

VOLUME: III

BOTSWANA DEFENCE FORCE

Part ID: VII Discipline and Trial and Punishment of Military Offences (ss 27-129)

CHAPTER: 21:05

Treachery, Cowardice and Offences arising out of Military Service (ss 27-33)

[Ch2105s27]27. Aiding the enemy

(1)

Any person subject to this Act who with intent to assist the enemy-

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

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

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

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

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

shall, on conviction by court-martial or by the High Court, be liable to suffer death or any other punishment provided by this Act.

(2)

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

(3)

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

[Ch2105s28]28. Communication with the enemy

(1)

Any person subject to this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy shall, on conviction by court-martial or by the High Court, be liable to suffer death or any punishment provided by this Act.

(2)

Any person subject to this Act who without authority communicates with or gives intelligence to the enemy shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(3)

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

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

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

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

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

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

(f) munitions of war.

[Ch2105s29]29. Cowardly behaviour

(1)

Any person subject to this Act who when before the enemy-

(a) leaves his post, position or other place where it is his duty to be; or

(b) throws away his arms, ammunition or tools,

in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence.

(2)

Any person subject to this Act who when before the enemy induces any other person subject to this Act and before the enemy to commit an offence under subsection (1) shall be guilty of an offence.

(3)

Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to suffer death or any other punishment provided by this Act.

[Ch2105s30]30. Offences against morale

Any person subject to this Act who-

(a) spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of the Defence Force or of any forces co-operating therewith, or of any part of the Defence Force or any of those forces, being reports calculated to create despondency or unnecessary alarm; or

(b) when before the enemy uses words calculated to spread despondency or unnecessary alarm,

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

[Ch2105s31]31. Prisoner of war

(1)

Any person subject to this Act who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence.

(2)

Any person subject to this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject to this Act captured by the enemy from taking, any reasonable steps to rejoin the Defence Force which are available to him or, as the case may be, to that other person, shall be guilty of an offence.

(3)

Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

[Ch2105s32]32. Offences by or in relation to sentries, etc.

(1)

Any person subject to this Act who while on guard duty-

(a) sleeps at his post;

(b) when not on duty at his post, is asleep at a time when he is not allowed to be asleep;

(c) is drunk; or

(d) leaves his post without having been regularly relieved, or otherwise absents himself from any place where it is his duty to be,

shall be guilty of an offence.

(2)

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

(3)

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

(4)

Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:

Provided

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

(5)

References in this section to a person on guard duty are references to a person who-

(a) is posted or ordered to patrol; or

(b) is a member of a guard or other party mounted or ordered to patrol,

for the purpose of protecting any person, premises or place.

(6)

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

[Ch2105s33]33. Looting

Any person subject to this Act who-

(a) steals from, or with intent to steal searches the person of, anyone killed or wounded in the course of warlike operations;

(b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or

(c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

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

Mutiny and Insubordination (ss 34-39)

[Ch2105s34]34. Mutiny

(1)

Any person subject to this Act who-

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

(b) incites any person subject to this Act to take part in such a mutiny, whether actual or intended,

shall, on conviction by court-martial or by the High Court, be liable to suffer death or any other punishment provided by this Act.

(2)

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

(3)

In this Act "mutiny" means a combination of between two or more persons subject to this Act, or between persons two at least of whom are subject to this Act-

(a) to overthrow or resist lawful authority in the Defence Force or any forces co-operating therewith or in any part of the Defence Force or any of the said forces;

(b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or

(c) to impede the performance of any duty or service in the Defence Force or in any forces co-operating therewith or in any part of the Defence Force or any of the said forces.

[Ch2105s35]35. Failure to suppress mutiny

Any person subject to this Act 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, on conviction by court-martial or by the High Court-

(i) if his offence was committed with intent to assist the enemy, be liable to suffer death or any other punishment provided by this Act;

(ii) in any other case, be liable to imprisonment or any less punishment provided by this Act.

[Ch2105s36]36. Insubordinate behaviour

(1)
Any person subject to this Act who-

(a) strikes or otherwise uses violence to, or offers violence to, a superior officer; or

(b) uses threatening, or insubordinate language to a superior officer,

shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service and did not involve the striking of or other use of violence, or offering of violence, to a superior officer exercising authority as such.

(2)
In this section the expression "superior officer", in relation to a person, means an officer, warrant officer or non-commissioned officer of superior rank, and includes an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as the said person's superior.

[Ch2105s37]37. Disobedience to particular orders

(1)
Any person subject to this Act who, in such manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally

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

(2)

Any person subject to this Act who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:

Provided

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

[Ch2105s38]38. Obstruction of provost officers

Any

person subject to this Act who-

(a) obstructs; or

(b) when called on, refuses to assist,

any person known to him to be a provost officer, or to be a person (whether subject to this Act or not) legally exercising authority under or on behalf of a provost officer, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch2105s39]39. Disobedience to standing orders

(1)

Any person subject to this Act who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2)

This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit of troops, or for any command or other areas, garrison or place, or for any vessel, train or aircraft.

Desertion, Absence without Leave, etc. (ss 40-44)

[Ch2105s40]40. Desertion

(1)

Any person subject to this Act who-

(a) deserts; or

(b) persuades or procures any other person subject to this Act to desert,

shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:

Provided

that a person shall not be liable to be imprisoned for more than two years unless-

(i) if the offence was against paragraph (a), he was on active service or under orders for active service at the time it was committed;

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

(2)

For the purposes of this Act, a person deserts who-

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

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

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

(3)

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

(4)

In addition to or in lieu of any punishment authorized by subsection (1), the High Court or the court-martial by which a soldier of the Regular Force is convicted of desertion may direct that the whole or any part of his service previous to the period in respect of which he is convicted of having been a deserter shall be forfeited.

[Ch2105s41]41. Absence without leave

Any person subject to this Act who-

(a) absents himself without leave; or

(b) persuades or procures any other person subject to this Act to absent himself without leave,

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

[Ch2105s42]42. Assisting and concealing desertion and absence without leave

Any person subject to this Act who-

(a) knowingly assists any other person subject to this Act to desert or absent himself without leave;

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

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

[Ch2105s43]43. Falsely obtaining or prolonging leave

Any person subject to this Act who, for the purpose of obtaining leave or prolonging his leave, knowingly makes any false statement, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch2105s44]44. Failure to perform military duties

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

Malingering and Drunkenness (ss 45-46)

[Ch2105s45]45. Malingering

(1)

Any person subject to this Act who-

(a) falsely pretends to be suffering from sickness or disability;

(b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent;

(c) injures another person subject to this Act, at the instance of that person, with intent thereby to render that person unfit for service; or

(d) with intent to render or keep himself unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

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

(2)

In this section the expression "unfit" includes temporarily unfit.

[Ch2105s46]46. Drunkenness

(1)

Any person subject to this Act who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act:

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

(2)

For the purposes of subsection (1) a person is guilty of drunkenness if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in any manner likely to bring discredit on the Defence Force.

Offences relating to Property (ss 47-49)

[Ch2105s47]47. Offences relating to public and service property

(1)

Any person subject to this Act who-

(a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at stealing or fraudulent misapplication of any public or service property;

(b) receives any public or service property knowing it to have been stolen or to have been fraudulently misapplied;

(c) wilfully damages, or is concerned in the wilful damage of, any public or service property; or

(d) by wilful neglect causes damage by fire to any public or service property,

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

(2)

Any person subject to this Act who, during a state of war, wilfully and without proper occasion or negligently causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any public or service property shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act:

Provided

that if he has not acted wilfully or with wilful neglect he shall not be liable to imprisonment for a term exceeding two years.

[Ch2105s48]48. Offences in relation to property of members of Forces

Any

person subject to this Act who-

(a) steals or fraudulently misapplies any property belonging to another person subject to this Act, or is concerned in or connives at the stealing or fraudulent misapplication of any such property;

(b) receives any such property knowing it to have been stolen or to have been fraudulently misapplied; or

(c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to this Act,

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

[Ch2105s49]49. Miscellaneous offences relating to property

Any

person subject to this Act who-

(a) loses, or by negligence damages, any public or service property of which he has the charge or which has been entrusted to his care or which forms part of property of which he has the charge or which has been entrusted to his care;

(b) is guilty of any act or neglect likely to cause damage or loss of any public or service property;

(c) by negligence causes damage by fire to any public or service property;

(d) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes;

(e) fails to take proper care of any animal or bird used in the public service which is in his charge; or

(f) makes away (whether by pawning, selling, destruction or in any other way) with any service decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for military purposes,

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

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

Offences relating to Billeting (s 50)

[Ch2105s50]50. Billeting offences

Any person subject to this Act who-

(a) knowing that no billeting requisition is in force under any written law 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;

(b) take 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 billeting requisition under any written law, any money or thing as consideration for not requiring, or ceasing to require, the accommodation for himself or the said other person or standing room for the vehicle; or

(c) commits any offence against the personal property of the occupier of premises in which he is billeted in pursuance of a billeting requisition under any written law or of any other person being in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property,

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

Offences relating to, and by, Persons in Custody (ss 51-54)

[Ch2105s51]51. Irregular arrest and confinement

(1) Any person subject to this Act who, when another person subject thereto is under arrest-

(a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his commanding officer or the Commander or, as the case may be, tried by court-martial or by the High Court; or

(b) fails to release, or effect the release of, that other person when it is his duty to do so,

shall be guilty of an offence.

(2) Any person subject to this Act who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer

or other officer, or any warrant officer, or non-commissioned officer, fails without reasonable cause to deliver-

(a) at the time of the committal; or

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

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

(3)

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

(a) a written statement containing so far as known to him the prisoner's name and the alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; and

(b) if he has received it, the report required by subsection (2), he shall be guilty of an offence.

(4)

Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch2105s52]52. Permitting escape, and unlawful release, of prisoners

(1)

Any person subject to this Act who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall, on conviction by court-martial or by the High Court, be liable to imprisonment or any less punishment provided by this Act.

(2)

Any person subject to this Act 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, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch2105s53]53. Resistance to arrest

(1)

Any person subject to this Act who, being concerned in any quarrel or disorder, refuses to obey the lawful order of any person senior in rank who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such person, shall be guilty of an offence, whether or not the person is his superior officer.

(2)

Any person subject to this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to this Act or not, whose duty it is to apprehend him or in whose custody he is, shall be guilty of an

offence.

(3)

Any person guilty of an offence against this section shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

[Ch2105s54]54. Escape from confinement

Any

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

Offences in relation to Courts-martial (ss 55-56)

[Ch2105s55]55. Offences in relation to courts-martial

(1)

Any person subject to this Act who-

(a) having been duly summoned or ordered to attend as a witness before a court-martial fails to comply with the summons or order;

(b) refuses to swear an oath when duly required by a court-martial to do so;

(c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce;

(d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer;

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person while that person is going to or returning from the proceedings of the court; or

(f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

shall, on conviction by court-martial, other than the court in relation to which the offence was committed, or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2)

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

[Ch2105s56]56. False evidence and contradictory statements

(1)

Any person subject to this Act who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a

statement material in those proceedings which he knows to be false or does not believe to be true shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2) A

person shall not be liable to be convicted of an offence against subsection (1) solely on the evidence of one witness as to the falsity of any statement alleged to be false.

(3)

Any person subject to this Act who, having been lawfully sworn as a witness or interpreter in proceedings before a court-martial or before any board or person having power by virtue of this Act to administer oaths, makes a statement of some fact relevant in the proceedings contradicting in a material detail a previous statement made by him on oath before the same court, board or person or any other court, board or person, such witness or interpreter, if either of such statements was made with intent to deceive, shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(4)

Upon the trial of any person for an offence under subsection (3), it shall not be necessary to prove the falsity of either of the contradictory statements, but, upon proof that both the statements were made by him, a court-martial or the High Court, as the case may be, if satisfied that the statements or either of them were or was made with intent to deceive, shall convict such person.

(5)

At the trial of any person for an offence under subsection (3) the record of any court, board or person containing any statement made on oath by the person charged shall be prima facie evidence of such statement.

(6)

For the avoidance of doubt, it is hereby declared that a person shall be liable to be convicted of an offence under subsection (3) notwithstanding that any statement made by him before any court, board or person was made in reply to a question which he was bound by law to answer, and any such statement shall be admissible in any proceedings under subsection (3).

Miscellaneous Offences (ss 57-65)

[Ch2105s57]57. Injurious disclosures

(1)

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

(2)

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

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

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

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

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

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

(f) any munitions of war.

[Ch2105s58]58. Making of false statement on enlistment

Any

person who, when before a recruiting officer for the purpose of being attested in pursuance of Part VI, has knowingly made a false answer to any question contained in the attestation paper and put to him by the direction of the recruiting officer shall, if he has since become and remains subject to this Act, be liable, on conviction by court-martial or by the High Court, to imprisonment for three months or to any less punishment provided by this Act.

[Ch2105s59]59. Making of false documents

Any

person subject to this Act who-

(a) makes, signs or makes an entry in any service report, return, payroll or certificate or other service document, being a document or entry which is to his knowledge false in a material particular;

(b) alters any service report, return, payroll or certificate or other service document, or alters any entry in such document, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce;

(c) with intent to defraud, fails to make an entry in any such document;

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

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

[Ch2105s60]60. Scandalous conduct of an officer

Every

officer subject to this Act who behaves in a scandalous manner, unbecoming the character of an officer, shall, on conviction by court-martial or by the High Court, be cashiered.

[Ch2105s61]61. Ill-treatment of officers or men of inferior rank

If-

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

(b) any warrant officer or non-commissioned officer subject to this Act strikes or otherwise ill-treats any person also

subject thereto, being a warrant officer or non-commissioned officer of inferior rank or less seniority, or a private soldier,

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

[Ch2105s62]62. Disgraceful and discreditable conduct

(1)

Any person subject to this Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

(2)

Any person subject to this Act who-

(a) acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Defence Force;

(b) lends money to any person senior to him in rank or borrows money from or accepts any present from any person junior to him in rank;

(c) incurs debt in or out of the Defence Force without any reasonable prospect or intention of paying the same or, having incurred any debt, makes no reasonable effort to pay the same; or

(d) if called upon by the Commander to furnish a full and true statement of his financial affairs, fails to do so,

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

[Ch2105s63]63. False accusation, etc.

Any person subject to this Act who-

(a) makes an accusation against any officer or soldier also subject thereto, which he knows to be false or does not believe to be true;

(b) in making a complaint in which he thinks himself wronged, makes a statement affecting the character of an officer or soldier also subject thereto, which he knows to be false or does not believe to be true, or wilfully suppresses any material facts,

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

[Ch2105s64]64. Attempts to commit military offences

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

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

[Ch2105s65]65. Conduct to the prejudice of military discipline

Any person subject to this Act who is guilty of any act, conduct or neglect to the prejudice of good order and military discipline shall, on conviction by court-martial or by the High Court, be liable to imprisonment for two years or any less punishment provided by this Act.

Civil Offences (s 66)

[Ch2105s66]66. Civil offences

(1)

Any person subject to this Act who commits a civil offence, whether in Botswana or elsewhere, shall be guilty of an offence against this section.

(2)

In this Act the expression "civil offence" means any act or omission punishable by the law of Botswana or which, if committed in Botswana, would be punishable by that law; and the expression "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.

(3) A

person convicted by court-martial or by the High Court of an offence against this section shall-

(a) if the corresponding civil offence is treason or murder, be liable to suffer death;

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

Provided

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

(4) A

person shall not be charged with an offence against this section committed in Botswana if the corresponding civil offence is treason, murder, manslaughter or rape.

(5)

Where the corresponding civil offence is murder or manslaughter, an offence against this section shall be deemed for the purposes of subsection (4) to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of death.

Punishments (ss 67-69)

[Ch2105s67]67. Punishment of officers

(1)

The punishments which may be awarded under this Act to an officer by sentence of a court-martial or by the High Court are those set out in the scale in subsection (2), and in relation to an officer references in this Act to punishments provided by this Act are references to those punishments.

(2)

The scale referred to in subsection (1) is-

(a) death;

(b) imprisonment;

(c) cashiering;

(d) dismissal from the Defence Force;

(e) reduction in rank, except that an officer appointed directly from cadet training shall not be reduced to a rank below that of second lieutenant;

(f) forfeiture in the prescribed manner of seniority of rank;

(g) fine of a sum not exceeding the equivalent of 90 days' pay;

(h) severe reprimand or reprimand;

(i) where the offence has occasioned any expense, loss or damage, stoppages.

(3)

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

(4)

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

(5)

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

(6) A

severe reprimand or reprimand may be awarded by a court-martial or by the High Court in addition to forfeiture of seniority of rank or a fine.

(7)

Where an officer is sentenced by a court-martial or by the High Court to imprisonment he shall also be sentenced to be cashiered:

Provided

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

[Ch2105s68]68. Punishment of soldiers

(1)

The punishments which may be awarded to a soldier by a sentence of a court-martial under this Act are those set out in the scale in subsection (2); and in relation to a soldier references in this Act to punishments provided by this Act are references to those punishments.

(2)

The scale referred to in subsection (1) is-

(a) death;

(b) imprisonment;

(c) discharge with ignominy from the Defence Force;

(d) in the case of a warrant officer, dismissal from the Defence Force;

(e) detention for a term not exceeding two years;

(f) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding 90 days;

(g) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;

(h) in the case of a warrant officer or non-commissioned officer, forfeiture in the prescribed manner of seniority of rank;

(i) where the offence is desertion, forfeiture of service;

(j) fine of a sum not exceeding the equivalent of 90 days' pay;

(k) severe reprimand or reprimand;

(l) where the offence has occasioned any expense, loss or damage, stoppages.

(3)

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

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.

(4)

Except as expressly provided in this Act, not more than one punishment shall be awarded by a court-martial for any one offence.

(5) A

soldier sentenced by a court-martial to imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from the Defence Force, and a warrant officer sentenced by a court-martial to imprisonment may, in addition thereto, be sentenced to dismissal from the Defence Force.

(6)

Where a warrant officer or 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 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.

(7)

In the case of a warrant officer or non-commissioned officer, a severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or a fine.

(8)

Where an offender is on active service when sentence of a court-martial is announced, a fine may be awarded in addition to field punishment.

(9)

Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(10)

Where an offender has been sentenced by a court-martial to detention, then, if he is subsequently sentenced by a court-martial to imprisonment, any part of the sentence of detention which has not been served shall thereupon be remitted by virtue of this subsection.

(11)

Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

[Ch2105s69]69. Field punishment

Field punishment 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 such loss of privileges as may be provided by or under regulations to be made by the President and may include confinement in such place or manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

Arrest (ss 70-71)

[Ch2105s70]70. Power to arrest offenders

(1)

Any person subject to this Act found committing an offence against any provision of this Act or reasonably suspected of having committed any such offence may be arrested in accordance with the following provisions of this section.

(2)

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

(3) A

soldier may be arrested by any officer, warrant officer or non-commissioned officer:

Provided

that a person shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A

provost officer, or any officer, warrant officer or non-commissioned officer lawfully exercising authority under a provost officer or on his behalf, may arrest any officer or soldier:

Provided

that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5)

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

[Ch2105s71]71. Provisions for avoiding delay after arrest

(1)

The allegations against any person subject to this Act who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be either proceedings shall be taken against him or he shall be released from

arrest.

(2)

Wherever any person subject to this Act, having been taken into military custody, remains under arrest for a longer period than 14 days without either a court-martial for his trial being assembled or the date for trial by the High Court having been fixed, a special report on the necessity for further delay shall be made by his commanding officer to the Commander and the Attorney-General in the prescribed manner, and a similar report shall be made to the like authorities and in the like manner every 14 days until either a court-martial is assembled or the trial by the High Court is commenced or the offence is dealt with summarily or he is released from arrest:

Provided

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

Investigations of, and Summary Dealing with, Charges (ss 72-78)

[Ch2105s72]72. Investigation of charges by commanding officer

Before

an allegation against a person subject to this Act (hereinafter referred to as "the accused") that he has committed an offence against any provision of this Part is further proceeded with, the allegation shall be reported, in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

[Ch2105s73]73. Charges to be dealt with summarily or by court-martial

(1)

After investigation, a charge against an officer below the rank of 8 of 1997, s. 2. Brigadier or against a warrant officer may be dealt with summarily by the Commander in accordance with this Part.

(2)

After investigation, a charge against a non-commissioned officer or private soldier may be dealt with summarily by his commanding officer, subject to, and in accordance with, the following provisions of this Part.

(3)

Any charge not dealt with summarily shall, after investigation-

8 of 1997, s. 2. (a) in the case of an officer of the rank of Brigadier and above, be remanded for trial by the High Court;

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

(4)

Notwithstanding anything in the foregoing provisions of this section, where-

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

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

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

(5)

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

(6) A

remand for trial by the High Court referred to in subsection (3)(a) shall be deemed to constitute a committal by a magistrate for trial to the High Court for the purposes of section 82 of the Cap. 08:02 Criminal Procedure and Evidence Act.

[Ch2105s74]74. Further proceedings on charges against n.c.o.'s and soldiers

(1)

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

(2)

If-

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

(b) the charge is one which can be dealt with summarily but the commanding officer is of the opinion that it should not be so dealt with,

he shall take the prescribed steps with a view to the charge being tried by court-martial.

(3)

Otherwise, the commanding officer shall proceed to deal with the charge summarily; and if he records a finding of guilty he may award one or more of the following punishments-

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

8 of 1997, s. 2. (i) detention for a period not exceeding 45 days, or, if the accused is on active service, field punishment for a period not exceeding 45 days,

8 of 1997, s. 2. (ii) a fine of a sum not exceeding the equivalent of 45 days pay,

8 of 1997, s. 2. (iii) severe reprimand or reprimand,

8 of 1997, s. 2. (iv) where the offence has occasioned any expense, loss or damage, stoppages,

8 of 1997, s. 2. (v) admonition;

(b) if the accused is a private soldier-

S.I. 57/2006, s. 2. (i) detention for a period not exceeding 45 days, or, if the accused is on active service, field punishment for a period not exceeding 45 days;

(ii) a fine of a sum not exceeding the equivalent of 45 days' pay;

(iii) severe reprimand or reprimand;

(iv) where the offence has occasioned any expense, loss or damage, stoppages;

(v) confinement to barracks for a period not exceeding 14 days;

(vi) extra guards or pickets;

(vii) admonition.

(4)

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

(5)

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

Provided

that any order reducing the accused in rank or to forfeiture of seniority shall not take effect until the finding and order have been confirmed by the Commander.

(6)

No fine or severe reprimand or reprimand, confinement to barracks, extra guards or pickets, or admonition shall be awarded for an offence for which detention is awarded.

(7) A

fine shall not be awarded for an offence for which stoppages have been awarded.

4 of 2005, s. 2. (8)

.....

4 of 2005, s. 2. (9)

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

[Ch2105s75]75. Further proceedings on charges against officers and warrant officers

(1)

After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to the Commander, who shall determine how the charge is to be proceeded with in accordance with the two next subsections following.

(2)

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

(3)

If the charge is not one which can be dealt with summarily or the charge is one which can be dealt with summarily but the Commander is of the opinion that it should not be so dealt with, the prescribed steps shall be taken with a view to its being tried-

(a) by the High Court in the case of officers of the rank of 8 of 1997, s. 2. Brigadier and above; or

(b) by court-martial in any other case.

(4) Where the charge is dealt with summarily by the appropriate superior authority nominated by the Commander, he shall investigate the charge in the prescribed manner and determine whether or not the accused is guilty of the charge, and accordingly dismiss the charge or record a finding of guilty:

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

(5) If the appropriate superior authority nominated by the Commander records a finding of guilty, he may award one or more of the following punishments-

(a) dismissal from the Defence Force;

(b) reduction in rank to a rank lower than his substantive rank, in both cases to take effect only upon confirmation by the relevant authority referred to in section 102;

(c) forfeiture in the prescribed manner of seniority of rank;

(d) a fine of a sum not exceeding the equivalent of 8 of 1997, s. 2. 45 days' pay;

(f) where the offence has occasioned any expense, loss or damage, stoppages,

except that he may not award both reduction in rank or forfeiture of seniority and a fine.

4 of 2005, s. 3. (6) Notwithstanding the provisions of subsection (4), where the appropriate superior authority nominated by the Commander has determined that the accused is guilty and if the charge is dealt with summarily will award dismissal from the Defence Force, the appropriate superior authority nominated by the Commander shall not record a finding until after affording the accused an opportunity of electing to be tried by court-martial, and, if the accused so elects, the appropriate superior authority nominated by the Commander shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

[Ch2105s76]76. Dismissal of charges referred to Commander

(1) Notwithstanding sections 74 and 75, where a charge-

(a) has been referred to the Commander with a view to its being tried by court-martial; or

(b) has been referred to the Commander for determination of how it is to be proceeded with,

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

such case the commanding officer shall dismiss the charge.

(2)

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

[Ch2105s77]77. Power of commanding officers to delegate powers

Regulations

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

[Ch2105s78]78. Limitation of powers of summary dealing with charges

(1)

The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by the Commander, shall be such as may be specified by regulations made by the President.

(2)

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

Court-martial: General Provisions (ss 79-83)

[Ch2105s79]79. Trial by, and powers of, court-martial

Subject

to this Act, a court-martial under this Act shall have power to try any person subject to this Act for any offence which under this Act is triable by court-martial and to award for any such offence any punishment authorized by this Act for that offence.

[Ch2105s80]80. Officers having power to convene court-martial

(1) A

court-martial may be convened by the Commander or by any officer not below field rank authorized by the Commander to convene courts-martial.

(2)

Any authorization under subsection (1) to convene courts-martial-

(a) may be made subject to restrictions, reservations, exceptions or conditions;

(b) may be addressed to officers by name or by designation of their offices, and may be issued or given to a named or designated officer, to a named or designated officer and to the person for the time being performing the duties of his office, to a named or designated officer and his successors in that office or to a named or designated officer and such person and successors; and

(c) may be varied or may be revoked either wholly or in part by the officer by whom it is given or his successor in office.

[Ch2105s81]81. Constitution of court-martial

(1) A

court-martial shall consist of the presiding officer and not less than two other officers as members:

Provided that a court-martial shall consist of the presiding officer and not less than four other officers as members if the only punishment or the maximum punishment which can be awarded in respect of the charge before the court is death.

(2)

An officer shall not be appointed to be the presiding officer or a member of a court-martial unless he belongs to the Defence Force and has been an officer in the Defence Force for a period of not less than two years or for periods amounting in the aggregate to not less than two years.

(3)

Not less than two of the members of a court-martial shall be of a rank lower than that of captain.

(4)

The presiding officer of a court-martial shall be appointed by order of the convening officer and shall not be under field rank unless in the opinion of the convening officer an officer of field rank having suitable qualifications is not, with due regard to the exigencies of the service, available; and in any event the presiding officer of a court-martial shall not be under the rank of captain.

(5)

The members of a court-martial shall be appointed by order of the convening officer or in such other manner as may be prescribed.

[Ch2105s82]82. Supplementary provisions as to constitution of courts-martial

(1)

The officer who convenes a court-martial shall not be a member of that court-martial.

(2)

An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who has held, or has acted as one of the persons holding, an enquiry into matters relating to the subject matter of the charge against the accused, shall not be presiding officer or sit as a member of the court-martial or act as judge advocate at such a court-martial.

(3)

Where the officer convening a court-martial appoints a captain to be presiding officer, being of the opinion that a field officer having suitable qualifications is not, with due regard to the exigencies of the service, available, the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

[Ch2105s83]83. Place of sitting of courts-martial and adjournment to other places

(1)

Subject to this section, a court-martial shall sit at such place (whether within or without Botswana) as may be specified in the order convening the court.

(2) A

court-martial sitting at any place shall, if the convening officer directs it to sit at some other place, and may without any such direction if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Court-martial: Provisions relating to Trials (ss 84-94)

[Ch2105s84]84. Challenges by accused

(1)

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

(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, and he shall be asked whether or not he objects to any of those officers.

(3)

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

(4)

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

(5)

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

[Ch2105s85]85. Administration of oaths

(1)

An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter.

(2)

Every witness before a court-martial shall be examined on oath:

Provided

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

(3)

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

[Ch2105s86]86. Court-martial to sit in open court

(1)

Subject to this section, a court-martial shall sit in open court and in the presence of the accused.

(2)

Nothing in subsection (1) shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interests of the

administration of justice to do so; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(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)

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

[Ch2105s87]87. Dissolution of court-martial

(1)

Where, whether before or after the commencement of the trial, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court-martial should be dissolved, the convening officer may by order dissolve the court-martial.

(2)

Without prejudice to the generality of subsection (1), if after the commencement of the trial the number of the members of a court-martial is for any reason reduced to below the legal minimum, it shall be dissolved.

(3)

If after the commencement of the trial the presiding officer is unable to attend and the court is not reduced below the legal minimum, then, if the senior member of the court is of the rank of captain or is of higher rank, the convening officer may appoint him presiding officer and the trial shall proceed accordingly; but if he is not, the court shall be dissolved.

(4)

Without prejudice to the generality of subsection (1), if after the commencement of the trial it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

(5)

Where a court-martial is dissolved under the foregoing provisions, the accused may be tried by another court-martial.

[Ch2105s88]88. Decisions of court-martial

(1)

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

(2)

In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) A

finding of guilty where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all the members of the court, and where on such a finding being come to by the majority

of the members there is no such concurrence, the court shall be dissolved and the accused may be tried by another court.

(4) Where

the accused is found guilty and the court has power to sentence him either to death or to some less punishment, sentence of death shall not be passed without the concurrence of all the 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 presiding officer shall have a second or casting vote.

[Ch2105s89]89. Finding and sentence

(1)

Without prejudice to section 86, the finding of a court-martial on each charge shall be announced in open court.

(2)

Any finding of guilty shall be, and be announced as being, subject to confirmation.

(3)

Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court and a sentence of a court-martial shall be, and be announced as being, subject to confirmation.

[Ch2105s90]90. Power to convict of an offence other than that charged

(1)

An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.

(2)

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

(3)

An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed that offence.

(4)

Where an accused is charged before a court-martial under section 66 in respect of attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5)

Where an accused is charged before a court-martial with an offence against section 66 and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Botswana, he might have been found guilty of another civil offence, then, if the court finds that he has committed that other civil offence, he may be convicted of an offence against section 66 in respect of the commission of that other civil offence.

(6)

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

[Ch2105s91]91. Rules of evidence

(1)

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

(2)

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

Provided

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

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

(ii) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been served on the commanding officer of the accused, or the commanding officer of the accused has given his agreement in writing to its admission,

(iii) in any case, if, not later than three days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the commanding officer of the accused serves a notice in the prescribed form on the commanding officer or accused requiring that oral evidence shall be given in lieu of the declaration,

(iv) in any case, if the court-martial is of the opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

(3) 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 of which judicial notice would be taken in a civil court in Botswana.

[Ch2105s92]92. Privilege of witnesses

A witness

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

[Ch2105s93]93. Offences by civilians in relation to court-martial

Where

in Botswana any person not subject to this Act-

(a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons;

(b) refuses to swear an oath when duly required by a court-martial to do so;

(c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to

produce;

(d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer;

(e) wilfully insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court;

(f) wilfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court; or

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

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

[Ch2105s94]94. Affirmations

(1)
If-

(a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to be sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or

(b) it is not reasonably practicable to administer an oath to such a person in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

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

Confirmation, Revision and Review of Proceedings of Court-martial (ss 95-101)

[Ch2105s95]95. Confirmation of proceedings of court-martial

(1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to the Commander for confirmation of the finding and sentence of the court on that charge.

(2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody

pending confirmation or the operation of sections 96 and 97 or the provisions of this Act as to confirmation or approval.

[Ch2105s96]96. Petition against finding or sentence

At any time after a court-martial has sentenced the accused, but not later than the prescribed time after confirmation is completed, the accused may in the prescribed manner present a petition against the finding or sentence or both.

[Ch2105s97]97. Revision of findings of court-martial

(1)

The Commander may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him-

(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 such direction shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reasons for the direction.

(3)

On any revision of a finding the court shall reconsider the finding, and (unless the court 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 in lieu of the finding under revision.

(4)

On any such revision the court shall not have power to receive further evidence.

(5)

Where on any such revision 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 of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

(6)

The Commander shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the Commander, or the revision of the original finding if adhered to by the court on such a previous direction; but except as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to its deliberations on the original finding or sentence, and any substituted finding or sentence shall be treated for all purposes as an original finding or sentence of the court:

Provided

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

[Ch2105s98]98. Powers of Commander on confirmation

(1)

Subject to section 97 and to the following provisions of this section, the

Commander shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of the opinion that the finding of the court is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice, or by confirming the finding or sentence or referring the finding or sentence, or both, for confirmation to the President.

(2)

In lieu of withholding confirmation of the finding of a court-martial, the Commander may, if-

(a) some other finding of guilty could have been validly made by the court-martial on the charge before it; and

(b) he is of opinion that the court-martial must have been satisfied of the facts necessary to 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 (4) should be exercised.

(3)

Where it appears to the Commander that a sentence of a court-martial is invalid, he may, in lieu of withholding confirmation of the sentence, substitute therefor a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

(4)

In confirming the sentence of a court-martial, the Commander may-

(a) remit in whole or in part any punishment awarded by the court; or

(b) commute any such punishment for one or more punishment or punishments provided by this Act, being less than the punishment commuted.

(5)

In confirming any sentence, the Commander may postpone the carrying out of the sentence for such time as seems expedient, and the Commander may extend or terminate any postponement ordered under this subsection.

(6) A

finding or sentence substituted by the Commander, or any sentence having effect after the Commander has remitted or commuted punishment, shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(7)

The confirmation of a finding or sentence shall not be deemed to be completed until the finding or sentence has been promulgated; and, in the event of any such substitution, remission or commutation, the finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(8)

Where the Commander determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

[Ch2105s99]99. Approval of death sentence

A

sentence of death shall not be carried into effect unless it has been approved by the President.

[Ch2105s100]100. Review of finding and sentence of

court-martial

(1) A

finding or sentence which has been confirmed may at any time be reviewed by the President and if, after confirmation of a finding or sentence, a petition is duly presented under section 96 against the finding or sentence, then, subject to this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

(2)

If an application for leave to appeal is received by the Registrar of the High Court under Part VIII, so much of subsection (1) as requires the review of a finding or sentence against which a petition has been presented shall thereupon cease to apply to the finding to which the application for leave to appeal relates and the sentence passed in consequence of that finding.

(3)

On a review under this section the President may-

(a) insofar as the review is of a finding, quash the finding, and, if the sentence relates only to the finding quashed, the sentence;

(b) insofar as the review is of a sentence, quash the sentence; or

(c) in any case, exercise the like powers of substituting findings, substituting valid for invalid sentences and remitting or commuting a punishment as are conferred on the Commander by section 98(2), (3) and (4),

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

(4)

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

[Ch2105s101]101. Reconsideration of sentences of imprisonment and detention

(1)

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

(2)

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

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

Review of Summary Findings and Awards (s 102)

[Ch2105s102]102. Review of summary findings and awards

(1)

Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding

or award.

(2)

The said authority is-

(a) the Commander; or

(b) any officer appointed by the Commander for the purposes of this section, who shall be superior in command to the officer who dealt summarily with the charge.

(3)

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

(4)

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

(5)

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

(6)

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

Findings of Insanity (s 103)

[Ch2105s103]103. Provisions where accused found insane

(1)

Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions the accused shall be kept in custody in such manner as the Commander may determine until the directions of the President are known or until any earlier time at which the accused is fit to stand his trial.

(2)

Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as the

Commander may determine until the directions of the President are known.

(3)

In the case of any such findings, the President may give orders for the safe custody of the accused during his pleasure in such place and in such manner as the President thinks fit.

(4) A

finding under subsection (1) shall not have effect unless the finding has been confirmed by the Commander and has been promulgated.

(5)

Where the court or the Commander comes to or substitutes a finding of guilty but insane the Commander or, as the case may be, the President shall not have power to substitute for that finding a finding of guilty, but except that the provisions of this Act as to revision, confirmation and review (and in particular the provisions of this Act which confer power to substitute for any finding any other finding which could have been come to by the court-martial in question) shall apply in relation to such findings as are provided for by subsection (2) as those provisions apply in relation to other findings of guilty.

Commencement, Suspension and Duration of Sentences (ss 104-111)

[Ch2105s104]104. Commencement of sentences

(1) A

military sentence of imprisonment or detention or of field punishment shall begin to run from the beginning of the day on which sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally awarded by his commanding officer.

(2) A

sentence of imprisonment or detention passed by a court-martial on a soldier which is suspended in pursuance of section 106 before he has been committed to prison or a military establishment shall not begin to run until the beginning of the day on which the suspension is determined:

Provided

that where the sentence is suspended by the Commander and the President determines the suspension, the President may direct that the sentence shall run from such earlier date, not earlier than the day on which sentence was originally pronounced by the court-martial, as the President may specify.

[Ch2105s105]105. Duration of sentences of imprisonment and detention

(1)

Where a soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of section 106 after he has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with the provisions of the said section 106 until the beginning of the day on which the suspension is determined.

(2)

Where any person serving a military sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day on which he became at large and ending with the day on which, as a person having become unlawfully at large, he is taken into military custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned or detained before he became unlawfully at large:

Provided that if he satisfies such authority as may be specified in that behalf by or under the Imprisonment and Detention Regulations made by the President that during any time during the last-mentioned period he was in the custody of a civil authority, otherwise than on account of an offence committed by him while unlawfully at large, the last-mentioned time shall not be disregarded in calculating the period for which he is liable to be imprisoned or detained in pursuance of the military sentence.

(3)

In subsection (2) the expression "civil authority" means a civil authority authorized by law to detain persons, and includes a police officer.

(4)

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

(5) A

person who for any period is released as mentioned in subsection (4) or who is otherwise allowed, in pursuance of the Imprisonment and Detention Regulations, out of any military establishment or otherwise out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (2) as being unlawfully at large.

(6) A

person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(7)

References in subsection (6) to release or recall under civil law are references to release or recall under the Cap. 21:03 Prisons Act.

[Ch2105s106]106. Suspension of sentences

(1)

The following provisions of this section shall have effect with regard to the suspension of a sentence of imprisonment or detention passed by a court-martial on a soldier.

(2)

Without prejudice to section 98(5), in confirming such a sentence the Commander may order that the sentence shall be suspended.

(3)

Any such sentence which is not for the time being suspended may, on the review or reconsideration of the sentence, be suspended by order of the Commander or the President, as the case may be.

(4)

The suspension of any such sentence may (without prejudice to its being suspended again) be determined on the review or reconsideration of the sentence by an order of the Commander or the President, as the case may be, committing the person sentenced to imprisonment or detention, as the case may be.

(5)

Where, while any such sentence is suspended, the person sentenced is sentenced

by court-martial to imprisonment or detention for a fresh offence, then (unless the balance of the earlier sentence is remitted by virtue of section 68(10))-

(a) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention, as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively;

(b) if the court does not exercise the powers conferred by paragraph (a), the Commander may exercise those powers on the confirmation of the later sentence;

(c) if neither the court nor the Commander exercises the said powers, the President may exercise those powers on the review of the later sentence;

(d) where the said powers are exercised (whether by the court, the Commander or the President), any power of suspension or remission exercisable in relation to the later sentence shall be exercisable also in relation to the earlier sentence:

Provided that this subsection has effect subject to section 68(11).

(6) Without prejudice to the further suspension of the earlier sentence, an order under subsection (5) directing that the suspension of that sentence shall be determined shall not be affected by the later sentence not being confirmed or by its being quashed.

(7) Where the sentence of a person in custody is suspended, he shall thereupon be released.

(8) The maximum intervals for the reconsideration, under section 101(2), of a sentence of imprisonment or detention which is suspended shall be three months, and not as specified under that subsection.

[Ch2105s107]107. Restriction on serving of sentences of detention in prisons

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

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

[Ch2105s108]108. Special provisions as to civil prisons in Botswana

A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under section 128 or of the Imprisonment and Detention Regulations shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

[Ch2105s109]109. Special provisions as to carrying out or serving sentences outside Botswana

The

President may from time to time make arrangements with the authorities of any country or territory outside Botswana whereby sentences of death passed by courts-martial in such countries may in accordance with regulations made under this Part be carried out in establishments under the control of those authorities, and military sentences of imprisonment or detention passed in such countries may in accordance with the Imprisonment and Detention Regulations be served wholly or partly in such establishments.

[Ch2105s110]110. Country in which sentence of imprisonment or detention to be served

(1) A

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

(2)

Subject to the following provisions, a person sentenced under this Act by a court-martial held out of Botswana to imprisonment or detention for more than 12 months shall as soon as practicable after the confirmation of the sentence is completed be removed to Botswana.

(3)

Where a person has been sentenced under this Act by a court-martial held out of Botswana to imprisonment or detention for more than 12 months, the Commander or the President may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to Botswana until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection the Commander or the President shall have regard to any recommendation in that behalf made by the court-martial.

(4)

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

(5)

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

(6)

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

[Ch2105s111]111. Duties of officers in charge of prisons and others to receive prisoners

(1)

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

(2)

Where a person is in military custody in pursuance of a military sentence of imprisonment or detention, then, on receipt of a written order in that behalf purporting to be signed by that person's commanding officer, it shall be the

duty of any such superintendent or other person as aforesaid or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

Trial of Persons ceasing to be subject to this Act and Time Limits for Trials (ss 112-113)

[Ch2105s112]112. Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto

(1)

Subject to section 113, where an offence under this Act triable by court-martial has been committed, or is reasonably suspected of having been committed by any person while subject to this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by court-martial (including confirmation, review, reconsideration and suspension) and execution of sentences as continuing subject to this Act notwithstanding his ceasing at any time to be subject thereto.

(2)

Where, while a person is in military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to this Act would be an offence under this Act triable by court-martial, then in relation to that offence or suspected offence he shall be treated, for the purposes of the provisions of this Act mentioned in subsection (1) and the provisions thereof as to the summary dealing with charges, as having been subject to this Act when the offence was committed or is suspected as having been committed and as continuing subject thereto thereafter.

(3)

Where by virtue of either subsection (1) or (2) a person is treated as being at any time subject to this Act for the purpose of any provision of this Act, that provision shall apply to him-

(a) if he holds any military rank, as to a person having that rank;

(b) otherwise as to a person having the rank which he had when last actually subject to this Act:

Provided

that as regards any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to a private soldier.

(4)

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

[Ch2105s113]113. Limitation of time for trial of offences under this Act

(1)

No person shall be tried by court-martial for any offence, other than one against section 34 or 35 or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent:

Provided
that-

(i) in the case of an offence against section 66 where proceedings for the corresponding civil offence must, by virtue of any law, be brought within a limited time, that limit of time shall apply to the trial of the offence under the said section 66 in substitution for the foregoing provisions of this subsection,

(ii) subject to any such limit of time as is mentioned in paragraph (i), a person may be tried by court-martial for a civil offence committed outside Botswana notwithstanding that it was committed more than three years before the beginning of the trial, if the 18 of 2006, s. 2. Director of Public Prosecutions consents to the trial.

(2)

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

(3) A

person shall not be triable by virtue of section 112(1) unless his trial is begun within three months after he ceases to be subject to this Act, or the trial is for a civil offence committed outside Botswana and the 18 of 2006, s. 2. Director of Public Prosecutions consents to the trial:

Provided

that this subsection shall not apply to an offence against section 34 or 35 or to desertion.

(4) A

person shall not be arrested or kept in custody by virtue of section 112(1) for an offence at any time after he has ceased to be triable for the offence.

Relations between Military and Civil Courts and Finality of Trials (ss 114-117)

[Ch2105s114]114. Powers of civil courts

(1)

Except as provided in section 133, nothing in this Act shall restrict the offences for which persons may be tried by any civil court or the jurisdiction of any civil court to try a person subject to this Act for any offence.

(2)

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

[Ch2105s115]115. Persons not to be tried under this Act for offences already disposed of

(1)

Where a person subject to this Act-

(a) has been tried for an offence by a competent civil court or a court-martial under this Act;

(b) has been charged with an offence under this Act, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the Commander;

(c) has had the offence condoned by his

commanding officer,

he shall not be liable in respect of that offence to be tried by court-martial or to have the case dealt with summarily by his commanding officer or the Commander.

(2)

For the purposes of this section-

(a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence;

(b) a person shall not be deemed to have had an offence taken into consideration by a court-martial in sentencing him if confirmation of the sentence of the court is withheld or the sentence is quashed;

(c) a case shall be deemed to have been dealt with summarily by the commanding officer or the Commander notwithstanding that the finding of that officer or the Commander has been quashed, or the award of that officer or the Commander quashed or varied, on the review thereof;

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

(e) a person ordered under section 55(2) to be imprisoned or to undergo detention for an offence against that section shall be deemed to have been tried by court-martial for the offence.

(3)

Where confirmation of a finding of guilty of an offence is withheld the accused shall not be tried again by court-martial for that offence unless the order convening the later court-martial is issued not later than 28 days after the promulgation of the decision to withhold confirmation.

(4)

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

[Ch2105s116]116. Resolution of conflicts of jurisdiction

(1)

The decision as to whether an offence shall be dealt with by the military authorities under this Act or by the civil authorities shall be determined by the Attorney-General in accordance with the following subsections.

(2)

The civil authorities shall exercise jurisdiction in respect of offences committed in Botswana where the offence is one of those referred to in section 66(4).

(3)

The civil authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Botswana not referred to in subsections (4) and (5).

(4)

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

(5)

The military authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Botswana-

(a) if the offence is against the property or security of the Defence Force;

(b) if the offence is against the property or person of a person subject to this Act;

(c) if the offence is against the property or person of a dependant of a person subject to this Act when such dependant is residing with such person; or

(d) the offence arises out of an act or omission in the course of official duty.

(6)

Notwithstanding the primary right of the military authorities to exercise jurisdiction in relation to any offence specified in subsections (4) and (5), the Commander may, if he considers that the military authorities have neither the facilities nor the personnel adequately to exercise jurisdiction over any such offence, refer it to the 18 of 2006, s. 2. Director of Public Prosecutions who may deal with it as he considers fit.

(7)

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

(8)

The 18 of 2006, s.

2. Director

of Public Prosecutions may delegate to the Commissioner of Police or any person, appointed by him under section 8 of the Cap. 08:02 Criminal Procedure and Evidence Act as a prosecutor before any court, the exercise of any function conferred on him under subsection (1).

[Ch2105s117]117. Criminal proceedings against member of Defence Force
12 of 1994, s. 2.

(1)

Where a person subject to this Act is under investigation, with a view to the institution of criminal proceedings against him, either before a civil court or a court martial, the Commander, or any officer so authorized by the Commander, may suspend such person from the performance of his duties pending the outcome of such investigation, or the outcome of the proceedings arising therefrom.

(2)

The person so suspended shall, during the period of such suspension, be paid such portion of his salary, being not less than one half thereof, as the Commander, or the officer so authorized by the Commander, determines.

(3)

If proceedings are not instituted against such person, or if at the end of proceedings the person is acquitted, his suspension shall be lifted and he shall be paid the whole of his emoluments which were withheld.

(4)

If an officer is convicted by a court martial and sentenced to a term of

imprisonment, any emoluments withheld under subsection (2) shall be forfeited.

(5)

If an officer is convicted by a civil court and sentenced to a term of imprisonment, he may be required by the Commander to resign from the Force with effect from the date of his conviction, or, in the event of an appeal against his conviction or sentence, with effect from the date of dismissal of such appeal, and any emoluments withheld under subsection (2) shall be forfeited.

(6)

If an officer is convicted by a civil court or by a court martial, and is awarded a sentence other than a sentence of imprisonment, or that he be cashiered or dismissed, the Commander may, if he does not require him to resign from the Force, authorize the payment to him of not less than one quarter of any emoluments withheld from him under subsection (2).

Enquiries (ss 118-119)

[Ch2105s118]118. Boards of enquiry

(1)

Subject to and in accordance with rules made under section 127 (hereinafter referred to as "Board of Enquiry Rules"), the Commander, or any officer empowered by or under such rules to do so, may convene a board of enquiry to investigate and report on the facts relating to-

(a) the absence of any person subject to this Act;

(b) the capture of any such person by the enemy;

(c) the death of any person where an enquiry into the death is not required to be held by any civil authority;

(d) any other matter of a class specified in such rules or referred to such a board by the Commander or any such officer as aforesaid,

and a board of enquiry shall, if directed to do so, express its opinion on any question arising out of any matters referred to the board.

(2) A

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

(3)

Evidence given before a board of enquiry shall not be admissible against any person in proceedings before a court-martial or a commanding officer, other than proceedings for an offence against section 56 or for an offence against section 66 where the corresponding civil offence is perjury.

[Ch2105s119]119. Enquiries into absence

(1)

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

(2) A

record entered in pursuance of subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of enquiry

is annulled by the Commander or a subsequent board of enquiry, have the like effect as a conviction by a court-martial for desertion.

Miscellaneous Provisions (ss 120-124)

[Ch2105s120]120. Restitution or compensation for theft, etc.

(1)

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

(2)

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

(3)

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

(4)

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

(5)

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

(6)

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

(7)

An order under this section may be made by the court-martial by which the offender is convicted, by the Commander or by the President, and in this section the expression "appearing" means appearing to the court, the Commander or the President, as the case may be.

(8)

An order under this section made by a court-martial shall not have effect until confirmed by the Commander; and the provisions of this Part as to the confirmation and review of the proceedings of courts-martial shall apply to an order under this section as they apply to a sentence.

(9)

The operation of any order under this section shall be suspended-

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

(b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned,

and where the operation of such an order as aforesaid is suspended under this section-

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

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

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

(10)

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

(11)

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

[Ch2105s121]121. Judge advocate

The appointment of a judge advocate to act at any court-martial may be made by the Commander or by the convening officer.

[Ch2105s122]122. Promulgation

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

[Ch2105s123]123. Custody of proceedings of courts-martial and right of accused to copy thereof

(1)

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

(2)

Subject to this section, any person tried by a court-martial shall be entitled to obtain from the Commander on demand at any time within the relevant period and on payment therefor of such payment as may be prescribed a copy of the record of the proceedings of the court.

(3)

Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Commander ought to be treated for the purposes of this subsection as his personal representative shall, subject to this section, be entitled to obtain from the Commander on demand at any time within a period of 12 months from the death and on payment therefor of such payment as may be prescribed a copy of the record of the proceedings of the court.

(4)

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

(5)

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

Provided

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

(6)

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

[Ch2105s124]124. Indemnity for prison officers, etc.

No

action shall lie in respect of anything done by any person in pursuance of a military sentence of imprisonment or detention if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

Rules of Procedure, etc. (ss 125-128)

[Ch2105s125]125. Rules of procedure

(1)

Subject to this section, the President may make rules (in this Act referred to as "Rules of Procedure") with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial and commanding officers, and with respect to the confirmation and revision of findings and sentences of courts-martial.

(2)

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

(a) the procedure to be observed in bringing charges before the Commander and commanding officers;

(b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether or not on oath and whether in full or in summary or abstract form) for the purpose of investigating or dealing summarily with such charges or

otherwise as a preliminary to the trial thereof by court-martial, so however that the Rules of Procedure shall make provision for the application of section 85 in any case where the accused requires that evidence shall be taken on oath;

(c) in addition to, or substitution for, a charge which has been investigated of a new charge for an offence disclosed by evidence taken on the investigation and the treating of the investigation as the investigation of the new charge;

(d) the convening and constitution of courts-martial;

(e) the sittings, adjournment and dissolution of courts-martial;

(f) the procedure to be observed in trials by courts-martial;

(g) the representation of the accused at such trials;

(h) procuring the attendance of witnesses before courts-martial and at the taking of evidence in pursuance of Rules of Procedure;

(i) applying in relation to proceedings before commanding officers and otherwise in relation to proceedings prior to trial by courts-martial all or any of the provisions of sections 91, 92, 93 and 94;

(j) empowering a court-martial or the convening officer, in such cases and to such extent as may be prescribed, to amend a charge which is being tried by the court;

(k) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged to make a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;

(l) the forms of orders and other documents to be made for the purposes of any provision of this Act or the Rules of Procedure.

(3)

Rules of Procedure shall secure that the power to amend charges referred to in subsection (2)(j) shall not be exercisable in circumstances substantially different from those in which charges or information are amendable by a civil court in Botswana, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which charges or information are so amendable, and shall not be exercisable by a court-martial (otherwise than for the purpose only of correcting a mistake in the name or description of the accused or a clerical error or omission) unless there is a judge advocate present at the trial.

(4)

Rules of Procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial, and without prejudice to the generality of this provision may make provision-

(a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law;

(b) for requiring or authorizing the presiding officer of a court-martial, in such cases as may be specified in the Rules, to direct that questions of law shall be determined by a judge advocate in the

absence of the presiding officer and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination such as the provisions of this Act relating to the court or its members and the proceedings thereof as may be specified in the Rules.

(5)

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

(6)

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

(7)

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

[Ch2105s126]126. Imprisonment and Detention Regulations

The

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

(a) the places in which and the establishments or forms of custody (whether military or not) in which persons may be required to serve the whole or any part of military sentences of imprisonment and detention passed on them under this Act;

(b) the committal of persons under military sentences of imprisonment or detention to the appropriate establishment or form of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;

(c) the provision, classification, regulation and management of military establishments;

(d) the classification, treatment, employment, discipline and control of persons serving military sentences of imprisonment or detention in military establishments or otherwise in military custody;

(e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence for good conduct and industry;

(f) the appointment, powers and duties of inspectors, visitors and superintendents, and of officers and other members of the staff of military establishments.

[Ch2105s127]127. Board of Enquiry Rules

(1)

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

(2)

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

(a) the rules of evidence to be observed by boards of enquiry and the taking of evidence before such boards, so however that the Rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with;

(b) without prejudice to the provisions of section 119, the making in service books or records of findings of boards of enquiry in such cases as may be provided by the Rules.

(3)

Board of Enquiry Rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of enquiry shall have an opportunity of being present, and represented, at the sittings of the board or such part thereof as may be specified by or under the Rules.

[Ch2105s128]128. Miscellaneous regulations

The President may make regulations with respect to all or any of the following matters-

(a) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out, and the custody, treatment and removal of persons under sentence of death;

(b) field punishment;

(c) any matter which by this Part is required or authorized to be prescribed or for which regulations may be made; and

(d) such incidental and supplementary matters as appear requisite for any of the purposes set out in sections 125, 126 and 127, and in this section.

Interpretation of Part VII (s 129)

[Ch2105s129]129. Interpretation of Part VII

In this Part-

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

"convening officer", in relation to a court-martial, means the officer convening that court-martial and includes his successor or any person for the time being exercising his or his successor's functions;

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

"military prison" means separate premises designated by the Commander for persons serving military sentences of imprisonment;

"prison" means a civil prison or a military prison;

"private soldier" means a soldier who is not a warrant officer or a non-commissioned officer.

(2)

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

(3)

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

(4)

References in this Part to warrant officers do not include references to acting warrant officers.

(5)

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