

**Defence**

## DEFENCE RULES OF PROCEDURE, 1984

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## Defence

Cap. 159.

## DEFENCE RULES OF PROCEDURE, 1984

1984/159.

**Authority:** These rules were made on 6th June, 1984 by the Defence Board under section 136 of the *Defence Act*.

**Commencement:** 1984.

*Citation*

1. These Rules may be cited as the *Defence Rules of Procedure, 1984*. Short title.

*Interpretation*

2. In these Rules, Definitions.
- "convening a fresh court" includes dissolving the existing court;
- "member" when used in relation to a court-martial does not include the president;
- "special finding", when used in relation to
- (a) section 103 of the Act, means a finding that a court-martial may make in accordance with that section,
  - (b) section 117 of the Act, means a finding in accordance with subsection (2) of that section that the accused is guilty but insane, and
  - (c) rule 65(3), means a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

*Arrest and avoidance of delay*

3. (1) Where a person is detained in arrest by military authority, his commanding officer shall, unless it is impracticable, within 48 hours of becoming aware that the person is so detained, Investigation of charge.

- (a) have the person brought before the commanding officer,

- (b) inform the person of the charge against him, and
- (c) investigate the charge.

(2) Where a person is detained in arrest for a period exceeding 48 hours and the commanding officer has not begun to investigate the charge against the person the commanding officer shall report to higher authority

- (a) the fact that the person is detained in arrest,
- (b) the fact that an investigation was not begun within the period specified in paragraph (1), and
- (c) the reason why an investigation was not begun within that period.

Eight day  
delay  
report.

4. (1) The report required by subsection (2) of section 82 of the Act

First  
Schedule.

- (a) must be in the form set out in the *First Schedule*, and
- (b) must be signed by his commanding officer.

(2) The report must be sent to the officer who would be responsible for convening a court-martial for the trial of the accused.

Arrest  
not to  
exceed  
seventy-  
two days.

5. (1) An accused may not be held in arrest for more than 72 consecutive days without a court-martial being convened for his trial, unless the officer who would be responsible for convening the court-martial directs in writing that the accused may not be released from arrest.

(2) Where the officer referred to in paragraph (1) directs in writing that the accused may not be released from arrest the officer shall state his reason for so directing.

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

Investiga-  
ting  
charges.

6. (1) Subject to paragraph (3), where a commanding officer investigates a charge he shall first read, and, if necessary, explain, the charge to the accused and shall

- (a) hear the evidence himself in accordance with rule 7, or
- (b) cause the evidence to be reduced to writing in accordance with paragraph (4), and read and consider the evidence.

(2) The commanding officer may, notwithstanding that he has heard all or part of the evidence himself, cause the evidence to be reduced to writing.

(3) After evidence has been reduced to writing and the commanding officer has considered it, he may himself hear evidence in accordance with rule 7.

(4) Before a commanding officer

(a) submits, to higher authority, a charge, against

(i) an officer, warrant officer or soldier, or

(ii) a civilian to whom Part V of the Act applies by virtue of section 222 thereof, or

(b) remands a non-commissioned officer or private soldier for trial by court-martial,

he shall cause the evidence to be reduced to writing.

(5) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9.

(6) A summary of evidence must be taken if

(a) the maximum punishment for the offence with which the accused is charged is death,

(b) the accused, at any time before the charge against him is referred to higher authority in accordance with rule 12, requires in writing that a summary of evidence be taken, or

(c) the commanding officer is of the opinion that the interests of justice require that a summary of evidence be taken.

(7) Where the evidence taken in accordance with paragraph (1) discloses an offence other than the offence that is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these rules, as the investigation of the added or substituted charge.

7. (1) Where a commanding officer investigates a charge by hearing the evidence himself

Hearing of  
evidence by  
commanding  
officer.

(a) each prosecution witness shall give his evidence orally in the presence of the accused;

- (b) the commanding officer shall read to the accused a written statement made by the witness;
- (c) the accused must be allowed to cross-examine any prosecution witness;
- (d) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;
- (e) the accused may call witnesses in his defence, who must give their evidence orally and in his presence;
- (f) evidence may not be given on oath unless the commanding officer so directs or the accused so demands; and
- (g) if evidence is given on oath, the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 33.

(2) Paragraph (1)(b) does not apply where the accused requires that the witness give his evidence orally.

Summary of  
evidence.

8. (1) A summary of evidence must be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer.

First  
Schedule.

(2) A summary of evidence must be in accordance with the form set out in the *First Schedule*.

(3) Prosecution witnesses must give their evidence orally and the accused must be allowed to cross-examine them.

(4) Where a prosecution witness

(a) cannot be compelled to attend,

(b) cannot, in the opinion of the officer taking a summary of evidence, attend owing to the exigencies of the evidence or on any other ground, including the expense and loss of time involved,

a written statement of the witness' evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but, if the witness can be compelled to attend, the accused may insist that the witness attend for cross-examination.

(5) The officer referred to in paragraph (4)(b) must certify in writing that the witness cannot attend for any reason stated in that paragraph.

(6) After all the evidence against the accused has been given, the accused shall be addressed as follows:

"Do you wish to say anything? You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence."

(7) Any evidence given or statement made by an accused must be recorded in writing and, immediately thereafter the record of his evidence or statement must be read over to him and corrected where necessary; and he may sign it or he may decline to do so.

(8) The accused may call witnesses in his defence, who shall give their evidence orally.

(9) Neither the accused nor the witnesses for the defence are subject to cross-examination.

(10) The evidence of each witness, other than the accused, who gives evidence orally shall be recorded in writing and, immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him.

(11) A record of evidence may be in narrative form; but any question put to a witness in cross-examination by the accused, and the answer to the question must be recorded verbatim if the accused so requires.

(12) The officer taking the summary of evidence shall administer the oath in accordance with rule 33 to each witness before he gives his evidence, and to any interpreter.

(13) Notwithstanding paragraph (12), where a child of tender years, called as a witness, does not, in the opinion of the officer taking a summary of evidence, understand the nature of an oath, the child's evidence may be received, though not given upon oath, if, in the opinion of the officer, the child is sufficiently intelligent to justify the reception of the evidence and understands the duty of speaking the truth.

(14) At the conclusion of the taking of a summary of evidence, the officer taking it shall certify thereon that he has complied with this rule.

Abstract  
of evidence.

9. (1) The following apply to an abstract of evidence:

- (a) it must be made by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the accused may not be present while the abstract of evidence is being made;
- (c) it shall comprise signed statements by such witnesses as are necessary to prove the charge;
- (d) if, in the case of any witness, a signed statement is not readily procurable, a precis of the evidence to be given by that witness may be included instead of a signed statement; and
- (e) an oath may not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements that are already in existence.

(2) Where an abstract of evidence has been made in accordance with paragraph (1), a copy of it shall be given to the accused and he shall then be cautioned in the following terms:

"This is a copy of the abstract of evidence in your case, you are not obliged to say anything with regard to it unless you wish to do so, but you should read it, and, when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence."

(3) Any statement made by an accused after he has read the abstract of evidence must be taken down in writing and he must be asked to sign it.

(4) A statement referred to in paragraph (3), and a certificate by the person who recorded the statement stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall, thereafter, form part of the abstract.

First  
Schedule.

(5) An abstract of evidence must be in accordance with the form set out in the *First Schedule*.

First  
Schedule.

(6) The certificate referred to in paragraph (4) must be in accordance with the form set out in the *First Schedule*.

Investiga-  
tion before  
summary  
dealing by  
commanding  
officer.

10. Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing

- (a) any prosecution witness who has not given his evidence orally shall do so if the accused requires it, and
- (b) the commanding officer shall give the accused a further opportunity
  - (i) to give evidence on oath,
  - (ii) to make a statement without being sworn, and
  - (iii) to call witnesses in his defence.

11. (1) A commanding officer may dismiss a charge at any time during his investigation if he is of the opinion that the charge ought not to be proceeded with further.

Dismissal  
of charge  
by command-  
ing officer.

(2) After a commanding officer has referred a charge to higher authority in accordance with rule 12, he may not dismiss it unless it has been referred back to him with a direction that it be dismissed in accordance with section 87 of the Act.

12. Where a commanding officer submits to a higher authority, a charge against a civilian to whom Part V of the Act applies by virtue of section 222 of the Act or against an officer or warrant officer, or remands a non-commissioned officer or private soldier for trial by court-martial, the commanding officer shall send to higher authority

Reference  
of charge  
to higher  
authority.

- (a) a copy of the charge on which the accused is held,
- (b) a draft charge-sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial,
- (c) a summary or abstract of evidence,
- (d) a statement of the character and service record of the accused, and
- (e) a recommendation as to how the charge should be proceeded with.

#### *Preparation of charge-sheets and framing of charges*

13. (1) A charge-sheet must contain the whole of the issue to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character.

Charge-sheets.

- (2) Charges under the following provisions of the Act:
- (a) paragraph (a) of section 48(1);
  - (b) paragraph (a) of section 49;
  - (c) paragraph (a) of section 56, where the charge is connected with a charge under paragraph (a) of section 48(1) or paragraph (a) of section 49; or
  - (d) section 63,

may be included in any charge-sheet, notwithstanding that other charges in that charge-sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

Second  
Schedule.

(3) A charge-sheet must be in accordance with the appropriate form in the *Second Schedule*.

(4) The commencement of each charge-sheet must be in the appropriate form set out in the *Second Schedule* and must state the number, rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to military law under the Act or otherwise liable to trial by court-martial.

Charges.

14. (1) Each charge must state one offence only.

(2) Offences may be charged in the alternative in separate charges but in no case may they be charged in the alternative in the same charge.

(3) Where charges are laid in the alternative they must be set out in order of gravity commencing with the most serious.

(4) Each charge must consist of 2 parts, namely

- (a) the statement of the offence, and
- (b) the particulars of the offence.

(5) The statement of an offence

(a) that is not a civil offence, must be in the appropriate form set out in the *Second Schedule*,

Second  
Schedule.

(b) that is a civil offence must be in such words as sufficiently describe the offence.

(6) The particulars of the offence must state



- (a) such circumstances respecting the alleged offences as will enable the accused to know the act to be proved against him as constituting the offence,
- (b) the facts to be proved as rendering the accused liable to a higher degree of punishment if convicted, where the offence charged is one that can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a lesser degree of punishment,
- (c) any additional facts to be proved as rendering the accused liable to stoppages, if convicted.

15. (1) Two or more accused may be charged jointly in one charge for an offence committed by them jointly. Joint charges.

(2) Where accused are charged pursuant to paragraph (1) any one or more of them may at the same time be charged in the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly, if those charges could, where the accused to whom they relate has been tried separately, have been included under paragraph (1) of rule 13 in the same charge-sheet as the other charges against him.

16. In the construction of a charge-sheet or charge there shall be presumed, in favour of supporting it, every proposition that may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together. Construction of charge-sheet and charges.

*Action by higher authority on receipt  
of a charge*

17. (1) Where a higher authority receives a charge against an accused, the higher authority shall, if he does not Action by higher authority.

- (a) refer it back to the commanding officer,
- (b) deal summarily with it himself, or
- (c) convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that the authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused.

(2) Where a higher authority refers a charge in accordance with paragraph (1), he shall send to the appropriate superior authority or other officer concerned, the documents mentioned in rule 12 together with his own recommendation as to how the case should be proceeded with.

*Investigation of, and summary dealings with charges  
by an appropriate superior authority*

Documents  
given to  
officers,  
warrant  
officers  
and civil-  
ians dealt  
with sum-  
marily.

18. An appropriate superior authority shall, before investigating and dealing summarily with a charge, ensure that the accused is given, not less than 24 hours before the charge is so investigated and dealt with, a copy of the charge-sheet containing the charge upon which he will be dealt with and a copy of the summary or abstract of evidence.

Investiga-  
tion of and  
summary deal-  
ing with  
charges  
against of-  
ficers, war-  
rant officers  
and civilians.

19. The following apply where an appropriate superior authority investigates and deals summarily with a charge:

- (a) the appropriate superior authority shall first read the charge to the accused;
- (b) the witnesses against the accused need not give their evidence orally if the accused agrees in writing but if the accused does not agree they must give their evidence orally in his presence and he must be allowed to cross-examine them;
- (c) where the witnesses against the accused do not give their evidence orally the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;
- (d) the accused may, in his defence, adduce evidence
  - (i) of the facts of the case,
  - (ii) of his character, and
  - (iii) in mitigation of punishment;
- (e) the accused himself may,
  - (i) give evidence on oath,
  - (ii) make a statement without being sworn, or
  - (iii) hand in a written statement;

- (f) each witness must give his evidence on oath and the oath must be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 33;
- (g) a record shall be made of the proceedings in accordance with the form set out in the *Third Schedule*.

Third  
Schedule.

## 20. Where

- (a) an accused elects to be tried by court-martial, or
- (b) an appropriate superior authority, in the course of investigating a charge, determines that it is desirable that the charge should be tried by court-martial,

Alterna-  
tive course  
open to  
appropriate  
superior  
authority.

the appropriate superior authority shall convene the court-martial or refer the charge to higher authority in accordance with rule 17.

## *Convening of courts-martial*

### 21. (1) Any officer who convenes a court-martial

- (a) shall issue a convening order in the appropriate form set out in the *Fourth Schedule*;
- (b) shall direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who investigated the charges;
- (c) shall direct, if he is of the opinion that charges be put in separate charge-sheets, the order in which the charges are to be tried;
- (d) shall direct, if there is more than one accused, whether the accused are to be tried jointly or separately;
- (e) shall appoint the president and members of the court and any waiting members in accordance with rule 22; and
- (f) shall, when convening
  - (i) an ordinary court-martial where the maximum or only punishment for the offence is death, or
  - (ii) any other court-martial at which he considers there should be a judge advocate,

Duties of  
convening  
officer.  
Fourth  
Schedule.

shall appoint a suitable person to act as judge advocate unless a person has been or is to be appointed by the Defence Board;

- (g) shall appoint an officer who is subject to service law, or counsel assisted by such an officer to prosecute, or detail a commanding officer to appoint an officer who is subject to service law to prosecute;
- (h) shall appoint the date, time and place for the trial;
- (i) shall send to the president
  - (i) the charge-sheet,
  - (ii) the convening order, and
  - (iii) a copy of the summary or abstract of evidence from which any evidence that, in his opinion, would be inadmissible under the Act at the court-martial has been expurgated;
- (j) shall send to each member of the court and to each waiting member a copy of the charge-sheet;
- (k) shall send to the prosecutor
  - (i) a copy of the charge-sheet,
  - (ii) a copy of the convening order, and
  - (iii) the original summary or abstract of evidence together with an unexpurgated copy thereof showing the passages, if any, that have been expurgated in the copy sent to the president;
- (l) shall send to the judge advocate, if any,
  - (i) a copy of the charge-sheet,
  - (ii) a copy of the convening order, and
  - (iii) an unexpurgated copy of the summary or abstract of evidence showing the passages, if any, that have been expurgated in the copy sent to the president;
- (m) shall ensure that the accused is given proper opportunity to prepare his defence in accordance with rule 24; and
- (n) shall procure in accordance with rule 89 the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24.

(2) Notwithstanding paragraph (1)(g), the convening officer may, if he considers it necessary, appoint 2 officers who are subject to service law to prosecute.

(3) Notwithstanding paragraph (1)(n), the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance the accused has requested and if the accused refuses to defray or to undertake to defray, as the case may be, the cost, the convening officer need not take any further steps to procure the attendance of the witness.

(4) Where an officer convenes a field court-martial he need not comply with

- (a) sub-paragraph (g),
- (b) sub-paragraph (i), in so far as it relates to the copy of the summary or abstract of evidence sent to the president being expurgated,
- (c) sub-paragraph (j),
- (d) sub-paragraph (k), and
- (e) sub-paragraph (i) of paragraph (1) if in his opinion it is impracticable to do so.

22. The convening officer shall

- (a) appoint the president of the court-martial by name and appoint the members either by name or by detailing a commanding officer to appoint an officer of a specified rank, and
- (b) appoint such waiting member as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of a specified rank.

Appoint-  
ment of  
president  
and mem-  
bers.

23. (1) Subject to rule 79, any officer being subject to service law may, by direction of the convening officer or at the discretion of the president remain with a court-martial throughout the proceedings as an officer under instruction.

Officers  
under in-  
struction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

Prepara-  
tion of  
defence.

**24. (1) Subject to paragraph (2)**

- (a) an accused who has been remanded for trial by court-martial shall be afforded a proper opportunity for preparing his defence and shall be allowed proper communication with his defending officer or counsel and with his witnesses;
- (b) a defending officer or counsel shall be appointed to defend an accused who has been remanded for trial by court-martial unless the accused states in writing that he does not wish such an officer or counsel;
- (c) where the prosecution is to be undertaken by a legally qualified officer or by counsel, the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him;
- (d) as soon as practicable after an accused has been remanded for trial by court-martial and in any case not less than 24 hours before his trial he shall be given
  - (i) a copy of the charge-sheet,
  - (ii) an unexpurgated copy of the summary or abstract of evidence showing the passages, if any, that have been expurgated in the copy sent to the president,
  - (iii) notice of any additional evidence that the prosecution intends to adduce, and
  - (iv) a list of the ranks, names and units of the president and members who are to form the court and of any waiting members, if the accused so requires;
- (e) when an accused is given a copy of the charge-sheet and of the summary or abstract of evidence in accordance with this rule he shall
  - (i) have the charge explained to him if necessary, and
  - (ii) be informed that, upon his making a written request to his commanding officer not less than 24 hours before his trial requiring the attendance at his trial of any witness, other than a witness for the prosecution, whom he desires to call in his defence such witness to be named by him, reasonable steps

will be taken in accordance with these rules to procure the attendance of the witness at his trial;

- (f) when an accused is served with a copy of a statutory declaration that the prosecutor proposes to hand to the court in accordance with subsection (2) of section 104 of the Act and rule 56 he shall be informed of his right under that subsection to require that oral evidence be given in lieu of the statutory declaration;
  - (g) where it is intended to try two or more accused jointly, notice of this fact shall be given to each accused when he is given a copy of the charge-sheet;
  - (h) an accused to whom notice is given in accordance with paragraph (g) may, before trial, by written notice to the convening officer request to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately;
  - (i) where an accused request separate trial in accordance with paragraph (h) the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused be tried separately;
  - (j) where a charge-sheet contains more than one charge, the accused may, before trial, by written notice to the convening officer request to be tried separately on any charge in the charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in any such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused be tried separately on that charge.
- (2) In the case of a field court-martial the provisions of paragraph (1) need only be complied with so far as it is practicable.

#### *Assembly and swearing of court*

25. (1) Upon a court-martial assembling, the court shall, before beginning the trial, satisfy itself in closed court
- (a) that the court has been convened in accordance with the Act and these rules;

Preliminary matters and beginning of trial.

- (b) that the court consists of not less than the legal minimum of officers;
- (c) that the president and members are of the required rank;
- (d) that the president and members have been duly appointed and are not disqualified under the Act;
- (e) that the judge advocate, if there is one, has been duly appointed;
- (f) that the accused appears, from the charge-sheet, to be subject to military law under the Act or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and
- (g) that each charge is on its face correct in law and framed in accordance with these rules.

(2) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may appoint a duly qualified waiting member to fill that vacancy.

(3) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(4) Where a court is not satisfied on any matter mentioned in paragraph (1), and is not competent to rectify the matter itself under the Act or these rules, it shall, before commencing the trial, report to the convening officer.

(5) When the court has complied with this rule and is ready to proceed with the trial, the president must open the court and the trial shall begin.

Objections  
to the court.

**26.** (1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of the officers in accordance with section 97 of the Act.

(2) When a court is convened to try more than one accused whether separately or jointly, each accused shall be given an opportunity to object to any officer of the court in accordance with paragraph (1) and shall be asked separately whether he has any objection to such an officer.



(3) An accused must state the names of all the officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to, the objection to each officer must be disposed of separately and the objection to the lowest in rank must be disposed of first, except where the president is objected to, in which case the objection to him must be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers of the court including any officer who has been appointed by the president in accordance with paragraph (9) in place of an officer who has retired.

(8) When an objection to an officer is allowed that officer must forthwith retire and take no further part in the proceedings.

(9) When an officer objected to, other than the president, retires and there is a duly qualified waiting member in attendance, the president must immediately appoint the waiting member to take the place of the officer who has retired.

(10) The court must

(a) satisfy itself that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act, and

(b) give the accused an opportunity to object to the waiting member and deal with any such objection in accordance with this rule.

(11) Where an objection to the president is allowed the court must report to the convening officer without proceeding further with the trial.

(12) Where as the result of the allowance of an objection to a member there are insufficient officers available to form a court in compliance with the Act the court shall report to the convening officer without proceeding further with the trial, and the convening officer may appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

Swearing  
of court.

27. (1) Immediately after rule 26 has been complied with, the president and each member of the court shall, in accordance with rule 33, take an oath in the presence of the accused.

(2) Where there is a judge advocate, the oath shall be administered by him to the president first and afterwards to each member of the court.

(3) Where there is no judge advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn.

(4) A court may be sworn at one time to try any number of accused then presented before it, whether they are to be tried jointly or separately.

(5) Where a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if it thinks fit,

(a) determine the objection in accordance with rule 26, or

(b) postpone the trial of the accused who objects and swear the court for the trial of the other accused only.

Swearing  
of judge  
advocate.

28. After the court has been sworn, an oath shall, in accordance with rule 33, be administered to the judge advocate, if any, in the presence of the accused.

Swearing of  
officer under  
instruction.

29. After the court and judge advocate, if any, have been sworn, an oath shall, in accordance with rule 33, be administered to any officer under instruction in the presence of the accused.

Inter-  
preter and  
shorthand  
writer.

30. (1) A competent and impartial person may be appointed at any time to act as an interpreter or shorthand writer at a trial by court-martial, and before he so acts an oath shall, in accordance with rule 33, be administered to him in the presence of the accused.

(2) Before a person is sworn as an interpreter or a shorthand writer, the accused must be given an opportunity to object to the person in the same manner as an objection may be taken to a member of the court, and if the court thinks that the objection is reasonable, the person may not act as interpreter or shorthand writer.

31. The accused has no right to object to a judge advocate, prosecutor or any officer under instruction.

No right of  
objection  
to judge  
advocate, etc.

32. (1) Where a court has been convened to try two or more accused separately and has been sworn in accordance with rule 27 (3), the court must try them in the order indicated by the convening officer, or, where he has not indicated an order then, in such order as the court thinks fit.

Order of  
trials.

(2) Where a court has been convened to try an accused on charges that are included in more than one charge-sheet, the court must take the charge-sheets in the order indicated by the convening officer, or, where he has not indicated an order then, in such order as the court thinks fit.

33. (1) An oath that is required to be administered under these rules must be administered in the appropriate form and in the manner set out in the *Sixth Schedule*.

Oath and  
affirmation.  
Sixth  
Schedule.

(2) Notwithstanding paragraph (1), the opening words of the oath may be varied to such words, and the oath may be administered in such manner, as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(3) Subject to rule 27 (2), the president, a member of the court or the judge advocate must administer the oath at a court-martial.

(4) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation must be in the appropriate form set out in the *Sixth Schedule*.

(5) Section 107 of the Act applies to proceedings before a commanding officer, the taking of summaries of evidence and proceedings before an appropriate superior authority as it applies to proceedings before a court-martial.

### *Arraignment of accused*

34. (1) Where the court and judge advocate, if any, have been sworn the accused must be arraigned.

Arraignment.

(2) If there is more than one charge against the accused the court must require him to plead separately to each charge.

(3) Where there is more than one charge-sheet against the accused the court must

- (a) arraign and try the accused upon the charge in the first of the charge-sheets, and
- (b) announce their finding on that charge.

(4) Where the accused has pleaded guilty the court must comply with paragraphs (1) and (2) or rule 44 before it arraigns him upon the charge in any subsequent charge-sheet.

Plea to  
jurisdiction.

**35.** (1) An accused before pleading to a charge, may offer a plea to the jurisdiction of the court.

(2) Where an accused offers a plea to the jurisdiction of the court

- (a) he may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer to the plea, and
- (b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(3) Where the court allows a plea mentioned in this rule it must adjourn and report to the convening officer.

(4) Where a court reports to the convening officer under this rule, the convening officer must

- (a) if he approves the decision of the court to allow the plea, dissolve the court, or
- (b) if he disapproves the decision of the court
  - (i) refer the matter back to the court and direct it to proceed with the trial, or
  - (ii) convene a fresh court to try the accused.

Objection  
to charge.

**36.** (1) An accused before pleading to a charge may object to it on the ground

- (a) that it is not correct in law, or
- (b) that it is not framed in accordance with these rules;

and where the accused objects, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) Where the court upholds an objection it must

- (a) amend the charge, if permissible under rule 81, or
- (b) adjourn and report to the convening officer.

(3) Notwithstanding paragraph (2), where

(a) there is a charge-sheet other than the one before the court,  
or

(b) there is another charge-sheet before the court,

the court may, before adjourning under this rule, proceed with a trial of the other charge or other charge-sheet.

(4) Where a court, under this rule, reports to the convening officer he must

(a) if he approves the decision of the court to allow the objection

(i) dissolve the court, or

(ii) direct the court to proceed with the trial of any other charge, or any other charge-sheet, before the court to which the objection does not relate and that the court has not tried, or

(iii) amend the charge to which the objection relates if permissible under rule 82, and direct the court to try it as amended;

(b) if he disapproves the decision of the court to allow the objection

(i) direct the court to try the charge,

(ii) direct the court to proceed with the trial of any other charge, or any other charge-sheet, before the court to which the objection does not relate and that the court has not tried, or

(iii) convene a fresh court to try the accused.

37. (1) An accused may, before pleading to a charge, offer a plea in bar of trial in reliance upon section 126 or section 128 of the Act. Plea in bar of trial.

(2) Where an accused offers a plea in bar of trial

(a) he may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer to the plea, and

(b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(3) Where the court allows a plea mentioned in this rule it must adjourn and report to the convening officer.

(4) Notwithstanding paragraph (3), where there is another charge, or another charge-sheet, before the court it may, before adjourning under this rule, proceed with the trial of the other charge or other charge-sheet.

(5) Where a court reports to the convening officer under this rule, the convening officer must

(a) if he approves the decision of the court to allow the plea

- (i) dissolve the court, or
- (ii) direct the court to proceed with the trial of any other charge, or any other charge-sheet, before the court to which the plea does not relate and that the court has not tried;

(b) if he disapproves the decision of the court to allow the plea

- (i) direct the court to try the charge, or
- (ii) direct the court to proceed with the trial of any other charge or any other charge-sheet before the court to which the plea does not relate and which the court has not tried, or
- (iii) convene a fresh court to try the accused.

Applica-  
tion for  
separate  
trial.

38. (1) Where two or more accused are charged jointly, any one of the accused may, before pleading to the charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately.

(2) Where the accused makes an application under paragraph (1) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address.

(3) Where the court is of the opinion that the interests of justice so require they must allow the application and try, separately, the accused who made the application.

Separate  
trial of  
charge.

39. (1) Where a charge-sheet contains more than one charge the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in the charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge.

(2) Where the accused makes an application under paragraph (1) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address.

(3) Where the court is of the opinion that the interests of justice so require they shall allow the application and try the accused separately on the charge to which the application relates as if the charge had been inserted in a separate charge-sheet.

**40.** (1) After any pleas under rules 35 and 37, any objection under rule 37, and any application under rules 38 and 39, have been dealt with, the accused must, subject to paragraph (2), be required to plead guilty or not guilty to each charge on which he is arraigned. Plea to charge.

(2) Where a court

(a) is empowered by section 103 of the Act to find an accused guilty of an offence, other than the offence charged, or guilty of committing the offence in circumstances involving a lesser degree of punishment, or

(b) could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 65,

the accused may plead guilty to the other offence, or to the offence charged, as having been committed in circumstances involving a lesser degree of punishment or to the offence charged subject to these exceptions or variations.

**41.** (1) Where an accused pleads guilty to a charge under paragraph (1) or paragraph (2) of rule 40, the president or judge advocate must, before the court decides to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty. Acceptance of plea.

(2) A court may not accept a plea of guilty under paragraph (1) or paragraph (2) of rule 40 where

(a) the court is not satisfied that the accused understands the nature of the charge or the effect of his plea, or

(b) the president having regard to all the circumstances, considers that the accused should plead not guilty. or

(c) the accused is liable, if convicted to be sentenced to death.

(3) In addition to paragraph (2) a court may not accept a plea of guilty under paragraph (2) of rule 40, unless

- (a) the convening officer concurs, and
- (b) the court is satisfied of the justice of accepting a plea of guilty.

(4) The concurrence of the convening officer may be signified by the prosecutor.

(5) Where

- (a) the court does not accept a plea of guilty under paragraph (1) or paragraph (2) of rule 40, or
- (b) the accused refuses to plead to the charge or does not plead to it intelligibly, the court must enter a plea of not guilty.

(6) Where a court is satisfied that it can properly accept a plea of guilty under paragraph (1) or paragraph (2) of rule 40 it shall record a finding of guilty.

Plea on  
alternative  
charge.

42. (1) Where an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the plea, shall record a finding of guilty in respect of the first charge and the prosecutor must withdraw any alternative charge before the accused is arraigned on it.

(2) Where an accused pleads guilty to one of two or more charges that are laid in the alternative other than the first of those charges, the court may

- (a) proceed as if the accused had pleaded not guilty to all the charges, or
- (b) record, with the concurrence of the convening officer, which may be signified by the prosecutor, a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge that is before the court in the charge-sheet.

(3) Where the court records the findings mentioned in subparagraph (b) of paragraph (2) the prosecutor must, before the accused is arraigned on it, withdraw any charge that is

- (a) alternative to the charge of which the court has found the accused guilty, and
- (b) placed after that charge in the charge-sheet.



*Procedure after recording a finding of guilty*

**43.** (1) Where a court has recorded a finding of guilty, if

(a) there is no other charge in the charge-sheet to which the accused has pleaded not guilty, and

(b) there is no other accused who has pleaded not guilty to a charge in that charge-sheet,

the court shall proceed with the trial in accordance with rule 44.

(2) Where

(a) there is another charge in the charge-sheet to which the accused has pleaded not guilty, or

(b) there is another accused who has pleaded not guilty to a charge in the charge-sheet,

the court shall not comply with rule 44 until after it has dealt with the other charge or tried the other accused and has announced and recorded its finding.

Order of  
trial on  
pleas of  
not guilty  
and guilty.

**44.** (1) After a court has recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to rule 43, read the summary or abstract of evidence to the court or inform the court of the facts contained therein.

Procedure  
after plea  
of guilty.

(2) Notwithstanding paragraph (1), where an expurgated copy of the summary or abstract referred to in that paragraph was sent to the president, the prosecutor shall not

(a) read to the court those parts of the summary or abstract that have been expurgated or inform the court of the facts contained in those parts, and

(b) hand the original summary or abstract to the court until the trial is concluded.

(3) Where there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court must hear and record in accordance with these rules sufficient evidence to enable it to determine the sentence.

(4) After paragraphs (1) and (2) have been complied with, the accused may

- (a) adduce evidence of character and evidence in mitigation of punishment, and,
  - (b) address the court in mitigation of punishment.
- (5) After paragraph (3) has been complied with, the court must proceed as directed in paragraphs (1), (2), (3) and (4) of rule 70.

*Change of plea*

Change of  
of plea.

45. (1) An accused who has pleaded not guilty may, at any time before the court closes to deliberate on its finding, withdraw his plea of not guilty and substitute a plea of guilty, including a plea of guilty under paragraph (2) of rule 40.

(2) Where an accused changes his plea under paragraph (1) the court must if it is satisfied that under these rules it can accept the accused's changed plea,

- (a) record a finding in accordance with the accused's changed plea, and
- (b) proceed as directed by rule 44 as far as is necessary.

(3) Where at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court must enter a plea of not guilty and proceed with the trial accordingly.

(4) Where a court enters a plea of not guilty in respect of any charge under paragraph (3), it must, if there was an alternative charge that the prosecutor withdrew under rule 42,

- (a) reinstate the alternative charge,
- (b) arraign the accused on it, and
- (c) proceed with the trial as if it had never been withdrawn.

*Procedure on plea of not guilty*

Application  
for adjourn-  
ment

46. (1) After a plea of not guilty to any charge has been entered the court must ask the accused whether he wishes to apply for an adjournment on the ground

- (a) that any of these rules relating to procedure before trial has not been complied with and that he has been prejudiced thereby, or

(b) that he has not had sufficient opportunity for preparing his defence.

(2) Where an accused applies for an adjournment

(a) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer to the application; and

(b) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address.

(3) A court may grant an adjournment if the court thinks the interest of justice so require.

47. (1) The prosecutor may, if he wishes, and shall, if Case for prosecution. required by the court, make an opening address explaining the charge, where necessary, and the nature and general effect of the evidence he proposes to adduce.

(2) After the opening address referred to in paragraph (1) witnesses for the prosecution must then be called to give their evidence.

48. (1) Where the prosecutor intends to adduce evidence that Witnesses whose evidence is not in summary or abstract. is not contained in any summary or abstract of evidence given to the accused, the prosecutor shall, when practicable, give notice of his intention together with the particulars of the evidence to the accused a reasonable time before the evidence is adduced.

(2) Where evidence is adduced without the notice or particulars referred to in paragraph (1) having been given, the court may, if the accused wishes, adjourn after receiving the evidence or allow any cross-examination arising out of the evidence to be postponed and the court shall inform the accused of his right to apply for such an adjournment or postponement.

49. (1) The prosecutor is not bound

(a) to call all the witnesses against the accused whose Notice to accused that prosecutor will not call witness. evidence is contained in the summary or abstract of evidence, or

(b) a witness whom the prosecutor has notified the accused that the prosecutor intends to call under rule 48.

(2) The prosecutor shall, where he does not intend to call a witness referred to in paragraph (1) to give evidence

- (a) tender the witness for cross-examination by the accused, or
- (b) give the accused reasonable notice that the prosecutor does not intend to call the witness and that the accused will be allowed to communicate with the witness and to call him as a witness for defence, if the accused so wishes and if the witness is available.

*Calling and examination of witnesses*

Swearing of  
witness.

**50.** Subject to the Act, an oath must be administered to each witness

- (a) in accordance with rule 33 before he gives evidence, and
- (b) in the presence of the accused.

Exclusion  
of witness.

**51.** During a trial a witness other than the prosecutor or accused may not, except by leave of the court, be in court while not under examination; and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence the court may direct the witness to withdraw during the discussion.

Examina-  
tion of  
witness.

**52. (1)** A witness

- (a) may be examined by the person calling him,
- (b) may be cross-examined by the opposite party to the proceedings, and
- (c) on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness must put his questions to the witness orally and unless an objection is made by the witness, court, judge advocate, prosecutor or by the accused the witness shall reply forthwith.

(3) Where an objection is made to a question mentioned in paragraph (2), the witness shall not reply until the objection has been disposed of.

(4) The court may allow the cross-examination or re-examination of a witness to be postponed.

**53.** (1) The president, the judge advocate and, with the permission of the president, any member of the court may put questions to a witness. Examination of witness by court.

(2) Where a witness answers a question put to him under paragraph (1) the prosecutor and the accused may put to the witness such questions arising from the answer that he has given as seem proper to the court.

**54.** (1) The record made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may Reading back of evidence.

- (a) ask for the record to be corrected, or
- (b) explain the evidence that he has given.

(2) Where

- (a) the record referred to in paragraph (1) has been corrected, or

- (b) the evidence referred to in that paragraph has been explained,

the prosecutor and the accused may put such questions respecting the correction or explanation as seem proper to the court.

(3) Where a shorthand writer is employed it is not necessary to comply with paragraph (1) if, in the opinion of the court and the judge advocate, if any, it is unnecessary to do so, unless a witness demands that paragraph (1) be complied with.

**55.** (1) A court may, at any time

- (a) before it closes to deliberate on its finding, or
- (b) where there is a judge advocate, before he begins to sum up,

call a witness or recall a witness previously called if in the opinion of the court it is in the interest of justice to do so.

(2) A prosecutor and an accused may put such questions to a witness called or recalled under paragraph (1) as seem proper to the court.

(3) A prosecutor and an accused may, at any time

- (a) before the court closes to deliberate on its finding, or

Calling of witness by court.

(b) where there is a judge advocate, before he begins to sum up,  
recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

Statutory  
declaration.

56. A statutory declaration that is admissible in accordance with section 104 of the Act shall be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

*Submission of no case to answer and stopping of case*

Submission  
of no case  
and power  
of court to  
stop case.

57. (1) At the close of the case for the prosecution the accused may make a submission to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for the accused to answer and that he should not be called upon to make his defence to the charge.

(2) Where the accused makes a submission referred to in paragraph (1) the prosecutor may address the court in answer to the submission and the accused may reply to the prosecutor's address.

(3) The court shall not allow the submission unless it is satisfied that

- (a) the prosecution has not established a *prima facie* case on the charge as laid, and
- (b) it is not open to the court on the evidence adduced, to make a special finding under section 103 of the Act or under paragraph (3) of rule 65.
- (4) The court shall,
  - (a) where it allows the submission mentioned in paragraph (1)
    - (i) find the accused not guilty of the charge to which the submission relates, and
    - (ii) announce this finding forthwith in open court; and
  - (b) where it disallows the submission, proceed with the trial of the offence as charged.

(5) Irrespective of whether there has been a submission under this rule or not, the court may,

- (a) at any time after the close of the prosecution's case, and
- (b) after hearing the prosecutor,

find the accused not guilty of a charge; and where the court does so it must, forthwith, announce its finding in open court.

### *Case for the Defence*

58. (1) After the close of the case for the prosecution, the president or judge advocate, if any, must explain to the accused that

Explanation  
of rights to  
accused.

- (a) if he wishes he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;
- (b) if he gives evidence on oath, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate, if any, but that, if he makes a statement without being sworn, no one is entitled to ask him any questions; and
- (c) whether he gives evidence or makes a statement or remains silent, he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the president or judge advocate, as the case may be, has complied with paragraph (1), he must ask the accused

- (a) whether he intends to give evidence on oath or to make a statement without being sworn, and
- (b) whether he intends to call any witness on his behalf and, if so, whether the witness is a witness to the facts or to character only.

(3) Where the accused intends to call a witness, other than himself, to the facts of the case he may make an opening address outlining the case for the defence before the witness gives his evidence for the defence.

59. (1) After rule 58 has been complied with the witnesses for the defence, if any, shall be called and shall give their evidence.

Evidence  
for defence.

(2) Rules 50 to 56 apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

**Evidence in  
rebuttal.**

**60.** After the witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a new witness, or recall a witness previously called, to give evidence on any matter raised by the accused in his defence

- (a) that the prosecution could not properly have mentioned to the court before the accused disclosed his defence, or
- (b) that the prosecution could not reasonably have foreseen.

**Closing  
addresses.**

**61. (1)** After all the evidence has been given the prosecutor and the accused may each make a closing address to the court.

(2) An accused is entitled to make his closing address after the closing address by the prosecutor unless the accused has called a witness, other than himself, to the facts.

(3) Where an accused has called the witness referred to in paragraph (2) the prosecutor is entitled, subject to paragraphs (4), (5) and (6), to make his closing address after the closing address by the accused.

(4) Where two or more accused are tried jointly, any one of them who has called a witness, other than himself to the facts must make his closing address before the closing address by the prosecutor, and any one of them who has not called such a witness is entitled to make his closing address after the closing address by the prosecutor.

(5) Where two or more accused are represented by the same defending officer or counsel, the officer or counsel, as the case may be, may make one closing address only.

(6) Where any one of the accused for whom the defending officer or counsel referred to in paragraph (5) appears has called no witness, other than himself, to the facts, the defending officer or counsel is entitled to make his closing address after the closing address by the prosecutor.



62. For the purposes of rules 58 and 61, the handing in by the accused of a statutory declaration is to be treated as the calling of a witness by him.

Handing in  
of statutory  
declaration  
by accused.

*Summing up by Judge Advocate*

63. Where there is a judge advocate, he shall, after the closing addresses mentioned in rule 61 (1), sum up the evidence and, in open court, advise the court on the law relating to the case.

Summing  
up.

*Deliberation on, and Announcement of,  
Finding on the Charge*

64. (1) The court must,

Deliberation  
on finding.

(a) after the closing addresses, or

(b) after the judge advocate, if any, sums up, close to deliberate on its finding on the charge.

(2) No person except the president and members of a court and any officer under instruction, may be present while the court is deliberating on its finding on the charge.

(3) Where there is a judge advocate and the court, while deliberating on its finding on the charge requires further advice from him, the court shall suspend its deliberation and ask for, and be given, the advice in open court.

65. (1) The opinion of the president and each member of a court as to a finding must be given.

Opinions  
and form of  
findings.

(a) in closed court, orally, and on each charge separately, and

(b) in order of seniority commencing with the junior in rank.

(2) Subject to paragraph (4), the court shall record on every charge on which a plea of not guilty has been recorded

(a) a finding of guilty or a special finding in accordance with section 103 or subsection (2) of section 117 of the Act or paragraph (3), or

(b) a finding of not guilty, or, of not guilty and honourably acquitted of the charge.

(3) Where a court is of the opinion as regards any charge that the facts it finds to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation the court specifies in the finding.

(4) Where a court has recorded a finding of guilty on a charge laid in the alternative the court shall

- (a) find the accused not guilty of any alternative charge placed before the court in the charge-sheet, and
- (b) record no finding on any alternative charge placed after it in the charge-sheet.

Announce-  
ment of  
finding.

66. (1) The finding of a court on each charge shall, forthwith, be announced in open court.

(2) A finding that requires confirmation shall be announced as being subject to confirmation.

Fourth  
Schedule.

(3) A finding must be in the appropriate form set out in the *Fourth Schedule*.

#### *Procedure after Announcement of Finding*

Completion  
of procedure  
on plea of  
guilty be-  
fore delib-  
eration on  
sentence.

67. After a court has announced its finding on any charge on which the court has entered a plea of not guilty, if there is another charge in the charge-sheet on which the court has accepted a plea of guilty, the court must comply with paragraphs (1) to (3) of rule 44 in respect of that charge before proceeding further with the trial.

Trial of  
charges in  
other charge  
sheets before  
deliberation  
on sentence.

68. Where there is, before a court, another charge-sheet against an accused, the court shall not comply with rules 69 and 70 until

- (a) the court has arraigned and tried the accused, and
- (b) has complied with rule 66, and, if necessary, with rule 67, in respect of each charge in such other charge-sheet unless that charge-sheet is withdrawn under rule 80.

69. Where the findings on all charges against an accused are not guilty the court shall order the accused to be released and the president and judge advocate, if any, shall

Release of  
accused.

(a) date and sign the record of the proceedings, and

(b) forward it as directed in the convening order.

70. (1) Where the finding on a charge against an accused is guilty, or the court makes a special finding in accordance with section 103 of the Act or paragraph (3) or rule 65, the court, before deliberating on its sentence, must, where possible, take evidence of the age of the accused, his rank and service record.

Accused's  
record and  
plea in  
mitigation.

(2) A service record referred to in paragraph (1) shall include

(a) any recognized acts of gallantry or distinguished conduct on the part of an accused and any decoration to which he is entitled, and

(b) particulars of any offence of which the accused has been found guilty during his service and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(3) The evidence of the matter referred to in paragraph (1) may be given by a witness producing to the court a written statement containing a summary of the entries in the service books relating to the accused, after the witness has in court verified the statement and identified the accused as the person to whom it relates.

(4) A statement referred to in paragraph (3) must be in the form set out in the *Fourth Schedule*.

Fourth  
Schedule.

(5) In addition to the evidence contained in the statement referred to in paragraph (2), the prosecutor must, where possible, call, as a witness, an officer to give the court any information in the possession of the military authorities regarding

(a) the accused's family background and responsibilities and any other circumstances that might have made him more susceptible to the commission of the offence charged;

(b) his general conduct in the service;

(c) particulars of offences that do not appear in the statement but of which the accused has been found guilty by a civil

court and that are of the same general nature as that of which the accused has been found guilty by the court-martial.

(6) Notwithstanding paragraph (3), the court shall not be informed of the civil offences mentioned in that paragraph unless

- (a) the finding is proved in accordance with section 190 of the Act, or
- (b) the accused has admitted, after the purpose for which the admission is required has been explained to him, that he was found guilty of the offence.

(7) An accused may cross-examine any witness who gives evidence in accordance with paragraphs (2) and (3), and if the accused so requires, the service books or a duly certified copy of the material entries therein, shall be produced; and if the contents of the form are in any respect not in accordance with the service books or the certified copy, the court shall cause the form to be corrected accordingly.

(8) An accused may, after paragraphs (1) to (4) have been complied with,

- (a) give evidence on oath and call witnesses
  - (i) in mitigation of punishment, and
  - (ii) to his character; and
- (b) address the court in mitigation of punishment.

#### *Deliberation on Sentence*

Persons entitled to be present during deliberation on sentence.

71. No person, except the president and members of a court and the judge advocate, if any, and any officer under instruction may be present while the court is deliberating on its sentence.

Sentence and recommendation to mercy.

72. (1) A court shall award one sentence in respect of all the offences of which an accused is found guilty.

Fifth Schedule.

(2) A sentence must be in the appropriate form set out in the *Fifth Schedule*.

(3) The president and each member of a court must, as regards the sentence mentioned in paragraph (1), give their opinions

- (a) orally and in closed court, and

(b) in order of seniority commencing with the junior in rank.

(4) A court may make a recommendation to mercy; and if it does so it shall record in the proceedings its reasons for making the recommendation.

73. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction, the court may, if it thinks that the interests of justice so require, postpone its deliberation upon the sentence to be awarded to any one or more of the accused until it has recorded and announced its findings in respect of all of the accused.

Postpone-  
ment of  
deliberation  
on sentence.

#### *Announcement of Sentence and conclusion of Trial*

74. (1) A sentence, and any recommendation to mercy together with the reason for the recommendation, must be announced in open court.

Announce-  
ment of  
sentence  
and con-  
clusion of  
trial.

(2) The sentence mentioned in paragraph (1) must be announced as being subject to confirmation.

(3) Where paragraphs (1) and (2) have been complied with the president must announce in open court that the trial is concluded.

(4) Immediately after the conclusion of a trial

(a) the president and judge advocate, if any, must date and sign the record of the proceedings; and

(b) the president or the judge advocate must then forward it as directed in the convening order.

#### *General duties of the President, Prosecutor, and the Defending Officer or Counsel*

75. (1) A president of a court shall ensure that the trial is conducted

General  
duties of  
president.

(a) in accordance with the Act and these rules; and

(b) in a manner befitting a court of justice.

(2) Without limiting paragraph (1), the president referred to in that paragraph

- (a) shall ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these rules;
- (b) shall ensure that the accused does not suffer any disadvantage in consequence of his position, his ignorance, his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;
- (c) shall ensure that an officer under instruction does not express an opinion to the court
  - (i) on any matter relating to the trial, before the court comes to its finding,
  - (ii) on sentence, before the court has decided upon the sentence; and
- (d) shall, where there is no judge advocate present, ensure that a proper record of the proceedings is made in accordance with rule 90 and that the record of the proceedings and exhibits are properly safeguarded in accordance with rule 90.

General  
duties of  
prosecutor  
and defend-  
ing officer  
or counsel.

- 76.** (1) A prosecutor and defending officer or counsel shall
- (a) assist the court in the administration of justice;
  - (b) treat the court and judge advocate with due respect; and
  - (c) present their cases fairly.
- (2) Without limiting paragraph (1), a prosecutor and defending officer or counsel
- (a) shall conform with these rules and the practice of the civil courts in Barbados relating to the examination, cross-examination and re-examination of witness;
  - (b) shall not refer to any matter not relevant to the charge before the court; and
  - (c) must not state as a matter of fact any matter that is not proved or that they do not intend to prove by evidence.
- (3) Without limiting paragraphs (1) and (2), a prosecutor must bring the whole of the transaction before the court and not take any unfair advantage of, or withhold any evidence in favour of, the accused.

77. (1) Subject to these rules the following persons shall be allowed to appear as counsel at a court-martial: Counsel.

- (a) every attorney-at-law who is entitled to practice in the Supreme Court of Barbados;
- (b) any person, with the consent of the convening officer, who is recognized by him as having in any commonwealth country or territory outside Barbados rights and duties similar to those of an attorney-at-law and as being subject to punishment or disability for a breach of professional rules.

(2) A defending officer or counsel for an accused may exercise on behalf of the accused

- (a) any right granted by these rules to the accused at a court-martial to call or examine witnesses or to address the court;
- (b) any right of the accused to object to the admissibility of evidence at a court-martial; and
- (c) any right granted to the accused by rules 24(1)(e), (g) and (h), 26, 30, 35, 36 to 39, 46, 57, 78(2), 90 and 92(2).

(3) A reference in these rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by an accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the defending officer or counsel of the accused on his behalf.

(4) Where an accused is to be defended at a court-martial by counsel not nominated by the convening officer, the accused shall give the convening officer notice of this fact not less than 24 hours before the accused's trial.

### *Powers and Duties of the Judge Advocate*

78. (1) A prosecutor and an accused respectively are, at all times after the judge advocate is named to act at a trial, entitled to his opinion on any question of law or procedure relative to the charge or trial, whether he is in or out of court, subject when he is in court to the permission of the court.

General  
duties of  
judge advo-  
cate.

(2) A judge advocate shall,

- (a) on the assembly of a court, advise the court of any defect in the constitution of the court or in the charge-sheet, and
- (b) during a trial, advise the court upon all questions of law or procedure that arise.

(3) The court referred to in paragraph (2) shall accept the advice of the judge advocate on all matters mentioned in that paragraph unless it has weighty reasons for not doing so; and where the court does not accept the advice its reasons for not doing so shall be recorded in the proceedings.

(4) After the closing addresses of the prosecutor and defending officer or counsel, the judge advocate, if any, shall sum up the evidence and advise the court upon the law relating to the case before the court closes to deliberate on its finding.

(5) Where in the course of deliberating on its finding the court requires advice from the judge advocate, it must suspend its deliberation and ask for and be given the advice in open court.

(6) Where a judge advocate is of the opinion that a finding of guilty or a special finding under section 103 of the Act or under paragraph (3) of rule 65, announced by the court, is contrary to the law relating to the case, he shall once more, but not more than once more, advise the court what findings are, in his opinion, open to it; and the court must, in closed court, reconsider its finding.

(7) The record of the proceedings relating to the reconsideration referred to in paragraph (6) must be in the form set out in the *Fourth Schedule*.

Fourth  
Schedule.

(8) The judge advocate must be present when the court is sitting, whether in open or closed court, except when the court is deliberating on the finding on a charge or on a revision of the finding.

(9) A judge advocate has, equally with a president, the duty of ensuring that an accused does not suffer any disadvantage in consequence of his position as an accused, his ignorance or his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.



(10) A judge advocate is responsible

- (a) for seeing that a proper record of the proceedings is made in accordance with rule 90, and
- (b) for the safe custody of the record of the proceedings under rule 92.

**79. (1)** Where there is a judge advocate and

- (a) during the course of a trial any question as to the admissibility of evidence arises;
- (b) during a joint trial an application is made by any of the accused for a separate trial; or
- (c) an application is made by an accused that a charge be tried separately,

Judge advocate sitting alone.

the president may direct that the point at issue be determined by the judge advocate in the absence of the president and the members of the court and of any officer under instruction; and where the president so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The judge advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with paragraph (1),

- (a) hear the arguments and evidence relevant to the point at issue; and
- (b) give his ruling on the point and such reasons therefor as he considers necessary.

(3) After the judge advocate has given his ruling referred to in paragraph (2)

- (a) the president and members of the court and any officer under instruction shall return to the court room; and
  - (b) the judge advocate shall announce his ruling to them,
- and the court shall follow his ruling.

(4) The proceedings before a judge advocate sitting alone form part of the proceedings of the court.

(5) Sections 64(1), 65, 98, 99(1) and (2), 100 and 104 to 107 of the Act and rules 33, 50 to 56, 76, 77, 83, 84, 85, 89, 90, 91, 92, 95, 96, and 104 apply to proceedings before a judge advocate

sitting alone as they apply to proceedings before a president and the members of a court; and anything authorized by those sections and those rules to be done by the court or by the president may be done by the judge advocate when sitting alone.

(6) When a judge advocate is sitting alone in accordance with this rule and a person subject to military law under the Act commits an offence against subsection (1) of section 64 of the Act, the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(7) A judge advocate sitting alone must ensure that the president and members of a court do not see the record of the proceedings before the judge advocate until after the court has announced its finding.

*Withdrawal and Amendment of Charge-Sheets  
and Charges*

Withdrawal  
of charge-  
sheets and  
charges.

**80.** A court may with the concurrence of the convening officer, (which may be signified by the prosecutor) allow the prosecutor to withdraw

- (a) a charge before the accused is arraigned on the charge; or
- (b) a charge-sheet before the accused is arraigned on any charge in the charge-sheet.

Amend-  
ment of  
charge-sheets  
and charges  
by the  
court.

**81.** (1) Where at any time during a trial, it seems to the court that there is in a charge-sheet

- (a) a mistake in the name or description of an accused; or
- (b) a mistake attributable to a clerical error,

the court may amend the charge-sheet in order to correct the mistake.

(2) Where, at any time during a trial at which there is a judge advocate, it seems to the court, before it closes to deliberate on its finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge that cannot be made under paragraph (1) the court may, if the addition, omission, or alteration can be made without unfairness to the accused, amend the charge if the judge advocate concurs.

(3) Where, at any time during a trial at which there is no judge advocate, it appears to the court, before it closes to deliberate on

its finding, that in the interests of justice it is desirable to make any addition to, omission from or alteration in a charge that cannot be made under paragraph (1) the court may adjourn and report its opinion to the convening officer.

- (4) The convening officer may
- (a) amend the charge referred to in paragraph (3) if permissible under rule 82 and direct the court to try the charge as amended after due notice of the amendment has been given to the accused;
  - (b) direct the court to proceed with the trial of the charge without amending it; or
  - (c) convene a fresh court to try the accused.

82. Where a court reports to the convening officer under rule 36(2) or rule 81(3), he may amend the charge in respect of which the court reported to him by making any addition to, omission from or alteration in the charge that in his opinion, is desirable in the interests of justice and that he is satisfied can be made without unfairness to the accused.

Amend-  
ment of  
charges by  
convening  
officer.

### *Sittings and Adjournment of the Court*

83. (1) Subject to the provisions of the Act and these rules relating to adjournment, a trial must be continued from day to day and the court must sit for such time each day as might be reasonable in the circumstances.

Sitting of  
court.

(2) Notwithstanding paragraph (1) no court may sit on Sunday, Christmas Day, or Good Friday, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

84. (1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

Adjourn-  
ment.

(2) A court may adjourn at any time to consult the convening officer on a point of law.

(3) Where during a trial any reason emerges making it advisable that a court should not continue to hear the case, the court must adjourn and report to the convening officer.

(4) Where at any time during a trial an accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall

(a) ascertain the facts of the illness; and

(b) adjourn and report to the convening officer.

View by  
court.

85. (1) Where at any time during a trial before the court closes to deliberate on its finding it seems to the court that it should, in the interest of justice, view any place or thing, the court may adjourn for that purpose.

(2) Where a court, pursuant to paragraph (1), views any place or thing the president, members of the court, judge advocate, if any, prosecutor, accused and defending officer or counsel, if any, shall be present.

Absence of  
president,  
members or  
judge advo-  
cate.

86. (1) Where, after the commencement of a trial, the president dies or is otherwise unable to attend, the court must adjourn and the senior member must report to the convening officer.

(2) Where, after the commencement of a trial, any member of the court dies or is otherwise unable to attend, the court, if not thereby reduced below the legal minimum, must continue with the trial; but if the court is reduced below the legal minimum the court must adjourn and the president must report to the convening officer.

(3) Where a judge advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court must adjourn and report to the convening officer.

(4) Where the president or a member of a court is absent during any part of a trial, he shall take no further part in the trial and the like steps must be taken as if the president or member, as the case may be, had died.

(5) An officer cannot be added to the court after the accused has been arraigned.

### *Insanity*

Insanity.

87. (1) Where at any time during a trial it seems to the court that an accused might be unfit to stand his trial by reason of insanity, the court must take evidence as to accused's mental condition.

(2) Where a court, after considering the evidence, is of the opinion that the accused is fit to stand his trial it must proceed with the trial; but if the court is of the opinion that the accused is unfit to stand his trial by reason of insanity it shall so find and its finding shall forthwith be announced in open court and shall be announced as being subject to confirmation.

(3) Where a court, in the course of its deliberation on its finding on a charge, finds, pursuant to subsection (2) of section 117 of the Act, that the accused was guilty of the offence but was insane at the time of the Act that constituted the offence, the court's finding shall forthwith be announced in open court and shall be announced as being subject to confirmation.

(4) Immediately after a finding has been announced under either paragraph (2) or (3) the president shall, in open court, announce that the proceedings are terminated and thereupon the president and the judge advocate, if any, shall date and sign the record of the proceedings.

(5) The president or judge advocate referred to in paragraph (4) shall forward the record referred to in that paragraph as directed in the convening order.

### *Interviewing and Attendance of Witnesses*

**88.** (1) The prosecution shall not, without the consent of the convening officer, or, after a trial has begun, without the consent of the president, interview any witness

*Interviewing  
of witnesses.*

- (a) who was called for the defence at the taking of the summary of evidence;
- (b) whose attendance at the trial the accused has requested in accordance with rule 24(1) (e); or
- (c) who has made a statutory declaration, a copy of which the accused has served on the prosecution in accordance with section 104 of the Act.

(2) Subject to rule 49, an accused or any person on his behalf may not, without the consent of the convening officer, or, after a trial has begun, without the consent of the president, interview any witness

- (a) who was called for the prosecution at the taking of the summary of evidence;
- (b) whose evidence is included in an abstract of evidence;
- (c) in respect of whom the prosecution have given the accused notice under rule 48 that they intend to call him as a witness at the trial; or
- (d) who has made a statutory declaration a copy of which the prosecution have served on the accused in accordance with section 104 of the Act.

Attendance  
of wit-  
nesses.

**89.** (1) A witness who is subject to military law under the Act may be ordered by the proper military authority to attend at

- (a) the taking of a summary of evidence, or
- (b) a trial by court-martial.

(2) A witness who is not subject to military law under the Act may be summoned to attend

- (a) the taking of a summary of evidence by an order under the hand of the commanding officer of an accused; or
- (b) a trial by court-martial by an order under the hand of
  - (i) an officer authorized to convene a court-martial,
  - (ii) a staff officer on the behalf of the officer referred to in sub-paragraph (b) (i), or
  - (iii) the president, after the assembly of the court.

(3) Where a witness is summoned pursuant to paragraph (2) the summons must, where it relates to

- (a) the taking of a summary of evidence, be in the appropriate form set out in the *First Schedule*, and
- (b) a trial by court-martial, be in the appropriate form set out in the *Fourth Schedule*.

First  
Schedule.

Fourth  
Schedule.

(4) A summons referred to in paragraph (3) must be served on the witness either personally or by leaving it with some person at the witness' normal place of abode; and at the time of service there must be paid or tendered to the witness or the person with whom the summons is left, any sum of money necessary to enable the witness to attend the taking of the summary of evidence or the

trial, as the case may be, and to return to his normal place of abode.

(5) Section 106 of the Act applies in relation to proceedings at the taking of a summary of evidence as it applies in relation to proceedings at a court-martial; and when so applied it must be construed as if the words "officer taking the summary of evidence" were substituted for the words "president of the court-martial".

### *Record of Proceedings*

**90.** (1) The proceedings of an ordinary court-martial must be recorded in accordance with the following provisions:

Record of  
proceedings.

(a) the proceedings of a court-martial must be recorded in writing in accordance with the appropriate form set out in the *Fourth Schedule* and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge the merits of the case;

Fourth  
Schedule.

(b) where there is no shorthand writer present the evidence must be taken down in narrative form as nearly as possible in the words used, but where the court, judge advocate, prosecutor or accused considers it necessary, any particular question and answer must be taken down verbatim;

(c) where an objection, submission or application is made during a trial at which there is no shorthand writer, a record must be made of the proceedings relating to the objection, submission or application if and in such detail as the court or judge advocate thinks fit, but where the prosecutor or accused so requests a note must be made

(i) of the objection, submission or application,

(ii) the grounds therefor,

(iii) the advice of the judge advocate, if any, thereon, and

(iv) the decision of the court;

(d) where any address by the prosecutor or the accused or summing up of the judge advocate is not in writing and there is no shorthand writer present, it is necessary to record only so much of the address or summing up as the

court or judge advocate thinks proper, but where the prosecutor or accused so requests a note must be made of any particular point in the address or summing up;

- (e) any matter not forming part of the trial may not be recorded in the record of the proceedings, but where any comment or report seems to the court to be necessary, the president may forward it, in a separate document, to the proper military authority.

(2) The proceedings of a field court-martial must so far as is practicable be recorded in accordance with paragraph (1).

(3) The record of the proceedings referred to in paragraph (2) must contain

- (a) the names of the president and members constituting the court,
- (b) the name of the judge advocate, if any,
- (c) the name and description of the accused,
- (d) the charge-sheet,
- (e) all pleas,
- (f) a brief summary of the evidence, and
- (g) the finding and sentence.

Exhibits.

**91.** (1) Subject to paragraph (2), any document or thing admitted in evidence shall be made an exhibit.

(2) A court may, at the request of a witness producing an original document or book, compare a copy of it or an extract of the relevant parts from the document or book, as the case may be, with the original, and after the court is satisfied that the copy or extract is correct and the president or the judge advocate has certified on the copy or extract that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit must

- (a) be marked with a number or letter and be signed by the president or have a label bearing a number or letter and the signature of the president affixed to the exhibit; and



(b) be attached to or kept with the record of the proceedings, unless in the opinion of the court, having regard to the nature of the exhibit or for other good reason, it is not expedient to attach it to or keep it with the record.

(4) Where an exhibit is not attached to or kept with the record of the proceedings under paragraph (3) (b), the president must ensure that proper steps are taken for its safe custody.

92. (1) During a trial at which there is no judge advocate the record of the proceedings and the exhibits shall be deemed to be in the custody of the president.

Custody  
and inspection  
of  
record of  
proceedings  
during trial.

(2) During a trial at which there is a judge advocate the record and the exhibits shall be deemed to be in the custody of the judge advocate, except when he is not present in closed court, in which case they shall be deemed to be in the custody of the president.

(3) With the permission of the court the prosecutor or the accused is entitled, at any reasonable time before a trial is concluded, to have a particular part of the record of the proceedings read to him, and, if proper precautions are taken for its safety, inspect any exhibit.

#### *Confirmation, Revision and Promulgation*

93. (1) When a confirming authority receives a record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision

Confirma-  
tion and  
promulga-  
tion.

(a) on the finding and on any sentence, and

(b) on any order the court might have made under section 131 of the Act,

on the record of the proceedings in the appropriate form set out in the *Fourth Schedule*; and the record of his decision forms part of the record of the proceedings.

Fourth  
Schedule.

(2) Where a court has accepted a plea of guilty made under paragraph (2) of rule 40, a confirming authority may confirm the finding of the court notwithstanding that the court has accepted the plea without the concurrence of the convening officer, if, in the opinion of the confirming authority, it is in the interest of justice to do so.

(3) Where a court

- (a) has rejected a plea to the jurisdiction of the court,
- (b) has rejected a plea in bar of trial, or
- (c) has overruled an objection to the charge,

it is not necessary for a confirming authority to approve, specifically, the decision of the court; but his approval is implied from his confirming the finding on the charge to which the plea or objection relates.

(4) Where a confirming authority disapproves the decision of a court to reject a plea or to overrule an objection, the authority shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(5) A confirming authority may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court

- (a) has rejected a plea to the jurisdiction or a plea in bar of trial, or
- (b) has overruled on objection to the charge,

because he disapproves the decision of the court, he shall, when recording his decision under paragraph (1), state that he has withheld confirmation for this reason.

(6) Where a sentence of a court-martial is informally expressed, a confirming authority may, in confirming the sentence, vary the form of the sentence so that it will be properly expressed.

(7) Where it seems that there is

- (a) sufficient evidence, or
- (b) a plea of guilty under paragraph (1) or (2) of rule 40,

to justify the finding of the court, the finding and any lawful sentence consequent on the finding may be confirmed.

(8) Notwithstanding any deviation from these rules, a sentence confirmed under paragraph (7) is valid unless an accused has been prejudiced by the deviation.

(9) When a confirming authority has confirmed a finding and sentence of a court or has withheld confirmation of the finding

and sentence, he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused, of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be.

(10) The fact of promulgation shall be recorded on the record of the proceedings in the form set out in the *Fourth Schedule*.

Fourth  
Schedule.

(11) Where confirmation has been withheld because the confirming authority disapproves the court's decision

- (a) to reject a plea to the jurisdiction,
- (b) to reject a plea in bar of trial, or
- (c) to overrule an objection to the charge, the accused must be so informed

94. (1) Any proceedings and decision of a court on revision shall be recorded on the record of the proceedings in the appropriate form set out in the *Fourth Schedule*; and the president shall

Revision.  
Fourth  
Schedule.

- (a) date and sign the record and decision, and
- (b) return it to the confirming authority, after it has been signed by the judge advocate, if any.

(2) Where an accused is acquitted on revision the revised finding must be communicated to the accused in such manner as the confirming authority specifies.

### *Loss of proceedings*

95. (1) Where, before confirmation, the whole or any part of the original record of any proceedings of a court-martial is lost, but a copy of the record exists, the copy may, if the president or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

Loss of original record of proceedings before confirmation.

(2) Where, before confirmation, the whole or any part of the original record of any proceedings of a court-martial is lost and no copy of the record exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof that has been lost to be reconstituted sufficiently to permit a confirming authority to follow the course of the proceedings and to judge the merits of the case, the record as so reconstituted may, with the

consent of the accused, be accepted and used in lieu of the original.

(3) Where before confirmation, part only of the original record of the proceedings of a court-martial has been lost, and the part that remains is sufficient to enable the confirming authority to follow the course of the proceedings and judge the merits of the case, the remaining part may, with the consent of the accused, be accepted and used as if it were the complete record; and in such case it is not necessary to reconstitute the part of the record that has been lost.

(4) Where, before confirmation, the whole or any part of the original record of any proceedings of a court-martial is lost and the loss cannot be made good under either paragraph (1), (2) or (3), the confirming authority

(a) shall withhold confirmation, and

(b) shall record his decision in the appropriate form set out in the *Fourth Schedule*.

Fourth  
Schedule.

Loss of original record  
of proceedings after  
confirmation.

96. Where, after confirmation, the whole or any part of the original record of any proceedings of a court-martial is lost and

(a) a copy of the record is certified by the president or the judge advocate to be correct; or

(b) a sufficient record of

(i) the charge, finding, sentence and proceedings before the court, and

(ii) the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered,

the copy, reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

*Custody of the record after confirmation  
and cost of copies thereof*

Custody and  
preservation  
of record of  
proceedings  
after con-  
firmation.

97. For the purposes of subsection (1) of section 134 of the Act, the record of any proceedings of a court-martial shall be kept in the custody of the Defence Board for a period of 6 years after the conclusion of the trial.

**98.** The fee at which copies of the record of any proceedings of a court-martial are to be supplied in accordance with subsections (2) and (3) of section 134 of the Act is the estimated cost of the copy required, but the cost may not exceed 25 cents for every folio of 72 words.

Cost of  
copies of  
record.

### *Petition*

**99.** (1) Where an accused who has been sentenced by a court-martial wishes, before a finding or sentence is confirmed, to petition against the finding or sentence or both, he must present a petition to the confirming authority in the appropriate form set out in the *Seventh Schedule*.

Petition.

Seventh  
Schedule.

(2) Where an accused who has been sentenced by a court-martial wishes, after promulgation of the finding, to petition against the finding he must present a petition to a reviewing authority at any time within 6 months after promulgation in the appropriate form set out in the *Seventh Schedule*.

Seventh  
Schedule.

(3) Where an accused who has been sentenced by a court-martial wishes, after promulgation of the sentence, to petition against the sentence he must present a petition to

(a) a reviewing authority, or

(b) an officer authorized to reconsider a sentence of a court-martial under section 115 of the Act,

at any time within 6 months after promulgation in the appropriate form set out in the *Seventh Schedule*.

Seventh  
Schedule.

### *Miscellaneous*

**100.** A notice under paragraph (c) of subsection (2) of section 104 of the Act requiring that oral evidence be given in lieu of a statutory declaration must be in the appropriate form set out in the *Fourth Schedule*.

Notice re-  
quiring oral  
evidence in  
lieu of  
statutory  
declaration.

Fourth  
Schedule.

**101.** (1) Where in the opinion of

(a) the officer who is or would be responsible for convening a court-martial to try an accused, or

(b) the senior officer on the spot, if the officer mentioned in sub-paragraph (a) is not available,

Exceptions  
from rules  
on account  
of exigen-  
cies of  
service.

Fourth  
Schedule.

the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in paragraph (4) impracticable, the officer referred to in sub-paragraph (a) or (b), as the case may be, may make a declaration to that effect in the appropriate form set out in the *Fourth Schedule*.

(2) Any declaration made under paragraph (1) by the senior officer referred to in sub-paragraph (b) of that paragraph shall be forwarded by him as soon as possible to the officer referred to in sub-paragraph (a) of that paragraph.

(3) Where a declaration has been made under paragraph (1) it is not necessary to comply with any provision of these rules that is mentioned in the declaration and these rules shall be construed accordingly.

(4) The provisions of these rules mentioned in paragraph (3) are

- (a) sub-paragraphs (a) and (b) of paragraph (6) of rule 6;
  - (b) paragraphs (3) and (4) of rule 8, insofar as they relate to the accused's right to insist that a witness be compelled to attend the taking of a summary of evidence for cross-examination;
  - (c) rule 18, insofar as it provides that the documents specified therein must be given to the accused not less than 24 hours before the appropriate superior authority investigates and deals summarily with a charge; and
  - (d) paragraph (d) of rule 24(1) insofar as it provides that the documents specified therein shall be given to the accused not less than 24 hours before his trial, and paragraphs (b) and (c) of that rule.
- (5) Where an accused
- (a) is brought to trial by court-martial, or
  - (b) is dealt with summarily by an appropriate superior authority,

any declaration that has been made in his case under paragraph (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

**102. (1)** Where in the opinion of

- (a) the officer who is or would be responsible for convening a court-martial to try the accused, or
- (b) the senior officer on the spot, if the officer referred to in paragraph (a) is not available,

Exceptions  
from rules in  
the interests  
of security.

a charge-sheet, summary or abstract of evidence or other document that, or a copy of which, is required under these rules to be given to an accused, contains information the disclosure of which would or might be directly or indirectly useful to an enemy, the officer or the senior officer, as the case may be, may make a declaration to that effect in the appropriate form set out in the *Fourth Schedule* specifying the document concerned.

Fourth  
Schedule.

(2) Where the senior officer referred to in paragraph (1) makes a declaration under that paragraph he shall forward the declaration as soon as possible to the officer who is or would be responsible for convening a court-martial to try an accused.

(3) Where a declaration has been made under paragraph (1) it is not necessary to give to the accused any document mentioned in the declaration, or a copy of such a document; and it is a sufficient compliance with these rules if the accused is given a proper opportunity to inspect the document while preparing and making his defence.

**(4)** Where an accused

- (a) is brought to trial by court-martial, or
- (b) is dealt with summarily by an appropriate superior authority,

any declaration made in his case under paragraph (1) must be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

**103.** A deviation or omission from a form or form of words set out in a Schedule does not, by reason only of the deviation or omission, render any document, act or proceeding invalid.

Deviation  
from forms.

**104.** In any case not provided for by these rules the course that appears best calculated to do justice should be adopted.

Cases not  
covered by  
rules.

## FIRST SCHEDULE

## THE DEFENCE RULES OF PROCEDURE, 1984

## FORMS FOR COMMANDING OFFICER

- (1) DELAY REPORT.
- (2) SUMMARY OF EVIDENCE.
- (3) ABSTRACT OF EVIDENCE.
- (4) CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE  
AFTER IT HAS BEEN HANDED TO THE ACCUSED.
- (5) SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A  
SUMMARY OF EVIDENCE.

-----  
(1) DELAY REPORT

(Rule 4)

Unit Address:

.....  
.....  
.....

Tel: .....

To:.....  
(Convening Officer)<sup>1</sup>EIGHT DAY DELAY REPORT

pursuant to Defence Act, 1979, section 82(2)

Number, rank, name of accused .....

.....



Date placed in arrest .....19 .....

Alleged Offence(s)

Dated of Alleged Offence(s)

<sup>2</sup>The accused is in close  
open arrest.

The reasons for his retention in arrest are.....

<sup>2</sup>The abstract  
summary of evidence (was taken on .....19.....  
(has not yet been  
taken because .....

<sup>2</sup>Application for trial (was made on .....19.....  
(has not yet been  
made because .....

<sup>2</sup>Legal advice (was received on .....19 .....

<sup>2</sup>Action (is being taken) .....  
( ..... )  
(has been taken) as follows .....

<sup>2</sup>Date of trial (has not yet been fixed  
(has been fixed as ..... 19.....

Reasons for delay since last report .....

.....

.....

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Date.....19....

Officer commanding accused's unit  
(To be signed personally by the C.O.)

1. Insert "1st", "2nd", "3rd", "Final" or as the case may be.
2. Strike out words not applicable.

(2) SUMMARY OF EVIDENCE (rule 8)

Summary of evidence in the case of ..... (number, rank, unit or  
other description.)

Taken by [The commanding officer of the accused] [.....(rank,  
name, unit) on the direction of the commanding officer of the accused.]

witness .....(number, rank, name, unit or other  
for the description) ..... having been duly sworn<sup>1</sup> states:-  
prose- (Cross-examined by the accused)  
cution.

<sup>2</sup>Question 1 .....

Answer 1 .....

or

(The accused declines to cross-examine this witness)

witness .....  
for the (Signature and rank (if any) of witness)  
prose- .....(number, rank, name, unit or other description)  
cution.

A written statement of this witness' evidence purporting to be signed  
by him has been read to the accused and is included in this  
summary at page ..... Having regard to  
..... (insert grounds  
for non-attendance of witness – see rule 8(4)(b)) the attendance  
of this witness cannot in my opinion be readily procured.

[The accused does not demand the attendance of this witness for cross-examination.] [The accused demands the attendance of this witness for cross-examination but the witness is not compellable and has refused to attend.]

.....  
(Signature of officer taking the  
summary of evidence)

The accused having been duly cautioned in accordance with Rule of Procedure 8(6) reserves his defence.

or

The accused having been duly cautioned in accordance with Rule of Procedure 8(6) elects [to give evidence on oath] [to make a statement without being sworn] and to call a witness(es).<sup>3</sup>

The accused ..... (number, rank, name, unit or other description) having been duly sworn<sup>1</sup> states:-

witness  
for the  
defence (Signature and rank, (if any) of accused if he signs) .....  
number, rank, name unit, or other descriptions) having been duly  
sworn<sup>1</sup> states:-

(Signature and rank (if any) of witness) certified that Rule of Procedure 8 has been complied with. This summary of evidence, was taken by me at ..... in the presence and hearing of the accused on the ..... day(s) of ..... 19 .....

.....  
Signature and rank of officer taking the  
summary of evidence

1. When a witness or the accused affirms the words "duly affirmed" should be substituted for the words "been duly sworn" and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words "without being sworn" should be substituted for the words "having been duly sworn".

2. See however rule 8(10).

3. Omit the words "and to call a witness(es)" if they are not applicable.

## (3) ABSTRACT OF EVIDENCE

(rule 9(5))

Abstract of evidence in the case of..... (*number, rank, name, unit or other description*) consisting of the .....(insert the number of statements) attached statements and.....(insert the number of precis) precis of evidence<sup>1</sup> of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [.....]<sup>2</sup> on the direction of the commanding officer of the accused.]

Date .....19.....

.....  
(*Signature and rank*)

1. Strike out any reference to statements or precis which are not applicable.
2. Insert name and rank of officer making the abstract.

(4) CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE  
AFTER IT HAS BEEN HANDED TO THE ACCUSED

(rule 9(6))

Certified that I .....<sup>1</sup> today handed to the accused<sup>2</sup>.....  
the abstract of evidence relating to him dated the ..... day of  
.....19 ..... and duly cautioned him in accordance with Rule of  
Procedure 9(2) and that he [elected to make and sign the statement dated  
the ..... day of .....19 ..... which is marked  
.....and attached to this certificate] [did not  
make a statement].

Dated .....19 .....

.....  
(*Signature of Certifying Officer*)

1. Insert rank, name and unit of officer signing the certificate.
2. Insert the number, rank, name, unit, or other description of the accused.

(5) SUMMONS TO A WITNESS TO ATTEND THE TAKING  
OF A SUMMARY OF EVIDENCE

(rule 89(3)(a))

To .....<sup>1</sup>WHEREAS a charge has been preferred against .....<sup>2</sup>AND WHEREAS I have directed a summary of the evidence to be taken at  
.....<sup>3</sup> on the..... day of ..... 19 .....

YOU ARE PURSUANT TO SECTION 136 OF THE DEFENCE ACT,  
1979 AND RULE 89 OF THE DEFENCE RULES OF PROCEDURE, 1984  
MADE THEREUNDER HEREBY SUMMONED and required to attend as a  
witness the taking of the said summary of evidence at .....<sup>3</sup> on the  
..... day of ..... 19 ..... at ..... o'clock in the  
..... noon and to bring with you the document hereinafter mentioned, viz.<sup>4</sup>

.....

.....

.....

Whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day  
of ..... 19 .....

.....  
(Signature, rank and unit)

Commanding Officer of the accused

- 
1. Insert name and address of the person to whom the summons is to be sent.
  2. Insert number, rank, name, unit or other description of the accused.
  3. Insert the place where the summary of evidence is to be taken.
  4. Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any document, strike out the words relating to documents.

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## SECOND SCHEDULE

## THE DEFENCE RULES OF PROCEDURE, 1984

## CHARGE-SHEETS

*(rules 13 and 14)*

(1) COMMENCEMENT OF CHARGE-SHEETS.

(2) STATEMENTS OF OFFENCES.

(3) ILLUSTRATIONS OF CHARGE-SHEETS.

(1) COMMENCEMENT OF CHARGE-SHEETS

## DEFENCE ACT, 1979

## SECTION 221

- |     |     |  |     |
|-----|-----|--|-----|
| (1) | (a) | The accused .....( <i>number, rank, name<br/>and unit</i> ) being subject to military law under section 221(1)<br>of the<br>Defence Act, 1979 is charged with: |     |
| (1) | (b) |  |     |
| (1) | (c) |  | (a) |
| (1) | (d) |  | (b) |
|     |     |  | (c) |
|     |     |  | (d) |

## SECTION 222

The accused.....(*name and brief description*) being  
liable to trial by court-martial under section 222(1) of the  
Defence Act, is charged with:

## SECTION 125

- (1) The accused .....(*name*) formerly ..... (*former  
military description including the manner in which the accused  
was formerly subject to military law set out in accordance with  
the appropriate form in this Schedule*) and now liable to trial  
by court-martial under the provisions of section 125(1) of the  
Defence Act, 1979 is charged with: (2)

## (2) STATEMENTS OF OFFENCES

## DEFENCE ACT, 1979

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

## SECTION 35

- |     |   |   |   |  |
|-----|---|---|---|--|
| (1) | $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \end{array} \right\}$ | Aiding the 'enemy with intent<br>contrary to section 35(1)                    | $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \end{array} \right\}$ | of the Defence Act,<br>1979.   |
| (2) |   | Knowingly and without lawful<br>excuse doing an act specified in<br>paragraph | $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \end{array} \right\}$ | of section 35(1) of<br>the Defence Act.<br><br>Contrary to section<br>35(2) of the said Act. |

**SECTION 36**

- (1) (Communicating with )  
( ) the enemy contrary to section  
(2) (Giving intelligence to ) 36<sup>(1)</sup> of the Defence Act, 1979<sup>(2)</sup>.

**SECTION 37**

- (1) Cowardice before the enemy contrary to section 37 (a) or (b) of the Defence Act, 1979.  
(2) Inducing cowardice before the enemy contrary to section 37(c) of the Defence Act, 1979.

**SECTION 38**

- (a) Publishing reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 38(a) of the Defence Act, 1979.  
(b) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 38(b) of the Defence Act, 1979.

**SECTION 39**

- (1) Being captured through disobedience or wilful neglect contrary to section 39(1) of the Defence Act, 1979.  
(2) (Failing to take  
(Preventing ) ) reasonable steps after  
( ) a person from tak- ) capture to rejoin the Bar-  
(Discouraging ) ing ) bados Defence Force con-  
trary to section 39(2) of  
the Defence Act, 1979.



## SECTION 40

{	Sleeping at his post when on	(guard duty )	Contrary to section 40(1)(a)	}
		(duty con-		
		(trolling )		
		(movement )		
{	Sleeping when on	(guard duty )	contrary to section 40(1)(b) only.	}
		( )		
		(duty controlling movement )		
{	Drunkenness when on	(guard duty )	contrary to section 40 (1)(c)	}
		( )		
		(duty controlling movement )		
{	Leaving his post	( ) (guard duty )	contrary to section	}
		(when on ) ( )		
{	Absenting himself	( ) (duty con-	40(1)(d)	}
		(trolling) movement)		

(Striking ) ) guard duty )  
 ( ) a person on ) contrary  
 (Using force ) ) duty control- ) to section  
 (against ) ) ling move- ) 40(3) of  
 ( ) ment ) the Defence  
 ( ) Act

(Compelling a person on (guard duty ) to let a )  
 ( ) ) )  
 ( (duty con- ) person )  
 (trolling ) pass )  
 movement )

## SECTION 41

- |     |                                |       |                     |
|-----|--------------------------------|-------|---------------------|
| (a) |                                | ((a)) |                     |
| (b) | Looting contrary to section 41 | ((b)) | of the Defence Act. |
| (c) |                                | ((c)) |                     |

### *Mutiny and insubordination*

## SECTION 42

- (1) (a) ( ) (with violence )  
(Mutiny ) ( ) contrary to section 42(1)(a)  
( ) (relating to the enemy) of the Defence Act, 1979.
- (1) (b) Incitement to mutiny (with violence ) contrary to section 42(1).  
(relating to the ) (b) of the Defence Act,  
( enemy ) 1979.
- (2) (Mutiny )  
( ) contrary to section 42(2) of the Defence  
(Incitement to mutiny ) Act, 1979.

## SECTION 43

- (a) Failing to suppress or prevent mutiny contrary to section 43(1) (a) of the Defence Act, 1979.**
- (b) Failing to report mutiny contrary to section 43 (1) (b) of the Defence Act, 1979.**

## SECTION 44

- (1) (a) (Striking ) his superior officer contrary to section  
(Using ) violence to ) 44 (1) (a) of the Defence Act, 1979.  
(Offering ) )
- (1) (b) Using (threatening ) language to his superior officer contrary to  
(insubordinate ) section 44(1)(b) of the Defence Act, 1979.

## SECTION 45

- (1) Disobeying a lawful command with wilful defiance of authority contrary to section 45(1) of the Defence Act, 1979.
- (2) Disobeying a lawful command contrary to section 45(2) of the Defence Act, 1979.

## SECTION 46

- |                          |  |                          |   |
|--------------------------|--|--------------------------|---|
| (a) Obstructing a        | (provost officer<br>(person exercising authority under<br>(or on behalf of a provost officer       | ) )<br>) )<br>) )        | contrary to sec-<br>tion 46 of the<br>Defence Act<br>1979.  |
| (b) Refusing to assist a | (provost officer<br>(person exercising autho-<br>(rity under or on behalf<br>(of a provost officer | ) )<br>) )<br>) )<br>) ) | contrary to sec-<br>tion 46 of the<br>Defence Act,<br>1979. |

## SECTION 47

- (1) Disobedience to standing orders contrary to section 47 of the Defence Act, 1979.

*Desertion, absence without leave, etc.*

## SECTION 48

- (1) (a) Desertion contrary to section 48 of the Defence Act, 1979.
- (1) (b) (Aiding, Abetting )  
( )  
(Counselling ) a person to desert contrary to section 48  
( ) (1) (b) of the Defence Act, 1979.  
(Procuring )

## SECTION 49

- (a) Absence without leave contrary to section 49(a) of the Defence Act, 1979.

- (b) (Persuading )  
 ( ) a person to absent himself without leave  
 (Procuring ) contrary to section 49(b) of the  
 Defence Act, 1979.

**SECTION 50**

- (a) Assisting a person to desert or absent himself contrary to section 50(a).
- (b) Failing to (report without delay) (a deserter or absentee) con-  
 (take steps to cause) (a person attempting to) trary  
 (the apprehension of) (desert or absent him- ) to  
 (self) sec-  
 tion  
 50  
 (b)  
 of  
 the  
 De-  
 fence  
 Act,  
 1979.

**SECTION 51**

- Failing to attend for a military duty )  
 ) Contrary to section 51 of the  
 Leaving a military duty without ) Defence Act, 1979.  
 permission )

*Malingering and drunkenness***SECTION 52**

- (1) ((a)) ((a))  
 ((b)) Malingering contrary to Section 52(1) ((b)) of the Defence  
 ((c)) Act, 1979.  
 ((d)) ((d))

**SECTION 53**

Drunkenness contrary to section 53(1) of the Defence Act, 1979.

*Offences relating to property***SECTION 54**

- (a) (Stealing  
(Fraudulently misapplying  
(Being concerned in) (stealing of ) (public ) property  
(Conniving at ) the (fraudulent ) (service) contrary  
(misapplica- ) to sec-  
(tion of ) tion 54  
(a) of  
the De-  
fence  
Act,  
1979.
- (b) Receiving (public) property contrary to section 54 (b) of  
(service) Defence Act, 1979.
- (c) (Wilfully damaging (public) property  
(Being concerned in the wilful damage of (service) contrary  
to sec-  
tion 54  
(c) of  
the De-  
fence  
Act,  
1979.
- (d) By wilful neglect damaging (public) property by fire  
(service) contrary to section 54 (d)  
of the Defence Act, 1979

**SECTION 55**

- (a) (Stealing  
(Fraudulently misapplying  
(Being concerned in ) (stealing of ) property  
(Conniving at ) the (fraudulently misappli- ) contrary  
x (cation of ) to sec-  
tion 55(a)  
of the De-  
fence Act,  
1979.

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- (b) Receiving property contrary to section 55(b) of the Defence Act, 1979.
- (c) (Wilfully damaging ) property contrary  
(Being concerned in the wilful damage of ) to section 55(c)  
of the Defence  
Act, 1979.

## SECTION 56

- (a) Losing (public) property contrary to section 56(1)(a) of the  
(service) Defence Act, 1979.
- (b) Negligently damaging (public) property contrary to section  
(service) 56(1) (b) of the Defence  
Act, 1979.
- (c) Negligently damaging by fire (public) property contrary to sec-  
(service) tion 56(1)(c) of the De-  
fence Act, 1979.
- (d) Neglect of (an animal) contrary to section 56(1) (d) of the  
(a bird ) Defence Act, 1979.
- (e) Making away with (a decoration granted to him) contrary to sec-  
(his equipment ) tion 56(1)(e) of  
the Defence Act,  
1979.

*Flying Offences*

## SECTION 57

Doing an ) in	$\left\{ \begin{array}{l} \text{flying} \\ \text{the use of aircraft} \\ \text{relation (aircraft)} \\ \text{to (aircraft)} \\ \text{(material)} \end{array} \right\}$	(causing (loss of life	$\left\{ \begin{array}{l} \text{to a per-} \\ \text{son con-} \\ \text{trary to} \\ \text{section} \\ \text{57 of the} \\ \text{Defence} \\ \text{Act,} \\ \text{1979.} \end{array} \right\}$
act )		( (bodily injury	
Neglect )		(likely to cause loss (of life or bodily injury	

## SECTION 58

Signing a certificate (aircraft ) without ensuring its accuracy  
relating to (aircraft material) contrary to section 58 of the  
Defence Act, 1979.

## SECTION 59

**Unlawful low flying contrary to section 59(a) of the Defence Act, 1979.**

Flying an aircraft in a manner causing or likely to cause unnecessary annoyance contrary to section 59(b) of the Defence Act, 1979.

### *Offences relating to and by Persons in Custody*

## SECTION 60

- (1) (a) Delaying (an investigation ) contrary to section 60(1)(a) of the Defence Act, 1979.  
(a trial )
- (1) (b) Failing to release a person in arrest contrary to section 60 (1)(b) of the Defence Act, 1979.
- (2) Failing to report the offence for which a person has been placed in custody contrary to section 60(2) of the Defence Act, 1979.
- (3) (a) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 60(3)(a) of the Defence Act, 1979.
- (3) (b) Failing to hand in a report relating to a person in custody received by him as a guard commander contrary to section 60(3)(b) of the Defence Act, 1979.

## SECTION 61.

- (1) Wilfully allowing a person to escape contrary to section 61(a) of the Defence Act, 1979.
- (2) (a) Releasing a person without authority contrary to section 61(b) of the Defence Act, 1979.

- (2) (b) Allowing a person to escape contrary to section 61(a) of the Defence Act, 1979.

## SECTION 62

- (1)  $\left\{ \begin{array}{l} \text{Refusing to obey} \\ \text{Striking} \\ \text{Using } ) \\ \text{Offering} \end{array} \right\} \text{ violence to } \left\{ \begin{array}{l} \text{an officer who orders him into} \\ \text{arrest contrary to section 62(1) of} \\ \text{the Defence Act, 1979.} \end{array} \right.$
- (2)  $\left( \begin{array}{l} \text{Striking} \\ \text{Using } ) \\ \text{Offering} \end{array} \right) \text{ violence to } \left( \begin{array}{l} \text{a person} \\ \text{whose duty it} \\ \text{is to apprehend} \\ \text{him in whose} \\ \text{custody he is} \end{array} \right) \left\{ \begin{array}{l} \text{contrary} \\ \text{to sec-} \\ \text{tion 62} \\ \text{(2) of the} \\ \text{Defence} \\ \text{Act,} \\ \text{1979.} \end{array} \right.$

## SECTION 63

Escaping from custody contrary to section 63 of the Defence Act, 1979.

*Offences in relation to Courts-Martial and Civil Authorities*

## SECTION 64

- (1)  $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \\ (f) \end{array} \right\} \text{ Contempt of a court-} \left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \\ (f) \end{array} \right\} \text{ of the Defence Act,}$   
 $\left\{ \begin{array}{l} \text{martial contrary to} \\ \text{section 64(1)} \end{array} \right\} \left\{ \begin{array}{l} \text{1979.} \end{array} \right.$

## SECTION 65

- (1) Making a false statement contrary to section 65(1) of the Defence Act, 1979.



**SECTION 66**

- |       |                |   |                  |       |                     |
|-------|----------------|---|------------------|-------|---------------------|
| ((a)) | (Obstructing   | ) | a constable      | ((a)) | of the Defence Act, |
| ((b)) | (Preventing an | ) | contrary to sec- | ((b)) | 1979.               |
|       | (arrest by     | ) | tion 66          |       |                     |

*Miscellaneous Offences***SECTION 67**

- (1) Disclosing information contrary to section 67(1) of the Defence Act, 1979.

**SECTION 68**

Making a false answer on enlistment contrary to section 68 of the Defence Act, 1979.

**SECTION 69**

- (a) (Making) a false  
 (Signing) ) service document contrary to  
 (Making a false entry in a ) section 69(a) of the Defence  
 Act, 1979.
- (Altering )  
 (Altering an entry in )
- (b) (Making away with ) a service document contrary to section  
 (Suppressing ) 69(b) of the Defence Act, 1979.  
 (Defacing )
- (c) Failing to make an entry in a service document with intent to deceive  
 contrary to section 69(c) of the Defence Act, 1979.

**SECTION 70**

Scandalous conduct unbecoming the character of an officer contrary to  
 section 70 of the Defence Act, 1979.

## SECTION 71

((a)) (Striking ) a person of inferior rank or less ((a)) of the  
 ((b)) (Ill-treating ) seniority contrary to section 71 ((b)) Defence  
 Act,  
 1979.

## SECTION 72

(a cruel )  
 Disgraceful conduct of (an indecent ) kind contrary to section  
 (an unnatural ) 72 of the Defence Act, 1979.

## SECTION 73

- (a) Making a false accusation contrary to section 73(a) of the Defence  
 Act, 1979.
- (b) (Making a false statement ) in a complaint contrary to  
 (Wilfully suppressing a material ) section 73(b) of the De-  
 (fact ) fence Act, 1979.

## SECTION 74

Attempting to commit a military offence contrary to section 74 of the  
 Defence Act, 1979 that is to say.....  
*(set out the offence.)*

## SECTION 75

An Act )  
 Conduct ) to the prejudice of good order and military discipline  
 Neglect ) contrary to section 75 of the Defence Act, 1979,

*Civil Offences*

## SECTION 76

Committing a civil offence contrary to section 76 of the Defence Act, 1979 that  
 is to say *(here describe the civil offence in such words as sufficiently  
 describe the offence).*

*(3) Illustrations of Charge-Sheets**(rule 13(3))***CHARGE-SHEET**

The accused No. 10321 Private John Smith, The Barbados Regiment, Barbados Defence Force being subject to military law under section 221(1)(a) of the Defence Act 1979, is charged with:

*1st charge*

STEALING PUBLIC PROPERTY CONTRARY TO  
SECTION 54(a) OF THE DEFENCE ACT,  
1979

*in that he*

at Bridgetown on 1st November, 19.....stole a pair of binoculars, public property.

*2nd charge**(Alternative to the 1st charge)*

RECEIVING PUBLIC PROPERTY CONTRARY TO  
SECTION 54(b) OF THE DEFENCE ACT,  
1979

*in that he*

at Bridgetown on 1st November, 19..... did receive a pair of binoculars, public property, knowing them to have been stolen or fraudulently misapplied.

B. C. GREEN, Lieutenant-Colonel,  
Commanding, The Barbados Regiment  
Commanding Officer of the accused

St. Ann's Fort  
7th November 19.....

To be tried by ordinary<sup>1</sup> court-martial.

A.D. Jones, Brigadier<sup>2</sup>  
Chief-of-Staff, Barbados Defence Force

St. Ann's Fort,  
9th November, 19.....

1. The type of court will be an ordinary or a field court-martial according to the circumstances.
2. The order for trial may be signed by a staff officer "authorised to sign for" the convening officer as in the second illustration charge-sheet.

### CHARGE-SHEET

The accused No. 10345, Corporal Peter Brown, and No. 10567 Private Thomas Jones, both of the Barbados Regiment, the Barbados Defence Force being subject to military law under section 221(1)(b) of the Defence Act, 1979 are charged with

Both accused jointly

#### *1st charge*

COMMITTING A CIVIL OFFENCE CONTRARY  
TO SECTION 76 OF THE DEFENCE ACT, 1979,  
THAT IS TO SAY COMMON ASSAULT

*in that they*

at Bathsheba on 1st November, 19.....assaulted Jack Sprat.

Corporal Brown only

#### *2nd charge*

STRIKING HIS SUPERIOR OFFICER CONTRARY  
TO SECTION 44(1)(a) OF THE DEFENCE ACT, 1979

*in that he*

when on active service at Bathsheba on 1st November, 19..... struck  
No. 10765 Sergeant V. Blue, the Barbados Regiment, Barbados Defence Force.

Private Jones only

#### *3rd charge.*

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR  
OFFICER CONTRARY TO SECTION 44(1)(b) OF THE  
DEFENCE ACT, 1979

*in that he*

when on active service at Bathsheba on 1st November, 19..... said to No. 10765 Sergeant V. Blue, the Barbados Regiment when asked by him for his (the accused's) particulars "Don't be nosey" or words to that effect.

A. M. FIELD, Lieutenant-Colonel,  
Commanding The Barbados Regiment,  
Commanding officer of the accused.

St. Ann's Fort,

9th November, 19.....

To be tried by ordinary<sup>1</sup> court-martial.

P. M. DUNN, Captain,  
Staff Captain, "A" authorised to sign for Chief of Staff,  
Barbados Defence Force.

St. Ann's Fort,

12th November, 19.....

<sup>1</sup>The type of court will be an ordinary or a field court-martial according to the circumstances.

THIRD SCHEDULE

THE DEFENCE RULES OF PROCEDURE, 1984

(rule 19(g))

RECORD OF PROCEEDINGS BEFORE AN APPROPRIATE  
SUPERIOR AUTHORITY

ACCUSED'S NUMBER, RANK AND NAME .....

UNIT .....

1. *Questions to be put to the accused by the officer dealing with the case before the charge is read.*

Q. Have you received a copy of the charge-sheet and [summary] [abstract] of evidence not less than 24 hours ago?

A. ....

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by the authority of the Government of Barbados

- Q. Have you had sufficient time to prepare your defence?
- A. ....
2. *The officer dealing with the case shall read the charge(s) to the accused and ask him the following questions:*
- Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?
- A. ....
3. *If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.*
4. *After the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused:*
- Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.
- A. ....
- Q. Do you wish to adduce any other evidence in your defence?
- A. ....
5. *If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then: (i) consider all the evidence and determine whether the accused is guilty of the offence or not; and (ii) if he determines that the accused is guilty examine and consider the accused's record of service. If he intends to award the*

*punishment of stoppages or the finding will involve a forfeiture of pay or, in the case of a civilian, if he intends to award any punishment, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award:*

Q. Will you accept my award or do you elect to be tried by court-martial?

A. ....

6. FINDING.....

AWARD .....

Date..... 19.....

.....  
(Signature, rank and appointment of  
appropriate superior authority)

#### FOURTH SCHEDULE

#### THE DEFENCE RULES OF PROCEDURE, 1984

(rules 21, 66(3), 78(7), 100, 101, and 102)

#### COURT MARTIAL FORMS

- (1) CONVENING ORDERS.
- (2) DECLARATIONS UNDER RULES 101 AND 102.
- (3) SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL.
- (4) NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION.
- (5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL.
- (6) FINDINGS.
- (7) RECORD OF RECONSIDERATION OF FINDING UNDER RULE 78(7).
- (8) SERVICE RECORD OF ACCUSED.

- (9) RECORD OF PROCEEDINGS ON REVISION UNDER SECTION 110 OF THE ACT.
- (10) CONFIRMATION.
- (11) DIRECTION UNDER SECTION 123(3).
- (12) RESTITUTION ORDER.
- (13) PROMULGATION.

(1) CONVENING ORDERS (rule 21(1)(a))

CONVENING ORDERS FOR AN ORDINARY COURT-MARTIAL

ORDERS BY .....<sup>1</sup>  
                  \*(Chief of Staff, Barbados Defence Force)  
                  \*(Commanding ..... )  
(Place and date) .....

The detail of officers ..... will assemble	Name etc.,
at ..... at .....hours on the .....day	of accused
of..... 19 ..... for the purpose of try-	.....
ing by ordinary court-martial the accused person(s)	.....
named in the margin.	.....

PRESIDENT

.....

MEMBERS<sup>3</sup>

.....  
.....  
.....

WAITING MEMBERS<sup>3</sup>

.....  
.....



## JUDGE ADVOCATE\*

The judge advocate has been appointed by the Defence Board

or

.....<sup>4</sup> is hereby appointed judge  
advocate.

- ( In the opinion of the convening officer the necessary number of military  
( officers having suitable qualifications is not available to form the court  
\* ( and cannot be made available with due regard to the public service.  
( A field officer having suitable qualifications is not in the opinion of the  
\* ( convening officer available with due regard to the public service.

The record of the proceedings will be forwarded to .....

Signed this .....day of.....19.....

.....  
(Signature, rank and appointment of the convening  
officer)

or

.....  
(Signature, rank and appointment of the appropriate  
staff officer)

Authorised to sign for .....  
(appointment held by the convening officer)

\*Strike out if not applicable

1. Insert rank and name of convening officer.
2. Insert number, rank, name, unit or other description of the accused.
3. A member or a waiting member may be described either by giving his rank,  
name, and unit or thus: "A ..... (rank)

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to be detailed by the officer commanding..... (unit)"  
see Rule of Procedure 22(a).

4. Insert the judge advocate's name and any legal qualifications which he has.

### CONVENING ORDER FOR A FIELD COURT-MARTIAL

ORDERS BY .....

Commanding .....  
(Place and date) .....

In the opinion of the convening officer it is not possible without serious detriment to the public service that the accused should be tried by an ordinary court-martial.

The detail of officers as mentioned below will assemble

at .....at.....hours on  
the ..... day of ..... 19 ..... for the  
purpose of trying by a field court-martial the  
accused person(s) named in the  
margin.

Name, etc<sup>2</sup>,  
of accused

.....  
.....  
.....  
.....

PRESIDENT

.....  
.....  
.....

MEMBERS<sup>3</sup>

.....  
.....

.....  
.....

**WAITING MEMBER(S)<sup>3</sup>**

.....  
.....  
.....

**JUDGE ADVOCATE\***

The judge advocate has been appointed by the Defence Board

or

.....<sup>4</sup> is hereby appointed judge advocate.

( In the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service.

( Three officers having suitable qualifications are not in the opinion of the convening officer available without serious detriment to the public service.

( It is not in the opinion of the convening officer practicable to appoint an officer other than himself as president.

The record of the proceedings will be forwarded to .....  
signed this ..... day of .....  
19 .....

.....  
*(Signature, rank and appointment of the  
convening officer)*

or

.....  
*(Signature, rank and appointment of the  
appropriate staff officer)*

.....  
Authorised to sign for .....  
(appointment held by the convening officer)

\*Strike out if not applicable.

1. Insert rank and name of convening officer.
2. Insert number, rank, name, unit or other description of the accused.
3. A member or a waiting member may be described either by giving his rank, name and unit or thus: "A ..... (rank)  
to be detailed by the officer commanding ..... (unit)"  
see Rule of Procedure 22(a).
4. Insert the judge advocate's name and any legal qualifications which he has.

#### DECLARATIONS UNDER RULES OF PROCEDURE 101 AND 102

##### *Declaration under Rule of Procedure 101*

In the case of .....<sup>1</sup>  
I.....<sup>2</sup> [the officer who [is] [would be] senior officer on the spot] hereby  
declare that in my opinion the following exigencies of the service, namely,  
.....  
.....  
.....  
render compliance with the following provisions of the Rules of Procedure  
.....  
.....  
.....  
impracticable.

Signed at.....this.....day of.....  
19.....

.....  
(Signature)  
.....

1. Insert number, rank, unit or other description of accused.
2. Insert rank, name and appointment of officer making the declaration.

*Declaration under Rule of Procedure 102*

In the case of .....<sup>1</sup>

I .....<sup>2</sup> [the officer who [is]  
[would be] responsible for convening a court-martial to try the accused] [the  
senior officer on the spot] hereby declare that in my opinion the<sup>3</sup>  
.....contain(s) information the disclosure of which would  
or might be directly or indirectly useful to an enemy.

Signed at.....this.....day of.....  
19.....

.....  
(Signature)

1. Insert number, rank, name, unit or other description of the accused.
2. Insert rank, name and appointment of officer making the declaration.
3. Here indicate the document(s).

(3) SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL  
(Rule 89)

To:.....<sup>1</sup>

WHEREAS a court-martial [has been ordered to assemble at .....]  
[has assembled at .....] on the ..... day of  
..... 19 ..... for the trial of .....<sup>2</sup>

YOU ARE PURSUANT TO SECTION 136 OF THE DEFENCE ACT, 1979, AND RULE 89 OF THE DEFENCE RULES OF PROCEDURE 1984, MADE THEREUNDER HEREBY SUMMONED and required to attend as a witness at the sitting of the said court at.....on the .....day of ..... 19 .....at .....o'clock in the .....noon and to bring with you the documents hereinafter mentioned, viz,<sup>3</sup> .....

and so attend from day to day until you shall be duly discharged; whereof you shall fail at your peril.

Given under my hand at .....on the .....day of ..... 19 .....

.....  
(Signature, rank and appointment)

An officer authorized to convene a court-martial\*  
President of the court\*

.....<sup>4</sup> Authorized to sign for .....<sup>5</sup>  
An officer authorized to convene a court-martial\*

\*Strike out if not applicable.

1. Insert name and address of the person to whom the summons is to be sent.
2. Insert number, rank, name, unit or other description of the accused.
3. Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents strike out the words relating to documents.
4. Insert appointment of staff officer who signs.
5. Insert the appointment of the officer for whom the staff officer is signing.

(4) NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU  
OF A STATUTORY DECLARATION

(rule 100)

*Notice by a Commanding Officer*To.....<sup>1</sup>

I .....<sup>2</sup> commanding .....<sup>3</sup>  
 hereby give notice that I require that .....<sup>4</sup>  
 shall give oral evidence in lieu of [his] [her] statutory  
 declaration dated ..... at your forthcoming trial  
 by court-martial.

Date ..... 19 .....

.....  
(Signature and rank)

Commanding Officer of the accused

*Notice by an Accused*To .....<sup>2</sup> commanding .....<sup>3</sup>

I .....<sup>1</sup> hereby give notice that I  
 require that .....<sup>4</sup> shall give oral evidence in lieu of [his] [her]  
 statutory declaration dated ..... at my  
 forthcoming trial by court-martial.

Dated..... 19.....

.....  
(Signature)

1. Insert number, rank, name, unit or other description of the accused.
2. Insert rank and name of commanding officer.
3. Insert unit.
4. Insert name of witness.

**(5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL***(rule 90(1)(a))***A****PAGE I****RECORD OF PROCEEDINGS OF A COURT-MARTIAL**

Proceedings of a .....<sup>1</sup> court-martial  
held at.....on the .....day  
of ..... 19..... by order of .....

\*(Chief of Staff, Barbados Defence Force) \* (Commanding  
.....) Dated the.....  
day of.....19.....

**PRESIDENT****MEMBERS****JUDGE ADVOCATE**

Trial of .....<sup>2</sup>

The court complies with Rule of Procedure 25.

..... not being available  
owing to .....



the president appoints .....  
a qualified waiting member to take his place.

The accused is brought before the court.

Prosecutor .....

Defending [officer] [counsel] .....

At .....hours the trial begins.

The convening order is read in the hearing of the accused, marked  
.....signed by the president and attached  
to the record.

The names of the president and members of the court are read in  
the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as president, or by any of the  
officers whose names you have heard read?

A. ....

The proceedings relating to the objection(s) are recorded on  
.....<sup>3</sup>

- 
1. Insert "ordinary" or "field" as the case may be.
  2. Insert the number, rank, name, unit or other description of the  
accused as given in the charge-sheet.
  3. Strike out if not applicable.

## B

## SWEARING

The president, members of the court and judge advocate are duly sworn.

The [following] officers under instruction [listed on page .....]  
are duly sworn.

Q. Do you object to ..... as shorthand writer?

A. ....<sup>1</sup>

(Name) .....is duly sworn as shorthand writer.

Q. Do you object to ..... as interpreter?

A. ....

(Name) ..... is duly sworn as interpreter.

## SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under Rule of Procedure 35.  
The proceedings relating to his plea are recorded on page .....<sup>2</sup>

The accused objects to the ..... charge(s) under Rule  
of Procedure 36. The proceedings relating to his objection(s) are recorded on  
page .....<sup>2</sup>

The accused offers (a) Plea(s) in bar of trial under Rule of Procedure 37  
in respect of the .....charge(s). The proceedings relating to his  
plea(s) are recorded on page .....<sup>2</sup>

The accused ..... applies under Rule of Procedure  
38 to be tried separately. The proceedings relating to his application are  
recorded on page .....<sup>2</sup>

The accused applies under Rule of Procedure 39 to have charges  
.....and .....tried separately.  
The proceedings relating to his application are recorded on page.....<sup>2</sup>

---

1. If there is an objection the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.
2. Strike out if not applicable.

Page .....

C1

**ARRAIGNMENT**

The charge-sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the president and inserted in the record immediately before this page as page(s).....

Q. Are you guilty or not guilty of the first<sup>1</sup> charge against you which you have heard read?

A. ....

Q. Are you guilty or not guilty of the second charge against you which you have heard read?<sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the third charge against you which you have heard read?<sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the fourth charge against you which you have heard read?<sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the fifth charge against you which you have heard read? <sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the sixth charge against you which you have heard read? <sup>2</sup>

A. ....

The accused having pleaded guilty to the .....  
charge(s) Rule of Procedure 41 is duly complied with in respect of [this] [these]  
charge(s)<sup>2</sup>.

The accused's pleas to the remaining charges are recorded overleaf<sup>2</sup>.

---

1. Strike out "first" if there is only one charge.

2. Strike out if not applicable.

C2

Page .....

Q. Are you guilty or not guilty of the seventh charge against you which you have heard read? <sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the eighth charge against you which you have heard read? <sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the ninth charge against you which you have heard read? <sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the tenth charge against you which you have heard read? <sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the eleventh charge against you which you have heard read? <sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the twelfth charge against you which you have heard read? <sup>1</sup>

A. ....

---

1. Strike out if not applicable.

**D1**

Page .....

**PROCEEDINGS ON PLEA(S) OF NOT GUILTY<sup>1</sup>**

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby or on the ground that you have not had sufficient opportunity for preparing your defence?

A. ....

The prosecutor [makes an opening address shortly outlining the facts]  
[makes an opening address which is summarised below] [hands in a written

address which is read signed by the president, marked .....  
.....and attached to the record].

- 
1. Remove this page if there are no pleas of not guilty.
  2. If the accused asks for an adjournment, the proceedings relating to his application should, if necessary, be recorded on a separate page and a record made here that this has been done.

**D2**

Page .....

The witnesses for the prosecution are called

.....  
being duly sworn<sup>1</sup> say:

*Continued on page* .....

- 
1. When a witness affirms the words "having duly affirmed" should be substituted for the words "being duly sworn" and where a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

**D3**

Page .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (*continued*)<sup>1</sup>

The prosecution is closed.

The accused submits under Rule of Procedure 57 that there is no case for him to answer in respect of the ..... charge(s). The proceedings relating to this submission are recorded on pages .....2

## DEFENCE

Rule of Procedure 58 is complied with.

Q. Do you apply to give evidence yourself on oath or do you wish to make a statement without being sworn?

A. ....

Q. Do you intend to call any other person as a witness in your defence?

A. ....

Q. Is he a witness as to fact or to character only?

A. ....

Q. Do you wish to make an opening address?

A. ....

The accused [makes an opening address which is summarized below] [hands in a written address which is read, signed by the president, marked ..... and attached to the record].

1. Remove this page if there are no pleas of guilty.
2. Strike out this paragraph if not applicable.
3. Strike out if the accused does not intend to call witnesses as to fact, other than himself.

**D4**

Page .....

*(Where the accused makes a statement without being sworn)<sup>1</sup>*

The accused [makes a statement which is recorded on page  
.....] [hands in a written statement which is read, marked  
..... signed by the president, and attached to the record].

*(Where evidence on oath is given for the defence)<sup>1</sup>*

The witnesses for the defence (including the accused if sworn)  
are called.

..... being duly sworn<sup>2</sup> says:

*Continued on page .....*

1. Strike out this paragraph if not applicable.
2. When a witness or the accused affirms the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

**D5**

Page .....

**PROCEEDINGS ON PLEA(S) OF NOT GUILTY (Continued)<sup>1</sup>**

The ..... [makes a closing  
address which is summarized on page..... ] [hands in a closing



address which is read, marked ..... signed by  
the president and attached to the record].

The .....[makes a closing address which is  
summarized on page ..... ] [hands in a closing address  
which is read, marked ..... signed by the president and  
attached to the record].

The note of the summing-up of the judge advocate is recorded on  
page.....<sup>2</sup>

### FINDING(S)

The court closes to deliberate on its finding(s).

The court finds that the accused<sup>3</sup>

.....  
.....is<sup>4</sup>

### ANNOUNCEMENT OF FINDING(S)

The court being re-opened the accused is again brought before it.

The finding(s) [is] [are] read and (with the exception of the finding(s) of  
"not guilty")<sup>2</sup> [is] [are] announced as being subject to confirmation.

### PROCEEDINGS ON ACQUITTAL ON ALL CHARGES<sup>2</sup>

The accused is released.

Signed at ..... this.....  
day of.....19 .....

.....  
*Judge Advocate*

.....  
*President*

1. Strike out this page if not applicable.
2. Strike out if not applicable.
3. Insert the number, rank, name, unit or other description of the accused as given on the charge-sheet.
4. Set out the finding on each charge in the appropriate form set out in the Fourth Schedule.

Page .....

**E**

**PROCEEDINGS ON PLEA(S) OF GUILTY<sup>1</sup>**

The accused<sup>2</sup> .....  
.....  
is found guilty of<sup>3</sup> .....

The finding(s) ..... [is] [are] read in open court and [is]  
[are] announced as being subject to confirmation.

The [summary] [abstract] of evidence is read to the court by the prosecutor,  
marked ..... signed by the president  
and attached to the record<sup>4</sup>

*or*

The prosecutor informs the court of the facts contained in the [summary]  
[abstract] or evidence which is marked ..... signed  
by the president and attached to the record<sup>4</sup>.

- 
1. Strike out this page if not applicable.
  2. Insert number, rank, and name, unit or other description of the accused as given on the charge-sheet.

3. Record the finding on each charge of which the accused is found guilty in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.
4. Strike out if not applicable. If this paragraph is struck out, Rule of Procedure 44(3) must be complied with.

**F1**

Page .....

**PROCEEDINGS ON CONVICTION**

NOTE: *F2 should be completed before F1 if the accused has pleaded not guilty to all charges. F1 should be completed before F2 if the accused has pleaded guilty to any charge but the president may in his discretion complete F2 before F1 if there is no danger of the accused making an inconsistent plea.*

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. ....

The evidence for the defence as to the accused's character and in mitigation of punishment, is recorded on pages .....<sup>1</sup>

Q. Do you wish to address the court in mitigation of punishment?

The ..... [makes an address in mitigation of punishment, which is summarized [below] on page.....]  
[hands in an address in mitigation of punishment, which is read, marked .....signed by the president and attached to the record]<sup>1</sup>

( Final question addressed to the accused personally.

(

( Q. Is there anything further that you wish to say to the court?

(

\*( A. ....

(

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- ( The accused makes a statement which is recorded on page .....  
(  
( The court closes to deliberate on sentence.

\* Strike out if F1 is completed before F2

---

1. Strike out this paragraph if not applicable.

**F2**

Page .....

#### PROCEEDINGS OF CONVICTION

NOTE: *F2 should be completed before F1 if the accused has pleaded not guilty to all charges.*

The prosecutor calls evidence as to the accused's character and record.

.....

is duly sworn.

Q. Do you produce the service record of the accused?

A. I produce.....

Q. Have you compared it with the service books?

A. ....

Q. Do the entries on it correspond with the entries in the service books?

A. ....

The ..... is read, marked.....  
signed by the president and attached to the record.

The accused [declines] [elects] to cross-examine this witness [and the cross-examination is recorded on pages.....]

The prosecutor adduces evidence under Rule of Procedure 70(5) which is recorded on pages .....<sup>1</sup>

( Final question addressed to the accused personally.

(

( Q. Is there anything further that you wish to say to the court?

\*

(

( A. ....

(

( The accused makes a statement which is recorded on page .....

(

( The court closes to deliberate on sentence.

*\*Strike out if F2 is completed before F1*

1. Strike out this paragraph if the prosecutor does not adduce evidence under Rule of Procedure 70(5).

## G

Page .....

## SENTENCE<sup>1</sup>

The Court sentences the accused .....

.....<sup>2</sup>  
to<sup>3</sup>

## ANNOUNCEMENT OF SENTENCE

The Court being re-opened, the accused is again brought before it.

The sentence (and recommendation to mercy<sup>4</sup>) [is] [are] announced in open court, the sentence is announced as being subject to confirmation.

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The president announces that the trial is concluded.

Signed at .....this .....day  
of .....19.....

.....  
Judge Advocate

.....  
President

1. Remove this page if not applicable.
2. Insert the number, rank, name, unit or other description of the accused as given on the charge-sheet.
3. Record the sentence in the appropriate form of words set out in the Fifth Schedule to the Rules of Procedure. Any recommendation to mercy (see Rule of Procedure 72(4)), recommendation under section 102(3) of the Defence Act, 1979 restitution order (see section 131 of the Defence Act, 1979), made by the court, should be on the record immediately after the sentence.
4. Strike out if not applicable.

**H**

Page .....

**CONFIRMATION<sup>1</sup>**

1. For minutes of confirmation see the Fourth Schedule to the Rules of Procedure. Promulgation should be recorded immediately below the minute of Confirmation in accordance with Rule of Procedure 93(9) to (11).

## (6) FINDINGS

*Acquittal on all charges*

not guilty of [the charge] [all the charges].

\_\_\_\_\_

not guilty of [the charge] [all the charges], and honourably acquit him thereof.

\_\_\_\_\_

*Acquittal on some but not all charges*

not guilty of the .....<sup>1</sup> charge(s) but is guilty of the .....<sup>1</sup> charge(s).

\_\_\_\_\_

not guilty of the .....<sup>1</sup> charge(s) and honourably acquit him thereof but is guilty of the .....<sup>1</sup> charge(s).

*Conviction on all charges*

guilty of [the charge] [all the charges].

*Special Findings*

guilty of the .....<sup>1</sup> [with the exception of the words .....<sup>2</sup>] [with the exception that .....<sup>2</sup>]

\_\_\_\_\_

not guilty of the offence charged but is guilty of :.....<sup>3</sup>

*Where the accused is unfit to stand trial by reason of insanity*

by reason of insanity unfit to stand his trial.

*Accused guilty but insane at the time when the offence was committed*

guilty but insane.

\_\_\_\_\_

1. Insert the number of the charge or charges as numbered in the charge-sheet.

2. Specify the exception in detail. This form is appropriate when a special finding is made under Rule of Procedure 65(3).
3. State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 103(2) (a), (3)(b) or (4) of the Defence Act, 1979.

(7) RECORD OF RECONSIDERATION OF FINDING UNDER  
RULE 78(5)

The judge advocate advises the court that the finding(s) on the .....<sup>1</sup> charge(s) [is] [are] contrary to the law relating to the case, and that in his opinion the following finding(s) [is] [are] open to them:

.....

.....

The court is closed for reconsideration of finding.

The court on reconsideration finds that the accused is<sup>3</sup>

.....

.....

.....

.....

.....

The finding(s) on reconsideration [is] [are] read in open court and (with the exception of the finding(s) of "not guilty"<sup>4</sup>) [is] [are] announced as being subject to confirmation.

- 
1. Insert number of charge as numbered in the charge-sheet.
  2. Insert the advice given by the judge advocate.
  3. Set out the finding(s) of the court in the appropriate form(s).
  4. Strike out the words relating to findings of "not guilty" if there is no such finding.



## (8) SERVICE RECORD OF ACCUSED

(rule 70 (4))

## SERVICE RECORD OF ACCUSED

*Number**Rank**Name**Unit*

.....

1. <sup>1</sup>He was enlisted on .....19.....and  
commissioned on .....19.....

2. He is serving on a<sup>2</sup> .....

3. His age is .....years.

4. He is single/married/divorced/widowed and has .....children under  
the age of 16 years.

5. His gross rate of pay is .....per day, but he is.....

6. <sup>3</sup>His reckonable service towards discharge or transfer to the reserve is  
.....years.

7. <sup>3</sup>His reckonable service towards pension, gratuity, etc. is .....years.

8. (i) He is entitled to the following decorations and awards:

(ii) The following acts of gallantry or distinguished conduct are  
recorded in his conduct sheet:

.....  
.....  
.....

9. He holds the substantive rank of .....with  
seniority from ..... 19 ..... and has held  
the acting rank of .....  
continuously since ..... 19 .....

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10. <sup>1</sup>He has been awaiting trial for ..... days since he was first, in connection with the matters for which he is before the court, charged or placed in arrest, of which ..... days were spent in civil custody ..... days were spent in close arrest and ..... days were spent in open arrest.
11. <sup>1</sup>(He is now under sentence) (He is now under sentence of ..... beginning on ..... 19 .....)
12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandant of a military establishment of the following offences:<sup>4</sup>

In the last  
12 months

During his service

For .....	times	.....	times
For .....	times	.....	times
For .....	times	.....	times
For .....	times	.....	times
For .....	times	.....	times

13. The details, according to his conduct sheets, of offences of which he has been convicted by court-martial or of which he has been found guilty during his service by a civil court, offences of which he has been found guilty by an appropriate superior authority are set out<sup>4</sup> in the Schedule hereto.\*

- 
1. Delete inapplicable wording.
  2. Insert the type and length of the commission or nature and length of the engagement.
  3. To be deleted in the case of an officer.
  4. If there are no entries in his conduct sheet, enter "nil".

\*See page L111.

THE SCHEDULE HEREINBEFORE REFERRED TO<sup>1</sup>

[illegible]

I HEREBY CERTIFY that this form and Schedule contain a summary of entries in the service books relating to the accused.

Signed this                      day of                      19

(Name, rank and appointment of Officer signing)

1. A verbatim extract from the service books, stating these convictions, etc., must be inserted.
2. Omit automatic remission under Imprisonment and Detention Rules.

(9) RECORD OF PROCEEDINGS ON REVISION UNDER  
SECTION 110 OF THE ACT

(rule 94)

At .....<sup>1</sup> on the ..... day of ..... at  
.....hours the court re-assembled by order of .....<sup>2</sup> the  
confirming authority for the purpose of reconsidering their finding(s) on the  
.....<sup>3</sup> charge(s).

Present<sup>4</sup> .....  
.....  
.....

The order directing the re-assembly of the court and giving the reasons  
therefor is read, marked ..... signed by the president and  
attached to the record.

The court having considered the observations of the confirming authority  
and the whole of the record of the proceedings do now revoke their finding(s)  
on the .....<sup>3</sup> charge(s) and find that the accused<sup>5</sup>  
.....is <sup>6</sup>  
.....  
.....  
and [adhere to their sentence] [sentence the accused to <sup>7</sup> .....in  
substitution for the original sentence].

*or*

The court having considered the observations of the confirming authority  
respectfully adhere to their finding(s) on the .....<sup>3</sup>  
charge(s) [and to their sentence] [but sentence the accused .....<sup>5</sup>  
to<sup>7</sup> .....  
.....  
in substitution for the original sentence].

*or*

The court having considered the observations of the confirming authority  
and the whole of the record of the proceedings do now revoke their finding(s)

on the .....<sup>3</sup> charge(s) and find the accused<sup>b</sup>  
.....not guilty of [that] [those] charge(s).

Signed at .....<sup>1</sup> this.....day of  
..... 19 .....

.....  
Judge Advocate

.....  
President

1. Insert the name of the place.
2. Insert the rank, name, appointment, etc., of the confirming authority.
3. Specify the number(s) of the charge(s) concerned, e.g. the 5th charge.
4. Give the name of the president and members of the court who are present. If the president is absent the senior member must report to the confirming authority.
5. Insert accused's number, rank, name, unit or other description as given in the charge-sheet.
6. Set out the finding in the appropriate form of words given in this Schedule.
7. Set out the new sentence in accordance with the appropriate form set out in the Fifth Schedule.

#### (10) CONFIRMATION

(rule 93(1))

NOTE: *These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.*

Confirmed.

---

I confirm the court's finding(s), sentence and order under section 131 of the Defence Act, 1979, but [remit .....<sup>1</sup>] [commute .....<sup>2</sup>]

---

I confirm the court's finding(s), sentence and order under section 131 of the Defence Act, 1979 but mitigate the sentence so that it shall be as follows:<sup>3</sup>

---

I vary the sentence so that it shall be as follows .....  
and confirm the finding and sentence as so varied.<sup>4</sup>

---

I confirm the finding(s) but substitute the sentence of .....  
for the sentence of the court.<sup>5</sup>

---

I substitute a finding of .....for the finding of the court  
and confirm the sentence but [remit .....<sup>1</sup>] [commute .....<sup>2</sup>]

---

I substitute a finding of .....for the  
finding of the court on the .....charge and confirm the  
finding(s) of the court on the .....charge(s) and the  
sentence.

---

Not confirmed (on the grounds that .....<sup>6</sup>)

I confirm the finding(s) of the court on the .....  
charge(s) but do not confirm its finding(s) (on the grounds that  
.....<sup>6</sup>). I confirm the sentence but [remit .....<sup>1</sup>]  
[commute .....<sup>2</sup>].

---

I refer the finding(s) and sentence to .....<sup>7</sup> for confirmation.

I confirm the finding(s) of the court on the ..... charge(s) and refer the finding(s) on the .....charge(s) and the sentence to .....<sup>7</sup> for confirmation.

I confirm the finding(s) of the court but refer the sentence to .....<sup>7</sup> for confirmation.

(rule 95(4))

[The record] [Part of the record] of the proceedings of the ..... court-martial which tried .....at .....on the .....day of ..... 19 ..... having been lost I do not confirm the finding(s) of the court.

Signed at .....this .....day of .....19 .....

.....<sup>8</sup>  
(Signature, rank, and appointment of  
confirming authority)<sup>8</sup>

1. State what part of the sentence is remitted.
2. State what the sentence is commuted to.
3. This form of words may be used when it is impracticable to use either "remit" or "commute".
4. This form of words is appropriate when the court has expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.
5. This form of words is appropriate when the court has passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.

6. Where a confirming officer withholds confirmation because he disapproves of the decision of the court on a plea to the jurisdiction, in bar of trial or on an objection to a charge he should specifically state that he is withholding confirmation for this reason. In other cases the confirming officer is not bound to give his reasons for withholding confirmation.
7. Insert the appointment of the higher authority to whom the matter is to be referred.
8. The rank and appointment of the confirming officer should be clearly stated after or under his signature.

(11) DIRECTION UNDER SECTION 123(3) OF THE ACT<sup>1</sup>

I .....[confirming authority] [reviewing authority] hereby direct that the accused .....[*number, rank, name or other description*] shall not be required to be returned to Barbados until he has served [.....months] [.....years] of the sentence of [imprisonment] [detention] passed on him.

.....  
(Signature)

Dated .....19 .....

1. When the confirming authority is making the direction this form of words should be inserted in the record of the proceedings of the court-martial in the confirming authority's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.

(12) RESTITUTION ORDER<sup>1</sup>

In accordance with subsection .....of section 131 of the Defence Act, 1979 I .....<sup>2</sup> hereby order that .....<sup>3</sup> be



[delivered] [paid] to .....<sup>4</sup> and I direct that this order shall be carried out forthwith.

Dated this .....19 .....

.....  
(Signature)

[Confirming authority]  
[Reviewing authority]

1. When the confirming authority is making the order this form of words should be inserted in the record of the proceedings of the court-martial in the confirming authority's minute of confirmation, when made by a reviewing authority it should follow the minute of promulgation.
2. Insert the rank, name and appointment of confirming or reviewing authority, as the case may be.
3. Insert description of article or amount of money, as the case may be.
4. Insert name of person to whom restitution is being made.

### (13) PROMULGATION

(rule 93(10))

Promulgated and extracts taken at ..... (place) this  
.....day of .....19 .....

.....  
(Signature, rank and appointment  
of officer making the promulgation)

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FIFTH SCHEDULE  
THE DEFENCE RULES OF PROCEDURE, 1984

(rule 72)

SENTENCES

- (1) SENTENCES.
- (2) RECOMMENDATION UNDER SECTION 123(3) OF THE ACT.
- (3) RESTITUTION ORDER.

---

(1) SENTENCES

NOTE: *The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.*

OFFICERS

Death. To suffer death.

Imprison-  
ment and  
cashiering. To be imprisoned for.....and to be  
cashiered.

---

Cashiering. To be cashiered.

---

Dismissal. To be dismissed from Her Majesty's service.

---

Fine. To be fined .....

---

To be [severely reprimanded] [reprimanded].

\_\_\_\_\_

[Severe  
reprimand.]  
[Reprimand.]

To be put under stoppage of pay until he has made good the sum of Stoppages.  
.....<sup>1</sup> in respect of.....<sup>2</sup>

### WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

To suffer death.

\_\_\_\_\_

Death.

To be imprisoned for .....and to be reduced to the ranks.

\_\_\_\_\_

Imprisonment and  
reduction  
to the ranks.

To be discharged with ignominy from Her Majesty's service.

\_\_\_\_\_

Discharge  
with  
ignominy.

To be dismissed from Her Majesty's service (*warrant officers only*).

\_\_\_\_\_

Dismissal.

To undergo detention for .....and to be reduced to the ranks.

\_\_\_\_\_

Detention  
and reduction  
to the  
ranks.

To undergo field punishment for .....days and to be reduced to the  
ranks.

\_\_\_\_\_

Field punishment and  
reduction to  
the ranks.

To be reduced [to the ranks] [to the rank of .....]

[Reduction  
to the ranks]  
[Reduction  
to .....]

To forfeit .....service.

\_\_\_\_\_

Forfeiture.

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[Severe  
reprimand.]  
[Reprimand.]

To be {severely reprimanded} [reprimanded].

\_\_\_\_\_

Fine.

To be fined .....

\_\_\_\_\_

Stoppages.

To be put under stoppages of pay until he has made good the sum of.....<sup>1</sup> in respect of .....<sup>2</sup>

### SOLDIERS

Death.

To suffer death.

\_\_\_\_\_

Imprisonment.

To be imprisoned for .....

\_\_\_\_\_

Discharge  
with ignominy.

To be discharged with ignominy from Her Majesty's service.

\_\_\_\_\_

Detention.

To undergo detention for .....

\_\_\_\_\_

Field  
punishment.

To undergo field punishment for ..... days

\_\_\_\_\_

Forfeiture  
of service.

To forfeit .....service.

\_\_\_\_\_

Fine.

To be fined .....

\_\_\_\_\_

To be put under stoppages of pay until he has made good the sum of Stoppages.  
 .....<sup>1</sup> in respect of .....  
 .....<sup>2</sup>

1. Insert the amount which has to be made good by stoppages in respect of the charge of article specified.
2. Specify the charge or article in respect of which the stoppage is to be imposed. If the stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

### (2) RECOMMENDATION UNDER SECTION 123(3) of the ACT<sup>1</sup>

The court recommends that the accused .....(*number, rank, name or other description*) shall not be required to be returned to Barbados until he has served [.....months] [.....years] of his sentence.

1. This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.

### (3) RESTITUTION ORDER<sup>1</sup>

In accordance with subsection .....of section 131 of the Defence Act, 1979 the court hereby orders that .....<sup>2</sup> be [delivered] [paid] to .....<sup>3</sup>

The court further orders that this order shall be carried out forthwith.

1. This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.
2. Insert the description of the article or the amount of money, as the case may be.
3. Insert name of person to whom restitution is to be made.

## SIXTH SCHEDULE

## THE DEFENCE RULES OR PROCEDURE, 1984

*(rule 33)*

## OATHS AND AFFIRMATIONS

- (1) OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES.
  - (2) OATHS AT COURTS-MARTIAL.
  - (3) MANNER OF ADMINISTERING OATHS.
  - (4) SOLEMN AFFIRMATIONS.
- 

(1) OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS  
AND APPROPRIATE SUPERIOR AUTHORITIES

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

*Witness*

I swear by Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth, and nothing but the truth.

---

(2) OATHS AT COURTS-MARTIAL

*President and Members**(rule 28)*

I swear by Almighty God that I will well and truly try the [accused] [accused persons] before the court according to the evidence, and that I will

duly administer justice according to the Defence Act, 1979, without partiality, favour or affection and I do further swear, that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial, unless thereunto required in due course of law.

*Judge Advocate*

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Defence Act, 1979, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial, unless thereunto required in due course of law.

*Officer under Instruction*

I swear by Almighty God that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto required in due course of law.

*Shorthand Writer*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

*Witness*

I swear by Almighty God that the evidence which I shall give before this court-martial shall be the truth, the whole truth, and nothing but the truth.

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### (3) MANNER OF ADMINISTERING OATHS

Christians taking the oath shall, unless female, remove their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath.

Jews shall take the oath in the same manner except that they shall wear their head-dress and hold the Old Testament in their right hand.

---

### (4) SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words "I (name in full) do solemnly, sincerely and truly declare and affirm" and for the word "swear" wherever it occurs the words "solemnly, sincerely and truly declare and affirm".

## SEVENTH SCHEDULE

### THE DEFENCE RULES OF PROCEDURE, 1984

(rule 99)

#### PETITIONS

##### *Petition to confirming authority (before confirmation)*

To the confirming authority.

I.....<sup>1</sup> having been convicted by court-martial on  
.....<sup>2</sup> at .....<sup>3</sup> and having been  
sentenced to .....hereby petition against the finding(s) on the  
.....charge(s)<sup>4</sup> and sentence<sup>5</sup> on the following grounds:

.....  
.....  
.....



Signed .....<sup>6</sup>

Dated .....

*Petition to reviewing authority (after promulgation)*

To .....<sup>8</sup> having been convicted by court-martial on  
.....at .....<sup>3</sup> and having been sentenced to  
.....and having had the finding(s) and sentence promulgated  
to me on .....<sup>7</sup> hereby petition against the finding(s) on  
the ..... charge(s)<sup>4</sup> and sentence<sup>5</sup> on the following grounds:

.....  
.....  
.....

Signed .....<sup>6</sup>

Dated .....

1. Insert the accused's number, rank, name or other description.
2. Insert the date when accused was convicted.
3. Insert the place where the trial was held.
4. The words "the finding(s) on the .....charge(s)" should be omitted if the accused is only petitioning against sentence.
5. The words "and the sentence" should be omitted if the accused is not petitioning against sentence.
6. Petitions should be signed by the accused personally but may, if necessary, be signed on his behalf by his representative.

7. Insert the date when the findings and sentence were promulgated.
8. Here state the reviewing authority whom it is desired to petition.

Made by the Defence Board this 6th day of June, 1984.

J. M. G. ADAMS  
Chairman of the Board.