

Zambia

## Defence Act, 1964

### Chapter 106

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1964/45/eng@1996-12-31

There may have been updates since this file was created.

PDF created on 21 February 2024 at 20:17.

*Collection last checked for updates: 31 December 1996.*

[Check for updates](#)



#### About this collection

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

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

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

There is no copyright on the legislative content of this document.  
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Defence Act, 1964  
 Contents

Part I – Preliminary ..... 1

    1. Short title ..... 1

    2. Interpretation ..... 2

    3. Provisions as to active service ..... 3

    4. Maintenance of Defence Force ..... 3

    5. Employment of Defence Force ..... 4

    6. Employment of Defence Force outside Zambia ..... 4

    7. Overseas training ..... 4

Part II – Defence Council ..... 4

    8. Establishment of Defence Council ..... 4

Part III – Officers ..... 4

    9. Officers selection board ..... 4

    10. Grant of commissions ..... 4

    11. Appointment and transfer of officers ..... 5

    12. Regulations under this Part ..... 5

Part IV – Enlistment and terms of service in the Regular Force ..... 5

    Enlistment ..... 5

        13. Recruiting officers ..... 5

        14. Enlistment ..... 5

        15. Terms of enlistment ..... 5

        16. Re-engagement and continuation in service ..... 6

        17. Prolongation of service ..... 6

    Discharge and transfer to Reserve Force ..... 6

        18. Discharge ..... 6

        19. Transfer to Reserve Force ..... 6

        20. Postponement of discharge or transfer pending proceedings for offences, etc. .... 6

        21. Discharge upon prescribed grounds ..... 7

        22. Right of soldier to purchase discharge ..... 7

        23. Restrictions on reduction in rank of warrant officers and non-commissioned officers ..... 7

        24. Right of warrant officer to discharge on reduction in rank ..... 7

        25. Persons enlisting in Corps of Instructors ..... 7

    Miscellaneous and supplementary provisions ..... 8

        26. Rules for reckoning service ..... 8

        27. Validity of attestation and enlistment ..... 8

28. False answers in attestation papers .....	8
Part V – Discipline and trial and punishment of military offences .....	9
Treachery, cowardice and offences arising out of military service .....	9
29. Aiding the enemy .....	9
30. Communication with the enemy .....	9
31. Cowardly behaviour .....	10
32. Offences against morale .....	10
33. Becoming prisoner of war through disobedience or wilful neglect and failing to rejoin Force .....	10
34. Offences by or in relation to sentries, etc. ....	11
35. Looting .....	11
Mutiny and insubordination .....	12
36. Mutiny .....	12
37. Failure to suppress mutiny .....	12
38. Insubordinate behaviour .....	13
39. Disobedience to particular orders .....	13
40. Obstruction of provost officers .....	13
41. Disobedience to standing orders .....	13
Desertion, absence without leave, etc. ....	14
42. Desertion .....	14
43. Absence without leave .....	14
44. Assisting and concealing desertion and absence without leave .....	14
45. Falsely obtaining or prolonging leave .....	15
46. Failure to perform military duties .....	15
Malingering and drunkenness .....	15
47. Malingering .....	15
48. Drunkenness .....	15
Offences relating to property .....	16
49. Offences in relation to public and service property .....	16
50. Offences in relation to property of members of Force .....	16
51. Miscellaneous offences relating to property .....	17
Offences relating to billeting and requisitioning of vehicles .....	17
52. Billeting offences .....	17
53. Offences in relation to requisitioning of vehicles .....	17
Flying, etc., offences .....	18
54. Dangerous flying, etc. ....	18

55. Inaccurate certification of aircraft, etc. ....	18
56. Low flying .....	18
57. Annoyance by flying .....	18
Offences relating to, and by, persons in custody .....	19
58. Irregular arrest and confinement .....	19
59. Permitting escape, and unlawful release of prisoners .....	19
60. Resistance to arrest .....	20
61. Escape from confinement .....	20
Offences in relation to courts-martial .....	20
62. Offences in relation to courts-martial .....	20
63. False evidence .....	21
Miscellaneous offences .....	21
64. Injurious disclosures .....	21
65. Making of false statements on enlistment .....	21
66. Making of false documents .....	21
67. Scandalous conduct of an officer .....	22
68. Ill-treatment of officers or men of inferior rank .....	22
69. Disgraceful conduct .....	22
70. False accusation, etc. ....	22
71. Attempts to commit military offences .....	22
72. Conduct to the prejudice of military discipline .....	23
Civil offences .....	23
73. Civil offences .....	23
Punishments .....	23
74. Punishment of officers .....	23
75. Punishment of soldiers .....	24
76. Field punishment .....	25
Arrest .....	25
77. Power to arrest offenders .....	25
78. Provisions for avoiding delay after arrest .....	26
Investigation of, and summary dealing with, charges .....	26
79. Investigation of charges by commanding officer .....	26
80. Charges to be dealt with summarily or by court-martial .....	26
81. Further proceedings on charges against non-commissioned officers and soldiers .....	27
82. Further proceedings on charges against officers and warrant officers .....	28

83. Dismissal of charges referred to higher authority .....	29
84. Officers who are to act as commanding officers and appropriate superior authorities .....	29
85. Limitation of powers of summary dealing with charges .....	30
Court-martial: General provisions .....	30
86. Trial by, and powers of, court-martial .....	30
87. Officers having power to convene court-martial .....	30
88. Constitution of court-martial .....	30
89. Supplementary provisions as to constitution of court-martial .....	31
90. Place for sitting of court-martial and adjournment to other places .....	31
Court-martial: Provisions relating to trial .....	31
91. Challenges by accused .....	31
92. Administration of oaths .....	32
93. Court-martial to sit in open court .....	32
94. Dissolution of court-martial .....	32
95. Decisions of court-martial .....	33
96. Finding and sentence .....	33
97. Power to convict of an offence other than that charged .....	33
98. Rules of evidence .....	34
99. Privilege of witnesses and others at court-martial .....	34
100. Offences by civilians in relation to court-martial .....	34
101. Affirmations .....	35
Confirmation, revision and review of proceedings of court-martial .....	35
102. Confirmation of proceedings of court-martial .....	35
103. Petitions against finding or sentence .....	35
104. Revision of findings of court-martial .....	35
105. Powers of confirming officers .....	36
106. Confirming officers .....	37
107. Approval of death sentence by President .....	37
108. Review of finding and sentence of court-martial .....	37
109. Reconsideration of sentences of imprisonment and detention .....	38
Review of summary findings and awards .....	38
110. Review of summary findings and awards .....	38
Findings of insanity .....	39
111. Provisions where accused found insane .....	39
Commencement, suspension and duration of sentences .....	39

112. Commencement of sentences .....	39
113. Duration of sentences of imprisonment and detention .....	40
114. Suspension of sentences .....	41
115. Restriction on serving of sentences of detention in prison .....	41
116. Special provisions as to civil prisons in Zambia .....	41
117. Special provisions as to carrying out or serving sentences outside Zambia .....	42
118. Country in which sentence of imprisonment or detention to be served .....	42
119. Duties of officers in charge of prisons and others to receive prisoners .....	42
Trial of persons ceasing to be subject to military law under this Act and time limits for trials .....	43
120. Trial and punishment of offences under this Act notwithstanding offender .....	43
121. Limitation of time for trial of offences under this Act .....	43
Relations between military and civil courts and finality of trials .....	44
122. Powers of civil court .....	44
123. Persons not to be tried under this Act for offences already disposed of .....	44
Inquiries .....	45
124. Boards of inquiry .....	45
125. Inquiries into absence .....	45
Miscellaneous provisions .....	45
126. Restitution or compensation for theft, etc. ....	45
127. Appointment of judge advocates .....	47
128. Promulgation .....	47
129. Custody of proceedings of court-martial and right of accused to copy thereof .....	47
130. Indemnity for prison officers, etc. ....	47
Rules of procedure, etc. ....	48
131. Rules of procedure .....	48
132. Imprisonment and Detention Regulations .....	49
133. Board of Inquiry Rules .....	49
134. Miscellaneous regulations .....	50
Interpretation of Part V .....	50
135. Interpretation of Part V .....	50
Part VI – Appeals from courts-martial .....	51
136. Right of appeal .....	51
137. Application for leave of appeal .....	51
138. Determination of appeals in ordinary cases .....	51
139. Powers of court of appeal in special cases .....	52

140. Commencement of sentence .....	52
141. Appeal to be final .....	53
142. Proceedings may be heard in absence of appellants .....	53
143. Defence of appeals .....	53
144. Right of appellant to present his case in writing .....	53
145. Suspension of death sentence .....	53
146. Person not to be tried again where conviction quashed .....	53
147. Removal of prisoners for purposes of this Part .....	53
148. Furnishing, on appeal, of documents relating to trial .....	54
149. Duties of registrar of court of appeal with respect to appeals, etc. ....	54
150. Saving of powers of reviewing authorities .....	54
151. Composition of court of appeal .....	54
152. Exercise of certain powers of court of appeal by a Judge .....	54
153. General provisions as to procedure .....	55
Part VII – Forfeitures and deductions and enforcement of maintenance liabilities .....	55
154. Forfeitures and deductions; general provisions .....	55
155. Forfeiture of pay for absence from duty .....	55
156. Deductions for payment of civil penalties .....	56
157. Compensation for loss occasioned by wrongful act or negligence .....	56
158. Deductions for barrack damage .....	56
159. Remission of forfeitures and deductions .....	57
160. Enforcement of maintenance and affiliation orders by deduction from pay .....	57
161. Deductions from pay for maintenance of wife or child .....	58
162. Limit of deductions under sections 160 and 161 and effect on forfeiture .....	58
163. Service of process in maintenance proceedings .....	59
Part VIII – Government and general provisions .....	59
Command .....	59
164. Command and precedence .....	59
165. Command of Forces .....	59
166. Regulations as to command .....	59
167. Powers of command of members of co-operating forces .....	59
Redress of complaints .....	60
168. Complaints by officers .....	60
169. Complaints by soldiers .....	60
Exemptions for officers and soldiers .....	60

170. Exemption from service as assessor .....	60
171. Exemption from tolls, etc. ....	61
172. Exemption from taking in execution of property used for military purposes .....	61
Provisions relating to deserters and absentees without leave .....	61
173. Arrest of deserters and absentees without leave .....	61
174. Proceedings before a civil court where persons suspected of illegal absence .....	61
175. Deserters and absentees without leave surrendering to police .....	62
176. Certificates of arrest or surrender of deserters and absentees .....	62
177. Duties of superintendents of prisons and others to receive deserters and absentees .....	63
Offences relating to military matters punishable by civil courts .....	63
178. Punishment for pretending to be a deserter .....	63
179. Punishment for obstructing officers or soldiers in execution of duty .....	63
180. Punishment for aiding malingering .....	63
181. Unlawful purchase, etc., of military stores .....	64
182. Illegal dealings in documents relating to pay, pensions, mobilisation, etc. ....	65
183. Unauthorised use of and dealing in Decorations etc. ....	65
Provisions as to evidence .....	65
184. General provisions as to evidence .....	65
185. Proof of outcome of civil trial .....	66
186. Evidence of proceedings of court-martial .....	67
Miscellaneous provisions .....	67
187. Temporary reception in civil custody of persons under escort .....	67
188. Avoidance of assignment of, or charge on, military pay, pensions, etc. ....	67
189. Power of certain officers to take statutory declarations .....	68
Part IX .....	68
190. *** .....	68
191. *** .....	68
192. *** .....	68
193. *** .....	68
194. *** .....	68
195. *** .....	68
196. *** .....	68
197. *** .....	68
198. *** .....	68
Part X – Reserve Force .....	69

199. Composition .....	69
200. Discharge from Reserve .....	69
201. Reporting of Reserve .....	69
202. Embodiment .....	69
203. Postponement of discharge .....	69
204. Failure to attend on embodiment .....	69
205. Regulations under this Part .....	70
Part XI – Application of Act and supplementary provisions .....	70
206. Persons subject to military law .....	70
207. Application of Act to civilians .....	70
208. Application of Act to persons subject to the Acts .....	71
209. Application of Act to Home Guard and Reserve Force .....	71
210. Regulations .....	72
211. Powers exercisable in subsidiary legislation .....	72
212. Execution of orders, instruments, etc. ....	73
213. Transitional provisions .....	73
214. Exemption from Trades Licensing Act and Clubs' Registration Act .....	73
First Schedule (Part V, Section 97) .....	74
Second Schedule (Section 213) .....	75



# Zambia

## Defence Act, 1964

### Chapter 106

Commenced on 18 September 1964

*[This is the version of this document as it was at 31 December 1996 to 25 December 2023.]*

*[45 of 1964; 1 of 1967; 32 of 1971; Government Notice 497 of 1964; Statutory Instrument 8 of 1964; Act No. 21 of 1985; 1 of 1987; 18 of 1988; Act No. 13 of 1994]*

An Act to provide for the creation and maintenance in Zambia of a Defence Force consisting of an Army comprising the Regular Force of the Army, the Territorial Force of the Army, the Army Reserve and the Territorial Army Reserve, and an Air Force comprising the Regular Force of the Air Force, the Auxiliary Air Force, the Air Force Reserve and the Auxiliary Air Force Reserve; to charge the Defence Force with the defence of Zambia and with such other duties as may from time to time be determined by the President; to provide for the creation of a Defence Council to advise the President in matters of policy and matters affecting the command, discipline and administration of the Defence Force; to provide for the commissioning, appointment and transfer of officers in the Defence Force and to set out the terms and conditions of enlistment and service of soldiers in the Regular Force of the Defence Force; to provide the conditions of discharge of soldiers from the Regular Force and for their transfer to the Reserve Force; to provide for the discipline of the Defence Force and for the trial and punishment of members of the Force who commit such military offences as are set out in the Act, or civil offences; to make provision for the arrest of members of the Defence Force who commit an offence against any provision of the Act and for the investigation of and summary dealing with charges preferred against such members; to provide for the creation and constitution of courts-martial to try persons subject to military law under the Act, for the procedure to be followed by such courts-martial, for the awarding of punishments and for the confirmation, revision and review of proceedings of courts-martial and the review of summary findings and awards; to make provision for the carrying out of sentences of imprisonment awarded by courts-martial, for a right of appeal from the decision of a court-martial to the court of appeal and for the procedure in and determination of such appeals; to provide for the enforcement of maintenance and affiliation orders against members of the Defence Force by deduction from pay and for the imposition of forfeitures and deductions from the pay of such members in certain circumstances; to set out the order of precedence of officers and soldiers of the Defence Force and to make provision for the command of the Army and the command of the Air Force and for the exemption of officers and soldiers from serving as assessors in civil courts, to provide for the arrest, of deserters and absentees without leave and for the bringing of such persons before a civil court; to set out the offences relating to military matters which are punishable by civil courts and to make provision with respect to evidence in proceedings under this Act, whether before a court-martial or a civil court; to provide for the composition of and enlistment of persons in the Territorial Force, for the training of persons enlisted in such Force, for the embodiment of such Force when necessary in the public interest, for the discharge of persons from the Force and for all other matters affecting the discipline of the Force; to provide for the composition and embodiment of the Reserve Force, for the discharge of persons from that Force and for all other matters affecting the discipline of such Force; to set out the persons who are subject to military law under the Act and generally to provide for matters incidental to or connected with the foregoing; to repeal the Defence Act, 1955, and to give effect to the transitional provisions and savings set out in the Act.

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Defence Act.

## 2. Interpretation

(1) In this Act, unless the context otherwise requires—

"**the Acts**" mean the Army Act, 1955, and Air Force Act, 1955, of the United Kingdom as amended from time to time and any enactment substituted therefor;

"**acting rank**" means rank of any description (however called) such that under regulations made under section two hundred and ten a commanding officer has power to order the holder to revert from that rank; and "acting warrant officer" and "acting non-commissioned officer" shall be construed accordingly;

"**active service**" shall be construed in accordance with section three;

"**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 connection with the taking-off or landing of aircraft or for detecting the movement of aircraft;
- (e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

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

"**appropriate superior authority**" has the meaning assigned to it by paragraph (b) of subsection (1) of section eighty-four;

"**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 Inquiry Rules**" means rules made by the President under section one hundred and thirty-three;

"**civil court**" means a court of ordinary criminal jurisdiction, but does not, except where otherwise expressly provided, include any such court outside Zambia;

"**civil offence**" has the meaning assigned to it in subsection (2) of section seventy-three;

"**colour service**" means service in the Regular Force under the provisions of this Act;

"**Commander**" means the person appointed under section one hundred and sixty-five, and "Army Commander" and "Air Commander" shall be construed accordingly;

"**commanding officer**" has the meaning assigned to it in paragraph (a) of subsection (1) of section eighty-four;

"**competent military authority**" means the President or any officer as may be prescribed;

"**corps**" means such body of the Defence Force as may from time to time be declared by the President to be a corps for the purposes of this Act and regulations made thereunder;

*[Please note: definitions omitted in the original.]*

- (2) References in this Act to officers and soldiers of the Defence Force shall, except in Part VII, be construed as including references to officers and soldiers attached or seconded to the Defence Force.
- (3) References in this Act to military or Army rank include references to the corresponding Air Force rank.

*[As amended by S.I. No. 8 of 1964 and No. 32 of 1971]*

*[Cap. 25; [Cap. 122](#); Cap. 87]*

### 3. Provisions as to active service

- (1) In this Act, "on active service", in relation to any unit, means that it is engaged in operations against an enemy and, in relation to a person, means that he is serving in or with such unit which is on 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 on active service, he may declare that for such period, not exceeding three 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 that it is 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 time, not exceeding three months, as may be specified in the declaration under this subsection.
- (4) If at any time while any unit is deemed to be on active service by virtue of the foregoing provisions 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 as 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 statutory proclamation.

*[As amended by S.I. No. 8 of 1964]*

### 4. Maintenance of Defence Force

- (1) There shall be maintained in Zambia a Defence Force which shall consist of—
  - (a) an Army comprising—
    - (i) the Regular Force of the Army;
    - (ii) the Home Guard;
    - (iii) the Army Reserve;
    - (iv) the Territorial Army Reserve; and
  - (b) an Air Force comprising—
    - (i) the Regular Force of the Air Force;
    - (ii) the Auxiliary Air Force;
    - (iii) the Air Force Reserve; and

- (iv) the Auxiliary Air Force Reserve.
- (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.

*[As amended by No. 32 of 1971]*

## **5. Employment of Defence Force**

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

## **6. Employment of Defence Force outside Zambia**

Subject to the provisions of section seven, the President may at any time order that the whole or any part of the Defence Force shall be employed out of or beyond Zambia.

## **7. Overseas training**

- (1) The President may order that any officer or soldier of the Regular Force or, with his consent, any officer or soldier of the Territorial Force or Reserve Force, shall proceed to any place outside Zambia 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 the military authorities of any other country or territory for the purpose of his being attached to the armed forces of that country or territory.

## **Part II – Defence Council**

### **8. Establishment of Defence Council**

- (1) There shall be a Defence Council which shall advise the President in such matters of policy and matters affecting the command, discipline and administration of the Defence Force and shall perform such other functions and duties as may be referred to it from time to time by the President.
- (2) The members of the Defence Council shall be appointed by the President.
- (3) The President shall have power to co-opt any other person as a member of the Defence Council from time to time as he may decide.

## **Part III – Officers**

### **9. Officers selection board**

No person shall be granted a commission in the Defence Force unless he has been recommended by a selection board which shall be established for this purpose by the President.

### **10. Grant of commissions**

- (1) The power to grant commissions in the Defence Force is vested in and shall be exercised only by the President.
- (2) A commission may be granted either for an indefinite period or for a specified time.
- (3) Every officer on being granted a commission shall be issued with a commission signed by the President in a form to be prescribed.

## 11. Appointment and transfer of officers

- (1) Every officer upon being granted a commission shall be appointed to one of the components of the Defence Force referred to in subsection (1) of section four.
- (2) The President may upon such terms and conditions as may be prescribed transfer any officer between the Regular Force and the Territorial Force, between the Regular Force and the Reserve Force, or between the Territorial Force and the Reserve Force.

## 12. Regulations under this Part

- (1) Subject to the provisions of this Act, the President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Part and, without prejudice to the generality of the foregoing, such regulations may make provisions with respect to all or any of the following matters, that is to say, the commissioning of officers, their terms of service, appointment, transfer, promotion, retirement, resignation, removal from office and such other matters concerning officers as may seem necessary.
- (2) The appointment, transfer, substantive promotion, retirement, resignation or removal from office of any officer shall be notified in the *Gazette*.

## Part IV – Enlistment and terms of service in the Regular Force

### Enlistment

## 13. Recruiting officers

Any person authorised 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.

## 14. Enlistment

- (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 eighteen years unless consent to the enlistment has been given in writing by his parent or guardian or, where the parents or guardian are dead or unknown, by the District Secretary of the district in which such person resides.

## 15. Terms of enlistment

- (1) The term for which a person enlisting in the Regular Force may be enlisted shall be such term beginning at the date of his attestation as is mentioned in the following provisions of this section.
- (2) Where the person enlisting has apparently attained the age of eighteen years, the term shall be seven years' colour service and five years with the Reserve Force, or as may be prescribed from time to time by regulations.
- (3) Where the person enlisting has not apparently attained the age of eighteen years, the said term shall be seven years' colour service commencing on the date upon which he attains such age, and a term of five years thereafter with the Reserve Force, or as may be prescribed from time to time by regulations.

## 16. Re-engagement and continuation in service

Any soldier of the Regular Force who at any time has completed or is within one year before completing the term of his service with the Regular Force may, with the approval of the competent military authority, re-engage for such further period or periods of service with the Regular Force and service in the Reserve Force as may be prescribed.

## 17. Prolongation of service

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 competent military authority may direct.

## Discharge and transfer to Reserve Force

### 18. Discharge

- (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 discharge shall remain subject to military law under this Act.
- (2) Where a soldier of the Regular Force who is entitled to be discharged is serving out of Zambia then —
  - (a) if he requires to be discharged in Zambia, 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 six months from 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 Zambia or elsewhere.
- (3) Except in pursuance of the sentence of a court-martial, a soldier of the Regular Force shall not be discharged unless his discharge has been authorised 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.

### 19. Transfer to Reserve Force

- (1) Every soldier of the Regular Force upon falling to be transferred to the Reserve Force shall be transferred to the Reserve Force but until so transferred shall remain subject to military law under this Act.
- (2) Where a soldier of the Regular Force when falling to be transferred to the Reserve Force, is serving out of Zambia, he shall be sent to Zambia free of cost with all convenient speed and shall be transferred to the Reserve Force on his arrival there or, if he consents to his transfer being delayed, within six months from his arrival.
- (3) Notwithstanding the provisions of subsections (1) and (2), the competent military authority may, when a soldier of the Regular Force falls to be transferred to the Reserve Force as aforesaid, discharge him forthwith without giving any reason and in any such case the provisions of section eighteen shall apply.

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

- (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 of the provisions of this Act:

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.

## **21. Discharge upon prescribed grounds**

A soldier of the Regular Force may be discharged by the competent military authority at any time during the currency of any term of engagement upon grounds and subject to such special instructions as may be prescribed.

## **22. Right of soldier to purchase discharge**

- (1) Subject to the provisions of this section, a soldier of the Regular Force shall be entitled to claim his discharge—
  - (a) at any time within three months after the date of his first attestation upon payment of a sum to be fixed by the Commander but which shall not exceed six hundred fee units; or
  - (b) at any time thereafter, with the consent of the Army Commander or Air Commander, as the case may be, upon payment of one-half of one month's pay for each whole year of service with the Regular Force then remaining uncompleted;

and shall be discharged with all convenient speed, but until discharge shall remain subject to military law under this Act.

- (2) Notwithstanding the provisions of subsection (1), a soldier of the Regular Force shall not be entitled to claim his discharge pursuant to this section while soldiers of the Regular Forces are required to continue their colour service under the provisions of section seventeen.

*[As amended by Act [No. 13 of 1994](#)]*

## **23. Restrictions on reduction in rank of warrant officers and non-commissioned officers**

- (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 an officer not below the rank of lieutenant-colonel authorised by regulations to act for the purposes of this subsection.
- (2) An authorisation under subsection (1) may be given generally or subject to such limitations as may be prescribed.
- (3) For the purposes of this section, a reduction in rank does not include reversion from acting rank to substantive rank or above.

## **24. Right of warrant officer to discharge on reduction in rank**

A warrant officer of the Regular Force who is reduced to the rank of private soldier may thereupon claim to be discharged unless a state of war, insurrection, hostilities or public emergency exists.

## **25. Persons enlisting in Corps of Instructors**

Notwithstanding the provision of this Part, a person to be enlisted in the Corps of Instructors may be enlisted and discharged upon such terms and conditions as may be prescribed by the President.

## Miscellaneous and supplementary provisions

### 26. Rules for reckoning service

In reckoning the service of any soldier of the Regular Force towards discharge or re-engagement or transfer to the Reserve Force, there shall be excluded therefrom—

- (a) all periods during which he has been absent from his duty for any of the following causes:
  - (i) imprisonment;
  - (ii) desertion;
  - (iii) absence without leave exceeding twenty-eight days; and
- (b) any period ordered by a court-martial to be forfeited.

### 27. Validity of attestation and enlistment

- (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—
  - (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 three 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 regulation 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 then—
  - (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 prejudicing the determination of any question as to the term for which a person was enlisted or as preventing the discharge of a person who has not claimed his discharge.

### 28. False answers in attestation papers

- (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 commit an offence against this section and shall be liable on conviction to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a term not exceeding three months, or to both.
- (2) For the avoidance of doubt it is hereby declared that a person may be proceeded against under this section notwithstanding that he has since become subject to military law under this Act.

*[As amended by Act [No. 13 of 1994](#)]*

## Part V – Discipline and trial and punishment of military offences

### Treachery, cowardice and offences arising out of military service

#### 29. Aiding the enemy

- (1) Any person subject to military law under 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; or
  - (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 any of those forces; or
  - (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage; or
  - (d) furnishes the enemy with arms or ammunition or with supplies of any description or with anything 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; or
  - (f) gives any false air signal or alters or interferes with any air signal or any apparatus for giving an air signal; or
  - (g) when ordered by a superior officer, or otherwise under orders, to carry out any warlike operation in the air fails to use his utmost exertions to carry such orders into effect; or
  - (h) causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force;

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

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

#### 30. Communication with the enemy

- (1) Any person subject to military law under this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to suffer death or any punishment provided by this Act.
- (2) Any person subject to military law under this Act who, without authority, communicates with or gives intelligence to the enemy shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (3) In this section, "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, that is to say:

- (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 of such forces, or aircraft as aforesaid;
- (c) any code, cypher, 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) munitions of war.

### **31. Cowardly behaviour**

- (1) Any person subject to military law under this Act who, when before the enemy—
  - (a) leaves his post, position or other place where it is his duty to be; or
  - (b) throws away his arms, ammunition or tools; or
  - (c) does any of the acts specified in paragraphs (f) to (h) of subsection (1) of section twenty-nine;

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 against this section.

- (2) Any person subject to military law under this Act who, when before the enemy, induces other persons subject to service law and before the enemy to commit an offence under subsection (1) shall be guilty of an offence against this section.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.

### **32. Offences against morale**

Any person subject to military law under 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 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, be liable to imprisonment or any less punishment provided by this Act.

### **33. Becoming prisoner of war through disobedience or wilful neglect and failing to rejoin Force**

- (1) Any person subject to military law under this Act who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy shall be guilty of an offence against this section.
- (2) Any person subject to military law under this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject to service law captured by the enemy from taking, 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 against this section.

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

*[As amended by S.I. No. 8 of 1964]*

### **34. Offences by or in relation to sentries, etc.**

- (1) Any person subject to military law under this Act who, while on guard duty—
- (a) sleeps at his post; or
  - (b) when not on duty at his post, is asleep at a time when he is not allowed to be asleep; or
  - (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 against this section.

- (2) For the purposes of this section, a person shall be treated as being 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.
- (3) Any person subject to military law under 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 that 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 against this section.
- (4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

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

- (5) References in this section to a person on guard duty are references to a person who—
- (a) is posted or ordered to patrol; or
  - (b) is a member of a guard or other party mounted or ordered to patrol;
- for the purpose of protecting any persons, property, 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, property or place, or regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

*[As amended by S.I. No. 8 of 1964]*

### **35. Looting**

Any person subject to military law under this Act who—

- (a) steals from or with intent to steal searches the person of anyone killed or wounded in the course of warlike operations; or
- (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, to imprisonment or any less punishment provided by this Act.

## **Mutiny and insubordination**

### **36. Mutiny**

- (1) Any person subject to military law under this Act who—

- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against the enemy, or the impeding of the performance of any such duty or service; or
- (b) incites any person subject to service law to take part in such a mutiny, whether actual or intended;

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

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

- (3) In this Act, "mutiny" means a combination between two or more persons subject to service law, or between persons two at least of whom are subject to service law—

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

### **37. Failure to suppress mutiny**

Any person subject to military law under 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—

- (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;

### 38. Insubordinate behaviour

- (1) Any person subject to military law under 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, be liable to imprisonment or any less punishment provided by this Act:

Provided that he shall not be liable to be imprisoned for more than two years if the offence was not committed on active service and did not involve the striking or other use of violence, or offering of violence, to a superior officer exercising authority as such.
- (2) In this section, "superior officer", in relation to a person, means an officer, warrant officer or non-commissioned officer subject to service law 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.

### 39. Disobedience to particular orders

- (1) Any person subject to military law under 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, be liable to imprisonment or any less punishment provided by this Act.
- (2) Any person subject to military law under this Act who, whether wilfully or through neglect, disobeys any lawful command shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

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

### 40. Obstruction of provost officers

Any person subject to military law under this Act who—

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

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

### 41. Disobedience to standing orders

- (1) Any person subject to military law under 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or body of troops, or for any command or other area, garrison or place, or for any vessel, train or aircraft.

## Desertion, absence without leave, etc.

### 42. Desertion

- (1) Any person subject to military law under this Act who—
- (a) deserts; or
  - (b) persuades or procures any person subject to service law to desert;
- shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:
- Provided that a person shall not be liable to be imprisoned for more than two years unless—
- (i) if the offence was against paragraph (a), he was on active service or under orders for active service at the time it was committed;
  - (ii) if the offence was an offence against paragraph (b), the person in relation to whom it was committed was on active service or under orders for active service at that time.
- (2) For the purposes of this Act, a person deserts who—
- (a) leaves the Defence Force or, when it is his duty to do so, fails to join or rejoin the Defence Force, with (in either case) the intention, subsisting at the time of leaving or failure or formed thereafter, of remaining permanently absent from his duty; or
  - (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 with intent to avoid serving at any place outside Zambia or to avoid service or any particular service when before the enemy;
- and references in this Act to "desertion" and "to desert" shall be construed accordingly.
- (3) In addition to or in lieu of any punishment authorised by subsection (1), the court-martial by whom 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.

### 43. Absence without leave

- Any person subject to military law under this Act who—
- (a) absents himself without leave; or
  - (b) persuades or procures any person subject to service law to absent himself without leave;
- shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### 44. Assisting and concealing desertion and absence without leave

- Any person subject to military law under this Act who—
- (a) knowingly assists any person subject to service law to desert or absent himself without leave; or

- (b) knowing that any person subject to service law has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **45. Falsely obtaining or prolonging leave**

Any person subject to military law under this Act who, for the purpose of obtaining leave or prolonging his leave, knowingly makes any false statement shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **46. Failure to perform military duties**

Any person subject to military law under 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 to do so shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### **Malingering and drunkenness**

#### **47. Malingering**

- (1) Any person subject to military law under this Act who—
- (a) falsely pretends to be suffering from sickness or disability; or
  - (b) injures himself with intent thereby to render himself unfit for service, or causes himself to be injured by any person with that intent; or
  - (c) injures another person subject to service law, 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) In this section, "unfit" includes temporarily unfit.

#### **48. Drunkenness**

- (1) Any person subject to military law under this Act who is guilty of drunkenness, whether on duty or not, shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

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

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

## Offences relating to property

### 49. Offences in relation to public and service property

- (1) Any person subject to military law under this Act who—
- (a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at the stealing or fraudulent misapplication of any public or service property; or
  - (b) receives any public or service 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 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, be liable to imprisonment or any less punishment provided by this Act.
- (2) Without prejudice to the generality of the provisions of subsection (1), any person subject to military law under this Act who—
- (a) wilfully damages, or is concerned in the wilful damage of, any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or
  - (b) by wilful neglect, causes damage to, or the loss of, any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or
  - (c) without lawful authority, disposes of any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith;
- shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act.
- (3) Any person subject to military law under 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 aircraft of the Defence Force or of any forces co-operating therewith shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:
- Provided that if he has not acted wilfully or with wilful neglect he shall not be liable to imprisonment for a term exceeding two years.

### 50. Offences in relation to property of members of Force

- Any person subject to military law under this Act who—
- (a) steals or fraudulently misapplies any property belonging to a person subject to service law, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
  - (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 service law;
- shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## 51. Miscellaneous offences relating to property

Any person subject to military law under this Act who—

- (a) loses, or by negligence damages, any public or service property of which he had 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; or
- (b) by negligence, loses or damages any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or
- (c) is guilty of any act or neglect likely to cause damage to or loss of any aircraft or aircraft material of the Defence Force or of any forces co-operating therewith; or
- (d) by negligence, causes damage by fire to any public or service property; or
- (e) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or
- (f) fails to take proper care of any animal or bird used in the public service which is in his charge; or
- (g) 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

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

## Offences relating to billeting and requisitioning of vehicles

### 52. Billeting offences

Any person subject to military law under this Act who—

- (a) knowing that no billeting requisition is in force under any law authorising him to demand any billets or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them; or
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under any 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 or premises in which he is billeted in pursuance of a billeting requisition under any 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### 53. Offences in relation to requisitioning of vehicles

(1) Any person subject to military law under this Act who—

- (a) knowing that no requisitioning order is in force under any law authorising him to give directions for the provisions of any vehicle, or that he is otherwise not authorised to give

such directions, gives directions for the provision of the vehicle or orders or procures another person to give such directions; or

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

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

- (2) Subsection (1) shall apply in relation to horses, food, forage and stores as it applies in relation to vehicles.

### **Flying, etc., offences**

#### **54. Dangerous flying, etc.**

Any person subject to military law under this Act who is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person, shall, on conviction by court-martial, be liable to imprisonment or any less punishment provided by this Act:

Provided that if the offender has not acted wilfully or with wilful neglect he shall not be liable to be imprisoned for more than two years.

#### **55. Inaccurate certification of aircraft, etc.**

Any person subject to military law under this Act who signs any certificate in relation to an aircraft or to aircraft material without ensuring the accuracy of the certificate shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **56. Low flying**

Any person subject to military law under this Act who, being the pilot of an aircraft, flies it at a height less than such height as may be provided by any regulations issued under the authority of the President, except —

- (a) while taking off or alighting; or
- (b) in such other circumstances as may be provided;

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **57. Annoyance by flying**

Any person subject to military law under this Act who, being the pilot of an aircraft, flies it so as to cause, or to be likely to cause, unnecessary annoyance to any person shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## Offences relating to, and by, persons in custody

### 58. Irregular arrest and confinement

- (1) Any person subject to military law under this Act who, when another person subject thereto is under arrest—
  - (a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person or for having the allegations against that other person investigated by his commanding officer or an appropriate superior authority, or, as the case may be, tried by court-martial; or
  - (b) fails to release, or effect the release of, that other person when it is his duty to do so;shall be guilty of an offence against this section.
- (2) Any person subject to military law under 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 twenty-four 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 against this section.
- (3) Where any person (hereinafter referred to as "the prisoner") is committed to the charge of a person subject to military law under 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 twenty-four 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 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 sub-section (2);he shall be guilty of an offence against this section.
- (4) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### 59. Permitting escape, and unlawful release of prisoners

- (1) Any person subject to military law under 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, be liable to imprisonment or any less punishment provided by this Act.
- (2) Any person subject to military law under this Act who—
  - (a) without proper authority, release 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## 60. Resistance to arrest

- (1) Any person subject to military law under this Act who, being concerned in any quarrel or disorder, refuses to obey any officer subject to service law who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such officer, shall be guilty of an offence against this section whether or not the officer is his superior officer.
- (2) Any person subject to military law under this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to military law under this Act or not, whose duty it is to apprehend him or in whose custody he is, shall be guilty of an offence against this section.
- (3) Any person guilty of an offence against this section shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

## 61. Escape from confinement

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

## Offences in relation to courts-martial

### 62. Offences in relation to courts-martial

- (1) Any person subject to military law under this Act who—
  - (a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order; or
  - (b) refuses to swear an oath when duly required by a court-martial to do so; or
  - (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
  - (d) when a witness, refuses to answer any question which a court-martial has lawfully required him to answer; or
  - (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, be liable to a term of imprisonment not exceeding two years or any less punishment provided by this Act.

- (2) Notwithstanding anything in subsection (1), where an offence against paragraph (e) or (f) of that subsection is committed in relation to any court-martial held in pursuance of this Act, that court, if of 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, may by order under the hand of the president order the offender to be imprisoned for a period not exceeding twenty-one days, or, in the case of a soldier, either to be imprisoned for such a period or to undergo detention for such a period.
- (3) References in paragraphs (a) to (f) of subsection (1) to a court-martial shall include references to a court-martial held in pursuance of service law.

### 63. False evidence

- (1) Any person subject to military law under 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) A person shall not be liable to be convicted of an offence against this section solely on the evidence of one witness as to the falsity of any statement alleged to be false.

## Miscellaneous offences

### 64. Injurious disclosures

- (1) Any person subject to military law under 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.
- (2) In this section, "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, that is to say:
  - (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 of such forces or aircraft as aforesaid;
  - (c) any code, cypher, call-sign, password or counter-sign;
  - (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.

### 65. Making of false statements on enlistment

Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part IV, 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 military law under this Act, be liable, on conviction by court-martial, to imprisonment for a period not exceeding three months or to any less punishment provided by this Act.

### 66. Making of false documents

Any person subject to military law under this Act who—

- (a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular; or
- (b) alters any service report, return, pay list, or certificate or other service document, or alters any entry in such document, so that the document or entry is to 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; or

- (c) with intent to defraud, fails to make an entry in any such document; or
- (d) aids, abets, commands, cancels, procures or connives at the commission by another person subject to service law of an offence against this section or the corresponding section of the applicable service law (whether or not he knows the nature of the document in relation to which that offence will be committed);

shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **67. Scandalous conduct of an officer**

Every officer subject to military law under this Act who behaves in a scandalous manner, unbecoming the character of an officer, shall, on conviction by court-martial, be cashiered.

#### **68. Ill-treatment of officers or men of inferior rank**

If—

- (a) any officer subject to military law under this Act strikes or otherwise ill-treats any officer subject to service law of inferior rank or less seniority, or any soldier subject to service law; or
- (b) any warrant officer or non-commissioned officer subject to military law under this Act strikes or otherwise ill-treats any person subject to service law, 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **69. Disgraceful conduct**

Any person subject to military law under this Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall, on conviction by court-martial, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **70. False accusation, etc.**

Any person subject to military law under this Act who—

- (a) makes an accusation against any officer or soldier subject to service law, which he knows to be false or does not believe to be true; or
- (b) in making a complaint in which he thinks himself wronged, makes a statement affecting the character of an officer or soldier subject to service law, 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### **71. Attempts to commit military offences**

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

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

## 72. Conduct to the prejudice of military discipline

Any person subject to military law under 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, be liable to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### Civil offences

## 73. Civil offences

- (1) Any person subject to military law under this Act who commits a civil offence, whether in Zambia or elsewhere, shall be guilty of an offence against this section.
- (2) In this Act—
  - (a) "civil offence" means any act or omission punishable by the law of Zambia or which, if committed in Zambia, would be punishable by that law;
  - (b) "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.
- (3) A person convicted by court-martial 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 Zambia, 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 Zambia if the corresponding civil offence is treason, murder, manslaughter, treason-felony, rape or an offence under section eight of the Suicide Act.

*[Cap. 89]*

- (5) Where the corresponding civil offence is murder, manslaughter or an offence under section eight of the Suicide Act, 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 or the neglect which caused the death, irrespective of the place of death.

*[Cap. 89]*

*[As amended by No. 1 of 1967]*

### Punishments

## 74. Punishment of officers

- (1) The punishments which may be awarded to an officer by sentence of a court-martial under this Act 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 in the Defence Force or in the corps to which the offender belongs, or in both;
  - (f) fine of a sum not exceeding the equivalent of ninety days' pay;
  - (g) 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 for one offence.
- (5) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.
- (6) A severe reprimand or reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or a fine.
- (7) Where an officer is sentenced by a court-martial to imprisonment he shall also be sentenced to be cashiered:

Provided that if the court-martial 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.

## 75. Punishment of soldiers

- (1) The punishments which may be awarded to a soldier by a sentence of a court-martial under this Act are those set out in the scale in subsection (2) and, in relation to a soldier, references in this Act to punishments provided by this Act are references to those punishments.
- (2) The scale referred to in subsection (1) is—
- (a) death;
  - (b) imprisonment;
  - (c) discharge with ignominy from the Defence Force;
  - (d) in the case of a warrant officer, dismissal from the Defence Force;
  - (e) detention for a term not exceeding two years;
  - (f) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding ninety 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 ninety days' pay;
  - (k) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;

- (1) 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 following paragraphs, 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 two years.

## 76. Field punishment

Field punishment shall consist of such duties or drills, in addition to those which the offender might be required to perform if he were not undergoing punishment, and such loss of privileges, as may be provided by or under regulations to be made by the President, and may include confinement in such place or manner as may be so provided and such personal restraint as may be necessary to prevent the escape of the offender and as may be so provided.

## Arrest

### 77. Power to arrest offenders

- (1) Any person subject to military law under this Act found committing an offence against any provision of this Act or alleged to have committed 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 by an officer subject to service law of superior rank, or, if engaged in a quarrel or disorder, by such an officer of any rank.
- (3) A soldier may be arrested by any officer, warrant officer or non-commissioned officer subject to service law:

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 subject to service law 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 section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

## **78. Provisions for avoiding delay after arrest**

- (1) The allegations against any person subject to military law under this Act who is under arrest shall be duly investigated without unnecessary delay and, as soon as may be, either proceedings shall be taken for punishing his offence or he shall be released from arrest.
- (2) Wherever any person subject to military law under this Act, having been taken into military custody, remains under arrest for a longer period than eight days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner, and a similar report will be made to the like authority and in the like manner every eight days until a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

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

- (3) For the purposes of subsection (1) of section fifty-eight, the question as to whether there has been unnecessary delay in the taking of any steps for the investigation of allegations against a person under arrest shall be determined without regard to the provisions of subsection (2).

## **Investigation of, and summary dealing with, charges**

### **79. Investigation of charges by commanding officer**

Before an allegation against a person subject to military law under 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.

### **80. Charges to be dealt with summarily or by court-martial**

- (1) After investigation, a charge against an officer below the rank of lieutenant-colonel or against a warrant officer may, if an authority has power under the following provisions of this Part to deal with it summarily, be so dealt with by that authority (in this Act referred to as "the appropriate superior authority") in accordance with those provisions.
- (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, 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) the 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 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 appropriate superior authority or the commanding officer of the accused, as the case may require, of the following action, that is to say, determining whether the accused is guilty, dismissing the charge or recording a finding of guilty accordingly, and awarding punishment.

### **81. Further proceedings on charges against non-commissioned officers and soldiers**

- (1) The following provisions of this section shall have effect where the commanding officer has investigated a charge against a non-commissioned officer or private soldier.
- (2) If—
- (a) the charge is not one which can be dealt with summarily and the commanding officer has not dismissed it; or
  - (b) the charge is one which can be dealt with summarily but the commanding officer is of 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, that is to say:
- (a) if the accused is a non-commissioned officer—
    - (i) a fine of a sum not exceeding the equivalent of seven 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 twenty-eight days, or, if the accused is on active service, field punishment for a period not exceeding twenty-eight days;
    - (ii) a fine of a sum not exceeding the equivalent of seven days' pay;
    - (iii) where the offence has occasioned any expense, loss or damage, stoppages;
    - (iv) confinement to barracks for a period not exceeding fourteen days;
    - (v) extra guards or pickets;
    - (vi) 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 the provisions of subsection (4), where the accused is a substantive 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 the ranks.

- (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, withdraw 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, any higher authority to whom the charge is referred 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 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.

- (10) Notwithstanding anything in the foregoing provisions of this section, the power thereby conferred on a commanding officer in the Home Guard shall not be exercisable by a commanding officer except during any period when the President has ordered the employment of the Home Guard or any part thereof under the provisions of section nineteen of the Home Guard Act, or during any period when the person to be dealt with is on any other duty pursuant to the provisions of the said Act.

*[Cap. 122]*

*[As amended by No. 32 of 1971]*

## **82. Further proceedings on charges against officers and warrant officers**

- (1) After investigating a charge against an officer or warrant officer, the commanding officer shall, unless he has dismissed the charge, submit it in the prescribed manner to a higher authority; and thereupon it shall be determined by such authority how the charge is to be proceeded with in accordance with subsections (2) and (3).
- (2) If the charge is one which can be dealt with summarily, it may be referred to the appropriate superior authority.
- (3) If the charge is not so referred, the prescribed steps shall be taken with a view to its being tried by court-martial.
- (4) Where the charge is referred to the appropriate superior authority, that authority shall investigate the charge in the prescribed manner and determine whether 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 authority determines that it is desirable that the charge be tried by the court-martial, the prescribed steps shall be taken with a view to its being so tried.

- (5) If the appropriate superior authority records a finding of guilty, the authority may award one or more of the following punishments, that is to say:
- (a) forfeiture in the prescribed manner of seniority of rank, where the accused is an officer the forfeiture being of seniority of rank either in the Defence Force or in the corps to which the accused belongs, or in both;
  - (b) a fine of a sum not exceeding the equivalent of twenty-eight 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 appropriate superior authority 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 authority 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 authority shall not record a finding but shall take the prescribed steps with a view to the charge being tried by court-martial.

### **83. Dismissal of charges referred to higher authority**

- (1) Notwithstanding the provisions of sections eighty-one and eighty-two, where a charge—
- (a) has been referred to higher authority with a view to its being tried by court-martial; or
  - (b) has been referred to higher authority for determination of how it is to be proceeded with;
- that authority may, subject to the provisions of 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 higher authority has so directed or the commanding officer thinks fit.

### **84. Officers who are to act as commanding officers and appropriate superior authorities**

- (1) In this Act—
- (a) "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;
  - (b) "appropriate superior authority", in relation to a person charged with an offence, means—
    - (i) in the case of officers of the rank of major and below and of warrant officers, any officer of the Defence Force not below the rank of colonel;
    - (ii) in the case of officers of the rank of lieutenant and below and of warrant officers, any officer of the Defence Force not below the rank of lieutenant-colonel who is not the commanding officer of such person.
- (2) Regulations made by the President under this section may confer on commanding officers power to delegate 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.

## 85. Limitation of powers of summary dealing with charges

- (1) The charges which may be dealt with summarily by a commanding officer, and the charges which may be dealt with summarily by an appropriate superior authority, shall be such as may be specified by regulations of the President.
- (2) In such cases as may be specified in that behalf by regulations of the President, the powers of a commanding officer or appropriate superior authority to award punishment shall be subject to such limitations as may be so specified.

## Court-martial: General provisions

### 86. Trial by, and powers of, court-martial

Subject to the provisions of this Act, a court-martial under this Act shall have power to try any person subject to military law under this Act for any offence which under this Act is triable by court-martial and to award for any such offence any punishment authorised by this Act for that offence.

### 87. Officers having power to convene court-martial

- (1) A court-martial may be convened by an officer not below the rank of colonel or by any officer not below field rank in the name of such officer and authorised by him to convene courts-martial.
- (2) Any authorisation 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;
  - (c) may be varied or may be revoked either wholly or in part by the officer by whom it was given or his successor in office.

### 88. Constitution of court-martial

- (1) A court-martial shall consist of the president and not less than two other officers as members:  
Provided that a court-martial shall consist of the president and not less than four other officers as members if—
  - (i) an officer is to be tried; or
  - (ii) 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 president or a member of a court-martial unless—
  - (a) he belongs to the Defence Force, is subject to military law and has been an officer in the Defence Force for a continuous period of not less than two years; or
  - (b) is an officer in the Defence Force, is subject to military law and has served in that Force or in any other military, naval or air force for periods amounting in the aggregate to not less than two years.
- (3) Not less than two of the members of a court-martial shall be of a rank not below that of captain.
- (4) The president 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 public service, available; and in any event the president 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.
- (6) An officer under the rank of captain shall not be a member of a court-martial for the trial of an officer above that rank.

*[As amended by S.I. No. 8 of 1964]*

### **89. Supplementary provisions as to constitution of court-martial**

- (1) The officer who convenes a court-martial shall not be a member of that court-martial.
- (2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who under service law has held, or has acted as one of the persons holding, an inquiry into matters relating to the subject-matter of the charge against the accused, shall not be president 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 president, being of opinion that a field officer having suitable qualifications is not, with due regard to the public service, available, the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

### **90. Place for sitting of court-martial and adjournment to other places**

- (1) Subject to the provisions of this section, a court-martial shall sit at such place (whether within or without Zambia) 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 interest of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

## **Court-martial: Provisions relating to trial**

### **91. Challenges by accused**

- (1) An accused about to be tried by court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another officer.
- (2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1), the names of the members of the court shall be read over in the presence of the accused before they are sworn, and he shall be asked whether 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 president and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another president.
- (5) If objection is made to a member of the court other than the president and not less than one-half of the members entitled to vote 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.

## 92. Administration of oaths

- (1) An oath shall be administered to every member of a court-martial and to any person in attendance on a court-martial as judge advocate, officer under instruction, shorthand writer or interpreter.
- (2) Every witness before a court-martial shall be examined on oath:

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

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

## 93. Court-martial to sit in open court

- (1) Subject to the provisions of this section, a court-martial shall sit in open court and in the presence of the accused.
- (2) Nothing in subsection (1) shall affect the power of a court-martial to sit *in camera* on the ground that it is necessary or expedient in the interests of the administration of justice 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.

## 94. Dissolution of court-martial

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

- (2) Without prejudice to the generality of subsection (1), if after the commencement of a trial a court-martial is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, it shall be dissolved.
- (3) If after the commencement of the trial the president dies or is otherwise 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 president 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 of this section the accused may be tried by another court-martial.

#### **95. Decisions of court-martial**

- (1) Subject to the provisions of 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 president shall have a second or casting vote.

#### **96. Finding and sentence**

- (1) Without prejudice to the provisions of section ninety-three, 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.

#### **97. Power to convict of an offence other than that charged**

- (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a less degree of punishment.
- (2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.
- (3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed that offence.
- (4) Where an accused is charged before a court-martial under section seventy-three 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 seventy-three, and the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Zambia, 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 seventy-three 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 First Schedule may be found guilty of an offence specified in relation thereto in the second column of that Schedule.

## 98. Rules of evidence

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

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

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

## 99. Privilege of witnesses and others at court-martial

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.

*[As amended by S.I. No. 8 of 1964]*

## 100. Offences by civilians in relation to court-martial

Where in Zambia any person not subject to military law under this Act—

- (a) having been duly summoned to attend as a witness before a court-martial, fails to comply with the summons; or
- (b) refuses to swear an oath when duly required by a court-martial to do so; or
- (c) refuses to produce any document in his custody or under his control which a court-martial has lawfully required him to produce; or
- (d) when a witness refuses to answer any question which a court-martial has lawfully required him to answer; or
- (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; 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 president of the court-martial may certify the offence of that person under his hand to the High Court, and the High Court may thereupon inquire 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 that 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.

### 101. Affirmations

- (1) If—
  - (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to be sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
  - (b) it is not reasonably practicable to administer an oath to such a person 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 to do so and for the purposes of this section, "reasonably practicable" means reasonably practicable without inconvenience or delay.

## Confirmation, revision and review of proceedings of court-martial

### 102. Confirmation of proceedings of court-martial

- (1) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to a confirming officer for confirmation of the finding and sentence of the court on that charge.
- (2) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation or the operation of sections one hundred and three and one hundred and four or the provisions of this Act as to confirmation or approval.

### 103. Petitions against finding or sentence

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

### 104. Revision of findings of court-martial

- (1) A confirming officer may direct that a court-martial shall revise any finding of guilty come to by the court in any case where it appears to him—
  - (a) that the finding was against the weight of evidence; or

- (b) that some question of law determined at the trial and relevant to the finding was wrongly determined.
- (2) Any such direction shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reasons for the direction.
- (3) On any revision of a finding the court shall reconsider the finding, and (unless the court adheres thereto) may substitute therefor either a finding of not guilty or any other finding to which the court could originally have come at the trial in lieu of the finding under revision.
- (4) On any such revision the court shall not have power to receive further evidence.
- (5) Where on any such revision the court either adheres to the original finding or substitutes therefor a finding of guilty of another offence, or of the same offence in different circumstances the court may substitute a different sentence for the original sentence.

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

- (6) The confirming officer shall not have power to direct the revision of any substituted finding come to by the court on a previous direction of the confirming officer, 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 their 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.

### 105. Powers of confirming officers

- (1) Subject to the provisions of section one hundred and four and to the following provisions of this section, a confirming officer shall deal with the finding or sentence of a court-martial either by withholding confirmation, if of 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 a higher confirming officer.
- (2) In lieu of withholding confirmation of the finding of a court-martial, a confirming officer 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 a confirming officer 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, a confirming officer 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, a confirming officer may postpone the carrying out of the sentence for such time as seems expedient, and a confirming officer may extend or terminate any postponement ordered under this subsection.
- (6) A finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer 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 confirming officer determines to withhold confirmation, the determination shall be promulgated and shall have effect as from the promulgation thereof.

### 106. Confirming officers

- (1) Subject to the provisions of this section, the following shall have power to confirm the finding and sentence of any court-martial, that is to say:
  - (a) the officer who convened the court-martial or any officer superior in rank to that officer;
  - (b) the successor of any such officer or superior officer, or any person for the time being exercising the functions of any such officer or superior officer;
  - (c) failing any such officer as aforesaid, the President.
- (2) The following shall not have power to confirm the finding or sentence of a court-martial, that is to say:
  - (a) any officer who was a member of the court-martial; or
  - (b) any person who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused; or
  - (c) any person who, as appropriate superior authority, investigated the allegations against the accused.
- (3) An authorisation empowering the convening of a court-martial may reserve for confirmation by superior authority findings or sentences, or both, in such circumstances as may be specified by or under the authorisation, and the power conferred by subsection (1) shall be exercisable subject to any such reservation.

### 107. Approval of death sentence by President

Subject to the provisions of the proviso to section one hundred and forty-five, a sentence of death shall not be carried into effect unless it has been approved by the President or by the advisory committee established under the Constitution.

*[S.I. No. 8 of 1964]*

*[Cap. 1]*

### 108. Review of finding and sentence of court-martial

- (1) A finding or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a finding or sentence, a petition is duly presented under section one hundred and three against the finding or sentence, then, subject to the provisions of this section, the finding or sentence shall be so reviewed as soon as may be after the presentation of the petition and after consideration of the matters alleged therein.

- (2) The reviewing authorities for the purposes of this Act are—
  - (a) any officer superior in command to the confirming officer;
  - (b) the President.
- (3) If an application for leave to appeal is received by the registrar of the court of appeal under the provisions of Part VI, 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.
- (4) On a review under this section the reviewing authority may—
  - (a) in so far as the review is of a finding, quash the finding and, if the sentence relates only to the finding quashed, the sentence; or
  - (b) in so far 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 a confirming officer by subsections (2), (3) and (4) of section one hundred and five;  
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.
- (5) Where a reviewing authority exercises any of the powers conferred by subsection (4), the determination shall be promulgated and shall have effect as from the promulgation thereof.

### **109. Reconsideration of sentences of imprisonment and detention**

- (1) Sentences of imprisonment and detention passed by courts-martial may be reconsidered by the Commander and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, 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 six months:  
Provided that delay in complying with this subsection shall not invalidate the sentence.

### **Review of summary findings and awards**

#### **110. Review of summary findings and awards**

- (1) Where a charge has been dealt with summarily, otherwise than by the dismissal thereof, the authority hereinafter mentioned may at any time review the finding or award.
- (2) The said authority is—
  - (a) any officer superior in command to the officer who dealt summarily with the charge; or
  - (b) the President.
- (3) Where on a 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**

### **111. Provisions where accused found insane**

- (1) Where, on the trial of a person by court-martial, it appears to the court that the accused is by reason of insanity unfit to stand his trial, the court shall so find; and if the finding is confirmed in accordance with the following provisions of this section the accused shall be kept in custody in such manner as may be provided by or under regulations made under this Part until the directions of the President are known or until any earlier time at which the accused is fit to stand his trial.
- (2) Where, on the trial of a person by court-martial, it appears to the court that the evidence is such as, apart from any question of insanity, to support a finding that the accused was guilty of any offence, but at the time of the acts or omissions constituting that offence the accused was insane, the court shall find that the accused was guilty of that offence but was insane at the said time, and thereupon the accused shall be kept in custody in such manner as may be provided by or under regulations made under this Part until the directions of the President are known.
- (3) In the case of any such finding 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 an officer who would have had power to confirm a finding of guilty come to by the court-martial in question and has been promulgated.
- (5) Where the court or the confirming officer comes to or substitutes a finding of guilty but insane, the confirming officer or, as the case may be, the reviewing authority shall not have power to substitute for that finding 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**

### **112. Commencement of sentences**

- (1) A military sentence of imprisonment or detention or a sentence of field punishment shall, subject to the provisions of subsection (4) of section one hundred and thirty-seven (which empowers the court of appeal in certain cases to direct that a sentence shall begin to run from the day on which the court dismisses an application for leave to appeal), 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 one hundred and fourteen 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 confirming officer and the reviewing authority determines the suspension, the reviewing authority 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 reviewing authority may specify.

### 113. Duration of sentences of imprisonment and detention

- (1) Where a soldier has been sentenced to imprisonment or detention by a court-martial, and the sentence is suspended in pursuance of section one hundred and fourteen after he has been committed to prison or a military establishment, the currency of the sentence shall be suspended from the beginning of the day after the day on which he is released in accordance with the provisions of 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 satisfies such authority as may be specified in that behalf by or under 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), "civil authority" means a civil authority authorised 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 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 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 provisions of the Prisons Act.

[Cap. 97]

#### 114. Suspension of sentences

- (1) The following provisions of this section shall have effect with regard to the suspension of a sentence of imprisonment or detention passed by a court-martial on a soldier.
- (2) Without prejudice to subsection (5) of section one hundred and five, in confirming such a sentence the confirming officer 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 authority reviewing or reconsidering the sentence.
- (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 said authority 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 subsection (10) of section seventy-five).
  - (a) the court may determine the suspension of the earlier sentence by an order committing the person sentenced to imprisonment or detention as the case may be, and if so the court shall direct whether the two sentences are to run concurrently or consecutively;
  - (b) if the court does not exercise the powers conferred by paragraph (a), the confirming officer may exercise those powers on the confirmation of the later sentence;
  - (c) if neither the court nor the confirming officer exercises the said powers, a reviewing authority may exercise those powers on the review of the later sentence.
  - (d) where the said powers are exercised (whether by the court, the confirming officer or a reviewing authority), 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 the provisions of subsection (11) of section seventy-five.

- (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 subsection (2) of section one hundred and nine, of a sentence of imprisonment or detention which is suspended shall be three months, and not as specified under that subsection.

#### 115. Restriction on serving of sentences of detention in prison

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 Imprisonment and Detention Regulations a person serving such a sentence may be temporarily detained in a military or civil prison for any period not exceeding seven days.

#### 116. Special provisions as to civil prisons in Zambia

A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under section one hundred and thirty-four or of Imprisonment and Detention Regulations made under section one hundred and thirty-two 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.

### **117. Special provisions as to carrying out or serving sentences outside Zambia**

The President may from time to time make arrangements with the authorities of any country or territory outside Zambia whereby sentences of death passed by courts-martial 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 may in accordance with Imprisonment and Detention Regulations be served wholly or partly in such establishments.

### **118. Country in which sentence of imprisonment or detention to be served**

- (1) A person who is serving a military sentence of imprisonment or detention in Zambia may (in so far as may be specified by or under Imprisonment and Detention Regulations) be removed out of Zambia to any place where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place.
- (2) Subject to the following provisions of this section, a person sentenced under this Act by a court-martial held out of Zambia, to imprisonment or detention for more than twelve months shall as soon as practicable after the confirmation of the sentence is completed be removed to Zambia.
- (3) Where a person has been sentenced under this Act by a court-martial held out of Zambia to imprisonment or detention for more than twelve months, the confirming officer or reviewing authority may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to Zambia until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) two years, as may be specified in the direction; and in determining whether or not to exercise the powers conferred by this subsection a confirming officer or reviewing authority shall have regard to any recommendation in that behalf made by the court-martial.
- (4) Any direction of a confirming officer under this section may at any time be revoked by the confirming officer or by a reviewing authority, or superseded by any direction of a confirming officer or a reviewing authority which the officer or authority could have given under subsection (3); and any direction of a reviewing authority under this section may at any time be revoked by a reviewing authority 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.

### **119. Duties of officers in charge of prisons and others to receive prisoners**

- (1) It shall be the duty, in so far as regulations made under this Part or Imprisonment and Detention Regulations so provide, of the superintendent or other person in charge of a prison (not being a military prison) to receive any person duly sent to that prison in pursuance of such regulations and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.
- (2) Where a person is in the military custody in pursuance of a military sentence of imprisonment or detention, then, on receipt of a written order in that behalf purporting to be signed by that person's commanding officer, it shall be the duty of any such superintendent or other person as aforesaid or the police officer in charge of a police station or of any person in charge of any other place in which prisoners may be lawfully confined to keep that person in custody for a period not exceeding seven days unless the said person is earlier discharged or delivered over in due course of law.

### **Trial of persons ceasing to be subject to military law under this Act and time limits for trials**

#### **120. Trial and punishment of offences under this Act notwithstanding offender**

- (1) Subject to the provisions of section one hundred and twenty-one, 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 military law under 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 military law under 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 military law under 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 military law under this Act when the offence was committed or is suspected of having been committed and as continuing subject thereto thereafter.
- (3) Where by virtue of either subsection (1) or subsection (2) a person is treated as being at any time subject to military law under 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 military law under this Act:

Provided that as respects 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.

#### **121. Limitation of time for trial of offences under this Act**

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

Provided that—

- (i) in the event of an offence against section seventy-three 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 seventy-three in substitution for the foregoing provisions of this subsection;
- (ii) subject to any such limit of time as is mentioned in proviso (i), a person may be tried by court-martial for a civil offence committed outside Zambia notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney-General by notice in writing consents to the trial.

- (2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the Regular Force continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.
- (3) A person shall not be triable by virtue of subsection (1) of section one hundred and twenty unless his trial is begun within three months after he ceases to be subject to military law under this Act, or the trial is for a civil offence committed outside Zambia and the Attorney-General by notice in writing consents to the trial:
- Provided that this subsection shall not apply to an offence against section thirty-six or thirty-seven or to desertion.
- (4) A person shall not be arrested or kept in custody by virtue of subsection (1) of section one hundred and twenty 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**

#### **122. Powers of civil court**

Save as provided in section one hundred and forty-six, 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 military law under this Act for any offence.

#### **123. Persons not to be tried under this Act for offences already disposed of**

- (1) Where a person subject to military law under this Act—
- (a) has been tried for an offence by a competent civil court or a court-martial under service law;
  - (b) has been charged with an offence under service law, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or an appropriate superior authority;
  - (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 an appropriate superior authority.
- (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 appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority 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 authorised 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 subsection (2) of section sixty-two or the corresponding provision of any service law, to be imprisoned or to undergo detention for an offence against that section or provision shall be deemed to have been tried by court-martial for the offence.

- (3) Subject to the provisions of subsection (2) of section one hundred and thirty-eight, 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 twenty-eight days after the promulgation of the decision to withhold confirmation.
- (4) Save as provided in the foregoing provisions of this section, proceedings for an offence against this Act (whether before a commanding officer or appropriate superior authority or before a court-martial) shall not be barred on the grounds of condonation.

## **Inquiries**

### **124. Boards of inquiry**

- (1) Subject to and in accordance with the provisions of rules made under section one hundred and thirty-three (in this Act referred to as "Board of Inquiry Rules") the Commander or any officer empowered by or under such Rules so to do, may convene a board of inquiry to investigate and report on the facts relating to—
  - (a) the absence of any person subject to military law under this Act;
  - (b) the capture of any such person by the enemy;
  - (c) the death of any person where any inquiry 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 President or any such officer as aforesaid;

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

- (2) A board of inquiry shall consist of such number of persons as may be provided for by Board of Inquiry Rules who shall be persons subject to service law and the president of a board of inquiry shall be an officer not below the rank of lieutenant.
- (3) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, commanding officer or appropriate superior authority, other than proceedings for an offence against section sixty-three or for an offence against section seventy-three where the corresponding civil offence is perjury.

### **125. Inquiries into absence**

- (1) Where a board of inquiry inquiring 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 twenty-one days, a record of the report shall in accordance with Board of Inquiry Rules be entered in the service books.
- (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 inquiry is annulled by the Commander or a subsequent board of inquiry, have the like effect as a conviction by a court-martial for desertion.

## **Miscellaneous provisions**

### **126. Restitution or compensation for theft, etc.**

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

- (2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be the owner thereof.
- (3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.
- (4) Where money is found in the possession of the offender, then, whether or not it appears to have been obtained as aforesaid, an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, in so far 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 pawn 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 pawn), such sum 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 pawn.
- (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 whom the offender is convicted, by the confirming officer, or by any reviewing authority; and, in this section, "appearing" means appearing to the court, officer or authority making the order.
- (8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming officer; 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 prescribed under Part VI as the period within which an application for leave to appeal to the court of appeal against the conviction must be lodged; and
  - (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 court of appeal 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, officer or authority making the order directs to the contrary in any case in which, in the opinion of the court, officer or authority, 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.

### 127. Appointment of judge advocates

The appointment of a judge advocate to act at any court-martial may be made by the Chief Justice upon application being made to him by the Commander.

*[As amended by Act [No. 21 of 1985](#)]*

### 128. Promulgation

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

### 129. Custody of proceedings of court-martial and right of accused to copy thereof

- (1) The record of the proceedings of a court-martial shall be kept in the custody of the Commander for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsections (2) and (3) shall be capable of being exercised.
- (2) Subject to the provisions of this section, any person tried by a court-martial shall be entitled to obtain from the Commander on demand at any time within the relevant period and on payment therefor of such payment as may be prescribed a copy of the record of the proceedings of the court.
- (3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the President ought to be treated for the purposes of this subsection as his personal representative shall, subject to the provisions of this section, be entitled to obtain from the Commander on demand at any time within the period of twelve months from the death and on payment therefor of such payment as may be prescribed a copy of the record of the proceedings of the court.
- (4) If, on an application in pursuance of either subsection (2) or (3) for a copy of the record of any proceedings, the President certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or part to which the certificate relates.
- (5) In this section, "the relevant period", in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, when he was convicted, of the promulgation of the findings and sentence or, where a finding of guilty was not confirmed, of the promulgation of the withholding of confirmation:

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

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

### 130. Indemnity for prison officers, etc.

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

## Rules of procedure, etc.

### 131. Rules of procedure

- (1) Subject to the provisions of this section, the President may, by statutory instrument, make rules (in this Act referred to as "Rules of Procedure") with respect to the investigation and trial of, and awarding of punishment for, offences cognizable by courts-martial, commanding officers and appropriate superior authorities and with respect to the confirmation and revision of findings and sentences of courts-martial.
- (2) Without prejudice to the generality of subsection (1), Rules of Procedure may make provision with respect to all or any of the following matters, that is to say:
  - (a) the procedure to be observed in the bringing of charges before commanding officers and appropriate superior authorities;
  - (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 ninety-two 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 appropriate superior authorities and otherwise in relation to proceedings prior to trial by courts-martial all or any of the provisions of sections ninety-eight, ninety-nine, one hundred and one hundred and one;
  - (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 paragraph (j) of subsection (2) shall not be exercisable in circumstances substantially different from those in which charges or informations are amendable by a civil court in Zambia, or otherwise than subject to the like conditions, as nearly as circumstances admit, as those subject to which charges or informations 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 authorising the president 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 president 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) references to questions of law include 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.

### 132. Imprisonment and Detention Regulations

The President may, by statutory instrument, make regulations (in this Act referred to as "Imprisonment and Detention Regulations") with respect to all or any of the following matters, that is to say:

- (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.

### 133. Board of Inquiry Rules

- (1) The President may, by statutory instrument, make rules with respect to the convening, constitution and procedure of boards of inquiry (in this Act referred to as "Board of Inquiry Rules").

- (2) Without prejudice to the generality of subsection (1), Board of Inquiry Rules may make provision with respect to all or any of the following matters, that is to say:
  - (a) the rules of evidence to be observed by boards of inquiry 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 one hundred and twenty-five, the making in service books of records of findings of boards of inquiry in such cases as may be provided by the Rules.
- (3) Board of Inquiry Rules shall contain provision for securing that any witness or other person who may be affected by the findings of a board of inquiry 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.

#### 134. Miscellaneous regulations

The President may, by statutory instrument, make regulations with respect to all or any of the following matters, that is to say:

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

### Interpretation of Part V

#### 135. Interpretation of Part V

- (1) In this Part—

"**civil prison**" means a prison in Zambia 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 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 VI – Appeals from courts-martial**

### **136. Right of appeal**

Subject to the following provisions of this Part, a person convicted by a court-martial may, with the leave of the supreme court appeal to that court against his conviction:

Provided that an appeal as aforesaid shall lie as of right without leave from any conviction by a court-martial involving a sentence of death.

### **137. Application for leave of appeal**

- (1) Leave to appeal to the supreme court shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, with the registrar of the court of appeal, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.
- (2) An appeal against a conviction involving a sentence of death shall not be entertained by the court of appeal unless the appeal is lodged by or on behalf of the appellant within fourteen days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, with the registrar of the supreme court in the prescribed manner.
- (3) The supreme court may extend the period within which an application for leave to appeal is required by subsection (1) to be lodged, whether that period has expired or not and may similarly extend the period for lodging the appeal provided by subsection (2), if, owing to the fact the appellant is outside Zambia or otherwise, he has not had a reasonable opportunity of lodging his appeal within fourteen days.
- (4) Where the supreme court dismisses an application for leave to appeal it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the court dismisses the application.

### **138. Determination of appeals in ordinary cases**

- (1) Subject to the provisions of section one hundred and thirty-nine, on an appeal under this Part against a conviction, the supreme court shall allow the appeal if it thinks that the finding of the court-martial 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, and in any other case shall dismiss the appeal:

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

- (2) If the supreme court allows an appeal under this Part, it shall either quash the conviction or direct that the finding of the court-martial shall be treated as if confirmation thereof had been withheld and, in the latter event, notwithstanding the provisions of subsection (3) of section one hundred and twenty-three, a new trial by court-martial may be held within such time as the court may order.

### 139. Powers of court of appeal in special cases

- (1) If it appears to the Supreme Court that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred, then, if the sentence passed by the court-martial on the appellant was not one that could lawfully be passed by the court-martial for the offence for which he was convicted on the other charge, the court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.
- (2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the supreme court that the court-martial must have been satisfied with the facts which proved him guilty of that other offence, the court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which could lawfully have been passed for that other offence, but not being a sentence of greater severity,
- (3) Where—
  - (a) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the supreme court that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment; or
  - (b) an appellant has been convicted of an offence and it appears to the supreme court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations;the supreme court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.
- (4) If, on an appeal, it appears to the supreme court that although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission was made so as not to be responsible according to law for his actions, the supreme court may quash the sentence passed at the trial and order the appellant to be kept in custody under the provisions of section one hundred and eleven in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

### 140. Commencement of sentence

The term of any sentence passed by the supreme court under any of the provisions of section one hundred and thirty-nine shall, unless the court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and a sentence passed by the supreme court shall be deemed, for the purposes of this Act, to be a sentence passed by the court-martial, being a sentence that has been confirmed.

**141. Appeal to be final**

Any determination by the Supreme Court of any appeal or other matter which it has power to determine under the provisions of this Part shall be final.

*[As amended by S.I. No. 8 of 1964]*

**142. Proceedings may be heard in absence of appellants**

An appellant shall not be entitled to be present at the hearing of an appeal to the supreme court under this Part or to any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the supreme court gives him leave to be present, and accordingly any power of the court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

**143. Defence of appeals**

It shall be the duty of the Attorney-General on an appeal against conviction by court-martial to undertake the defence of the appeal.

**144. Right of appellant to present his case in writing**

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

**145. Suspension of death sentence**

Where a conviction by court-martial involves sentence of death—

- (a) the sentence shall not in any case be executed until the expiration of the period within which the appeal to the supreme court against the conviction shall be lodged;
- (b) if such an appeal is duly lodged or if application is made for the extension of the period for lodging the appeal, the sentence shall not be executed until the appeal or application is determined or abandoned;

Provided that, where a sentence of death passed on a person on active service by a court-martial is confirmed and the officer who confirms the sentence certifies that it is essential in the interests of discipline for the purposes of securing the safety of the force with which that person is present that the sentence should be carried out forthwith, the foregoing provisions of this section shall not apply to the sentence.

*[As amended by S.I. No. 8 of 1964]*

**146. Person not to be tried again where conviction quashed**

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 this offence by a court-martial or by any other court.

**147. Removal of prisoners for purposes of this Part**

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 or any place to which the supreme court or a Judge thereof may order him to be taken for the purpose of any proceedings of the court of appeal.

**148. Furnishing, on appeal, of documents relating to trial**

In the case of every appeal or application for leave to appeal, under this Part to the supreme court against a conviction by court-martial, it shall be the duty of the Commander to furnish to the registrar of the supreme court, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the findings or sentence of the court-martial in pursuance of subsection (1) of section one hundred and four), the proceedings with respect to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted.

**149. Duties of registrar of court of appeal with respect to appeals, etc.**

- (1) The registrar of the supreme court shall take all necessary steps for obtaining the determination of an appeal or application under this Part and shall obtain and lay before the supreme court in proper form all documents, exhibits and other things relating to the proceedings in the court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.
- (2) The registrar of the supreme court shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal under this Part to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to lodge an appeal or make application for leave to appeal under this Part.

**150. Saving of powers of reviewing authorities**

Nothing in this Part shall affect the exercise by the reviewing authorities of the powers conferred by section one hundred and eight 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 supreme court 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.

**151. Composition of court of appeal**

Upon the hearing of any appeal from any court-martial, supreme court shall consist of an uneven number of Judges not being less than three.

**152. Exercise of certain powers of court of appeal by a Judge**

Any Judge of the the supreme court may—

- (a) give leave to appeal; or
- (b) extend the period within which an application for leave to appeal or an appeal is required by subsection (1) or (2) of section one hundred and thirty-seven to be lodged; or
- (c) allow the applicant or appellant to be present at any proceedings under this Part;

but if the Judge refuses an application on the part of an applicant or appellant to exercise in his favour any of the powers hereinbefore mentioned, the applicant or appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed manner, shall be entitled to have the application determined by the supreme court which shall consist of an uneven number of Judges not being less than three.

### 153. General provisions as to procedure

- (1) Subject to the provisions of this Part, any rules of court in force relating to the hearing of criminal appeals by the supreme court shall apply to the hearing and determination of an appeal by that court under this Part.
- (2) Where under this Part anything is required or authorised to be prescribed, it shall be prescribed by rules of court to be made by the Chief Justice.

## Part VII – Forfeitures and deductions and enforcement of maintenance liabilities

### 154. Forfeitures and deductions; general provisions

- (1) No forfeiture of the pay of an officer or soldier of the Defence Force shall be imposed unless authorised by this Act, other service law or any other law and no deduction from such pay shall be made unless so authorised or authorised by regulations.
- (2) Regulations shall not authorise the making of any penal deduction, that is to say, a deduction to be made by reason of the commission of any offence or other wrongful act or in consequence of any negligence.
- (3) The provisions of subsections (1) and (2) shall not prevent the making of regulations providing for the imposition of any forfeiture authorised by this Act or the making of any deduction so authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised 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 authorised 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.

### 155. Forfeiture of pay for absence from duty

- (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 forty-two or forty-three or, if the Commander so directs, of other absence without leave;
  - (b) for any day of imprisonment, detention or field punishment awarded under service law 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 or sentence of a civil court;
  - (c) where he is found guilty (whether by court-martial under service law, an appropriate superior authority or his commanding officer) of an offence under service law, 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 President or an officer authorised by him is satisfied—
- (a) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty; or
  - (b) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Defence Force; or
  - (c) that 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 authorised by international usage;

but, save as aforesaid, nothing in paragraph (a) of subsection (1) 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.

*[As amended by S.I. No. 8 of 1964]*

### **156. Deductions for payment of civil penalties**

Where a person sentenced or ordered by a civil court (whether within or without Zambia) 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.

### **157. Compensation for loss occasioned by wrongful act or negligence**

- (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 perusal of the record of the proceedings of a board of inquiry, the Commander is satisfied 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").
- (2) The Commander 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, in so far 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 under service law, an appropriate superior authority or 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).

### **158. Deductions for barrack damage**

- (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 the provisions of 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) The provisions of 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.

### 159. Remission of forfeitures and deductions

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.

### 160. Enforcement of maintenance and affiliation orders by deduction from pay

- (1) Where any court in Zambia has made an order against any person (in this section referred to as "the defendant") for the payment of any periodical or other sum specified in the order for or in respect of —
- (a) the maintenance of his wife or child; or
  - (b) any costs incurred in obtaining the order; or
  - (c) any costs incurred in proceedings on appeal against, or for the variation, revocation or revival of, any such order;

and the defendant is an officer or soldier of the Defence Force then (whether or not he was a member of that Force when the said order was made) the Commander or an officer authorised by him may order such sum to be deducted from the pay of the defendant and appropriated in or towards satisfaction of the payment due under the order of the court as the Commander or authorised officer may think fit.

- (2) Where to the knowledge of the court making any such order as aforesaid, or an order varying, revoking or reviving any such order, the defendant is an officer or soldier of the Defence Force, the court shall send a copy of the order to the Commander.
- (3) Where such an order as is mentioned in subsection (1) has been made by a court of a country outside Zambia, and the Commander or an officer authorised by him is satisfied that the defendant has had a reasonable opportunity of appearing in person, or has appeared by a duly authorised legal representative, to defend the case before the court by which the order was made, the Commander or authorised officer shall have the like power under subsection (1) as if the order had been made by such a court as is mentioned in that subsection:

Provided that this subsection shall not apply to an order for payment of a sum for or in respect of the maintenance of an illegitimate child or for the payment of costs incurred in obtaining such an order or in proceedings on appeal against, or for the variation, revocation or revival of, such an order.

- (4) The Commander or an officer authorised by him may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section one hundred and fifty-five.
- (5) In this section—
- (a) references to an order made by a court in Zambia include references to an order registered in or confirmed by such a court under the provisions of the Affiliation and Maintenance of Children Act;

*[Cap. 55]*

- (b) references to a wife or child include, in relation to an order made in proceedings in connection with the dissolution or annulment of a marriage, references to a person who would have been the wife or child of the defendant if the marriage had subsisted;
- (c) references to a child of a person include references to a child of his wife, and to an illegitimate or adopted child of that person or of his wife, and in this paragraph "adopted child" means a child adopted (whether alone or jointly) in pursuance of an adoption order made under the Adoption Act.

*[Cap. 54]*

### **161. Deductions from pay for maintenance of wife or child**

- (1) Where the Commander or an officer authorised by him is satisfied that an officer or soldier of the Defence Force is neglecting, without reasonable cause, to maintain his wife or any child of his under the age of sixteen, the Commander or authorised officer may order such sum to be deducted from his pay and appropriated towards the maintenance of his wife or child as the Commander or authorised officer thinks fit.
- (2) On an application made to the Commander or an officer authorised by him for an order under subsection (1), the Commander or authorised officer, if satisfied that a *prima facie* case has been made out for the making of such an order, may make an interim order for such deduction and appropriation as is mentioned in subsection (1) to take effect pending the further examination of the case.
- (3) Where an order is in force under subsection (1) or (3) of section one hundred and sixty for the making of deductions in favour of any person from the pay of an officer or soldier of the Defence Force, no deductions from his pay in favour of the same person shall be ordered under the foregoing provisions of this section unless the officer or soldier is in a place where process cannot be served on him in connection with proceedings for the variation of the order of the court in consequence of which the order under section one hundred and sixty was made.
- (4) The Commander or authorised officer may by order vary or revoke any order previously made under this section, and may treat any order made under this section as being in suspense at any time while the person against whom the order was made is absent as mentioned in paragraph (a) of subsection (1) of section one hundred and fifty-five.

### **162. Limit of deductions under sections 160 and 161 and effect on forfeiture**

- (1) The sums deducted under sections one hundred and sixty and one hundred and sixty-one shall not together exceed—
  - (a) in the case of an officer, three-sevenths of his pay;
  - (b) in the case of a warrant officer or a non-commissioned officer not below the rank of sergeant, two-thirds of his pay;
  - (c) in the case of a soldier below the rank of sergeant, three-fourths of his pay.
- (2) Where any deductions have been ordered under either section one hundred and sixty or one hundred and sixty-one from a person's pay and (whether before or after the deductions have been ordered) he incurs a forfeiture of pay by or in consequence of the finding or sentence of a court-martial or the finding or award of an appropriate superior authority or his commanding officer, it shall apply only to so much of his pay as remains after the deductions have been made.
- (3) For the purposes of paragraphs (b) and (c) of subsection (1), a person having acting rank shall be treated as of that rank.

### 163. Service of process in maintenance proceedings

- (1) Any process to be served on an officer or soldier of the Defence Force (in this section referred to as "the defendant") in connection with proceedings for any such order of a court in Zambia as is mentioned in subsection (1) of section one hundred and sixty, or for the variation, revocation or revival of such an order, shall be deemed to be duly served on him if served either on him or his commanding officer, and may, without prejudice to any other method of service, be so served by registered post.
- (2) Where any such process is served in Zambia and the defendant will be required to appear in person at the hearing, then if his commanding officer certifies to the court by which process was issued that the defendant is under orders for service out of Zambia and that in the commanding officer's opinion it would not be possible for the defendant to attend the hearing and return in time to embark for that service, the service of the process shall be deemed not to have been effected.

## Part VIII – Government and general provisions

### Command

#### 164. Command and precedence

- (1) Officers and soldiers of the Defence Force shall stand with each other in such order of precedence as may be prescribed by the President.
- (2) Officers and soldiers of any other military, naval or air force may, with the approval of the President, be attached or seconded to the Defence Force.

*[As amended by S.I. No. 8 of 1964]*

#### 165. Command of Forces

- (1) The President shall appoint an officer to be Commander of the Army, and another officer to be Commander of the Air Force and the command of the Army and of the Air Force respectively shall vest in the persons so appointed.
- (2) Each Commander shall have such rank and title and fulfil such duties and functions as may be determined by the President.
- (3) Each 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.

#### 166. Regulations as to command

Without prejudice to the provisions of section one hundred and sixty-five, the President may, by statutory instrument, make regulations as to the persons in whom command over any part of the Defence Force or member thereof is vested and as to the circumstances in which such command as aforesaid is to be exercised.

#### 167. Powers of command of members of co-operating forces

- (1) In so far as powers of command depend on rank, a member of any other military, naval or air force who—
  - (a) is acting with; or

(b) is a member of a body of those forces which is acting with;

any body of the Defence Force shall have the like such powers as a member of the Defence Force of corresponding rank; and, for the purposes of sections thirty-eight and seventy-seven, 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 Army Commander or Air 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 of precedence of the officers, warrant officers and non-commissioned officers of the Defence Force in relation to the officers, warrant officers and non-commissioned officers of such other force.

*[As amended by S.I. No. 8 of 1964]*

## **Redress of complaints**

### **168. Complaints by officers**

- (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 respect 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 thereon.

### **169. Complaints by soldiers**

- (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 respect 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 respect thereto to any officer under whom the complainant is for the time being serving, being an officer not below the rank of lieutenant-colonel.
- (3) It shall be the duty of a commanding or other officer to have any complaint received by him under this subsection investigated and to take any steps for redress in the matter complained of which appear to him to be necessary.

## **Exemptions for officers and soldiers**

### **170. Exemption from service as assessor**

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

**171. Exemption from tolls, etc.**

- (1) Duties or tolls for passing over any road, ferry or bridge in Zambia shall not be payable in respect of—
  - (a) members of the Defence Force on duty;
  - (b) vehicles in military service, being vehicles belonging to the Government or other vehicles driven by persons (whether members of the Defence Force or not), in the service of the Government;
  - (c) goods carried in such vehicles;
  - (d) animals in military service.
- (2) In subsection (1), "in military service" means employed under proper military authority for the purposes of any body of the Defence Force or accompanying any body of the Defence Force.

**172. Exemption from taking in execution of property used for military purposes**

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

**Provisions relating to deserters and absentees without leave****173. Arrest of deserters and absentees without leave**

- (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.
- (2) Where no police officer is available any person may arrest any person whom he has reasonable cause to suspect as aforesaid.
- (3) 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 authorising his arrest.
- (4) Any person in custody in pursuance of this section shall as soon as practicable be brought before a subordinate court.
- (5) Notwithstanding the provisions of any other law to the contrary, a person arrested and brought before a subordinate court under the provisions of this section or section one hundred and seventy-four or one hundred and seventy-five shall not be admitted to bail.

**174. Proceedings before a civil court where persons suspected of illegal absence**

- (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.
- (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 service law and if of opinion that there is sufficient evidence to justify his being tried under service law 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 discharge 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.

### **175. Deserters and absentees without leave surrendering to police**

- (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 inquire 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.

### **176. Certificates of arrest or surrender of deserters and absentees**

- (1) Where a subordinate court in pursuance of section one hundred and seventy-four 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 the provisions of section one hundred and seventy-five or under any other lawful power, there shall be handed over a certificate in the prescribed form signed by a police officer who causes him to be delivered into military custody, containing the prescribed particulars relating to his surrender.
- (3) In any proceedings for an offence against section forty-two or forty-three—
- (a) a document purporting to be a certificate under either of subsections (1) or (2), or under the corresponding provisions of any service law (other than this Act) and 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 fact, date, time and place of arrest or surrender, shall be evidence of the matter stated in the certificate.

**177. Duties of superintendents of prisons and others to receive deserters and absentees**

- (1) It shall be the duty of the superintendent or other person in charge of a civil prison to receive any person duly committed to that prison by a subordinate court as illegally absent under service law and to detain him until, in accordance with the directions of the court, he is delivered into military custody.
- (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****178. Punishment for pretending to be a deserter**

- (1) Any person who falsely represents himself to any military or civil authority to be a deserter from the Defence Force shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a term not exceeding three months, or to both.
- (2) Punishment for procuring and assisting desertion

Any person who—

- (a) procures or persuades any officer or soldier of the Defence Force to desert or to absent himself without leave; or
- (b) knowing that any such officer or soldier is about to desert 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;

shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

*[As amended by Act [No. 13 of 1994](#)]*

**179. Punishment for obstructing officers or soldiers in execution of duty**

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 guilty of an offence and liable on conviction to a fine not exceeding one thousand and five hundred penalty units or to imprisonment for a term not exceeding three months, or to both.

*[As amended by Act [No. 13 of 1994](#)]*

**180. Punishment for aiding malingering**

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;

with a view to enabling him to avoid military service, whether permanently or temporarily, shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

*[As amended by Act No. 13 of 1994]*

### **181. Unlawful purchase, etc., of military stores**

- (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 be guilty of an offence, unless he proves either—
- (a) that he did not know, and could not reasonably be expected to know, that the chattels in question were military stores; or
  - (b) that those chattels 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 chattels 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 representatives of a person who had died;
- and shall be liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding two years, or to both.
- (2) A police officer may arrest without warrant any person whom he 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 crime 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—
- (a) "acquire" means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);
  - (b) "dispose" means sell, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);
  - (c) "military stores" means any chattel of any description belonging to the Government which has been issued for use for military purposes or is held in store for the purpose of being so issued when required, and includes any chattel 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.

**182. Illegal dealings in documents relating to pay, pensions, mobilisation, etc.**

- (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 connection 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 against this section.
- (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 connection with the mobilisation or demobilisation of the Defence Force or any member thereof, shall be guilty of an offence against this section.
- (3) Any person guilty of an offence under this section shall be liable on conviction to a fine not exceeding three thousand penalty units or to imprisonment for a term not exceeding six months, or to both.
- (4) For the purposes of this section, a document shall be deemed to be in the possession of a person if 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.

*[As amended by Act [No. 13 of 1994](#)]*

**183. Unauthorised use of and dealing in Decorations etc.**

- (1) Any person who purchases or takes in pawn any naval, military or air force 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 against this section 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.
- (2) Any person who is guilty of an offence under this section shall be liable on conviction to a fine not exceeding one thousand penalty units or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment.

*[As amended by S.I. No. 8 of 1964 and No. 1 of 1987, and Act [No. 13 of 1994](#)]*

**Provisions as to evidence****184. General provisions as to evidence**

- (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 that Force at or before any specified time; or
  - (b) held or did not hold at any specified time any specified rank or appointment in the Defence Force, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
  - (c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem;
- shall, if purporting to be issued by or on behalf of the Commander, or a person authorised by him, 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 service law or regulations, 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 or on the instructions of the Commander and to contain instructions or orders given or made by the Commander 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 by a person authorised by him, and stating—
- (a) that a decoration of a description specified in or annexed to the certificate is a military or air force decoration; or
  - (b) that a badge, wound stripe or emblem of a decoration specified in or annexed to the certificate is one authorised by the President;
- shall be evidence of the matters stated in the certificate.
- (8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him 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; or
  - (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.

*[As amended by S.I. No. 8 of 1964]*

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

- (1) Where a person subject to military law under 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:
- (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 authorised 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.

### **186. Evidence of proceedings of court-martial**

- (1) The original record of the proceedings of a court-martial under service law purporting to be signed by the president of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.
- (2) A document purporting to be a copy of the original record of the proceedings of a court-martial under service law or any part thereof 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**

### **187. Temporary reception in civil custody of persons under escort**

- (1) Where a person is in military custody when charged with, or with a view to his being charged with, an offence against Part V in the corresponding provisions of any other service law, 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 seven days.
- (2) In subsection (1), "civil prison" has the meaning ascribed to it in section one hundred and thirty-five.

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

- (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.

*[As amended by S.I. No. 8 of 1964]*

**189. Power of certain officers to take statutory declarations**

- (1) An officer of the Defence Force or of any other military, naval or air force not below field rank (hereinafter referred to as an "authorised officer") may, outside Zambia, take statutory declarations from persons subject to military law under this Act.
- (2) A document purporting to have subscribed thereto the signature of an authorised 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.

*[As amended by S.I. No. 8 of 1964]*

**Part IX**

**190. \*\*\***

*[Repealed by No. 32 of 1971]*

**191. \*\*\***

*[Repealed by No. 32 of 1971]*

**192. \*\*\***

*[Repealed by No. 32 of 1971]*

**193. \*\*\***

*[Repealed by No. 32 of 1971]*

**194. \*\*\***

*[Repealed by No. 32 of 1971]*

**195. \*\*\***

*[Repealed by No. 32 of 1971]*

**196. \*\*\***

*[Repealed by No. 32 of 1971]*

**197. \*\*\***

*[Repealed by No. 32 of 1971]*

**198. \*\*\***

*[Repealed by No. 32 of 1971]*

## Part X – Reserve Force

### 199. Composition

The Reserve Force shall consist of such officers and soldiers who shall be appointed therein under the provision of sections eleven and nineteen.

### 200. Discharge from Reserve

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.

### 201. Reporting of Reserve

Officers and soldiers of the Reserve Force shall be required to report to such authority and to attend such examination before a medical board as may be prescribed by the President.

### 202. Embodiment

- (1) Whenever it appears to the President necessary or desirable in the public interest, he may, by statutory notice, or otherwise—
  - (a) order the employment of the whole or any part of the Reserve Force; and
  - (b) order the employment of any officer or soldier of the Reserve Force for service within or, with his consent, without Zambia.
- (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 Territorial Force or the Reserve Force.

### 203. Postponement of discharge

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 two hundred and two, he may be required to prolong his service for such further term as the President may order.

### 204. Failure to attend on embodiment

- (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 two hundred and two, shall be guilty, according to the circumstances, of desertion or absence without leave, and on conviction by court-martial shall be punishable as for an offence under section forty-two or, as the case may be, section forty-three.
- (2) Sections one hundred and seventy-three and one hundred and seventy-four shall apply to a deserter or an absentee without leave contrary to subsection (1).
- (3) 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 paragraph (c) of subsection (2) of section one hundred and seventy-eight (which provides, among other things, for the punishment of persons concealing deserters from the Defence Force).

- (4) Where an officer or soldier of the Reserve Force deserts contrary to subsection (1), the time which elapsed between the time of his desertion and the time of his apprehension or voluntary surrender shall not be taken into account in reckoning his service for the purpose of retirement or discharge.

## 205. Regulations under this Part

Subject to the foregoing provisions of this Part, the President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Part and generally for the good government and organisation of the Reserve Force and for providing for matters required by this Part to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say:

- (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 on service in accordance with section two hundred and two, including prescribing the manner in which notification of the places and times appointed is to be given;
- (d) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

## Part XI – Application of Act and supplementary provisions

### 206. Persons subject to military law

- (1) Subject to the provisions of sections two hundred and eight and two hundred and nine, the following persons are subject to military law under 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) members of the Home Guard under the provisions of the Home Guard Act, when employed in terms of section nineteen of the said Act or when performing any other duty pursuant to the provisions of the said Act;  
*[Cap. 122]*
  - (d) officers and soldiers of the Auxiliary Air Force;
  - (e) officers and soldiers of the Reserve Force when employed in terms of section two hundred and two.
- (2) This Act shall apply to the persons subject thereto—
  - (a) as well outside as within Zambia; and
  - (b) notwithstanding their attachment under the provisions of section seven.

*[As amended by No. 32 of 1971]*

### 207. Application of Act to civilians

- (1) Subject to the modifications hereinafter specified, where any part of the Defence Force is on active service, Part V 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 service law, as Part V applies to soldiers subject to military law under this Act.

- (2) The said modifications are the following:
- (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 one hundred kwacha, but no other punishment;
  - (c) the following provision shall have effect in substitution for subsections (2), (3) and (4) of section seventy-seven, that is to say, that a person may be arrested by a provost officer, by any warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer subject to service law;
  - (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 one hundred and twenty and one hundred and twenty-one 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 that Part V applies and subsection (3) of section one hundred and twenty shall not apply.
- (3) Any fine awarded by military law 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.

## 208. Application of Act to persons subject to the Acts

- (1) Officers, warrant officers and non-commissioned officers who, being members of the United Kingdom Military or Air Forces, are subject to military or air force law under the Acts and are seconded to serve with the Defence Force or any part thereof, shall remain subject to military law or air force law under the Acts and shall not be subject to military law under this Act.
- (2) The powers of arrest conferred by section 74 of the Acts and the provisions of [sections 186 to 190](#) inclusive of the Acts (which relate to deserters and absentees without leave) shall continue to apply in Zambia to the persons referred to in subsection (1) on or after the 24th October, 1964, as they applied before that date.
- (3) In the event of a person referred to in subsection (1) committing an offence against the provisions of the Acts, he may be held, tried and punished in Zambia under the Acts for the offence thereunder.

## 209. Application of Act to Home Guard and Reserve Force

- (1) The provisions of Parts I, II, III, V, VI, VII, VIII and XI shall not apply to members of the Home Guard except—
  - (a) when the President has ordered the employment of the whole or any part of the Home Guard under section nineteen of the Home Guard Act; or

*[Cap. 122]*

- (b) when on duty pursuant to any other provisions of the Home Guard Act.
- (2) The provisions of Part V relating to the award of fines and stoppages and the provisions of Part VII shall not apply to officers and soldiers of the Reserve Force except when employed in terms of section two hundred and two.

*[No. 32 of 1971]*

## 210. Regulations

Subject to the foregoing provisions, the President may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act and generally for the good government and organisation of the Defence Force and for providing for matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to all or any of the following matters, that is to say:

- (a) the enlistment of persons into, and the discharge of persons from, the Regular Force and generally for the carrying into effect of Part IV, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (b) determining to what extent and under what conditions colour service in any other military, naval or air force may be counted as colour service in the Regular Force;
- (c) the pay, allowances, pensions and gratuities of soldiers and their dependants surviving them, and the deductions therefrom and the forfeiture thereof (including the reckoning for pay, pensions and gratuities of service in any other military, naval or air force prior to the commencement of service in the Defence Force);
- (d) the description, supply, use and disposal of arms, accountments, 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 respect of matters for which regulations may be made under the foregoing provisions of this Act, other than under the provisions of Parts III and VI.

*[As amended by S.I. No. 8 of 1964]*

## 211. Powers exercisable in subsidiary legislation

- (1) Any power conferred by this Act to make regulations, rules orders or other instruments shall include power to make provisions for specified cases or classes of cases, and to make different provisions for different classes or cases, and for the purpose of any such instrument classes or cases may be defined by reference to any circumstances specified in the instrument.
- (2) Any such regulations, rules, orders or other instruments as aforesaid may impose conditions, require acts or things to be performed or done to the satisfaction of any person named therein, whether or not such persons are members of the Defence Force or of any other military, naval or air force, empower such persons to issue orders orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribed periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled and provide for appeal against any such order, requirement or direction.
- (3) Any regulations made under section twelve or made with respect to any matter referred to in paragraph (c) of section two hundred and ten may, if the President considers it expedient to do so in order to confer a benefit on or remove a disability attaching to any officer or soldier be made with retrospective effect.

*[As amended by Act [No. 18 of 1988](#)]*

## 212. Execution of orders, instruments, etc.

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

## 213. Transitional provisions

- (1) The units raised under the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland, existing in the former Protectorate of Northern Rhodesia at the commencement of this Act shall be deemed to have been raised under this Act.
- (2) Any person who, immediately before the commencement of this Act, held a commission as an officer in the Defence Forces of the former Protectorate of Northern Rhodesia constituted under the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland or is a member, other than an officer, of such Defence Forces shall be deemed, as from the commencement of this Act—
  - (a) in the case of a person holding such commission as aforesaid, to have been granted a commission pursuant to this Act and to have been appointed to the Regular Force, Territorial Force or Reserve Force, as the case may be; and
  - (b) in the case of a member (not being an officer) as aforesaid, to have been enlisted as a soldier under Part IV or IX, or transferred to the Reserve Force under the provisions of section nineteen, as the case may be, so however, that any such member who held, immediately before the commencement of this Act, the rank of a warrant officer or a non-commissioned officer in the said Defence Forces shall be deemed to have been promoted to that rank in the Regular Force, Territorial Force or Reserve Force, as the case may be, by virtue of the provisions of this Act.
- (3) No person shall, if he held a commission as an officer in or was a soldier in the Defence Forces of the former Federation of Rhodesia and Nyasaland and transferred from such Defence Forces to the Defence Force without a break in his service, be required, without his consent, to serve for a longer period or on terms and conditions (including rights and privileges) less favourable than he would have been required to serve pursuant to the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland.
- (4) Where any question exists in relation to any matter arising under subsection (3), such question may be determined by the President.
- (5) The transitional provisions and savings set out in the Second Schedule shall have effect in connection with the repeal of the Defence Act, 1955.

## 214. Exemption from Trades Licensing Act and Clubs' Registration Act

None of the provisions of the Trades Licensing Act or the Clubs' Registration Act shall apply to any canteen, mess or other similar institution belonging to the Defence Force.

[*Cap. 393; Cap. 162*]

### First Schedule (Part V, Section 97)

#### Alternative offences of which accused may be convicted by court-martial

Offence charged		Alternative offence	
1.	Any offence against subsection (1) of section 29.	1.	Any offence against subsection (2) of section 29.
2.	Any offence against subsection (1) of section 30.	2.	Any offence against subsection (2) of section 30.
3.	Any offence against subsection (1) of section 36.	3.	Any offence against subsection (2) of section 36.
4.	Communicating with or giving intelligence to the enemy, either with intent to assist the enemy or without authority.	4.	Disclosing information without authority.
5.	Striking a superior officer.	5.	(a) Using violence to a superior officer otherwise than by striking him; (b) offering violence to a superior officer.
6.	Using violence to a superior officer otherwise than by striking him.	6.	Offering violence to a superior officer.
7.	Using threatening language to a superior officer.	7.	Using insubordinate language to a superior officer.
8.	Disobeying, in such a manner as to	8.	Disobeying a lawful command.

	show wilful defiance of authority, a lawful command given or sent to him personally.		
9.	Desertion.	9.	Absence without leave.
10.	Attempting to desert.	10.	Absence without leave.
11.	Stealing any property.	11.	Fraudulently misapplying the property.
12.	Any offence against subsection (1) of section 59.	12.	Any offence against subsection (2) of section 59.
13.	Any offence against subsection (1) of section 60 involving striking.	13.	(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 60 involving the use of violence other than striking.	14.	The corresponding offence involving the offering of violence.

## Second Schedule (Section 213)

### Transitional provisions and savings

1. In this Schedule—

"the appointed day" means the \*day upon which this Act comes into operation;

\*18th September, 1964

"the Defence Act" means the Defence Act, 1955, of the former Federation of Rhodesia and Nyasaland.

2. (1) In relation to an offence against any section in Part V of the Defence Act, sections seventy-four to one hundred and twenty-three, and sections one hundred and twenty-six to one hundred and thirty-one of this Act, and the regulations made under these sections, shall apply as if the said section had been contained in this Act and this Act had been in force when the offence was committed, and as if any finding or punishment having effect before the appointed day, and anything done before that date by virtue of or in relation to such a finding or sentence, had been come to, awarded or done under this Act:

Provided that nothing in this sub-paragraph shall render an offence capable of being tried by court-martial or dealt with summarily, if by reason of the time or place of the commission of the offence it could not have been so tried or dealt with under the Defence Act.

- (2) Notwithstanding anything in sub-paragraph (1), where any proceedings for such an offence as aforesaid have been begun before the appointed day, any step in the proceedings taken after that day shall be deemed to be validly taken if taken in accordance with the Defence Act and the regulations made thereunder.
  - (3) In section one hundred and twenty-three of this Act (which provides against trials for offences already disposed of) references to this Act or to any provision thereof shall be construed as including respectively references to the Defence Act and to the corresponding provision thereof.
3. Where after the appointed day a person is alleged—
- (a) to have committed an offence continuing over a period beginning before that day and ending thereon or thereafter; or
  - (b) to have committed an offence between two dates falling within such a period;
- and the offence would be one against a provision in Part V of this Act if this Act had been in force at all material times, he may be proceeded against as if this Act had so been in force.
4. Any instrument issued before the appointed day which authorises the convening of a court-martial shall, if in force on that day, continue in force thereafter as if issued under this Act, and may be varied or revoked accordingly.
5. (1) A person enlisted in pursuance of the Defence Act whose term of enlistment is current at the appointed day shall be deemed to have been enlisted under the corresponding provisions of this Act.
- (2) Anything done under the provisions of the Defence Act and relating to the varying of a person's terms of enlistment shall, if the doing thereof would have been authorised by any provisions of this Act if they had been in force when it was done, be deemed to have been done under the last-mentioned provisions.
6. Any order authorising the discharge of a person given before the appointed day by an officer prescribed in that behalf under the Defence Act shall be treated for the purposes of subsection (3) of section eighteen of this Act as an order of the competent military authority.
7. The powers conferred by this Act of remitting forfeitures and deductions shall be exercisable in relation to forfeitures and deductions imposed under the Defence Act.
8. (1) Any forfeiture of, or deduction from, pay having effect under the Defence Act immediately before the appointed day shall, subject to paragraph 7, continue to have effect notwithstanding that the Defence Act has ceased to be in force.
- (2) Any order having effect immediately before the appointed day under the provisions of the Defence Act corresponding with sections one hundred and sixty and one hundred and sixty-one of this Act shall continue to have effect as if made under this Act, and section one hundred and sixty-two of this Act shall apply accordingly.
9. Any document made before the appointed day which would have been admissible under the provisions of the Defence Act shall be admissible to the like extent and in the like proceedings notwithstanding that the Defence Act has ceased to be in force.

\*18th September, 1964.