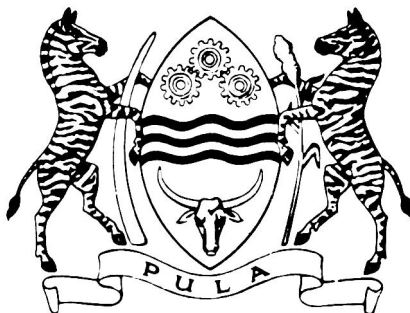




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The following Supplements are published with this issue of the Gazette —

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Bill No. 17 of 1977

BOTSWANA DEFENCE FORCE BILL, 1977

(Published on 23rd March, 1977)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. The object of the Bill is to establish the Botswana Defence Force and to provide for matters incidental thereto and connected therewith. Part II of the Bill provides for the establishment of the Defence Force which will consist of a Regular Force and a Reserve Force. This Part also makes provision for the employment of the Defence Force outside Botswana and for the training of personnel overseas.

3. Part III provides for the establishment of the Defence Council to consist of members appointed by the President, and Part IV provides for the command of the Defence Force, the Commander being appointed by the President. This Part also makes provision for the powers of command of members of other forces co-operating with the Defence Force.,

4. Part V provides for the appointment of officers, those of Lieutenant-Colonel and above being appointed by the President, and those below that rank by the Commander. Regulations made by the President will provide for matters regarding officers' terms of service, transfer, promotion, etc.

5. Part VI relates to the enlistment and termination of service of other ranks in the Defence Force. Other ranks will serve until they attain the age of 40 years, or, with the agreement of the Commander, until the age of 45 years. Thereafter, other ranks will serve in the Reserve Force for a period of 5 years.

6. Part VII makes provision for discipline in the Defence Force and the trial and punishment of military offences. There are detailed provisions concerning such offences, the investigation thereof, trial, whether by court-martial, summarily or by the High Court, the arrest and detention of offenders pending trial, and for the punishments which may be awarded. This Part also provides for review of findings. Appeals from courts-martial are provided for in Part VIII.

7. Part IX makes provision for forfeitures and deductions of pay arising out of disciplinary and similar offences.

8. Part X contains a number of clauses making governmental and general provisions regarding the Defence Force. These include the redress of complaints by officers and other ranks, offences relating to military matters punishable by civil courts, and provisions as to evidence.

9. Part XI provides for the Reserve Force and for regulations regarding the Reserve Force; while Part XII sets out who will be subject to the provisions of the Act and other supplementary provisions.

D.K. KWELAGOBÉ,
Minister of the Public Service and Information.

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SCHEDULE

A BILL

entitled

An Act to provide for the Establishment, Administration, Recruitment, Conditions of Service, Training, Command, Discipline and Employment of the Botswana Defence Force; to declare offences and penalties; to make provision for trials by Court-martial and for appeals therefrom; to prevent the unauthorized wearing or use of Military Uniforms, Decorations, Medals or Badges, and the unauthorized use of certain Military Documents; and for matters incidental to the foregoing and connected therewith.

Date of Assent :

Date of Commencement :

ENACTED by the Parliament of Botswana.

PART I. *Preliminary*

1. This Act may be cited as the Botswana Defence Force Act, 1977. Short title
2. (1) In this Act, unless the context otherwise requires, — Inter-pretation
 - “active service” shall be construed in accordance with section 3;
 - “aircraft” means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;
 - “aircraft material” includes —
 - (a) parts of, and components of or accessories for, aircraft, whether for the time being in the aircraft or not;
 - (b) engines, armaments, ammunition and bombs, and other missiles of any description in, or for use in, aircraft;
 - (c) any other gear, apparatus or instruments in, or for use in, aircraft;
 - (d) any apparatus used in connexion with the taking-off or landing of aircraft or for detecting the movement of aircraft;
 - (e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;
 - “air signal” means any message, signal or indication given, by any means whatsoever, for the guidance of aircraft or a particular aircraft;
 - “arrest” includes open arrest;
 - “before the enemy”, in relation to a person, means that he is in action against the enemy or about to go into action against the enemy, or is under attack or threat of imminent attack by the enemy;
 - “Board of Enquiry Rules” means rules made by the President under section 126;

- “civil court” means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside Botswana;
- “civil offence” has the meaning assigned to it in section 66 (2);
- “Commander” means the person appointed under section 9;
- “commanding officer”, in relation to a person charged with an offence, means the officer for the time being commanding the unit or detachment to which the person belongs or is attached;
- “competent military authority” means the Defence Council or any officer as may be prescribed;
- “corresponding civil offence” has the meaning assigned to it in section 66 (2);
- “court-martial” means a court-martial under this Act;
- “damage” includes destruction, and references to damaging shall be construed accordingly;
- “date of attestation”, in relation to any person, means the date on which he is attested in accordance with the provisions of regulations;
- “decoration” includes medal, medal ribbon, clasp and good-conduct badge;
- “Defence Council” means the Defence Council established under Part III;
- “Defence Force” means the Botswana Defence Force established by section 4;
- “desertion” shall be construed in accordance with section 40;
- “detachment” means a part of a unit which is so separated from the unit to which it belongs that the officer commanding that unit cannot effectively exercise his disciplinary powers as commanding officer over it;
- “enemy” includes all persons engaged in armed operations against the Defence Force or any forces co-operating therewith and also includes all armed mutineers, armed rebels and armed rioters;
- “field rank” means the rank of Major and any higher rank, and “field officer” shall be construed accordingly;
- “Imprisonment and Detention Regulations” means regulations made by the President under section 125;
- “oath” includes affirmation, and references to swearing shall be construed accordingly;
- “provost officer” means a provost marshal or officer subject to this Act appointed to exercise the functions conferred by or under this Act on provost officers;

“public property” means any property belonging to any department of the Government or held for the purposes of any such department;

“recruiting officer” means a person authorized as such under section 16;

“Regular Force” means the Regular Force of the Defence Force referred to in section 4 (1);

“Reserve Force” means the Defence Force Reserve referred to in section 4 (1);

“Rules of Procedure” means the Rules of Procedure made by the President under section 124;

“service”, when used adjectivally, means belonging to or connected with the Defence Force or any part of the Defence Force, or any force co-operating therewith;

“soldier” does not include an officer but, with the modifications contained in this Act in relation to warrant officers and non-commissioned officers, includes a warrant officer and a non-commissioned officer;

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

“unit” means —

(a) any independent portion of the Defence Force which is not higher in the organization of the Defence Force than a battalion or any equivalent formation of troops; or

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

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

3. (1) In this Act the expression “on active service”, in relation to any unit, means that it is engaged on operations against the enemy, and, in relation to a person, means that he is serving in or with a unit which is on active service.

Provisions as to active service

(2) Where it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary in the public interest that a unit should be deemed to be an active service, he may declare that for such period, not exceeding 6 months beginning with the coming into force of the declaration as may be specified therein, that unit shall be deemed to be on active service.

(3) Where it appears to the President necessary in the public interest that the period specified in a declaration under subsection (2) should be prolonged, or, if previously prolonged under this section, should be further prolonged, he may declare that the said

period shall be prolonged by such period, not exceeding 6 months, as may be specified in the declaration under this subsection.

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

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

PART II. *Establishment of Defence Force*

Establishment
and main-
tenance of
Defence Force

4. (1) There shall be established and maintained in Botswana a force to be known as the "Botswana Defence Force", which shall consist of —

- (a) the Regular Force of the Defence Force; and
- (b) the Defence Force Reserve,

and may include a Volunteer Force of the Defence Force.

(2) Such components of the Defence Force referred to in subsection (1) may be formed into units or other military bodies as the President may from time to time determine.

Employment
of Defence
Force

5. The Defence Force shall be charged with the defence of Botswana and with such other duties as may from time to time be determined by the President.

Employment
of Defence
Force outside
Botswana
Overseas
training

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

7. (1) The President may order that any officer or soldier of the Regular Force, or, with his consent, any officer or soldier of the Defence Force Reserve, shall proceed to any place outside Botswana for the purpose of undergoing instruction or training or for duty or employment.

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

PART III. *Defence Council*

Establishment
of Defence
Council

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

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

(3) The Defence Council shall consist of such persons as the President shall, from time to time, determine, together with the Commander, who shall be an ex-officio member.

PART IV. *Command*

9. (1) The President shall appoint an officer to be Commander of the Defence Force and the command of the Defence Force shall vest in the person so appointed. Command of
Defence Force

(2) The Commander shall have such rank and title and fulfil such duties and functions as may be determined by the President.

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

10. Officers and soldiers of the Defence Force shall stand with each other in order of rank and seniority or in such order of precedence as may be prescribed by the Defence Council. Command
and preced-
ence

11. (1) Insofar as the powers of command depend on rank, a member of a military force from any country outside Botswana who is — Powers of
command of
members of
co-operating
forces

(a) acting with; or

(b) is a member of a body of those forces which is acting with, any body in the Defence Force shall have the same powers as a member of the Defence Force of corresponding rank, and, for the purposes of sections 36 and 70, any such member of the said forces shall be treated as if he were a member of the Defence Force of corresponding rank.

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

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

PART V. *Officers*

12. Officers of the rank of Lieutenant-Colonel and above shall be appointed by the President. Appointment
of officers of
rank of
Lieutenant-
Colonel and
above

13. Officers of the rank of Major and below shall be appointed by the Commander. Appointment
of officers
of rank of
Major and
below

Posting and
transfer of
officers

14. (1) Every officer upon being appointed shall be posted to one of the components of the Defence Force specified in section 4 (1).

(2) The President may, upon such terms and conditions as may be prescribed, transfer any officer between the Regular Force and the Reserve Force.

Power to
make regu-
lations for this
Part

15. Subject to the provisions of this Act, the President may make regulations for the better carrying out of this Part and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to the appointment of officers, their terms of service, transfer, promotion, retirement, resignation, removal from office, and such other matters concerning officers as may seem necessary.

PART VI. Enlistment and Termination of Service in the Regular Force

Recruiting
officers

16. Any person authorized in that behalf by regulations, in this Act referred to as a "recruiting officer", may enlist recruits in the Regular Force in the prescribed manner.

Enlistment

17. (1) A person offering to enlist in the Regular Force shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him, and a recruiting officer shall not enlist any person in the Regular Force unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the apparent age of 18 years.

Terms of
enlistment

18. Subject to the provisions of this Act, a soldier enlisted in the Regular Force shall remain in the Force until he attains the age of 40 years:

Provided that a soldier may, —

(i) in such manner as may be prescribed and with the agreement of the Commander, resign from the Force at an earlier age;

(ii) with the agreement of the Commander, continue to serve until he attains the age of 45 years.

Prolongation
of service

19. Any soldier of the Regular Force whose service expires during a state of war, insurrection, hostilities or public emergency may be retained in the Regular Force and his service prolonged for such period as the Defence Council may direct.

Discharge

20. (1) Save as hereinafter in this Act provided, every soldier of the Regular Force, upon becoming entitled to be discharged, shall be discharged with all convenient speed, but until discharged shall remain subject to this Act.

(2) Where a soldier of the Regular Force who is entitled to be discharged is serving out of Botswana, then, —

- (a) if he requires to be discharged in Botswana, he shall be sent there free of cost with all convenient speed and shall be discharged on his arrival there, or, if he consents to his discharge being delayed, within 6 months of his arrival; but
- (b) if at his request he is discharged at the place where he is serving, he shall have no claim to be sent to Botswana or elsewhere.

(3) Except in pursuance of a sentence of a court-martial, a soldier of the Regular Force shall not be discharged unless his discharge has been authorized by order of the competent military authority.

(4) Every soldier of the Regular Force shall be given on his discharge a certificate of discharge containing such particulars as may be prescribed.

21. Every soldier of the Regular Force shall, on being discharged under section 20, be transferred to the Reserve Force and shall serve in the Reserve Force for a period of 5 years from such discharge or until he attains the age of 50 years, whichever period is the shorter.

Transfer to
Reserve Force

22. (1) Notwithstanding anything in this Part, a soldier of the Regular Force shall not be entitled to be discharged or transferred to the Reserve Force at a time when he has become liable to be proceeded against for an offence against any provision of this Act:

Postponement
of discharge
or transfer
pending
proceedings
for offences,
etc.

Provided that, if it is determined that the offence shall not be tried by court-martial, this subsection shall cease to apply.

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

23. A soldier of the Regular Force may be discharged by the Commander at any time during the currency of his term of engagement upon such grounds as may be prescribed.

Discharge
upon
prescribed
grounds

24. (1) A warrant officer or non-commissioned officer of the Regular Force, other than a lance-corporal, shall not be reduced in rank except by a sentence of a court-martial or by order of the Commander.

Restriction of
reduction in
rank of
warrant
officers and
non-commissioned officers

(2) For the purpose of this section a reduction in rank does not include reversion from acting rank to substantive rank or above.

25. (1) Where a person has made such declaration upon his attestation as may be prescribed and has thereafter received pay as a soldier of the Regular Force —

Validity of
attestation
and enlistment

- (a) the validity of his enlistment shall not be called in question on the ground of any error or omission in his attestation paper;

- (b) after the expiration of a period of 3 months from the date on which he made the said declaration, he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Act or any regulations made as to enlistment or attestation or any other ground whatsoever (not being an error or omission in his attestation paper) and he shall be deemed to be a soldier of that Force until his discharge.
- (2) Where a person has received pay as a soldier of the Regular Force without having previously made such declaration as aforesaid—
 - (a) he shall be deemed to be a soldier of that Force until discharged;
 - (b) he may claim his discharge at any time and if he makes such claim the claim shall be submitted as soon as may be to the competent military authority who shall, if the claim is well-founded, cause him to be discharged with all convenient speed.
- (3) Nothing in the foregoing provisions of this section shall be construed as preventing the discharge of a person who has not not claimed his discharge.

False answers
in attestation
papers

26. (1) If a person appearing before a recruiting officer for the purpose of being enlisted in the Regular Force knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer, he shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months.

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

PART VII. *Discipline and Trial and Punishment of Military Offences*
Treachery, Cowardice and Offences arising out of Military Service

Aiding the
enemy

27. (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.

28. (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.

Communic-
ation with the
enemy

(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.

29. (1) Any person subject to this Act who when before the enemy —

Cowardly
behaviour

(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.

Offences
against
morale

30. 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.

Becoming
prisoner of
war through
disobedience
or wilful
neglect and
failing to
rejoin forces

31. (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.

Offences by
or in relation
to sentries,
etc.

32. (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 2 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.

33. Any person subject to this Act who —

Looting

- (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

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

Mutiny

- (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 connexion 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 2 or more persons subject to this Act, or between persons 2 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 connexion 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.

Failure to
suppress
mutiny

35. 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.

Insubordinate
behaviour

36. (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 2 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.

37. (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.

Disobedience
to particular
orders

(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 2 years.

38. Any person subject to this Act who —

- (a) obstructs; or
- (b) when called on, refuses to assist,

Obstruction
of provost
officers

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 2 years or any less punishment provided by this Act.

39. (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 2 years or any less punishment provided by this Act.,

Disobedience
to standing
orders

(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.

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

Desertion

- (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 2 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 so to do, 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.

Absence
without
leave

41. 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 2 years or any less punishment provided by this Act.

Assisting and
concealing
desertion and
absence
without leave

42. 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 2 years or any less punishment provided by this Act.

43. 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 2 years or any less punishment provided by this Act.

Falsely
obtaining or
prolonging
leave

44. Any person subject to this Act who, without reasonable excuse, fails to attend for any parade or any military duty of any description or leaves any such parade or duty as aforesaid before he is permitted so to do shall, on conviction by court-martial or by the High Court, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Failure to
perform
military
duties

Malingering and Drunkenness

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

Malingering

- (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 2 years or any less punishment provided by this Act.

(2) In this section the expression “unfit” includes temporarily unfit.

46. (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 2 years or any less punishment provided by this Act:

Drunkenness

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 6 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

Offences
relating to
public and
service
property

47. (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 2 years.

Offences in
relation to
property of
members of
Forces

48. 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 2 years or any less punishment provided by this Act.

Miscellaneous
offences
relating to
property

49. 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, ammu-

nition 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 2 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

50. Any person subject to this Act who —

Billeting
offences

- (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 as aforesaid,

shall, on conviction by court-martial or by the High Court, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Offences relating to, and by, Persons in Custody

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

Irregular
arrest and
confinement

- (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 so to do,
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 so to do 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 2 years or any less punishment provided by this Act.

Permitting
escape, and
unlawful
release, of
prisoners

52. (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 2 years or any less punishment provided by this Act.

Resistance
to arrest

53. (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 2 years or any less punishment provided by this Act.

54. 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 2 years or any less punishment provided by this Act.

Escape from
confinement

Offences in relation to Courts-martial

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

Offences in
relation to
courts-martial

- (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 so to do;
- (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; 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 2 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

False
evidence and
contradictory
statements

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.

56. (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 2 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 2 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

Injurious
disclosures

57. (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 2 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.

58. 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 3 months or to any less punishment provided by this Act.

Making of
false
statement on
enlistment

59. 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),

Making of
false
documents

shall, on conviction by court-martial or by the High Court, be liable to imprisonment for 2 years or any less punishment provided by this Act.

Scandalous
conduct of an
officer

60. 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.

Ill-treatment
of officers or
men of
inferior rank

61. 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; 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 2 years or any less punishment provided by this Act.

Disgraceful
and dis-
creditable
conduct

62. (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 2 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 effect to pay the same; or
- (d) if called upon by the Commander to furnish a full and true statement of his financial affairs, fails so to do,

shall, on conviction by court-martial or by the High Court, be liable to imprisonment for 2 years or any less punishment provided by this Act.

False
accusation,
etc.

63. 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 2 years or any less punishment provided by this Act.

64. 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:

Attempts to commit military offences

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

65. 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 2 years or any less punishment provided by this Act.

Conduct to the prejudice of military discipline

Civil Offences

66. (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.

Civil offences

(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

Punishment
of officers.

67. (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) forfeiture in the prescribed manner of seniority of rank;
- (f) fine of a sum not exceeding the equivalent of 90 days' pay;
- (g) a severe reprimand or reprimand;
- (h) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part a punishment specified in any paragraph of the scale in subsection (2) shall 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) Save 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.

Punishment
of soldiers

68. (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 2 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 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) Save 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 2 years.

Field
punishment

69. 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

Power to
arrest
offenders

70. (1) (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.

Provisions
for avoiding
delay after
arrest

71. (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 com-

pliance with this subsection shall be excused insofar as it is not reasonably practicable having regard to the exigencies of military operations.

Investigation of, and Summary Dealing with, Charges

72. 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.

Investigation
of charges by
commanding
officer

73. (1) After investigation, a charge against an officer below the rank of Lieutenant-Colonel or against a warrant officer may be dealt with summarily by the Commander in accordance with this Part.

Charges to be
dealt with
summarily or
by court-
martial

(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 as aforesaid shall, after investigation, —

(a) in the case of an officer of the rank of Lieutenant-Colonel or 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 81 of the Criminal Procedure and Evidence Act.

Cap. 08:02

74. (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.

Further
proceedings
on charges
against
n.c.o.'s and
soldiers

(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, —
 - (i) a fine of a sum not exceeding the equivalent of 28 days' pay;
 - (ii) severe reprimand or reprimand;
 - (iii) where the offence has occasioned any expense, loss or damage, stoppages;
 - (iv) admonition;
- (b) if the accused is a private soldier, —
 - (i) detention for a period not exceeding 28 days, or, if the accused is on active service, field punishment for a period not exceeding 28 days;
 - (ii) a fine of a sum not exceeding the equivalent of 28 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 (4), where the accused is a corporal or lance-corporal 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.

(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.

(8) Notwithstanding anything in subsection (3), where a commanding officer has determined that the accused is guilty and if the charge is dealt with summarily will award a punishment other than severe reprimand, reprimand or admonition, confinement to barracks, extra guards or pickets, or where a finding of guilty (whatever the punishment awarded) will involve a forfeiture of pay, the commanding officer 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 and does not subsequently in accordance with regulations withdrawn his election, the commanding officer shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

(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), (7) and (8) shall apply as if the commanding officer had originally been of the opinion that the charge should be dealt with summarily:

Provided that a charge shall not be referred back where the accused has elected to be tried by court-martial and has not withdrawn his election.

75. (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.

Further
proceedings
on charges
against
officers and
warrant
officers

(2) If the charge is one which can be dealt with summarily, it may be so dealt with 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 Lieutenant Colonel and above; or
- (b) by court-martial in any other case.

(4) Where the charge is dealt with summarily 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 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 Commander records a finding of guilty, he may award one or more of the following punishments —

- (a) forfeiture in the prescribed manner of seniority of rank;
- (b) a fine of a sum not exceeding the equivalent of 28 days' pay;
- (c) severe reprimand or reprimand;
- (d) where the offence has occasioned any expense, loss or damage, stoppages,

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

(6) Notwithstanding anything in subsection (4), where the Commander has determined that the accused is guilty and if the charge is dealt with summarily will award forfeiture of seniority, a fine, stoppages, or, where a finding of guilty will involve a forfeiture of pay, the Commander shall not record a finding until affording the accused an opportunity of electing to be tried by court-martial; and, if the accused so elects, the Commander shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

Dismissal of
charges
referred to
Commander

76. (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.

Power of
commanding
officers to
delegate
powers

77. Regulations made by the President under this section 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.

Limitation of
powers of
summary
dealing with
charges

78. (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

79. 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.

Trial by,
and powers of,
court-martial

80. (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.

Officers
having power
to convene
court-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.

81. (1) A court-martial shall consist of the presiding officer and not less than 2 other officers as members:

Constitution
of court-
martial

Provided that a court martial shall consist of the presiding officer and not less than 4 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 2 years or for periods amount in the aggregate to not less than 2 years:

Provided, until 31st December, 1979, service as a senior officer in the Botswana Police Force constituted under the Police Act shall, for the purposes of this subsection, be deemed to be service as an officer in the Defence Force. Cap. 21:01

(3) Not less than 2 of the members of a court-martial shall be of a rank not below 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

Supplement-
ary provisions
as to
constitution
of courts-
martial

82. (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.

Place of
sitting of
courts-martial
and adjourn-
ment to other
places

83. (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

Challenges
by accused

84. (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.

85. (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. Adminis-
tration of
oaths

(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.

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

(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 so to do; 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 their 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.

87. (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. Dissolution of
court-martial

(2) Without prejudice to the generality of subsection (1), if after the commencement of a trial a court-martial is for any reason reduced 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, —

(a) 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

(b) 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.

Decisions of
court-martial

88. (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.

Finding and
sentence

89. (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.

90. (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.

Power to
convict of an
offence other
than that
charged

(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 that 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 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.

91. (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.

Rules of
evidence

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

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

- (i) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than 7 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 7 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 3 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.

Privilege of witnesses and others at court-martial

92. 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.

Offences by civilians in relation to court-martial

93. 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 so to do;
- (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 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.

94. (1) If —

Affirmations

- (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 as aforesaid 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 who may be permitted under this section to make his solemn affirmation may also be required so to do, 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

95. (1) Where a court-martial finds the accused guilty of 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.

Confirmation of proceedings of court-martial

(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.

96. 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 finding or sentence or both.

Petition against finding or sentence

97. (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 —

Revision of findings of court-martial

- (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 save as aforesaid this Act shall apply to the proceedings of the court on any such revision as it applies to his 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.

Powers of
Commander
on confirm-
ation

98. (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, 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 as aforesaid, 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.

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

Approval of
death
sentence by
President

100. (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.

Review of
finding and
sentence of
court-martial

(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 appeal or the application for leave to appeal relates and to 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.

Reconsideration of sentences of imprisonment and detention

101. (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 review a sentence remains effective it shall be reconsidered at intervals of 6 months:

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

Review of Summary Findings and Awards

Review of summary findings and awards

102. (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 review under this section it appears to the said authority expedient so to do 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.

Findings of Insanity

103. (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

Provisions
where accused
found insane

(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 as aforesaid 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 and until 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 a finding of guilty, but save as aforesaid 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) 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

Commence-
ment of
sentences

104. (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.

Duration of
sentences of
imprisonment
and detention

105. (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 that section 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 satisfied 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 Prisons Act.

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106. (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.

Suspension of sentences

(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 again being suspended) 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 2 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 3 months, and not as specified under that subsection.

Restriction on
serving of
sentences of
detention in
prisons

107. 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 7 days.

Special
provisions as
to civil
prisons in
Botswana

108. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under section 127 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.

109. 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.

Special provisions as to carrying out or serving sentences outside Botswana

110. (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.

Country in which sentence of imprisonment or detention to be served

(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 2 years' imprisonment) 2 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 as aforesaid.

(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.

111. (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

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

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 7 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

Trial and
punishment
of offences
under this Act
notwith-
standing
offender
ceasing to be
subject
thereto

112. (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 and 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.

113. (1) No person shall be tried by court-martial for any offence, other than one against section 33 or 34 or desertion, unless the trial is begun within 3 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:

Limitation of time for trial of offences under this Act

Provided that —

- (i) in the event 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 3 years before the beginning of the trial, if the Attorney-General 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 3 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 3 months after he ceases to be subject to this Act, or the trial is for a civil offence committed outside Botswana and the Attorney-General consents to the trial:

Provided that this subsection shall not apply to an offence against section 33 or 34 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

114. (1) Save as provided in section 132, 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.

Powers of civil courts

(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 has been punished for any such act by his commanding officer or an appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of this Act.

115. (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;

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

- (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) Save 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 grounds of condonation.

Resolution of
conflicts of
jurisdiction

116. (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) 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.

Enquiries

117. (1) Subject to and in accordance with rules made under section 126 (hereinafter referred to as “Board of Enquiry Rules”), the Commander, or any officer empowered by or under such rules so to do, may convene a board of enquiry to investigate and report on the facts relating to —

Boards of
enquiry

- (a) the absence of any person subject to this Act;
- (b) the capture of any such person by the enemy;
- (c) the death of any person where any 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 so to do, 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 admis-

sible 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.

Enquiries
into absence

118. (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

Restitution or
compensation
for theft, etc.

119. (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 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 —

- (c) it shall not take effect if the conviction is quashed on appeal;
- (d) the High Court may by order annul or vary the order although the conviction is not quashed;
- (e) 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, in 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.

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

Appointment
of judge
advocate

Promulgation

121. 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.

**Custody of
proceedings of
court-martial
and right of
accused to
copy thereof**

122. (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 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 representative 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 any 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 5 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 2 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 5 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.

123. 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 a warrant or other instrument made for the purposes of that sentence.

Indemnity
for prison
officers, etc.

Rules of Procedure, etc.

124. (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.

Rules of
procedure

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

- (a) the procedure to be observed in the bringing of 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 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 of 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.

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

Imprisonment and Detention Regulations

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

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

Board of Enquiry Rules

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

- (a) the rules of evidence to be observed by boards of enquiry and the taking of evidence before such boards, so however that the Rules shall provide for the taking of evidence on oath or affirmation except in circumstances such that if the evidence were being taken at a court-martial an oath could be dispensed with;
- (b) without prejudice to the provisions of section 118, 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.

Miscellaneous
regulations

127. 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 124, 125 and 126, and in this section.

Interpretation of Part VII

Inter-
pretation of
Part VII

128. (1) In this Part —

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

“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.

PART VIII. *Appeals*

129. A person convicted by a court-martial may appeal against his conviction to the High Court in accordance with rules made under section 95 (6) of the Constitution and section 26 of the High Court Act. Appeal from court-martial
Cap. 04:02

130. An appeal shall lie to the Court of Appeal from a decision of the High Court in accordance with rules made under section 11 of the Court of Appeal Act. Appeal to Court of Appeal
Cap. 04:01

131. A person found guilty of a charge dealt with summarily under sections 74 and 75 may appeal to the Defence Council. Appeal on charges dealt with summarily

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

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

134. In the case of every appeal under this Part to the High Court against a conviction by court-martial, it shall be the duty of the Commander to furnish to the Registrar of the High Court, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with regard to the revision of the findings or sentence of the court-martial in pursuance of section 97 (1)) the proceedings with regard to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted. Furnishing, on appeal, of documents relating to trial

135. Nothing in this Part shall affect the exercise by the President of the powers conferred by section 100 in respect of a conviction by a court-martial so far as regards the exercise thereof at a time before the lodging with the Registrar of the Court of Appeal of an appeal or an application for leave to appeal to that Court against the conviction, and nothing in this Part shall affect the exercise by the President of the prerogative of mercy. Saving of powers of reviewing authorities

PART IX. *Forfeitures and Deductions*

136. (1) No forfeiture of the pay of an officer or soldier of the Defence Force shall be imposed unless authorized by this Act or any other law, and no deduction from such pay shall be made unless so authorized or authorized by regulations. Forfeitures and deductions: general provisions

(2) Regulations shall not authorize the making of any penal deduction, that is, a deduction to be made by reason of the commis-

sion of any offence or other wrongful act or in consequence of any negligence.

(3) Subsections (1) and (2) shall not prevent the making of regulations providing for the imposition of any forfeiture authorized by this Act, or the making of any deduction so authorized, or for the time at which and manner in which sums may be deducted from pay to give effect to authorized deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the appropriation of any such sum or amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

(4) Notwithstanding any deduction from the pay of an officer or soldier of the Defence Force, he shall (subject to any forfeiture) remain in receipt of pay at not less than such minimum rate as may be prescribed.

(5) Notwithstanding that forfeiture of pay of an officer or soldier of the Defence Force for any period has been ordered in pursuance of this Act, he shall remain in receipt of pay at such minimum rate as aforesaid, but the amount received for that period may be recovered from him by deduction from pay.

(6) Any amount authorized to be deducted from the pay of an officer or soldier of the Defence Force may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or soldier, and references in this Act to the making of deductions from pay shall be construed accordingly and the whole or any part of any sum forfeited from an offender's pay may be recovered by deductions from any such balance.

Forfeiture of
pay for
absence from
duty

137. (1) The pay of an officer or soldier of the Defence Force may be forfeited —

- (a) for any day of absence in such circumstances as to constitute an offence under section 40 or 41 or, if the Commander so directs, of other absence without leave;
- (b) for any day of imprisonment, detention or field punishment awarded under this Act by a court-martial or commanding officer, or of imprisonment or detention of any description to which he is liable in consequence of an order of sentence of a civil court;
- (c) where he is found guilty (whether by court-martial, the High Court or his commanding officer) of an offence under this Act, for any day (whether before or after he is found guilty) on which he is in hospital on account of sickness or injury certified by the proper medical officer to have been occasioned by the offence;

(2) The pay of an officer or soldier of the Defence Force may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Commander or an officer authorized by him is satisfied that —

- (a) he was made a prisoner of war through disobedience to orders or wilful neglect of his duty;
- (b) having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Defence Force; or
- (c) having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorized by international usage,

but, save as aforesaid, nothing in subsection (1) (a) shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations or orders of the President may make provision as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

(4) For the purposes of this section "a day" shall be deemed to be any period over 6 hours but not more than 24 hours.

138. Where a person sentenced or ordered by a civil court (whether within or without Botswana) to pay a sum by way of fine, penalty, damages, compensation or costs in consequence of being charged before the court with an offence is at the time of the sentence or order, or subsequently becomes, an officer or soldier of the Defence Force, then, if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay.

Deductions
for payment
of civil
penalties

139. (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after such investigation as may be prescribed by regulations made by the President, it appears to the Commander or an officer authorized by him that any loss of, or damage to, public or service property has been occasioned by any wrongful act or negligence of an officer or soldier of the Defence Force (hereinafter referred to as "the person responsible").

Compensation for loss
occasioned by
wrongful act
or negligence

(2) The Commander or authorized officer, as the case may be, may order the person responsible to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order; and any such sum, insofar as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under the provisions of subsection (2) if, in proceedings before a court-martial, the commanding officer of the person responsible, that person —

- (a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or
- (b) has been awarded stoppages in respect of the same loss or damage,

but, save as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2).

Deductions
for barrack
damage

140. (1) When damage occurs to any premises in which one or more units or parts of such units of the Defence Force are quartered or billeted or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with regulations made by the President, that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof but that the said persons cannot be identified, any person belonging to any of such units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with such regulations be determined to be just, and the amount may be deducted from his pay.

(2) Subsection (1) shall extend to vessels, trains, motor vehicles and aircraft in which units or parts of units are being transported, and reference to premises, quartering and occupation shall be construed accordingly.

Remission
forfeitures
and
deductions

141. Any forfeiture or deduction imposed under this Part or under regulations may be remitted by the President or in such manner or by such authority as may be provided by such regulations.

PART X. Governmental and General Provisions
Redress of Complaints

Complaints
by officers

142. (1) If an officer of the Defence Force thinks himself wronged in any matter by a superior officer and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint with regard to that matter to the Commander.

(2) On receiving any such complaint it shall be the duty of the Commander to investigate the complaint and to grant any redress which appears to him to be necessary or, if the complainant so requires, the Commander shall make his report on the complaint to the President in order to receive the directions of the President.

Complaints
by soldiers

143. (1) If a soldier of the Defence Force thinks himself wronged in any matter by any officer other than his commanding officer or by any soldier, he may make a complaint with regard to that matter to his commanding officer.

(2) If a soldier of the Defence Force thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint with regard thereto to the Commander.

(3) It shall be the duty of a commanding officer or the Com-

mander to have any complaint received under this section investigated and to take any steps for redress in the matter complained of which appear to be necessary.

Exemptions for Officers and Soldiers

144. An officer or soldier of the Regular Force shall be exempt from serving as an assessor in any civil court:

Exemption
from service
as assessor

Provided that an officer of the rank of Captain or above may serve as an assessor in a civil court during any trial for an offence against this Act.

145. No judgment, decree or order given or made against an officer or soldier of the Defence Force by any court in Botswana shall be enforced by the levying of execution on any service property, nor shall any distress be made thereon.

Exemption
from taking
in execution
of property
used for
military
purposes

Provisions relating to Deserters and Absentees without Leave

146. (1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or soldier of the Defence Force who has deserted or is absent without leave.

Arrest of
deserters
and absentees
without leave

(2) Any person having authority to issue a warrant for the arrest of a person charged with crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or soldier of the Defence Force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorizing his arrest.

(3) Any person in custody in pursuance of this section shall as soon as practicable be brought before a subordinate court.

(4) Notwithstanding any other law to the contrary a person arrested and brought before a subordinate court under this section or section 147 or 148 shall not be admitted to bail.

147. (1) Where a person who is brought before a subordinate court is alleged to be an officer or soldier of the Defence Force who has deserted or is absent without leave, the following provisions shall have effect.

Proceedings
before a
civil court
where persons
suspected of
illegal
absence

(2) If he admits that he is illegally absent from the Defence Force and the court is satisfied of the truth of the admission, then, —

- (a) unless he is in custody for some other cause, the court shall; and
- (b) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify (not exceeding such time as appears to the court reasonably necessary for the purpose of enabling him to be delivered

into military custody) or until sooner delivered into such custody.

(3) Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary so to do for the purpose aforesaid.

(4) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to this Act and if of opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave, then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as aforesaid, but otherwise shall release him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

Deserters and
absentees
without leave
surrendering
to police

148. (1) Where a person surrenders himself to a police officer as being illegally absent from the Defence Force the police officer shall (unless he surrenders himself at a police station) bring him to a police station.

(2) The police officer in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith enquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid he may cause him to be delivered into military custody without bringing him before a subordinate court or may bring him before such a court.

Certificates
of arrest or
surrender of
deserters and
absentees

149. (1) Where a subordinate court in pursuance of section 147 deals with a person as illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by a magistrate, containing the prescribed particulars as to his arrest or surrender and the proceedings before the court.

(2) Where a person is delivered into military custody without being brought before a court, whether under section 148 or under any other lawful power, there shall be handed over a certificate in the prescribed form, signed by the police officer who caused him to be delivered into military custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence against section 39 or 40 —

(a) a document purporting to be a certificate under either subsection (1) or (2), or under the corresponding provisions of this Act to be signed as thereby required, shall be evidence of the matters stated in the document;

- (b) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or by any officer in charge of the guardroom or other place where that person was confined on being taken into custody, stating the facts, date, time and place of arrest or surrender, shall be evidence of the matter stated in the certificate.

150. (1) It shall be the duty of the officer in charge of a civil prison to receive any person duly committed to that prison by a subordinate court as illegally absent under the provisions of this Act and to detain him until in accordance with the directions of the court he is delivered into military custody.

Duties of officers in charge of prisons and others to receive deserters and absentees

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, as it applies to the superintendent of a prison.

Offences relating to Military Matters punishable by Civil Courts

151. Any person who falsely represents himself to any military or civil authority to be a deserter from the Defence Force shall be liable to a fine of P100 and to imprisonment for 3 months.

Punishment for pretending to be a deserter

152. Any person who —

- (a) procures or persuades any officer or soldier of the Defence Force to desert or to absent himself without leave;
- (b) knowing that any such officer or soldier is about to desert or or absent himself without leave, assists him in so doing; or
- (c) knowing any person to be a deserter or absentee without leave from the Defence Force, conceals him or assists him in concealing himself or assists in his rescue from custody,

Punishment for procuring and assisting desertion

shall be liable to a fine of P500 and to imprisonment for 12 months.

153. Any person who wilfully obstructs or otherwise interferes with any officer or soldier of the Defence Force acting in the execution of his duty shall be liable to a fine of P100 and to imprisonment for 3 months.

Punishment for obstructing officers or soldiers in execution of duty

154. Any person who —

- (a) produces in an officer or soldier of the Defence Force any sickness or disability; or
- (b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

Punishment for aiding malingering

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be liable to a fine of P250 and to imprisonment for 6 months.

B.110

Unlawful
purchase, etc.
of military
stores

155. (1) Any person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall unless he proves —

- (a) that he did not know, and could not reasonably be expected to know, that the goods in question were military stores;
 - (b) that those goods had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe had, power to give the order or consent; or
 - (c) that those goods had become the property of an officer of the Defence Force who had retired or ceased to be an officer, or of a soldier of the Defence Force who had been discharged or of the personal representative of a person who had died,
- be liable to a fine of P1 000 and to imprisonment for 2 years.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with an offence may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods; and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a subordinate court.

(4) In this section the expressions —

“acquire” means buy, take in exchange, take in pledge, or otherwise receive (whether apart from this section the receiving is lawful or not);

“dispose” means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);

“military stores” means any goods of any description belonging to the Government which have been issued for use for military purposes or are held in store for the purpose of being so issued when required, and includes any goods which had belonged, and had been issued or held as aforesaid at some past time.

(5) For the purposes of subsection (3) property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

156. (1) Any person who —

- (a) as a pledge or a security for a debt; or
- (b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person, receives, detains or has in his possession any official document, issued in connexion with the payment to any person of any pay, pension, allowance, gratuity or other payment payable in respect of his or any other person's military service shall be guilty of an offence.

Illegal dealings in documents relating to pay, pensions, mobilization, etc.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid or any official document issued in connexion with the mobilization or demobilization of the Defence Force or any member thereof shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable to a fine of P250 and to imprisonment for 6 months.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether or not he has it for his own use or benefit or for the use or benefit of another.

157. (1) Any person who —

- (a) being a person who is not serving in the Defence Force without authority wears in a public place the uniform of any part of those forces or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform;
- (b) without authority uses or wears any naval, military or air force decoration, or any badge, wound strip or any emblem supplied or authorized by the Defence Council;
- (c) uses or wears any decoration, badge, wound stripe or emblem so nearly resembling any decoration, badge, wound stripe or emblem mentioned in paragraph (b), as to be calculated to deceive; or
- (d) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, wound stripe or emblem as is mentioned in paragraph (b),

Unauthorized use of and dealing in decorations, etc.

shall be guilty of an offence:

Provided that nothing in this subsection shall prevent any person from wearing any uniform or dress in the course of a stage play or in the course of a musical or circus performance, or in the course of any *bona fide* military representation.

(2) Any person who purchases or takes in pledge any decoration awarded to any member of the Defence Force, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of that Force.

(3) Any person who is guilty of an offence under this section shall be liable to a fine of P100 and to imprisonment for 3 months.

Provisions as to Evidence

General
provisions as
to evidence

158. (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court-martial, a civil court or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that any person —

(a) was or was not serving at any specified time or during any specified period in any part of the Defence Force or was discharged from any part of those forces at or before any specified time;

(b) held or did not hold at any specified time any specified rank or appointment in any of those forces or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or

(c) was or was not at any specified time authorized to use or wear any decoration, badge, wound stripe or emblem, shall, if purporting to be issued by or on behalf of the Defence Council, or a person authorized by it, be evidence of the matters stated in the document.

(5) A record made in any prescribed service book or any other prescribed document, being a record made in pursuance of the provisions of this Act, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a copy of a record (including the signature thereto) in any such book or other document as aforesaid purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

(6) A document purporting to be issued by order of the Commander or the Defence Council and to contain instructions or orders given or made by the Commander or the Defence Council shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be issued by or on behalf of the

Commander or the Defence Council, or by a person authorized by him or it, and stating —

- (a) that a decoration of a description specified in or annexed to the certificate is a military decoration; or
- (b) that a badge, wound stripe or emblem of a decoration specified in or annexed to the certificate is one supplied or authorized by the Commander or the Defence Council,

shall be evidence of the matters stated in the certificate.

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

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

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

159. (1) Where a person subject to this Act has been tried before a civil court (whether at the time of the trial he was so subject or not) a certificate signed by the clerk of the court or by a judge or a magistrate and stating all or any of the following matters —

Proof of
outcome of
civil trial

- (a) that the said person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) what judgment or order was given or made by the court;
- (d) that other offences specified in the certificate were taken into consideration at the trial,

shall for the purposes of this Act be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by the clerk of the court, a judge or a magistrate shall, unless the contrary is shown, be deemed to be such a certificate.

(3) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer authorized by him, furnish a certificate under this section.

(4) References in this section to the clerk of the court include references to his deputy, to the Registrar of the High Court and to any other person having the custody of the records of a court.

160. (1) The original record of the proceedings of a court-martial purporting to be signed by the presiding officer of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

Evidence of
proceedings of
court-martial

(2) A document purporting to be a copy of the original record of the proceedings of a court-martial and to be certified by the person

having the lawful custody of the proceedings to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Miscellaneous Provisions

Temporary reception in civil custody of persons under escort

161. (1) Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part VII it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding 7 days.

(2) In subsection (1) "civil prison" has the meaning ascribed to it in section 128.

Avoidance of assignment of, or charge on, military pay, pensions, etc.

162. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Defence Force shall be void.

(2) Save as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

Power of certain officers to make statutory declarations

163. (1) An officer of the Defence Force not below field rank (hereinafter referred to as an "authorized officer") may, outside Botswana, take statutory declarations from persons subject to this Act.

(2) A document purporting to have subscribed thereto the signature of an authorized officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of that officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

PART XI. Reserve Force

Composition

164. The Reserve Force shall consist of such officers and soldiers who shall be appointed therein under sections 13 and 21 respectively.

165. A soldier of the Reserve Force may be discharged by the competent military authority at any time during the currency of any term of service in the Reserve Force upon such grounds as may be prescribed. Discharge from Reserve Force

166. Officers and soldiers of the Reserve Force shall be required to report to such authority and to attend such examinations before a medical board as may be prescribed. Reporting of Reserve Force

167. (1) Whenever it appears to the President necessary or desirable in the public interest, he may, by notice published in the Gazette or otherwise, — Embodiment

- (a) order the employment of the whole or any part of the Reserve Force; and
- (b) authorize the Commander or the Defence Council to order the employment of any officer or soldier of the Reserve Force for service within or without Botswana.

(2) Any officer or soldier of the Reserve Force employed in terms of subsection (1) by reason of an order issued by the President shall remain so employed until released by the President.

(3) Every officer and soldier of the Reserve Force may, when called out for service under this section, be posted or attached to any unit of the Regular Force or the Reserve Force.

168. Where the time at which a soldier of the Reserve Force would otherwise be entitled to be discharged occurs at a time when the Reserve Force, or any part thereof, is employed in terms of section 167, he may be required to prolong his service for such further term as the President may order. Postponement of discharge

169. (1) Any officer or soldier of the Reserve Force who, without leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed on embodiment in accordance with directions given under section 166, shall be guilty, according to the circumstances, of desertion or absence and on conviction by court-martial shall be punishable as for an offence under section 40 or as section 41. Failure to attend on embodiment

- (2) Any person who, by any means whatsoever, —
 - (a) procures or persuades any officer or soldier of the Reserve Force to commit an offence of desertion contrary to subsection (1), or attempts to procure or persuade any such soldier to commit such an offence;
 - (b) knowing that any such officer or soldier is about to commit such an offence, aids or assists him in so doing; or
 - (c) knowing any such officer or soldier to be a deserter contrary to subsection (1), conceals the officer or soldier, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue,
 shall be liable to a fine of P250 and to imprisonment for 6 months.

(3) Sections 146 and 147 shall apply to a deserter or an absentee without leave contrary to subsection (1).

(4) Any person who, knowing any officer or soldier of the Reserve Force to be a deserter within the meaning of this Act, employs or continues to employ the officer or soldier, shall be deemed to aid him in concealing himself within the meaning of section 152 (c) (which provides, *inter alia*, for the punishment of persons concealing deserters from the Regular Force).

Power to
make regu-
lations under
this Part

170. Subject to the foregoing provisions of this Part, the President may make regulations for the better carrying out of this Part and generally for the good government and organization of the Reserve Force and for providing for matters required by this Part to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with regard to all or any of the following matters —

- (a) the transfer of persons into, and the discharge of persons from, the Reserve Force;
- (b) the pay, allowances, pensions and gratuities of officers and soldiers of the Reserve Force and of their dependants surviving them and the deductions therefrom and the forfeiture thereof;
- (c) the calling out of officers and soldiers of the Reserve Force for service in accordance with section 167, including prescribing the manner in which notification of the places and times appointed is to be given; and
- (d) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

PART XII. *Application of Act and Supplementary Provisions*

Persons
subject to
this Act

171. (1) Subject to section 173, the following persons are subject to this Act —

- (a) officers and soldiers of the Regular Force;
 - (b) officers and soldiers when attached to the Defence Force or any part thereof;
 - (c) officers and soldiers of the Reserve Force when employed in terms of section 167.
- (2) This Act shall apply to the persons subject thereto —
- (a) as well outside as within Botswana;
 - (b) notwithstanding their attachment under section 7.

Application
of Act to
civilians

172. (1) Subject to the modifications hereinafter specified, where any part of the Defence Force is on active service, Part VII shall apply to any person who is employed in the service of that part of the Defence Force or a member thereof, or accompanies the said part of the Defence Force, and is not subject to this Act, as the said Part VII applies to soldiers subject to this Act.

- (2) The said modifications are as follows —
- (a) the punishments which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment;

- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding P100 but no other punishment;
 - (c) the following provision shall have effect in substitution for section 70 (2), (3) and (4), that is, that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer subject to this Act;
 - (d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial as may be prescribed by Rules of Procedure;
 - (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences shall, save as otherwise expressly provided, apply as they apply to soldiers;
 - (f) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer of a civilian to whom this section applies shall be the officer for the time being commanding the unit or detachment in which that person is employed or which he accompanies;
 - (g) for references in sections 112 and 113 to being, continuing or ceasing to be subject to this Act, there shall be substituted references to being, continuing to be or ceasing to be in such circumstances which Part VII applies and section 112 (3) shall not apply.
- (3) Any fine awarded under this Act, whether by a court-martial or the commanding officer, shall be recoverable summarily on complaint by any officer of the Defence Force before a subordinate court as a debt due to the Government.

173. The provisions of Part VII relating to the award of fines and stoppages, and Part VIII, shall not apply to officers and soldiers of the Reserve Force except when employed in terms of section 167.

Application
of Act to
Reserve Force

174. (1) The Commander may, at the request of the Commissioner of Police, authorize the use of any member or unit of the Defence Force in support of, or to give assistance to, the Botswana Police in the discharge of their functions under section 6 of the Police Act.

Use of
Defence
Force in aid
of civil power

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

Certain members of P.M.U. deemed to be enlisted in Defence Force

Rewards and Fines Fund

175. Any person who enlisted in that part of the Botswana Police known as the Police Mobile Unit after 1st January, 1977, shall be deemed to be a member of the Defence Force and to be enlisted therein in terms of this Act.

176. (1) All fines imposed under this Act for any offence against discipline and any fees paid or donations made in respect of any special services provided by the Defence Force shall be placed to the credit of a fund called the Defence Force Rewards and Fines Fund (hereinafter referred to as "the Fund").

(2) No payment shall be made from the Fund except upon the authority of the Commander.

(3) The Commander may, in his descretion, sanction payment from the Fund for any of the following purposes —

- (a) to assist the wives and families of deceased soldiers, or to assist any soldier discharged from the Defence Force as medically unfit for further service;
- (b) as rewards for soldiers for meritorious acts or service in the execution of duty:

Provided that no payment shall be made to any soldier who has received any other reward from Government revenue;

- (c) the procuring of any comforts, conveniences or advantages for persons subject to this Act which are not chargeable to general revenue;
- (d) the granting of loans in special circumstances to soldiers, repayable by instalments; or
- (e) to provide prizes for competitions limited to persons subject to this Act.

Power to make regulations

177. Subject to the foregoing provisions of this Act, the President may make regulations for the better carrying out of this Act and generally for the good government and organization of the Defence Force and for providing for matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with regard to all or any of the following matters —

- (a) the enlistment of persons into, and the discharge of persons from, the Regular Force and generally for the carrying into effect of Part VII, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (b) the pay, allowances, pensions and gratuities of soldiers and their dependants surviving them, and the deductions therefrom and the forfeiture thereof;
- (c) the establishment of a Promotion Advisory Board to advise the Commander on the promotion of soldiers;
- (d) the description, supply, use, disposal of and accounting for arms, accoutrements, clothing and other stores;

- (e) prohibiting, restricting and regulating the holding of meetings, within the limits of any camp or other military establishment, and the admission thereto of civilians for the purpose of holding, addressing or attending any such meeting;
- (f) in regard to matters for which regulations may be made under the foregoing provisions of this Act, other than under Parts VI and VII.

178. Save as expressly provided by any regulations, any order, determination, direction or appointment required or authorized to be made under this Act by any military officer or authority may be signified under the hand of any officer authorized in that behalf, and any instrument signifying such an order, determination, direction or appointment and purporting to be signed by an officer stated therein to be so authorized shall, unless the contrary is proved, be deemed to be signed by an officer so authorized.

Execution
of orders,
instruments,
etc.

SCHEDULE

(s.90)

Alternative Offences of which Accused may be convicted by Court-martial

<i>Offence Charged</i>	<i>Alternative Offence</i>
1. Any offence against section 27 (1)	Any offence against section 27 (2)
2. Any offence against section 28 (1)	Any offence against section 28 (2)
3. Any offence against section 34 (1)	Any offence against section 34 (2)
4. Communicating with or giving intelligence to the enemy either with intent to assist the enemy or without authority	Disclosing information without authority
5. Striking a superior officer	(a) Using violence to a superior officer otherwise than by striking him; (b) offering violence to a superior officer Offering violence to a superior officer
6. Using violence to a superior officer otherwise than by striking him	
7. Using threatening language to a superior officer	Using insubordinate language to a superior officer
8. Disobeying in such manner as to show wilful defiance of authority, a lawful command given or sent to him personally	Disobeying a lawful command
9. Desertion	Absence without leave
10. Attempting to desert	Absence without leave
11. Stealing any property	Fraudulently misapplying the property
12. Any offence against section 52 (1)	Any offence against section 52 (2)
13. Any offence against section 53 (1) involving striking	(a) The corresponding offence involving the use of violence other than striking; (b) the corresponding offence involving the offering of violence
14. Any offence against section 53 involving the use of violence other than striking	The corresponding offence involving the offering of violence.