other Military Forces; or
- (c) any part of the Forces referred to in subparagraph (a) or (b);

being reports calculated to create despondency or unnecessary alarm, shall be guilty of an offence and liable to imprisonment or any lesser punishment.

## 8. Mutiny

- (1) Any member who—

- (a) takes part in a mutiny—

- (i) involving the use of violence or the threat of the use of violence; or
    - (ii) having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy or the impeding of the performance of any such duty or service; or

- (b) incites any member to take part in such a mutiny, whether actual or intended;
- shall be guilty of an offence and liable to suffer death or imprisonment or any lesser punishment.
- (2) Any member who, in a case not falling within subparagraph (1), takes part in a mutiny or incites any member to take part in a mutiny, whether actual or intended, shall be guilty of an offence and liable to imprisonment or any lesser punishment.

## 9. Failure to suppress mutiny

Any member who, knowing that a mutiny is taking place or is intended—

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

shall be guilty of an offence and—

- (i) if his offence was committed with intent to assist the enemy, be liable to suffer death or imprisonment or any lesser punishment;
- (ii) in any other case, be liable to imprisonment or any lesser punishment.

## 10. Offences in relation to guard and other duties

(1) For the purposes of this paragraph—

- (a) any reference to a member on guard duty shall be construed as a reference to a member or to a member of any other Military Forces who is posted or ordered to patrol or is a member of a guard or other party mounted or ordered to patrol for the purpose of—
  - (i) protecting any persons, premises or place; or
  - (ii) preventing or controlling access to or egress from any premises or place; or
  - (iii) regulating traffic by road or rail or on any canal, river or lake;
- (b) a member shall be deemed to be drunk if, owing to the influence of alcohol or drugs or both, he is unfit to be entrusted with his duty.

(2) Any member who—

- (a) while on duty, sleeps at his post; or
- (b) while on guard duty when not on duty at a post, is asleep at a time when he is not allowed to be asleep; or
- (c) while on duty, is drunk; or
- (d) absents himself from any place where it is his duty to be; or
- (e) while on duty is not alert or not carrying out his duties in a proper manner;

shall be guilty of an offence.

(3) Any member who—

- (a) assaults a member on guard duty; or
- (b) by act, word or gesture, wrongfully compels a member on guard duty to let him or any other person pass; or
- (c) wrongfully evades a member on guard duty; or
- (d) in any manner whatsoever, prevents a member on guard duty from doing his duty; or

(e) occasions false alarm to a member on guard duty;

shall be guilty of an offence.

- (4) Any member who commits an offence in terms of this paragraph shall be liable to imprisonment or any lesser punishment:

Provided that, if the offence was not committed on active service, he shall not be liable to imprisonment for more than two years.

## 11. Looting

Any member who—

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

shall be guilty of the offence of looting and liable to imprisonment or any lesser punishment.

## 12. Insubordinate behaviour

- (1) In this paragraph—

"superior officer", in relation to any member, means an officer or non-commissioned officer of superior rank and includes an officer or non-commissioned officer of equal rank but greater seniority while exercising authority as such member's superior.

- (2) Any member who—

- (a) assaults; or
- (b) wrongfully points a firearm at; or
- (c) draws any weapon against;

a superior officer, shall be guilty of an offence.

- (3) Any member who—

- (a) behaves in a threatening or insulting manner towards; or
- (b) by word or conduct, displays insubordination towards; or
- (c) behaves with contempt towards;

a superior officer, shall be guilty of an offence.

- (4) Any member who commits an offence in terms of subparagraph (2) or (3) shall be liable to imprisonment or any lesser punishment:

Provided that, if the offence—

- (a) was not committed on active service; or
- (b) being an offence in terms of subparagraph (1), was not committed against a superior officer exercising authority as such;

the accused shall not be liable to imprisonment for more than two years.

**13. Assault or ill-treatment of subordinates**

Any member who—

- (a) assaults; or
- (b) wrongfully points a firearm at; or
- (c) draws any weapon against; or
- (d) otherwise ill-treats;

any member who, by reason of rank or appointment, is subordinate to him, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

**14. Disobedience to lawful commands, directions or orders**

(1) In this paragraph—

"order" means a standing order or any other routine order of a continuing nature made for any unit or for any area, garrison, place, ship, train or aircraft.

(2) Any member who—

- (a) in wilful defiance of authority, disobeys any lawful command given or sent to him personally; or
- (b) whether wilfully or through neglect, disobeys any lawful command;

shall be guilty of an offence.

(3) Any member who—

- (a) disobeys the lawful direction of the commander of any aircraft, vehicle or vessel in which he is being conveyed, whether such commander is a member, a civilian or a member of any other Military Forces and irrespective of the rank or status of such commander; or
- (b) 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; or
- (c) contravenes or fails to comply with any provision of any order, of which it is his duty to have knowledge, or regulation;

shall be guilty of an offence.

(4) Any member who commits an offence—

- (a) in terms of subparagraph (2) shall be liable to imprisonment or any lesser punishment:  
Provided that if the offence is one in terms of subparagraph (b) of subparagraph (2) and it was not committed on active service the period of imprisonment shall not exceed two years;
- (b) in terms of subparagraph (3), shall be liable to imprisonment for a period not exceeding two years or any lesser punishment.

**15. Offences in relation to desertion, absence and failure to perform duties**

(1) Any member who deserts shall be guilty of an offence and liable—

- (a) if the offence was committed whilst he was on active service or under orders for active service, to imprisonment or any lesser punishment;



- (b) in any other case, to imprisonment for a period not exceeding two years or any lesser punishment.

(2) Any member who—

- (a) absents himself without leave; or
- (b) without reasonable excuse, fails to attend for any parade or duty; or
- (c) leaves any parade or duty without permission; or
- (d) being required to attend an educational institution, whether civilian or otherwise, fails to attend thereat or absents himself therefrom without leave; or
- (e) knowingly makes any false statement for the purpose of obtaining or prolonging leave;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

(3) Any member who, knowing that another member—

- (a) has deserted; or
- (b) has absented himself without leave; or
- (c) intends to desert or absent himself without leave;

fails to report such knowledge without delay or fails to take any reasonable steps to cause such member to be apprehended, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

## 16. Malingering

Any member who—

- (a) feigns any sickness or disability; or
- (b) injures himself or causes himself to be injured by any other person with intent thereby to render himself unfit for service; or
- (c) injures another member, whether or not at the instance of that other member, with intent thereby to render that other member unfit for service; or
- (d) with intent to render or keep himself unfit for service, does or fails to do anything whereby he produces, prolongs or aggravates any sickness or disability;

shall be guilty of the offence of malingering and liable to imprisonment for a period not exceeding two years or any lesser punishment.

## 17. Offences in relation to drunkenness and disorderly behaviour

Any member who—

- (a) owing to the influence of alcohol or any drug or both—
  - (i) is unfit to be entrusted with his duty or with any duty which he may be called upon to perform; or
  - (ii) behaves in a disorderly manner; or
  - (iii) behaves in any manner likely to bring discredit upon the Defence Forces; or
- (b) behaves in a riotous, disorderly or unseemly manner;

shall be guilty of an offence and liable—

- (i) where the offence was committed on active service, to imprisonment for a period not exceeding two years or any lesser punishment;
- (ii) in any other case, to imprisonment for a period not exceeding six months or any lesser punishment.

## **18. Offences in relation to State property or service property**

Any member who—

- (a) steals; or
- (b) knowing it to have been stolen, receives; or
- (c) wilfully abandons; or
- (d) wilfully destroys or damages; or
- (e) wilfully fails or wilfully omits to take any reasonable steps to prevent the destruction of or damage to;

any State property or service property shall be guilty of an offence and liable to imprisonment or any lesser punishment.

## **19. Miscellaneous offences in relation to State property or service property**

(1) Any member who—

- (a) by negligence, causes damage to any State property or service property; or
- (b) fails to take proper care of any animal or bird of the State which is in his charge; or
- (c) fails to take all reasonable precautions to safeguard arms, ammunition or explosives of the State which are in his possession;

shall be guilty of an offence.

(2) Any member who—

- (a) negligently loses; or
- (b) by negligence, causes damage to; or
- (c) makes away with, whether by pawning, pledging, selling, destroying, abandoning or in any other way; any—
  - (i) State property or service property of which he has the charge or which has been entrusted to his care; or
  - (ii) clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or
  - (iii) decoration awarded to him;

shall be guilty of an offence.

(3) Any member who—

- (a) without authority—
  - (i) takes or removes from its appointed place; or
  - (ii) uses for any purpose other than on State or service duty; or
  - (iii) has in his possession;

any State property or service property; or

- (b) improperly uses, takes or removes from the possession or control of any other member any clothing, arms, ammunition or other equipment issued to that member for his use for military purposes;

shall be guilty of an offence.

- (4) Any member who, being responsible for any State property or service property, so negligently performs his duties as to result in any deficiency in such property shall be guilty of an offence.
- (5) Any member who commits an offence in terms of this paragraph shall be liable to imprisonment for a period not exceeding two years or any lesser punishment.
- (6) If, in any prosecution for a contravention of subparagraph (a) of subparagraph (2), it is proved that the property or article in question was—
  - (a) in the charge of the accused; or
  - (b) entrusted to the care of the accused; or
  - (c) issued to the accused; or
  - (d) in the case of a decoration, awarded to the accused;

and that at a time subsequent to such issue or otherwise the accused was found not to be in possession of the property or article, it shall be presumed, unless the contrary is proved, that the property or article was negligently lost by the accused.

## 20. Offences in relation to property of members

Any member who—

- (a) steals; or
- (b) knowing it to have been stolen, receives; or
- (c) wilfully damages; or
- (d) without permission improperly uses, takes or removes from the control of the owner or lawful possessor;

any property belonging to a member shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

## 21. Billeting offences

Any member who—

- (a) knowing that no requisition is in force authorizing him to demand any billets or that he is otherwise not authorized to demand them, obtains those billets or orders or procures another person to obtain them; or
- (b) takes or agrees to take or demands from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a requisition, any money or thing as consideration for not requiring or ceasing to require accommodation for himself or that other person or standing room for the vehicle; or
- (c) commits any offence against the person or property of the occupier of premises in which he is billeted in pursuance of a requisition or of any other person being in those premises or against any other property in those premises or wilfully or by wilful neglect damages those premises or any such property as aforesaid;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

**22. Offences in relation to requisitioning of vehicles and other property**

- (1) Any member who—
- (a) knowing that no requisition is in force authorizing him to give directions for the provision of a vehicle or that he is otherwise not authorized to give such directions, gives directions for the provision of that vehicle or orders or procures another person to give such directions; or
  - (b) in purported exercise of powers conferred by a requisition, takes possession of, or orders or procures any other person to take possession of, a vehicle knowing that no requisition is in force under which the taking of possession of the vehicle could be authorized; or
  - (c) takes or agrees to take or demands from any person any money or thing as consideration for directions or any particular direction for the provision of a vehicle not being given or possession of a vehicle not being taken or not being retained under a requisition;
- shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.
- (2) Subparagraph (1) shall apply in relation to aircraft, boats, animals, food, fuel and stores as it applies in relation to vehicles.

**23. Offences in relation to driving of motor vehicles of State**

- (1) Any member who drives any motor vehicle of the State—
- (a) recklessly; or
  - (b) negligently; or
  - (c) in a manner which is dangerous to the public; or
  - (d) without due care and attention; or
  - (e) without reasonable consideration for other road users; or
  - (f) at an excessive speed;
- shall be guilty of an offence.
- (2) Any member who, when driving or attempting to drive any motor vehicle of the State, is under the influence of alcohol or a drug or both to such an extent as to be incapable of having proper control of the said vehicle shall be guilty of an offence.
- (3) Any member who commits an offence in terms of this paragraph shall be liable to imprisonment for a period not exceeding two years or any lesser punishment.

**24. Offences in relation to flying or use of aircraft of State**

- (1) Any member who flies any aircraft of the State—
- (a) recklessly; or
  - (b) negligently; or
  - (c) at an unauthorized height; or
  - (d) in such a manner as to cause or be likely to cause unnecessary annoyance to any person;
- shall be guilty of an offence.
- (2) Any member who, when flying or attempting or preparing to fly any aircraft of the State, is under the influence of alcohol or a drug or both to such an extent as to be incapable of having proper control of the said aircraft shall be guilty of an offence.

(3) Any member who—

- (a) through any act, omission or neglect in flying or preparing to fly or in the preparation for flight or the use of any aircraft or aircraft material, causes or is likely to cause—
  - (i) loss of life or bodily injury to any person; or
  - (ii) destruction of or damage to the said aircraft or aircraft material or any other property; or
- (b) signs any certificate in relation to any aircraft or aircraft material without ensuring the accuracy of such certificate;

shall be guilty of an offence.

(4) Any member who commits an offence—

- (a) in terms of subparagraph (a) of subparagraph (1), subparagraph (2) or subparagraph (a) of subparagraph (3), shall be liable to imprisonment or any lesser punishment;
- (b) in any other case in terms of this paragraph, shall be liable to imprisonment for a period not exceeding two years or any lesser punishment.

## **25. Hazarding of and interference with aircraft, vehicles, vessels or other property of State**

- (1) Any member who wilfully or negligently causes or allows any aircraft or vessel of the State to be hazarded, stranded or wrecked shall be guilty of an offence and liable to imprisonment or any lesser punishment.
- (2) Any member who, in circumstances not amounting to any offence in terms of any other provision of this Schedule, contrary to his duty and without authority, alters, adjusts or interferes with any aircraft, motor vehicle, vessel, weapon, machine, instrument or other equipment of the State or any part or accessory thereof, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

## **26. Obstructing or refusing to assist arrest or custody of members**

Any member who—

- (a) resists; or
- (b) wilfully obstructs; or
- (c) when called upon, refuses or neglects to assist;

a member in the performance of any duty relating to the lawful arrest, custody or confinement of any other member shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

## **27. Resisting arrest and escape from custody**

Any member who—

- (a) being ordered into arrest—
  - (i) refuses to obey such order; or
  - (ii) assaults the person ordering him into arrest; or
  - (iii) resists the person whose duty it is to apprehend him; or
- (b) assaults or resists any person in whose custody he has been placed; or
- (c) escapes from custody; or

- (d) hinders or obstructs any person lawfully carrying out a search of his person, equipment, belongings or living quarters;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

## **28. Offences in relation to arrest and investigation of charges**

- (1) Any member who—

- (a) without due or just cause, orders any member into arrest or custody; or
- (b) unnecessarily detains a member in arrest or custody; or
- (c) fails, when it is his duty to do so, to release or effect the release of a member from arrest or custody; or
- (d) unnecessarily delays the taking of those steps which are prescribed or which it is his duty to take for—
  - (i) investigating the allegations against a member in arrest or custody; or
  - (ii) having such allegations investigated by the appropriate authority; or
  - (iii) having such allegations tried by court martial; or
- (e) having committed a member to the custody of any other member, fails to deliver to the latter within twenty-four hours of such committal a signed statement setting out the particulars of the offence the committed member is alleged to have perpetrated; or
- (f) as guard commander, having had a member committed to his charge, fails, within twenty-four hours of such committal, to deliver to the appropriate officer—
  - (i) a written report setting out as far as is known to him the committed member's name, details of the alleged offence and the name, rank or particulars of the person charging such member; and
  - (ii) if he has received it, the statement required by subparagraph (e); or
- (g) assaults, ill-treats or uses unnecessary violence towards a member in custody; or
- (h) fails to comply with subsection (6) of section eighteen;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

- (2) In determining whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a member in arrest, regard shall not be had to subsection (2) of section twenty-one.

## **29. Permitting escape and unlawful release of prisoners**

- (1) Any member who wilfully allows to escape any person who is committed to his charge or whom it is his duty to guard shall be guilty of an offence and liable to imprisonment or any lesser punishment.
- (2) Any member who—
  - (a) without proper authority, releases any person who is committed to his charge; or
  - (b) without reasonable excuse, allows to escape any person who is committed to his charge or whom it is his duty to guard;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

### 30. Making of false statements on attestation

Any person who, when being attested in the Defence Forces, knowingly gives a false answer to any question contained in the attestation paper shall, if he is thereafter duly so attested, be guilty of an offence and liable to a fine not exceeding one hundred dollars or, in default of payment, to imprisonment for a period not exceeding three months or to any lesser punishment.

### 31. Making of false documents

(1) In this paragraph—

"military document" means a document relating to the Defence Forces or other Military Forces.

(2) Any member who—

- (a) makes, signs or makes an entry in any military document, being a military document or entry which is to his knowledge false in a material particular; or
- (b) alters any military document or alters any entry in a military document, so that the military document or entry is to his knowledge false in a material particular; or
- (c) suppresses, defaces or makes away with any military document or entry which it is his duty to preserve or produce; or
- (d) with intent to defraud, fails to make an entry in any military document;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

### 32. Offences in relation to false accusations or statement

Any member who—

- (a) makes any accusation or statement against or concerning any other member which he knows to be false or does not know or believe to be true; or
- (b) in making a complaint where he considers himself wronged, intentionally suppresses any material fact;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

### 33. Offences in relation to redress of wrongs

Any member who—

- (a) when a complaint by another member has been made to him, unduly delays—
  - (i) in redressing the wrong complained of; or
  - (ii) in sending the complaint to higher authority in the prescribed manner; or
- (b) complains to higher authority when it is his duty to direct his complaint to his commanding officer or other authority as prescribed;

shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

**34. False representation concerning rank**

Any member who, by the wearing of any insignia of rank or otherwise, represents himself to be the holder of any rank in the Defence Forces or other Military Forces other than his own rank shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

**35. Offences in relation to wearing of decorations**

Any member who knowingly wears any decoration to which he is not entitled shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

**36. Scandalous conduct of officer**

Any officer who behaves in a scandalous manner unbecoming the character of an officer and a gentleman shall be guilty of an offence and liable to be cashiered.

**37. Disgraceful conduct**

Any member who disgracefully conducts himself in a cruel, indecent or unnatural manner shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

**38. Conduct to prejudice of military discipline**

Any member who, in circumstances not amounting to an offence in terms of any other provision of this Schedule, causes, by any act, conduct or omission, prejudice to good order and military discipline shall be guilty of an offence and liable to imprisonment for a period not exceeding two years or any lesser punishment.

**39. Civil offences**

(1) In this paragraph—

"civil offence" means any act or omission punishable under any law in force in Zimbabwe;

"corresponding civil offence" means the civil offence the commission of which constitutes an offence in terms of subparagraph (a) of subparagraph (2);

"foreign offence" means—

- (a) treason or murder when committed outside Zimbabwe; or
- (b) any other offence committed outside Zimbabwe which is punishable under any law in force where it occurred if such offence constitutes an offence in terms of the law in force in Zimbabwe.

(2) Any member who commits—

- (a) a civil offence other than treason, murder or rape; or
- (b) a foreign offence;

shall be guilty of an offence in terms of this paragraph.

(3) A member who commits an offence in terms of subparagraph (2) shall—

- (a) if such offence was—
  - (i) the foreign offence of treason or murder, be liable to suffer death; or
  - (ii) any other foreign offence, be liable to imprisonment or any lesser punishment;



- (b) in any other case, be liable to suffer any punishment provided in section seventy or, as the case may be, section seventy-one:

Provided that, if the punishment imposed is—

- (a) imprisonment or detention, the period of imprisonment or detention shall not exceed such period as the High Court may impose by way of imprisonment;
- (b) a fine, the amount of the fine shall not exceed such amount as the High Court may impose by way of a fine;

for the corresponding civil offence.

#### 40. Attempt, conspiracy or incitement to commit offences

Any member who—

- (a) attempts to commit; or
- (b) conspires with any other person to aid or procure the commission of or to commit; or
- (c) incites any other person to commit;

any offence in terms of this Act shall be guilty of an offence and liable to the punishment provided for the principal offence.

### Second Schedule (Section 61)

#### Conviction of offence other than that charged

<i>Provision of First Schedule charged</i>	<i>Provision of First Schedule of which accused may be convicted</i>
Paragraph 2 (a) or (b)	Any provision of paragraph 5
Paragraph 3 (2)	Paragraph 3 (3) or 7
Paragraph 3 (3)	Paragraph 7
Any provision of paragraph 5 (a)	Any provision of paragraph 14 (2)
Paragraph 7	Paragraph 3 (3)
Any provision of paragraph 8	Any provision of paragraph 12
Paragraph 10 (2) (a)	Paragraph 10 (2) (b) or (e)
Paragraph 10 (2) (c)	Any provision of paragraph 17 (a)
Paragraph 10 (2) (d)	Paragraph 15 (2) (a), (b) or (c)

<i>Provision of First Schedule charged</i>	<i>Provision of First Schedule of which accused may be convicted</i>
Paragraph 10 (3) (a)	Paragraph 10 (3) (b) or (d)
Paragraph 10 (3) (b)	Paragraph 10 (3) (c) or (d)
Stealing contrary to paragraph 11 (a)	Searching with intent to steal contrary to paragraph 11 (a)
Paragraph 11 (b)	Paragraph 11 (c)
Paragraph 12 (2) (a)	Paragraph 12 (2) (b) or (c)
Paragraph 12 (2) (b)	Paragraph 12 (2) (c)
Any provision of paragraph 12 (2)	Any provision of paragraph 12 (3)
Any provision of paragraph 12 (3)	Any other provision of paragraph 12 (3)
Any provision of paragraph 12 (3)	Paragraph 14 (2) (a)
Any provision of paragraph 13	Any other provision of paragraph 13
Paragraph 14 (2) (a)	Paragraph 14 (2) (b)
Paragraph 14 (2) (a)	Any provision of paragraph 12 (3)
Paragraph 14 (3) (a)	Any provision of paragraph 14 (2)
Paragraph 15 (1)	Paragraph 15 (2) (a), (b), (c) or (d)
Paragraph 15 (2) (a)	Paragraph 15 (2) (b), (c), (d) or (e)
Paragraph 15 (2) (b)	Paragraph 15 (2) (c)
Paragraph 16 (b)	Paragraph 16 (a) or (d)
Paragraph 16 (d)	Paragraph 16 (b)
Any provision of paragraph 17 (a)	Paragraph 17 (b)

<i>Provision of First Schedule charged</i>	<i>Provision of First Schedule of which accused may be convicted</i>
Paragraph 18 (a)	Paragraph 18 (b) or any provision of paragraph 19 (3) or 19 (4)
Paragraph 18 (c)	Paragraph 19 (2) (a) or (c)
Paragraph 18 (d)	Paragraph 18 (e), 19 (1) (a) or 19 (2) (a)
Paragraph 19 (2) (b)	Paragraph 19 (1) (a)
Paragraph 19 (2) (c)	Paragraph 19 (2) (a)
Paragraph 20 (a) or (b)	Paragraph 20 (b) or (d)
Paragraph 23 (1) (a)	Any other provision of paragraph 23 (1)
Paragraph 23 (1) (b)	Paragraph 23 (1) (c), (d), (e) or (f)
Paragraph 23 (1) (c)	Paragraph 23 (1) (d), (e) or (f)
Paragraph 23 (1) (d)	Paragraph 23 (1) (e) or (f)
Paragraph 23 (1) (e)	Paragraph 23 (1) (f)
Paragraph 23 (2)	Any provision of paragraph 23 (1)
Paragraph 24 (1) (a)	Any other provision of paragraph 24 (1)
Paragraph 24 (1) (b)	Paragraph 24 (1) (c) or (d)
Paragraph 24 (1) (c)	Paragraph 24 (1) (d)
Paragraph 24 (1) (d)	Paragraph 24 (1) (c)
Paragraph 24 (2)	Any provision of paragraph 24 (1)
Paragraph 25 (1)	Paragraph 18 (d) or 19 (1) (a)
Paragraph 26 (a)	Paragraph 26 (b)

<i>Provision of First Schedule charged</i>	<i>Provision of First Schedule of which accused may be convicted</i>
Paragraph 26 (b)	Paragraph 26 (c)
Paragraph 26 (c)	Any provision of paragraph 14 (2)
Paragraph 27 (a) (i)	Paragraph 14 (2) (a)
Paragraph 28 (1) (a)	Paragraph 28 (1) (h)
Paragraph 28 (1) (b)	Paragraph 28 (1) (c)
Any provision of paragraph 28 (1) (d)	Paragraph 28 (1) (e) or any provision of paragraph 28 (1) (f)
Paragraph 28 (1) (g)	Any provision of paragraph 13
Paragraph 29 (1)	Any provision of paragraph 29 (2)
Paragraph 29 (2) (a)	Paragraph 29 (2) (b)
Paragraph 29 (2) (b)	Paragraph 29 (2) (a)
Paragraph 31 (2) (a)	Paragraph 31 (2) (b)
Paragraph 36	Any provision of paragraph 17