

Unannotated Statutes of Malaysia - Subsidiary Legislations/ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976 (P.U.(A) 163/1976)

**ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976
[P.U.(A) 163/1976]**

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IN exercise of the powers conferred by section 119 of the Armed Forces Act 1972, the Minister of Defence makes the following Rules:

1. Citation

These Rules may be cited as the **Armed Forces (Court-Martial) Rules of Procedure 1976**, and shall come into force on the 1st day of June, 1976.

2. Definition.

In these Rules--

"Act"

means the Armed Forces Act 1972;

"advocate"

means a person entitled to practise as an advocate or as an advocate and solicitor under the law in force in any part of Malaysia;

"commanding officer",

in relation to any person, means the officer, whatever his rank may be, who is in immediate command of the unit, ship, station or establishment to which the person belongs or is attached;

"competent authority"

means the Armed Forces Council or any other officer appointed by the Armed Forces Council in that behalf;

"confirming officer"

means any of the officers listed under section 126 of the Armed Forces Act 1972;

"convening authorities"

in relation to a court-martial means the authorities constituted under section 104 of the Act;

"Court"

means, unless the context otherwise requires, a court-martial established under the Act;

"defending counsel"

means a person entitled to practise as an advocate or as an advocate and solicitor under the law in force in any part of Malaysia;

"Investigating Officer"

means--

- (a) a provost officer;
- (b) any armed forces personnel appointed in writing by the commanding officer or a provost officer to investigate a service offence; and
- (c) any member of the Corp of Military Police authorised to investigate a service offence;

"President"

means the president of the court;

"prosecutor"

means a legal officer of the Ministry of Defence and includes a service prosecuting officer appointed in writing by the convening authority;

"provost officer"

means a provost marshal or officer appointed to exercise the functions conferred by or under the Act on provost officers.

3. Trial of offences under the Act.

All offences under the Act shall be inquired into and tried according to the provisions hereinafter contained; subject however to any written law for the time being in force regulating the manner or place of inquiring into or trying such offences.

4. Criminal Procedure Code when applicable.

(1)

As regards matters of rules of procedure for which no special provision has been made by these Rules or by any other law for the time being in force, the law relating to the criminal procedure for the time being in force in Malaysia shall be applied so far as the same shall not conflict or be inconsistent with these Rules and can be made auxiliary thereto.

(2)

Where no provision is made in the Act or in any Rules made thereunder or in the Criminal Procedure Code, in respect of any procedural matter, a court-martial shall decide on the most expedient procedure to be followed in the particular case that will best serve the interests of justice.

CHAPTER II GENERAL PROVISIONS AS TO COURTS

5. Courts.

The court for the administration of justice in the Federation shall be any of those constituted pursuant to section 105 of the Act.

6. Jurisdiction.

Every court shall have jurisdiction to try any person subject to service law for any offence under the Act and to award for any such offence any punishment authorised by the Act for that offence.

7. Court to be open.

(1)

Subject to any other provisions in these Rules, a court shall sit in open court in the presence of the parties and, to the extent that accommodation permits, the public shall be admitted to the trial.

(2)

Every judgment or finding of a court shall be pronounced in open court

8. In camera.

(1)

The president of a court may, where it is expedient in the interests of--

- (a) the administration of justice;
- (b) the security of the Federation;
- (c) public defence or safety; or
- (d) public morals,

order that all or any part of the proceedings before it shall be dealt with in camera and upon the making of such order the court shall cease to be an open court and, with the exception of the accused's counsel and such other persons as may be deemed by the court to be necessary for the purposes of the proceedings, the public shall be excluded therefrom for so long as the court thinks fit.

(2)

A court may exclude a person from any part of the proceedings where such person is obstructing the proceedings of the court.

(3)

No person shall be present during any deliberation among the members of a court, whether on the finding or sentence on any charge or otherwise without permission from the president of the court

9. Publicity

(1)

Where any proceedings in a court have been held in camera, no person shall publish any information concerning the proceedings and the judgment, except with the permission of the Armed Forces Council.

(2)

No person shall take photographs in the court room or in the presence of the court or publish photographs so taken, except with the permission of the president of the court.

(3)

Any person who contravenes any of the provisions of this Rule shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand ringgit or to both such imprisonment and fine.

10. Right of accused to be represented

(1)

Subject to any other provisions in these Rules, an accused shall have the right to be represented in his defence before a court by an advocate and solicitor, if provided by him, or by any officer of the Malaysian Armed Forces.

(2)

Where an accused is not represented by a person in accordance with paragraph (1) and--

- (a) is charged with an offence punishable with death; or
- (b) is suspected of being of unsound mind, the competent authority or the court shall appoint a defence counsel to assist the accused in his defence.

(3)

Where the accused selects a person to represent him in the court, such person shall be authorised to do so

after submitting to the convening authority a written consent signed by the accused.

11. Independences of court

(1)

In matters of adjudication, members of the court shall not be subject to the authority of their commanders, or to any other authority, except the law.

(2)

No person shall attempt to coerce or by any unauthorised means influence the action or proceedings of a court or any members thereof.

(3)

Any person who contravenes the provisions of paragraph (2) shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand ringgit or to both such imprisonment and fine.

12. Power of restitution of stolen property

(1)

Where a person has been convicted by a court of having stolen, dishonestly misappropriated or converted, received, knowing it to be stolen or otherwise unlawfully obtained, any property and the property or any thereof is found in the possession of the offender, the president of the court may order the property so found to be restored to the person appearing to be the lawful owner thereof.

(2)

A like order may be made with respect to any property found in the possession of such offender, which appears to the president of the court to have been obtained by the conversion or exchange of any of the property stolen, dishonestly misappropriated or converted, received or unlawfully obtained.

(3)

An order under this Rule shall not bar the right of any person* other than the offender, or any one claiming through him, to recover any property or money delivered or paid in pursuance of an order under this Rule from the person to whom the same is so delivered or paid.

CHAPTER III

ARRESTS, SEARCHES AND INVESTIGATIONS OF OFFENCES

13. Reasons for arrest

(1)

A person may not be placed or detained under arrest where the offence he has committed or is reasonably suspected of having committed is not of a serious nature.

(2)

A person shall be placed under arrest only when absolutely necessary for example when--

- (a) the offence is punishable with death;
- (b) he is deliberately trying to undermine discipline by acts of misconduct;

- (c) he is likely to injure himself or others;
- (d) he is likely to suborn witnesses;
- (e) he has been apprehended (and has not surrendered himself) as being absent without leave or is habitually absent without leave;
- (f) having regard to the nature or prevalence of the offence with which he is charged or which is under investigation, it is undesirable in the interests of discipline that he should be at large or in a position to consort with his comrades; or
- (g) it is suspected that he will not attend the investigation of the case or the trial

14. Reconsideration of arrest and investigation

(1)

Subject to Rule 13 the person responsible (normally the commanding officer or the provost officer) for deciding whether a person should be kept under arrest and what the form of arrest should be, shall use his discretion from time to time, as circumstances may require, to change the form of arrest, to re-arrest or to release him without prejudice to re-arrest.

(2)

The allegations against a person who is under arrest shall be duly investigated into without unnecessary delay and as soon as possible proceedings shall be instituted against him or he shall be duly released.

15. Delay reports

(1)

The report required by subsection (2) of section 94 of the Act with regard to the necessity for further delay in bringing an accused to trial shall be in the form set out in the First Schedule to these Rules.

(2)

The report shall be in quadruplicate and sent direct to--

- (a) in the case of the first copy--the convening officer;
- (b) in the case of the second copy--the Principal Legal Officer of the Ministry of Defence;
- (c) in the case of third copy--the Provost Marshal of the Ministry of Defence; and
- (d) in the case of the fourth copy--be retained by unit.

(3)

A person shall not be held under arrest for more than seventy two days without being tried unless the convening authority, with the prior approval of the competent authority directs in writing that he shall not be released from arrest.

16. Arrest during and after trial.

(1)

During his trial by a court-martial the accused shall be held under close arrest, except where the convening authority directs that for the period of any adjournment of the court he shall be held under open arrest or released from arrest.

(2)

Where the sentence announced in court is lower in the scale of punishments than detention, the accused shall be released from arrest immediately after the trial.

17. Use of force.

(1)

Force may be used for the purpose of arrest only when absolutely necessary and in no case shall it extend to the inflicting of more harm than it is necessary to inflict for the purpose of making the arrest

(2)

The use of force shall not include the use of fire-arms except under the following circumstances--

- (a) where the offence is of a very serious nature; and
- (b) the person being arrested is behaving in such a violent manner that damage to life or limb may result or the use of firearms is the only possible way of making the arrest.

(3)

Before fire-arms are used, the person who makes an arrest, shall comply with the following procedure--

- (a) he shall warn the person being arrested that unless he ceases his violent behaviour fire-arms may be used;
- (b) he shall ascertain that the person being arrested understands the warning and still refuses to submit to arrest;
- (c) he shall fire a shot vertically into the air;
- (d) if the person being arrested still does not submit to arrest, he may fire at his knees but only so as to wound him;
- (e) when an arrest is being made under the orders of a person superior in rank and in his presence, no fire-arms shall be used without his permission.

18. Duties of person making arrest

A person who makes an arrest shall--

- (a) inform the arrested person whether he is under close or open arrest;
- (b) inform the arrested person of the reason for which he is under arrest;
- (c) immediately deliver the arrested person to a place of custody; and
- (d) deliver to the person into whose custody the arrested person is committed at the time of arrest or within twenty-four hours thereafter a copy of a charge report provided that if no such charge report is produced, the person into whose custody the arrested person is committed will report the circumstances to the commanding officer who will, if continued arrest does not appear to be justified, order the release of the arrested person without prejudice to his re-arrest.

19. Power to issue search warrants

(1)

Where--

- (a) (a) there is reason to believe that a person to whom a summon or an order under these Rules might be addressed would not produce the document or other material as required by such summons or order; or

- (b) (b) the interests of justice or of any investigation, inquiry, trial or other proceedings under the Act will be served by a general search, the president of a court-martial or a commanding officer or provost officer may issue a search warrant and the person to whom such warrant is directed may search or inspect in accordance therewith.

(2)

Such search warrant shall only be extended to military establishments, including married quarters.

20. Person executing search warrant.

(1)

A search warrant may be directed to

- (a) military policemen in general or to any one member of the corp of military police;
- (b) any one or more officers or servicemen not being member of the corp of military policemen;

(2)

When a search warrant is directed to more than one person it may be executed by all or any one or more of them.

21. Form and validity of search warrant

(1)

Every search warrant issued under Rule 19 shall be in the form set out in Second Schedule to these Rules and signed by the President of the court-martial or a commanding officer or a provost officer.

(2)

Every such warrant shall remain in force for a reasonable number of days to be specified therein.

22. Entry into premises

(1)

Whenever a place liable to search is closed, any person residing in or being in charge of such place shall, on demand of a person executing a search warrant and on production of the warrant, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2)

If ingress to such place cannot be so-obtained, the person executing a search warrant may enter such place and search therein, and in order to effect an entrance into such place may break open any outer or inner door or window of the place to be searched if after notification of his authority and purpose and demand of admittance duly made he cannot otherwise obtain admittance.

23. Persons present during search

(1)

Except in extremely urgent cases a search shall only be carried out in the presence of two witnesses, in addition to the person making the search.

(2)

The occupant of the place searched or another person on his behalf shall in every instance be permitted to attend during the search.

24. List of articles seized

(1)

A list of all articles seized in the course of a search made under these Rules and of the places in which they are respectively found shall be prepared by the person making such search and signed by him and by the persons who witnessed the search.

(2)

A copy of the list prepared and signed under this Rule shall be delivered to the possessor of such property or to the occupant of the place searched.

25. Person found in searched premises

Whenever a person makes a search under these Rules, he may detain and search any person found in the place searched whom he reasonably suspects of possessing any document or material sought except that no such person may be detained after the completion of the search of the place.

26. Seizure of articles

Any person authorised by a search warrant may seize any document or material specified therein and any other material which is found under circumstances which create suspicion of the commission of any offence.

27. Disposal of articles seized.

(1)

A person seizing any document or material under Rule 26 shall produce the same forthwith before the person who issued the search warrant.

(2)

Any document or material seized under paragraph (1) shall be disposed of in accordance with the order of the person who issued the search warrant.

(3)

A person making an arrest shall forthwith produce anything seized before a commanding officer or a provost officer.

(4)

A person authorised to search without a search warrant shall forthwith produce anything seized before a commanding officer or a provost officer.

(5)

Any document or material seized under paragraph (3) shall be disposed of in accordance with the order of the commanding officer or provost officer to whom the document or material was delivered.

(6)

Any document or material seized under paragraph (4) shall be disposed of in accordance with the order of the commanding officer or the provost officer.

(7)

The power herein conferred under paragraphs (2), (5) and (6) shall include the power to make the following orders--

- (a) the delivery of the document or material seized to the person entitled to possession thereof;
- (b) the forfeiture or confiscation of the document or material seized when the possession of such thing is unlawful or where it served as an instrument for the commission of an offence;
- (c) the destruction of the document or material seized;
- (d) the sale of the document or material seized and the disposal of the proceeds of the sale in any manner provided for above.

28. Interrogation

(1)

When an investigating officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has not been charged with the offence or informed that he may be prosecuted for it.

(2)

Such person shall be bound to answer all questions relating to such case put to him by such officer;

Provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3)

A person making a statement under this Rule shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4)

An officer examining a person under paragraph (2) and (3) shall first inform that person of the provisions of paragraphs (2) and (3).

29. Statements

Where an investigating officer has reason to believe that a person has committed an offence the following provisions shall apply--

- (a) the investigating officer shall inform him of the nature of the offence;
- (b) the investigating officer shall caution him as follows:
 - "You are not obliged to say anything, but anything you say may be given in evidence";
- (c) a person making a statement after being duly cautioned shall not be cross-examined without his express consent, except that the investigating officer may ask any questions necessary for the purpose of clarifying a statement made;
- (d) any statement made shall be taken down in writing and read to the person making it and he shall be invited to introduce any corrections he may wish;
- (e) the person making the statement and the investigating officer shall sign the statements; where

- the person who has made the statement refuses to sign, the investigating officer shall record such refusal;
- (f) when two or more persons are charged with the same offence and statements are made by them separately, the investigating officer shall not read the statement of one person to another and nothing shall be said or done by him to invite a reply but each person may be furnished by the investigating officer with a copy of the statements. If such person desires to make a statement in reply, the investigating officer shall caution him;
 - (g) a statement made by a person before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he shall be cautioned as soon as possible.

30. Admissibility

A court-martial may refuse to admit a statement or allow it to be used where it appears to the court that it was not made and recorded substantially in compliance with Rule 29.

31. Interpreter

The investigating officer may appoint an interpreter or interpret himself whenever necessary.

32. Diary

(1)

The investigating officer shall keep a diary recording every act done by him in the course of the investigation.

(2)

The investigating officer shall include in the record the following-

- (a) the time at which the order for investigation reached him;
- (b) the times at which he commenced and completed his investigation;
- (c) the places visited by him; and
- (d) a statement of the facts and circumstances ascertained through his investigation.

(3)

An accused person shall not be entitled either before or in the course of trial to call for or to inspect any such diary.

CHAPTER IV

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

33. Method of investigating charges

(1)

Subject to paragraphs (3) and (4) when a commanding officer investigates a charge he shall first read out and, if necessary, explain the charge to the accused and shall then--

- (a) hear the evidence himself in accordance with Rule 34; or
- (b) cause the evidence to be reduced to writing, in accordance with paragraph (2) and read and consider it:

Provided that--

- (a) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;
- (b) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with Rule 34; and
- (c) before he submits to higher authority a charge against an officer or warrant officer or a civilian to whom Part V of the Act is applied by section 211 or section 212 of the Act or remands a non-commissioned officer or soldier for trial by court-martial he shall cause the evidence to be reduced to writing.

(2)

Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with Rule 35 or an abstract of evidence made in accordance with Rule 36:

Provided that summary of evidence must be taken if--

- (a) the maximum punishment for the offence with which the accused is charged is death; or
- (b) the accused, at any time before the charge against him is referred to higher authority in accordance with Rule 38, 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.

(3)

Where the evidence taken in accordance with paragraph (1) of this Rule discloses an offence other than the offence which 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.

(4)

Where a civilian, to whom Part V of the Act is applied by section 211 or section 212 of the Act, is charged with an offence with which an appropriate superior authority can deal summarily, it shall not be necessary for his commanding officer to read the charge to the accused; but it shall be a sufficient compliance with the provisions of this Rule if his commanding officer caused to be delivered to the accused a copy of the charge and of the abstract of evidence and considers them together with any statement made by the accused under Rule 36 (2) and any statements of witnesses submitted by the accused under Rule 36 (3).

34. Hearing of evidence by commanding officer.

When a commanding officer investigates a charge by hearing the evidence himself--

- (a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness:
Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;
- (b) the accused shall be allowed to cross-examine any prosecution witness;
- (c) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;
- (d) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;
- (e) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;
- (f) if the 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 59.

35. Summary of evidence

A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in the Third Schedule to these Rules--

- (a) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that, if a person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a Written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

- (c) a child shall not be called as a prosecution witness in any case where the charge being investigated is for a sexual offence and any statement made in writing by or taken in writing from the child which would be admissible if given orally may be read to the accused and included in the summary of evidence:

Provided that this paragraph shall have no application where the child can be compelled to attend and the accused objects to the application of this paragraph or the officer taking the summary of evidence requires the attendance of the child for the purpose of establishing the identity of any person or is satisfied it has not been possible to obtain from the child a statement that may be given in evidence under this paragraph;

- (d) after all the evidence against the accused has been given, the accused shall be asked:

"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."

Any evidence given or statement made, by the accused shall be recorded in writing and, immediately thereafter, the record of his evidence or statement shall be read over to him and corrected where necessary, and he shall be asked to sign it;

- (e) the accused may call witnesses in his defence, who shall give their evidence orally:

Provided that, if a person cannot be compelled to attend as a defence witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any defence witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing), be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence;

- (f) neither the accused nor the witnesses for the defence shall be subject to cross-examination;
- (g) 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;
- (h) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;
- (i) the oath shall be administered in accordance with Rule 59 by the officer taking the summary of

evidence to each witness, before he gives his evidence, and to any-interpreter:

Provided that, where any child of tender years, called as a witness, does not, in the opinion of the officer taking the summary, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the officer taking the summary, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and

- (j) at the conclusion of the taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with the provisions of this Rule.

36. Abstract of evidence

(1)

An abstract of evidence shall be made in the following way A and shall be in accordance with the form set out in the Third Schedule to these Rules--

- (a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the accused should not be present while the abstract of evidence is being made;
- (c) it shall consist of signed statements by such witnesses as are necessary to prove the charge:

Provided that 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

- (d) an oath shall 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 which are already in existence.

(2)

When an abstract of evidence has been made in accordance with paragraph (1), a copy of it shall be handed 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."

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

(3)

After the accused has been given an opportunity of making a statement in accordance with paragraph (2), and after his statement (if any) has been recorded, he may submit to the officer making the abstract the statements of any witnesses he wishes to be attached to the abstract of evidence.

(4)

Any statement made by the accused in accordance with paragraph (2) and any statements of witnesses submitted by him in accordance with paragraph (3) shall be attached to the abstract of evidence.

(5)

A certificate by the person who recorded the statement made by the accused in accordance with paragraph

(2), 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 it. This certificate shall be in the form set out in the Third Schedule to these Rules.

37. Investigation before summary dealing by commanding officer.

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 to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

38. Reference of charges to higher authority

(1)

When a commanding officer submits to higher authority a charge against an officer or warrant officer or a civilian to whom Part V of the Act is applied by section 211 or section 212 of the Act or has remanded a non-commissioned officer or soldier for trial by court-martial, he shall send 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) the 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.

(2)

After a commanding officer has referred a charge to higher authority in accordance with paragraph (1) he shall not dismiss it unless it has been referred back to him with a direction to dismiss it.

CHAPTER V

TRIALS BEFORE THE COURT

PART I

CHARGES AND CHARGE SHEETS

39. Charge Sheets.

(1)

A charge sheet shall contain the whole of the issue or issues 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 but charges under sections 54, 55, 61 and 67 of the Act 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.

(2)

Every charge sheet shall contain--

- (a) the commencement; and

(b) the charge or charges.

(3)

The commencement of each charge sheet shall state the number, rank, name and unit of the accused or where these are not known any other particulars sufficient for his identification, and show by the description of the accused or directly by an express averment that he is subject to service law or otherwise liable to trial by a court-martial.

(4)

If there is more than one charge in a charge sheet, the charges should be numbered and, when laid in the alternative, the alternative nature of the charges involved, shall be indicated on the charge sheet.

(5)

Every charge sheet shall as far as practicable be drawn in the form and according to the illustrations given in the Fourth Schedule to these Rules.

40. Charges and alternative charges.

(1)

Each charge in a charge sheet shall--

- (a) allege one offence only; and
- (b) be divided into two parts, as follows:
 - (i) a statement of the offence with which the accused is charged; and
 - (ii) a statement of the particulars of the act, omission, disorder or neglect constituting the offence.

(2)

Every statement of the particulars of an offence in a charge sheet shall include sufficient details to enable the accused to know exactly what he is charged with.

(3)

A statement of the particulars of an offence should, as far as practicable, include an allegation of the place, date and time of the alleged commission of the offence.

(4)

Offences may be charged in the alternative in separate charges but in no case shall they be charged in the alternative in the same charge. When charges are laid in the alternative they should be set out in order of gravity commencing with the most serious.

41. Joint charges

(1)

Any number of accused may be charged in the same charge sheet with offences alleged to have been committed by them separately if the acts on which the charges are founded are so connected that it is in the interests of justice that they be tried together.

(2)

Any number of accused may be charged jointly in one charge for an offence committed by them jointly.

(3)

When so charged any one or more of such accused 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 provided that such charges could, if the accused to whom they relate had been tried separately, have been included under paragraph (1) of Rule 39 in the same charge sheet as the other charges against him.

42. Construction of charge sheet and charges

In the construction of a charge sheet or charge there shall be presumed in favour of supporting it every proposition which 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.

43. Withdrawal of charge sheets and charges

A court may with the concurrence of the convening authority (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge sheet before the accused is arraigned on any charge therein.

44. Amendment of charges**(1)**

At any time during a trial if it appears to the court that there is in the charge sheet--

- (a) a mistake in the name or description of the accused;
- (b) a mistake which is attributable to a clerical error or omission, the court may amend the charge sheet so as to correct the mistake.

(2)

If at any time during a trial at which there is a judge advocate, it appears 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 which cannot be made under paragraph (1) it may, if such addition, omission or alteration can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

(3)

If 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 which cannot be made under paragraph (1), it may adjourn and report its opinion to the convening authority, which may--

- (a) amend the charge if permissible under Rule 45 and direct the court to try it as amended after due notice of the amendment has been given to the accused; or
- (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.

45. Amendment of charges by convening authority

When a court reports to the convening authority under paragraph (2) of Rule 62 or paragraph (3) of Rule 44, the convening authority may amend the charge in respect of which the court reported to it by making any addition to, omission from or alteration in the charge which, in its opinion, is desirable in the interests of justice and which it is satisfied can be made without unfairness to the accused.

46. Recall of witnesses when charge altered

Whenever a charge is altered or added by the court after the commencement of the trial the prosecutor and the accused shall be allowed to recall or re-summon and examine, with reference to such alteration or addition, any witness who may have been examined, and may also call any further evidence which may be material.

47. Power to convict for offence other than that charged

(1)

If an accused is charged before the court with an offence involving a higher degree of punishment and if it appears in evidence that he has committed an offence involving a lesser degree of punishment, the court may have the power to convict him for the offence which he is shown to have committed although he was not charged with it.

(2)

When an accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

(3)

When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.

(4)

When the accused is charged with attempting to commit an offence, he may be convicted on that charge, although it is proved that he actually committed the offence.

PART II

CONVENING OF COURTS-MARTIAL

48. Duties of convening authority

(1)

Subject to paragraph (2), when an officer convenes a court-martial he shall--

- (a) issue a convening order in the appropriate form set out in the Fifth Schedule to these Rules;
- (b) direct upon what charges the accused is to be tried;
- (c) if he is of the opinion that charges should be put in separate charge sheets, so direct and direct the order in which they are to be tried;
- (d) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;
- (e) appoint the president and members of the court in accordance with Rule 49;
- (f) if he considers there should be a judge advocate, take the necessary steps to procure the detailing of a judge advocate;
- (g) take the necessary steps to procure the detailing of a prosecutor to prosecute except that two

- prosecutors may be detailed to prosecute if it is deemed necessary;
- (h) appoint the date, time and place for the trial;
 - (i) send to the president the charge sheet, the convening order and a copy of the investigation papers from which any evidence which in his opinion would be inadmissible at the court has been expurgated;
 - (j) send to each member of the court a copy of the charge sheet;
 - (k) send to the prosecutor copies of the charge sheet, convening order and the original investigation papers together with an unexpurgated copy thereof showing the passages (if any) which have been expurgated in the copy sent to the president;
 - (l) send to the judge advocate copies of the charge sheet, convening order and an unexpurgated copy of the investigation paper showing the passages (if any) which have been expurgated in the copy sent to the president;
 - (m) ensure that the accused is given a proper opportunity to prepare his defence in accordance with Rule 51; and
 - (n) take steps to procure the attendance at the court of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with Rule 51 but the convening authority may require the accused to defray or to undertake to defray, as the convening authority thinks fit, the cost of the attendance of a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be, such cost, the convening authority shall not be obliged to take any further steps to procure the attendance of that witness.

(2)

When an officer convenes a court consequent to an order authorising a retrial made under the Act, sub-paragraph (b) of paragraph (1) shall not apply.

49. Appointment of president and members

The convening authority shall--

- (a) appoint the president of a 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 members as he thinks expedient either by name or by detailing a commanding officer to appoint an officer of specified rank.

50. Officers under instruction**(1)**

Subject to Rule 102, any officer subject to service law may, by direction of the convening authority or at the discretion of the president, remain with a court throughout the proceedings as an officer under instruction.

(2)

An officer under instruction, although allowed to be present in closed court, shall not take part in any of the deliberations or decisions of the court.

51. Preparation of defence**(1)**

An accused who is to be tried by a court 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.

(2)

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 appointment to be made.

(3)

If 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.

(4)

If the prosecution is to be undertaken by a legally qualified prosecutor, the accused shall be notified of this fact in sufficient time to enable him, if he so wishes and it is practicable, to make arrangements for an advocate and solicitor to defend him.

(5)

As soon as practicable after a charge has been submitted to the convening authority and in any case not less than twenty four hours before the commencement of the trial, the accused shall be given--

- (a) a copy of the charge sheet; and
- (b) if the accused so requires, a list of the ranks, names and units of the president and members who are to form the court and of any waiting members.

(6)

When an accused is given a copy of the charge sheet in accordance with this Rule he shall--

- (a) if necessary, have the charge explained to him; and
- (b) be informed that, upon his making a written request to his commanding officer not less than twenty four 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 any such witness at his trial.

(7)

When it is intended to try two or more accused jointly, notice of this fact shall be given to each such accused when he is given a copy of the charge sheet. Any such accused may, before trial, by written notice to the convening authority claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. In such case the convening authority shall, if it is of the opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately.

(8)

When a charge sheet contains more than one charge, the accused may, before trial by written notice to the convening authority claim to be tried separately on any charge in that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening authority shall, if it is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

Part III

ASSEMBLY AND SWEARING OF COURTS

52. Preliminary matters to be considered

(1)

Upon a court assembling the court shall, before commencing the trial, satisfy themselves in closed court--

- (b) that the court has been convened in accordance with the Act and these Rules;
- (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) if there is a judge advocate, that he has been duly appointed;
- (f) that the accused appears from the charge sheet to be subject to service law or otherwise liable to trial by a court-martial and to be subject to the jurisdiction of the court; and
- (g) that each charge is on the face of it correct in law and framed in accordance with these Rules.

(2)

- (a) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court convenes, the president may appoint a duly qualified waiting member to fill that vacancy.
- (b) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening authority.

(3)

If the court is not satisfied on any of the matters mentioned in paragraph (1) and is not competent to rectify such matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening authority thereon.

(4)

When the court has complied with this Rule and is ready to proceed with the trial, the president shall open the court and the trial shall begin.

53. Challenges by accused

(1)

The convening order 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 those officers in accordance with section 108 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 on the court in accordance with paragraph (1) and shall be asked separately whether he has any such objection.

(3)

An accused shall 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 shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection shall 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 on 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 shall 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 shall immediately appoint him to take the place of the officer who has retired.

(10)

The court shall 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 shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this Rule.

(11)

If an objection to the president is allowed the court shall report to the convening authority without proceeding further with the trial.

(12)

If as a 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 authority without proceeding further with the trial and the convening authority may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

54. No right to object to judge advocate, prosecutor or officer under instruction

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

55. Swearing of court and judge advocate

(1)

Immediately after Rule 53 has been complied with an oath or affirmation shall be administered to the president, and each member of the court in accordance with Rule 59 and in the presence of the accused.

(2)

If there is a judge advocate, the oath be administered by him to the president first and afterwards to each member of the court. If 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.

(3)

A court may be sworn or affirmed at one time to try any member of accused then present before it, whether they are to be tried jointly or separately.

(4)

When a court is convened to try two or more accused separately and one accused objects to the president or to any members of the court, the court may, if it thinks fit, proceed to determine that objection in accordance with Rule 53, or postpone the trial of that accused and swear the court for the trial of the other accused only.

56. Swearing of officers under instruction

After the court and judge advocate have been sworn, an oath or affirmation shall be administered to any officer under instruction in the presence of the accused.

57. Appointment and swearing of, and objection to clerk of court, interpreter, shorthand writers and recorders.

(1)

A competent and impartial person may be appointed at any time to act as clerk of court, interpreter, shorthand writer or recorder at a trial by a court and before he so acts an oath or affirmation shall be administered to him in the presence of the accused.

(2)

Before a person is sworn as a clerk of court, an interpreter, a shorthand writer or as a recorder the accused shall be given an opportunity to object to him 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, that person shall not act as clerk of court, interpreter, shorthand writer or recorder.

58. Order of trials

(1)

When a court has been convened to try two or more accused separately and has been sworn in accordance with paragraph (3) of Rule 55, the court shall try them in the order indicated by the convening authority or, where he has given no such indication, in such order as the court thinks fit.

(2)

When a court has been convened to try an accused on charges which are included in more than one charge sheet, the court shall take the charge sheets in the order indicated by the convening authority or, where it has given no such indication, in such order as the court thinks fit.

59. Form of oath or affirmation

An oath or affirmation which is required to be administered under these Rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule to these Rules.

Part IV

ARRAIGNMENT OF THE ACCUSED

60. Arraignment of accused

(1)

When the court and judge advocate have been sworn the accused shall be arraigned by the judge advocate or by the president if there is no judge advocate.

(2)

In arraigning the accused, the judge advocate or president, as the case may be, shall--

- (a) read the charge sheet to the accused; and
- (b) ask the accused to plead guilty or not guilty to each of the charge.

(3)

If the accused refuses to plead, he shall be deemed to have pleaded not guilty.

(4)

If there is more than one charge sheet against the accused before the court, the court shall arraign and try the accused upon the charge in the first of such charge sheets and shall announce its finding thereon and if the accused has pleaded guilty the court shall comply with Rule 69 before it arraigns him upon the charge in any subsequent charge sheet.

61. Plea to the jurisdiction of the court

(1)

The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court. If he does so--

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

(2)

If the court allows the plea it shall adjourn and report to the convening authority.

(3)

When a court reports to the convening authority under this Rule the convening authority shall--

- (a) if it approves the decision of the court to allow the plea, dissolve the court;
- (b) if it disapproves the decision of the court; convene a fresh court to try the accused.

62. Objection to charge

(1)

An accused may, before pleading to a charge, object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules and if he does so, the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2)

If the court upholds the objection, it shall either amend the charge, if permissible under Rule 44, or adjourn and report to the convening authority except that if there is another charge or another charge sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or charge sheet.

(3)

When a court reports to the convening authority, under this Rule, the convening authority shall--

- (a) if it approves the decision of the court to allow the objection :
 - (i) dissolve the court; or
 - (ii) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or
 - (iii) amend the charge to which the objection relates if permissible under Rule 45 and direct the court to try it as amended;
- (b) if it disapproves the decision of the court to allow the objection:
 - (i) where there is another charge or another charge sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or
 - (ii) convene a fresh court to try the accused.

63. Plea in bar of trial**(1)**

An accused may, before pleading to a charge, offer a plea in bar of trial in reliance upon section 144 or 146 of the Act. If he does so--

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

(2)

If the court allows the plea it shall adjourn and report to the convening authority except that if there is another charge or another charge sheet before the court, the court may, before adjourning under this Rule, proceed with the trial of such other charge or other charge sheet.

(3)

When a court reports to the convening authority under this Rule, the convening authority shall--

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

- (i) dissolve the court; or
 - (ii) where there is another charge or another charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only;
- (b) if it disapproves the decision of the court to allow the plea--
- (i) where there is another charge or another charge sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge sheet only; or
 - (ii) convene a fresh court to try the accused.

64. Application for separate trial where accused charged jointly

Where two or more accused are charged jointly, or are charged in the same charge sheet with offences alleged to have been committed by them separately, any one of them may, before pleading to the charge or charges, 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. If the accused makes such an application, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court is of the opinion that the interests of justice so require it shall allow the application and try separately the accused who made it.

65. Application by accused to have charges tried separately

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 that charge sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge. If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address. If the court is of the opinion that the interests of justice so require it shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge sheet.

66. Pleas to the charge

(1)

After any pleas under Rules 61 and 63, any objection under Rule 62, any application under Rules 64 and 65, have been dealt with, the accused shall be required, subject to paragraph (2), to plead either guilty or not guilty to each charge on which he is arraigned.

(2)

Where a court is empowered by section 114 of the Act to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where it could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with Rule 81, the accused may plead guilty to such other offences or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

67. Acceptance of plea of guilty

(1)

If an accused pleads guilty to a charge under paragraph (1) or (2) of Rule 66, the president or judge advocate shall, 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.

(2)

A court shall not accept a plea of guilty under paragraph (1) or (2) of Rule 66 if--

- (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 the case of a plea of guilty under paragraph (2) of Rule 66, a court shall also not accept the plea unless the convening authority concurs and it is satisfied of the justice of such course. The concurrence of the convening authority may be signified by the prosecutor.

(4)

When a plea of guilty under paragraph (1) or (2) of Rule 66 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5)

When a court is satisfied that it can properly accept a plea of guilty under paragraph (1) or (2) of Rule 66, it shall record a finding of guilty in respect thereof.

68. Plea on alternative charges

(1)

When an accused pleads guilty to the first of two or more alternative charges, the court, if it accepts the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2)

When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges, the court may--

- (a) proceed as if the accused had pleaded not guilty to all the charges; or
- (b) with the concurrence of the convening authority (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it in the charge sheet. Where the court records such findings, the prosecutor shall, before the accused is arraigned on it, withdraw any charge which is alternative to the charge of which the court has found the accused guilty and which is placed after it in the charge sheet.

Part V

PROCEDURE AFTER RECORDING A FINDING OF GUILTY

69. Order of trial where pleas of guilty and not guilty

After the court has recorded a finding of guilty, if there is no other charge in the same charge sheet to which the accused has pleaded] not guilty and no other accused who has pleaded not guilty to a charge in that charge sheet, the court shall proceed with the trial as directed by Rule 70. If there is another charge in the charge sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge sheet, the court shall not comply with Rule 70 until after it has dealt with such other charge or tried such other accused and has announced and recorded its finding in respect thereof.

70. Procedure on finding of guilty after plea of guilty

Where the court has recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to Rule 69, inform the court of the facts of the case and the circumstances in which the offence was committed, including facts which show the nature and gravity of the offence and factors affecting mitigation or aggravation and the court shall proceed in the manner prescribed in Rule 86.

Part VI

CHANGES OF PLEA

71. Changes of plea

(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 66) and in such case the court shall, if it is satisfied that it can accept the accused's changed plea under these Rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by Rule 70.

(2)

If 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 shall enter -a plea of not guilty and proceed with the trial accordingly.

(3)

When a court enters a plea of not guilty in respect of any charge under paragraph (2), it shall, if there was a charge laid in the alternative thereto which the prosecutor withdraws under Rule 68, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

Part VII

PROCEDURE ON PLEA OF NOT GUILTY

72. Application for adjournment

After a plea of not guilty to any charge has been entered--

- (a) the court shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these Rules relating to procedure before trial has not been complied with and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence;
- (b) if the accused applies for an adjournment--
 - (i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and
 - (ii) the prosecutor may address the court in answer to the application and the accused

may reply to the prosecutor's address;

- (c) the court may grant an adjournment if it thinks the interests of justice so require.

73. Case for the prosecution

(1)

The prosecutor may, if he wishes, and shall, if required by the court, make an opening address explaining the charge, the circumstances in which it is alleged the offence was committed, and the nature and general effect of the evidence which he proposes to adduce.

(2)

The prosecutor shall then in such order as he sees fit call the witnesses for the prosecution to give evidence.

(3)

When the examination of all the witnesses for the prosecution has been completed the prosecutor shall inform the court that the case for the prosecution is closed.

74. Submission of no case to answer

(1)

At the close of the case for the prosecution, the accused may submit to the court in respect of any charge that the prosecution has failed to establish a prima facie case for him to answer and that he should not be called upon to make his defence to that charge.

(2)

If the accused makes a submission under paragraph (1), the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3)

The court shall then close to deliberate on whether a prima facie case has been made out against the accused.

(4)

The court shall re-open when it has arrived at a decision and--

- (a) if it has been decided that no prima facie case has been made out in respect of a charge, the president shall find the accused not guilty on that charge; or
- (b) if it has been decided that a prima facie case has been made out in respect of a charge, the president shall direct that the trial proceed on that charge.

(5)

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 them on the evidence adduced to make a finding under section 114 of the Act or paragraph (3) of Rule 81.

(6)

If the court allows the submission it shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith; if the court disallows the submission it shall proceed with the trial of the offence as charged.

(7)

Irrespective of whether there has been a submission under this Rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if it does so it shall also announce such finding in open court forthwith.

75. Explanation of rights of accused**(1)**

After the close of the case for the prosecution, the president or judge advocate should explain to the accused that--

- (a) he may give evidence on oath or affirmation as a witness or make a statement without being sworn, or remain silent;
- (b) if he gives evidence as a witness, he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate, but that, if he makes a statement without being sworn or affirmed, no one will be 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)

The president or judge advocate shall then ask the accused if he intends to give evidence on oath or affirmation or to make a statement without being sworn or affirmed and if he intends to call any witness on his behalf, and, if so, whether the witness is a witness to fact or to character only.

(3)

If the accused intends to call a witness to the facts of the case other than himself he may make an opening address outlining the case for the defence before the evidence for the defence is given.

76. Case for the defence**(1)**

After Rule 75 has been complied with, the witnesses for the defence shall be called to give their evidence.

(2)

Where the accused elects to give evidence and to call other witnesses as to facts, the accused shall except in exceptional cases be called before the other witnesses.

(3)

Rules 106 to 108 shall apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

(4)

When the examination of all witnesses for the defence has been completed, the accused shall inform the court that the case for the defence is closed.

77. Calling and recalling of witnesses by court

(1)

When the case for the defence is closed, the prosecutor may, by leave of the court, call or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

(2)

The court may, at any time before it closes to deliberate on its finding or if there is a judge advocate before he begins to sum up, call a witness or recall a witness* if in the opinion of the court it is in the interests of justice to do so. If the court calls a witness or recall a witness under this Rule, the prosecutor and the accused may put such questions to the witness as seen proper to the court.

(3)

The prosecutor and the accused may, at any time before the court closes to deliberate on its finding or if 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 seen proper to the court.

78. Closing addresses

(1)

After all the evidence has been given, the prosecutor and the accused may each make a closing address to the court.

(2)

The accused shall be entitled to make his closing address after the closing address by the prosecutor.

(3)

Where two or more accused are represented by the same defending officer or counsel, one closing address only shall be made.

79. Summing up by judge advocate

After the closing addresses, if there is a judge advocate, he shall--

- (a) advise the court upon the law relating to the case;
- (b) sum up the evidence; and
- (c) advise the court as to any special finding it may make.

Part VIII

FINDING

80. Deliberation on finding on the charge

(1)

After the closing addresses, or if there is a judge advocate after his summing up, the court shall close to deliberate on its finding on the charge.

(2)

While the court is deliberating on its finding on the charge no person shall be present except the president and members of the court and any officer under instruction.

(3)

If 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 and be given such advice in open court.

81. Expression of opinion on and form of finding.

(1)

The opinion of the president and each member of the court as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank.

(2)

Save as is otherwise provided in 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 finding in accordance with section 114 of the Act; or
- (b) a finding of not guilty or of not guilty and honourably acquitted of the charge.

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The opinion of the president and each member of the court as to the finding shall be given in closed court, orally, and on each charge separately and their opinions shall be given in order of seniority commencing with the junior in rank.

(2)

Save as is otherwise provided in 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 finding in accordance with section 114 of the Act; or
- (b) a finding of not guilty or of not guilty and honourably acquitted of the charge.

(3)

Where the court is of the opinion as regards any charge that the facts which 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 which it shall specify in the finding.

(4)

Where the court has recorded a finding of guilty on a charge which is laid in the alternative it shall find the

accused not guilty of any charge alternative thereto which is placed before it in the charge sheet and record no finding on any charge alternative thereto which is placed after it in the charge sheet.

82. Announcement of finding

(1)

The court shall re-open when it has arrived at a decision and it shall announce the finding on each charge.

(2)

The finding shall as far as practicable be in the appropriate form set out in the Seventh Schedule to these Rules.

Part IX

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

83. Completion of procedure on plea of guilty before deliberation on sentence

After the 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 same charge sheet on which the court has accepted a plea of guilty, the court shall comply with Rule 70 in respect of that charge before proceeding with the trial.

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

Where there is another charge sheet against the accused before the court, the court shall not comply with Rules 85, 86 and 87 until it has (complied with Rule 82 and, if necessary, with Rule 83 in respect of each charge in such other charge sheet unless that charge sheet is withdrawn under Rule 43.

85. Release of accused

If the findings on all charges against the accused are not guilty, the court shall order the accused to be released and the president and judge advocate shall date and sign the record of the proceedings. The president or the judge advocate shall then forward it as directed in the convening order.

86. Accused's record and plea on mitigation

(1)

If the finding on a charge against the accused is guilty, or the court makes a finding in accordance with section 114 of the Act, the court before deliberating on the sentence shall whenever possible take evidence of his age, rank and service record.

(2)

The service record shall include--

- (a) any recognised acts of gallantry or distinguished conduct on the part of the 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 which is recorded in the service books relating to the accused and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(3)

Evidence of the matters referred to in paragraphs (1) and (2) 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 such statement and identified the accused as the person to whom it relates. Such statement shall be in the form set out in the Eighth Schedule to these Rules.

(4)

The prosecutor may inform the court of any other matter which in his opinion might tend to increase or decrease the punishment, and shall, if the court so directs, call witnesses to prove that matter. Any witness called shall be subject to cross-examination, re-examination and to questioning by the court.

(5)

The accused may cross-examine any witness who gives evidence in accordance with paragraphs (1), (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 such certified copy, the court shall cause the form to be corrected accordingly.

(6)

After paragraphs (1) to (5) have been complied with the accused may-

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

87. Request by accused for other offences to be taken into consideration

(1)

Before the court closes to deliberate on the sentence, the accused may request the court to take into consideration any other offence against the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seems proper.

(2)

A list of the offences which the court agrees to take into consideration shall be read to the accused by the president or judge advocate, who shall ask the accused if he admits having committed them. The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in the list into consideration. The list shall be signed by the president and be attached to the record of the proceedings as an exhibit.

88. Deliberation on sentence

(1)

The court shall close to deliberate on the sentence.

(2)

While the court is deliberating on the sentence no person shall be present except the president, members, judge advocate and any officer under instruction.

88. Sentence

(1)

The court shall award one sentence in respect of all the offences of which the accused is found guilty, in the

appropriate form set out in the Ninth Schedule to these Rules.

(2)

When the court has agreed to take into consideration an offence which is not included in the charge sheet, the court shall award a sentence appropriate both to the offence of which the accused has been found guilty and to the other offence which it is taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty save that it may include in its sentence a direction that such deductions shall be made from the pay of the accused as it would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

90. Postponement of deliberation on sentence 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 such accused until it has recorded and announced its findings in respect of all of such accused.

91. Announcement of sentence The court shall re-open when it has arrived at a decision and it shall announce the sentence.

92. Reason for finding and sentence The president shall either at once after the announcement of the sentence or on some future date deliver a written judgment.

93. Conclusion of trial When Rule 92 has been complied with, the president shall announce in open court that the trial is concluded.

Part X

PREVIOUS ACQUITTALS OR CONVICTIONS

94. Person not to be tried twice

(1)

Where a person subject to service law has been acquitted or convicted of an offence by a court-martial or by a competent civil court, he shall, while such acquittal or conviction remains in force, not be liable to be tried again by a court-martial or any civil court or a commanding officer or an appropriate superior authority in respect of that offence or for any offence based on the same facts.

(2)

Where a person subject to service law has been acquitted or convicted of an offence by a commanding officer or an appropriate superior authority summarily, he shall not be liable to be tried again by a court-martial or a commanding officer or an appropriate superior authority in respect of that offence or for any offence based on the same facts.

95. Plea of previous acquittal or conviction

(1)

The plea of a previous acquittal or conviction may be pleaded: either orally or in writing.

(2)

Such plea may be pleaded together with any other plea, but the issue raised by such plea shall be tried and disposed of before the issues raised by the other pleas are tried.

Part XI

RECORD OF PROCEEDINGS AND EXHIBITS

96. Record of proceedings

The proceedings of a court-martial shall be recorded in accordance with the following provisions--

- (a) the proceedings shall be recorded in writing in accordance with the appropriate form set out in the Tenth Schedule to these Rules;
- (b) when there is no shorthand writer present the evidence should be taken down in narrative form as nearly as possible in the words used, except where the court, the judge advocate, the prosecutor or the accused considers it necessary that any particular question and answer shall be taken down verbatim;
- (c) when an objection, submission or application is made during a trial at which there is no shorthand writer, a record shall be made of the proceedings relating to such objection, submission or application and in such detail as the court or judge advocate thinks fit, except that if the prosecutor or the accused so requests a note shall be made of the objection, submission or application, the grounds therefor, the advice of the judge advocate thereon and the decision of the court;
- (d) when 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 shall only be necessary to record so much of such address or summing up as the court or the judge advocate thinks proper, except that if the prosecutor or the accused so requests a note shall be made of any particular point in such address or summing up;
- (e) there shall not be recorded in the record of the proceedings any matter not forming part of the trial, but if any comment or report seems to the court to be necessary, the president may forward it to the proper military authority in a separate document.

97. Exhibits

(1)

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

(2)

When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom, with the original and after it has satisfied itself that such copy or extract is correct and the president or the judge advocate has certified thereon 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 shall--

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

When an exhibit is not attached to or kept with the record of the proceedings under sub-paragraph (b) of paragraph (3) the president shall ensure that proper steps are taken for its safe custody.

98. Custody and inspection on record of proceedings during trial

(1)

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

(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, save when he is not present in closed court when they shall be deemed to be in the custody of the president.

(3)

With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded 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.

Part XII

CONFIRMATION, REVISION AND PROMULGATION

99. Confirmation and promulgation

(1)

When a confirming officer receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision thereon and on any sentence and any order which the court may have made under section 149 of the Act, on the record of the proceedings in the appropriate form set out in the Eleventh Schedule to these Rules, and such record of his decision shall form part of the record of the proceedings.

(2)

When a court has accepted a plea of guilty made under Rule 66 (2), the confirming officer may confirm its finding notwithstanding that the court has accepted the plea without the concurrence of the convening officer if, in the opinion of the confirming officer, it is in the interests of justice to do so.

(3)

When a court has rejected a plea to the jurisdiction of the court or a plea in bar of trial or has overruled an objection to a charge, it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates. If he disapproves the decision of the court to reject the plea or to overrule the objection, he shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(4)

A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation where a court has rejected a plea to the jurisdiction or a plea in bar of trial or has overruled an objection to the charge, because he disapproves this decision of the court, he shall when recording his decision under paragraph (1) state that he has withheld confirmation for this reason.

(5)

If the sentence of a court-martial is informally expressed, the confirming officer may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6)

Whenever it appears that there is sufficient evidence or a plea of guilty under either paragraph (1) or paragraph (2) of Rule 66 to justify the finding of the court, such finding and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7)

When a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof, 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. The fact of promulgation shall be recorded on the record of the proceedings in the form set out in the Eleventh Schedule to these Rules. If confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

100. Revision

(1)

The 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 Eleventh Schedule to these Rules, and the president shall date and sign such record and decision and return it to the confirming officer, after it has been signed by the judge advocate, if any.

(2)

When an accused is acquitted on revision the revised finding shall be communicated to the accused in such manner as may be specified by the confirming officer.

Part XIII

PETITIONS

101. Petitions

(1)

If an accused who has been sentenced by a court-martial or who has been found by a court-martial to be unfit to stand his trial or to be not guilty by reason of insanity wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming officer in the appropriate form set out in Twelveth Schedule to these Rules.

(2)

If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to a reviewing authority or an officer authorised to reconsider a sentence of a court-martial under section 128 of the Act at any time within six months of promulgation in the appropriate form set out in Twelveth Schedule to these Rules.

(3)

In any of the circumstances specified in the first column of the list of persons to whom petitions may be

presented under this Rule which is set out in Twelveth Schedule to these Rules a petition under paragraph (2) which is presented to the person specified in relation to those circumstances in the second column of that list shall be treated as having been presented to the authority to whom the petition is addressed.

Part XIV

RESPONSIBILITY OF COURTS, JUDGE ADVOCATE, PROSECUTOR AND DEFENDING OFFICER OR COUNSEL

102. Duties of the president

The president shall ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular--

- (a) ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with the Act and these Rules;
- (b) ensure that the accused does not suffer, any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;
- (c) ensure that an officer under instruction does not express an opinion to the court on any matter relating to the trial before the court has come to its finding, nor on sentence before the court has decided upon the sentence;
- (d) where there is no judge advocate, ensure that a proper record of proceedings is made in accordance with Rule 96 and that the record of the proceedings and exhibits are properly safeguarded in accordance with Rule 98.

103. General duties of judge advocate

(1)

The judge advocate shall be responsible for the proper discharge of his functions to the Judge Advocate General.

(2)

The prosecutor and the accused respectively are at all times after the judge advocate is named to act at the 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.

(3)

On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge-sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise. The court shall accept his advice on all such matters unless they have weighty reasons for not doing so, and if the court do not accept it their reasons for not doing so shall be recorded in the proceedings.

(4)

After the closing addresses the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court close to deliberate on their finding. If in the course of deliberating on their finding the court require further advice from the judge advocate, they shall suspend their deliberation and ask and be given such advice in open court.

(5)

If when the court announce a finding of guilty or a special finding under either section 114 of the Act or Rule 81 (3) the judge advocate is of the opinion that such finding or special finding 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 them. The court shall then reconsider their finding in closed court. The record of the proceedings relating to such reconsideration shall be in the form set out in the Thirteenth Schedule to these Rules.

(6)

The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(7)

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

(8)

The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with Rule 96 and responsible for the safe custody of the record of the proceedings under Rule 98.

104. Judge Advocate sitting alone**(1)**

Where there is a judge advocate and--

- (a) an accused before pleading to a charge offers a plea in bar of a trial; or
- (b) during the course of a trial any question as to the admissibility of evidence arises; or
- (c) during a joint trial an application is made by any of the accused for a separate trial; or
- (d) an application is made by an accused that a charge should be tried separately; or
- (e) an application is made by a party calling a witness for permission to treat that witness as hostile; or
- (f) a submission is made to the court in respect of any charge that the prosecution has failed to establish a prima facie case for an accused to answer;

the president may direct that the point at issue shall be determined by the judge advocate in the absence of the president and the members of the court and of any officer under instruction. 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) hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary. After the judge advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3)

When a judge advocate sits alone in accordance with this Rule the proceedings before him shall form part of the proceedings of the court, and subsection (1) of section 75, sections 76, 110, 115, 116 and 118 of the Act and Rules 59, 77, 96, 97, 98, 105, 106, 107, 108, 109, 110, 111, 113, 114, 118 and 119 shall apply to

proceedings before the judge advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorised 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.

(4)

When a judge advocate is sitting alone in accordance with this Rule and a person subject to service law commits an offence against subsection (1) of section 75 of the Act, the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(5)

The judge advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

105. Duties of prosecutor and defending officer or counsel

(1)

It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court and judge advocate with due respect and to present their cases fairly and in particular--

- (a) to conform with these Rules and the practice of civil courts in Malaysia relating to the examination, cross-examination and re-examination of witnesses;
- (b) not to refer to any matter not relevant to the charge before the court; and
- (c) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2)

Without prejudice to the generality of any of the provisions of paragraph (1) it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

106. Exercise of right of accused

(1)

Any right granted by these Rules to the accused at a court to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court and any right granted to the accused by Rules 51 (6), 51 (7), 51 (8), 53, 57, 61, 62, 63, 64, 65, 72, 74, 87, 96, 98 (3) and 103 (2), may be exercised by his defending officer or counsel on his behalf, and any 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 by the 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 by his defending officer or counsel on his behalf.

(2)

If the accused is to be defended by a counsel not nominated by the convening authority, the accused shall give the convening authority notice of this fact in writing not less than twenty-four hours before his trial.

Part XV

ATTENDANCE, CALLING AND EXAMINATION OF WITNESSES

107. Procuring attendance of witnesses

(1)

A witness who is subject to service law may be ordered by the proper military authority to attend a trial by a court-martial.

(2)

A witness who is not subject to service law may be summoned to attend a trial by a court-martial by an order under the hand of an officer authorised to convene a court or of a staff officer on his behalf, or of the president in the form set out in the Fourteenth Schedule to these Rules and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

108. Swearing of witnesses

Save as is otherwise provided by the Act an oath shall be administered to each witness in accordance with Rule 59 before he gives evidence and in the presence of the accused.

109. Exclusion of witnesses

During a trial a witness other than the prosecutor or accused shall 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 evidence the court may direct the witness to withdraw during such discussion.

110. Examination of witnesses

(1)

A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and 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 shall put his question 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. If such an objection is made, the witness shall not reply until the objection has been disposed of.

(3)

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

111. Examination by court and judge advocate

(1)

The president, the judge advocate and with the permission of the president, any member of the court may put questions to a witness.

(2)

Upon any such question being answered, the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

112. Interview of witnesses

(1)

The prosecutor shall not without the consent of the convening authority, or, after the trial has begun, without the consent of the president, interview any witness whose attendance at the trial the accused has requested in accordance with paragraph (6) of Rule 51.

(2)

Neither the accused nor any person on his behalf shall without the consent of the convening authority, or, after the trial has begun without the consent of the president, interview any witness for the prosecution.

Part XVI

ADJOURNMENT

113. Adjournment

(1)

During a trial, the court may adjourn from time to time and from place to place as the interests of justice require.

(2)

A court may adjourn at any time to consult the convening authority on a point of law.

(3)

If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening authority.

(4)

If at any time during a trial the 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 ascertain the facts of the illness and shall then adjourn and report to the convening authority.

114. View by court

If at any time during a trial before the court closes to deliberate on its finding it appears to the court that it should, in the interests of justice, view any place or thing, it may adjourn for this purpose.

When the court views any place or thing, the president, the members of the court, the judge advocate, the prosecutor, the accused and defending officer or counsel shall be present.

115. Absence of president, members or judges advocate

(1)

If after the commencement of a trial, the president dies or is otherwise unable to attend, the court shall adjourn and the senior member shall report to the convening authority.

(2)

If after 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, shall continue with the trial, but if reduced below the legal minimum the court shall adjourn and the president shall report to the convening authority.

(3)

If a judge advocate who has been appointed to act at a trial dies or is otherwise unable to attend, the court shall adjourn and the president shall report to the convening authority.

(4)

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

(5)

An officer shall not be added to the court after the accused has been arraigned.

CHAPTER VI

MISCELLANEOUS PROVISIONS

116. Minor punishment

A court may award such minor punishments as may be awarded by a Commanding Officer.

117. Suspension of sentence of imprisonment or detention

(1)

A court which passes a sentence of imprisonment or detention of not more than two years may, pursuant to section 135 of the Act, order that the sentence be suspended for a period of not less than one year from the date of the order and in that event the sentence shall not take effect unless during the period of suspension the offender commits another offence.

(2)

An order of court cancelling a suspension order of a court shall be recorded in the record of proceedings in the form set out in the Ninth Schedule to these Rules.

118. Deviations from the forms in the Schedules

A deviation or omission from a form or forms set out in a Schedule to these Rules shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

119. Cases not covered by the Rules

In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

120. Application of General Rules of evidence

Save as otherwise expressly provided in the Act or in any rules made thereunder, the rules of evidence, including the Evidence Act 1950, observed in the trial of criminal cases before the civil courts in the Federation shall in so far as they are not inconsistent with the provisions of the Act or any rules made thereunder apply to the Courts-martial.

121. Cessation

The Rules of Procedure relating to court-martial proceedings made or adopted under the Malay Regiment Enactment, Cap. F.M.S. 42, the Navy Ordinance, 1958 and the Air Force Ordinance, 1958 shall cease to apply to the Federation Armed Forces.

FIRST SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 15 (1))

Unit Address.....,

* EIGHT DAY DELAY REPORT UNDER SECTION 94 (2)

Number, Rank and name of accused.. ..

Date placed in arrest....19

Alleged offence(s) Date of Alleged offence(s)

1. The accused is in arrest

2. The reasons for his retention in arrest are

3. Application for trial

4. Legal Department's advice

5. Legal Department's advice

6. Action on Legal Department'sadvice as follows

7. Date of trial has not yet been fixedhas been fixed as

8. Reasons for delay since last report

Date.....

.....
Rank, name and signature of Commanding Officer

* Insert "1st", "2nd" or "final" whichever the case may be.

Delete where inapplicable.

SECOND SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 22 (1))

Part I SEARCH WARRANT

To 1

(Number, rank, name, unit)

1. You are hereby authorised and required to search for the articles and documents specified in the Annex below in 2 and, if found, to produce the same forthwith before.....3 returning this warrant immediately upon its execution with an indorsement certifying what action you have taken under it.

2. This warrant is valid for a period of... 4

Date 5

Rank, name and signature of 6

President of Court-Martial I

.....
Commanding Officer I Provost Officer

THE ANNEX 7

Part II INDORSEMENT 8

3. I hereby certify that on 9 I conducted a search and in the course of the search, I have seized the following articles and documents.

..... 10

4. The search was conducted in the presence of the undersigned witnesses:

Date 11 12

Number, rank, name, appointment 13

Number, name, address

1 Particulars of person to whom search warrant is directed.

2 Describe the place, building, house or part thereof, to which the search is to be confined.

3 Particulars of the issuing authority.

4 State a reasonable number of days.

5 Date of issue of search warrant.

6 Delete where inapplicable.

- 7 Articles and documents to be seized.
- 8 To be filled by a person who conducted the search.
- 9 Date, time and place of the search.
- 10 List of articles and documents seized and the place in which they were found.
- 11 Date of search.
- 12 Signature and particulars of person who conducted the search.
- 13 Signature and particulars of witnesses.

THIRD SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 35 or 36)

SUMMARY OF EVIDENCE

Summary of evidence in the case of (number, rank, name, 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).....(number, rank, name, unit, or other description), having been duly sworn states:

(Cross-examined by the accused)

Question 1

Answer 1

or

(The accused declines to cross-examine this witness)

.....

.....

(Signature and rank (if any) of witness) or(number, rank, name, unit, or other description).

A written statement of this witness's 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 35(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) or
.....(description)

A written statement of this witness's evidence has been read to the accused and is included in this summary at page.....(The accused does not object to the application of Rule of Procedure 35 (c). (The accused objects to the application of Rule of Procedure 35 (c). (The accused objects to the application of Rule of Procedure 35(c) 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 35(d) reserves his defence.

or

The accused having been duly cautioned in accordance with Rule of Procedure 35(d) elects (to give evidence on oath) (to make a statement without being sworn) and to call a witness(es).

The accused.....(number, rank, name, unit or other description) having been duly sworn states:

(Signature and rank (if any) of accused if he signs
.....(number, rank, name unit or other description)
having been duly sworn states:

(Signature and rank (if any) of witness)

or

.....(number, rank, name, unit

or

other description).

A written statement of this witness's evidence purporting to the 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 35(e)) the attendance of this witness cannot in my opinion be readily procured.

(Signature of officer taking the summary of evidence)

Certified that Rule of Procedure 35 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) of19.....

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

ABSTRACT OF EVIDENCE

Abstract of evidence in the case(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 of witnesses for the prosecution and compiled by me (the commanding officer of the accused) (on the direction of the commanding officer of the accused).

Dated

.....
(Signature and rank)

CERTIFICATE TO BE ATTACHED TO ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED

Certified that I ¹ on the. day of.....19.....handed to the accused ² a copy of the abstract of evidence relating to him dated the.... day of19..... and duly cautioned him in accordance with Rule of Procedure 36 (2) and that (on the..... day of19..... he elected to make and sign the statement which is marked..... and attached to this certificate) (he did not make a statement). (The accused submitted statements of evidence for the defence which are marked..... (respectively) and attached to this certificate).

Dated19.....

.....
(Signature of certifying officer)

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

SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE

To..... ¹

WHEREAS a charge has been preferred against.....
²

AND WHEREAS I have directed a summary of the evidence to be taken at ³ on theday of.....19.....

You ARE PURSUANT TO SECTION 119 OF THE ARMED FORCES ACT 1972 AND RULE 107 OF THE ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976 MADE THEREUNDER SUMMONED and required to attend as a witness the taking of the said summary of evidence at..... ³ on the.... day of 19.....at o'clock in the.....noon and to bring with

you the documents hereinafter mentioned, viz:⁴

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 the 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 documents, strike out the words relating to documents.

FOURTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 39 (5))

ILLUSTRATIONS OF CHARGE-SHEETS

(1)

The following is a specimen of a charge sheet containing two charges:

CHARGE SHEET

The accused No. 100010, Corporal XYZ, 1st Battalion, The Malay Regiment, a serviceman of the regular forces being subject to Service Law under section 209 of the Armed Forces Act 1972 is charged with:

FIRST CHARGE

DRUNKENNESS CONTRARY TO SECTION 60 OF THE ARMED FORCES ACT 1972, in the, he was found drunk at ABC BAR, Jalan Padang Tembak, Kuala Lumpur on... at or about 22.30 hours.

SECOND CHARGE ABSENCE WITHOUT LEAVE FROM SERVICE CONTRARY TO SECTION 55 OF THE ARMED FORCES ACT 1972, in that he,at., absented himself without leave from service from to ...

Camp Batu Garrison Kuala Lumpur

Date

MAJOR M.N.O. Commanding, 1st Battalion The Malay Regiment

Commanding Officer of the Accused To be tried by a Court Martial.

Camp Batu Garrison Kuala Lumpur

Date

BRIGADIER GENERAL ABC Commanding, 1st Infantry Brigade

(2)

The following is a specimen of a charge sheet containing three charges, one of them laid in the alternative:

CHARGE SHEET

The accused No. 1234567/A Private A.B.C., 1st Battalion, The Malay Regiment a regular serviceman, being subject to service law under section 209 of the Armed Forces Act 1972, is charge with:

STEALING ARMED FORCES PROPERTY CONTRARY TO SECTION 61 (a) OF THE ARMED FORCES ACT 1972.

Malacca on,19....., at or about 0100 hours, stole 10 pairs of combat boots, value three hundred dollars (\$300), Armed Forces property.

RECEIVING STOLEN ARMED FORCES PROPERTY CONTRARY TO SECTION 61 (6) OF THE ARMED FORCES ACT 1972, in that he, at Trendak Camp Malacca on, 19....., dishonestly received ten pairs of combat boots, value three hundred dollars (\$300), Armed Forces property, knowing them to have been stolen or to have been dishonestly misappropriated.

ESCAPING FROM LAWFUL CUSTODY CONTRARY TO SECTION 67 OF THE ARMED FORCES ACT 1972, in that he, at Trendak Camp Malacca on, 19, at or about 1735 hours, when in arrest in his Unit Guard Room, escaped therefrom.

Trendak Camp Malacca

Date

MAJOR X.Y.Z. Commanding, 1st Battalion The Malay Regiment

Commanding Officer of the Accused To be tried by a Court Martial.

Trendak Camp Malacca

Date

COLONEL P.Q.R. Commanding, 1st Infantry Brigade

(3)

The following is a specimen of a charge sheet where two accused are charged jointly:

CHARGE SHEET

The accused No. 1234123/E Sergeant B.C.D. and No. 1212121/F Private F.G.H., both of the 22nd Battalion, The Federation Infantry Reserve, reservists, being subject to military law under section 209 (d) of the Armed Forces Act 1972, are charged with:

Both accused jointly.

COMMITTING A CIVIL OFFENCE CONTRARY TO SECTION 88 OF THE ARMED FORCES ACT 1972, THAT IS TO SAY, VOLUNTARILY CAUSING HURT CONTRARY TO SECTION 323 OF THE PENAL CODE (F.M.S. Cap. 45), in that they, at Sungei Besi Camp, Kuala Lumpur on, 19....., or about 1300 hours punched No. 0123123/A P.Q.R., a

civilian.

Private F.G.H. only.

STRIKING A PERSON SUPERIOR IN RANK CONTRARY TO SECTION 49 (a) OF THE ARMED FORCES ACT 1972, in that he, at Sungei Besi Camp, Kuala Lumpur at or about 1300 hours, struck No. 1212121/F Lieutenant M.N.O., Manpower Division.

Sungei Besi camp

Date

LIEUTENANT COLONEL J.K.L.

Commanding, 22nd Battalion

The Federation Infantry Reserve

Commanding Officer of the Accused To be tried by a Court Martial.

Batu Camp Kuala Lumpur

Date

BRIGADIER F.E.D.

Commanding, 2nd Federation

Infantry Reserve Brigade

FIFTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 48)

CONVENING ORDERS FOR A COURT-MARTIAL ORDERS

BY.....¹ Commanding

(Place and date)

The officers as mentioned below shall assemble aton the day of..... 19,..... for the purpose of trying by a court-martial the accused person(s)

President.....³

Members

Waiting Member(s)

Judge Advocate*

The Judge Advocate has been appointed by or on behalf of the Armed Forces Council

or

is hereby appointed judge advocate⁶.

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

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

.....
(Signature, rank, name and appointment of the convening authority)

* Strike out if not applicable.

¹Insert number, rank and name of convening authority.

²Insert number, rank, name, unit or other description of the accused.

³Insert number, rank and unit name of president.

⁴A member or waiting member may be described either by giving his number, rank name and unit or this "A (rank) to detailed by the officer commanding (unit)".

⁵Insert name of judge advocate.

⁶Insert the judge advocate's name and any legal qualifications which he has.

SIXTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 59)

OATHS AND AFFIRMATIONS

(1)

OATHS AT COURT-MARITAL

By President and members:

I swear that I will duly administer justice according to law, without fear or favour, affection or illwill to the best of my ability and I do further swear that I will not, at any time whatsoever, disclose the vote or opinion of the president or any particular member of this Court, unless thereunto required in due course of law. So help me God.

By judge advocate:

I swear that I will discharge the duties of judge advocate without fear or favour, affection or illwill to the best of my ability and I do further swear that I will not, at any time whatsoever, disclose the vote or opinion of the president or any particular member of this Court, unless thereunto required in due course of law. So help me God.

By officer under instruction:

I swear that I will not, at any time whatsoever, disclose the vote or opinion of the president of any particular member of this Court, unless there-

unto required in due course of law. So help me God.

By shorthand writer or recorder:

I swear that I will truly take down to the best of my ability the evidence to be given before this Court and such other matters as may be required, and will, when required, deliver to the Court a true transcript of the same. So help me God.

By interpreter:

I swear that I will to the best of my ability without fear or favour truly interpret and translate as I shall be required to do. So help me God.

By witness:

I swear that the evidence which I shall give shall be the truth, the whole truth and nothing but the truth. So help me God.

(2)

MANNER OF ADMINISTERING OATH:

A person taking the oath shall repeat after the person administering the oath the words of the oath.

(3)

AFFIRMATION

A person making an affirmation shall say to or repeat after the person administering the affirmation the words of the appropriate form of oath except that for the words "I swear" he shall substitute the words "I do solemnly, sincerely and truly declare and affirm", and the words "So help me God" shall be omitted.

SEVENTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 82 (2))

FINDINGS

Acquitted on all charges

not guilty of (the charge) (all the charges).

not guilty of (the charge) (all the charges), and honourably acquit him thereof.

Acquitted on some but not all charges

not guilty of the 1 charge(s) but is guilty of the 1 charge(s).

not guilty of the.....1 charge(s) and honourably acquit him thereof but is guilty of the1 (charge(s).

Conviction on all charges

guilty of (the charge) (all the charges).

Special findings guilty of the..... ¹ charge
 (with the exception of the words.....²) (with the ex-
 ception that²) not guilty of the offence
 charged but is guilty of.....
³ No finding on altern-
 ative charge guilty of the..... ¹ charge; the court records no
 finding on the.....(alternative charge).

Where the accused is unfit to stand his trial unfit to stand his trial.

Acquitted by reason of insanity not guilty by reason of insanity.

¹Insert 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 finding is made under Rule 81 (3).

³State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 114 (2), (3), (5) or (6) of the Armed Forces Act 1972.

EIGHTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 86 (3))

SERVICE RECORDS OF ACCUSED

NumberRank..... Name..... Unit.....

1. He was enlisted on, 19.....
2. ¹He was appointed an officer on, 19
3. He is serving on a ².....
4. His age is..... years.
5. ³ He is single/married/divorced/widowed and has..... children under the age of 16 years.
 His pay isper month.
 His reckonable service towards discharge or transfer to the reserve is: ..years.
 His reckonable service towards pension, gratuity, etc., is.....years.
9. (i) He is entitled to the following declarations and awards:
 (ii) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet:
10. He holds the substantive rank ofwith seniority

from.....19.... and has held the temporary rank of.....continuously since19.....

11. 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.

12. ³ (He is not now under sentence). (He is now under sentence of. ... beginning on,19.... but suspended on19..... and (not yet put into operation again) (put into operation on....., 19.....)).

13. According to his conduct sheets, he has been found guilty by a Commanding Officer of the following offences ⁴:

In the last During his 12 months service

For ⁵timestimes

14. The details, according to his conduct sheets, of offences of which he has been convicted by a court-martial or of which he has been found guilty during his service by a civil court, are set out in the Schedule hereto.

¹ Delete if not applicable.

² Insert the type and length of service.

³ Delete inapplicable wording.

⁴ If there are no entries in his conduct sheets, enter "nil".

⁵ State briefly the offence.

THIS SCHEDULE HEREINBEFORE REFERRED TO ¹

No ...Rank Name of.. Unit

Description of court Date and place of trial Charges on which convicted or found guilty, offences taken into consideration and offences in respect of which trial was dispensed with Sentence or order of the court Punishment

Remitted ² on review

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 the Armed Forces (Detention and Imprisonment) Rules 1976.

NINTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 89)

(A)

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

To be dismissed with disgrace from His Majesty's Service and to suffer death.

To be imprisoned for.....and to be dismissed with disgrace from His Majesty's Service.

To be dismissed with disgrace from His Majesty's Service.

To be dismissed from His Majesty's Service.

To be reduced to the rank of

To take seniority in the rank of in the Malaysian Armed Forces as if his appointment to that rank bore date theday of.....,19.....

To forfeit.....service.

To be dismissed from the ship to which he belonged.

To be fined

To suffer deduction of pay of

To be reprimanded.

To pay compensation of

To forfeit.....days pay.

To forfeit his

To serve reserve service for further.

SERVICEMEN

To be dismissed with disgrace from His Majesty's Service and to suffer death.

To be imprisoned for

To be dismissed with disgrace from His Majesty's Service.

To be dismissed from His Majesty's Service.

To undergo detention for

To undergo field punishment for

To be reduced to the rank of

To take seniority in the rank of in the Federation Armed Forces as if his appointment to that rank bore date theday of....., 19.....

To forfeit..... service.

To be fined.

To suffer deduction of pay of

To be reprimanded.

To forfeitdays pay.

To pay compensation of

To forfeit his.....

To serve reserve service for further.

To be put under stoppage of leave for.....

To be put under restriction of privileges for

To perform extra guards for

To perform extra work and drill for

To be removed from the appointment of officer cadet.

(B) RESTITUTION ORDER

In accordance with section 149 of the Armed Forces Act 1972, I.....² order that.....³ be (delivered) (paid) to⁴

Date

.....

President, Court Martial

¹This order should be made part of the record of proceedings.

² Insert the rank, name and appointment of the President of the Court Martial.

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. If the order directs that property shall be delivered to the person appearing to be the true owner and the title to the property is not in dispute, the following words may be added, "and I direct that this order shall be carried out forthwith".

(C) CANCELLATION OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY

The court hereby orders the accused to be committed to imprisonment/ detention under the sentence passed on him by the Court Martial held aton the, 19..... and directs that sentence and the sentence passed on the accused by this court shall run concurrently/consecut-

ively.

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.

TENTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 96 (1))

A

RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Proceedings of a court-martial held at on the day.... of... 19..... by order of Commanding dated the dayof19.....

PRESIDENT

MEMBERS²

JUDGE ADVOCATE³

THE COURT COMPLIES WITH RULE 52

Trial of ⁴.....not being available ⁵ owing to the president appoints a qualified waiting member to take his place.

The accused is brought before the court.

Prosecutor⁷

Defending (officer)⁶ (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.⁷

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.....⁸

¹ In this form, all references to Rules shall be references to provisions of the Armed Forces (Court-Martial) Rules of Procedure 1976. All inapplicable printed matter should be deleted and initialled by the president or judge advocate. After the pages have been put together they should be numbered on each side consecutively up to the end of the proceedings.

² When a member is not appointed by name the fact that he has been appointed by the C.O. detailed in the convening order should be recor-

ded after the name.

³ Insert judicial appointment or legal qualification.

⁴ Insert the number, rank, name, unit or other description of the accused.

⁵ Rule 52 (2).

⁶ Insert rank, name, unit and legal qualification.

⁷ The convening order should be inserted immediately after page 1 (in the event of a conviction) or D5 (in the event of a total acquittal).

⁸ Delete if not applicable.

B

SWEARING

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

The (following) officers under instruction (listed on page) are duly sworn.

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

A.¹duly sworn as shorthand writer/recorder ?

Q. Do you object to as interpreter?

A.¹duly sworn as interpreter.

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under Rule 61. The proceedings relating to his plea are recorded on page.....²

The accused objects to the charge(s) under Rule 62. The proceedings relating to this objection(s) are recorded on page²

The accused offers (a) plea (s) in bar of trial under Rule 63, in respect of the..... charge(s). The proceedings relating to his plea(s) are recorded on page.....²

The accusedapplies under Rule 64 to be tried separately. The proceedings relating to his application are recorded on page²

The accused applies under Rule 65 to have charges andtried separately. The proceedings relating to his application are recorded on page.....²

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 Delete if not applicable.

PAGE C1

ARRAIGNMENT

The charge sheet is read to the accused and he is arraigned on each charge.¹

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 first² 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?³

A.

Q. Are you guilty or not guilty of the third charge against you which you have heard read?³

A.

Q. Are you guilty or not guilty of the fourth charge against you which you have heard read?³

A.

Q. Are you guilty or not guilty of the fifth charge against you which you have heard read?³

A.

Q. Are you guilty or not guilty of the sixth charge against you which you have heard read?³

A.

The accused having pleaded guilty to the charge(s) Rule 67 is duly complied with in respect of (this) (these) charge(s).³

The accused's pleas to the remaining charges are recorded overleaf.³

¹ (a) Rule 60. (b) The following rules must be borne in mind-- Rules 43, 44 and 60 (4).

² Delete "first" if there is only one charge.

³ Delete if not applicable

PAGE D1

PROCEEDINGS ON PLEA(S) OF NOT GUILTY¹

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 ? ²

A.³

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).⁴

¹ Remove this page if there are no pleas of not guilty

² Rule 72

³ If the accused asked 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.

⁴ Rule 73.

PAGE D2

The witness for the prosecution are called.....being duly sworn/affirmed says:

PAGE D3

The prosecution is closed.

The accused submits under Rule 74 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

DEFENCE

Rule 75 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 summarised below) (hands in a written address which is read, signed by the president markedand attached to the record).

¹ Remove this page if there are no pleas of not guilty.

² Delete if not applicable.

³ Delete if the accused does not intend to call witnesses as to fact, other than himself.

PAGE D4

(Where the accused makes a statement without being sworn).¹

The accused (makes a statement, which is recorded on page.....) (hands in a written statement which is read, marked.....and signed by the president and attached to the record). (Where evidence on oath is given for the defence).¹

The witness for the defence (including the accused if sworn) are called.....being duly sworn¹/affirmed says:

¹ Delete this paragraph if not applicable.

PAGE D5

The(makes a closing address which is summarised on page)
(hands in a closing address which is read, marked signed by the president and attached to the record).²

The (makes a closing address which is summarised 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.....³

FINDINGS 1

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

The court finds that the accused⁴is:⁵

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")³ (is) (are) announced.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES³

The accused is released.

Signed at³this day..... of..... 19.....

¹ Delete this page if not applicable.

² For order of addresses see Rule 78.

³ Delete if not applicable.

⁴ Insert the number, rank, name, unit or other description of the accused.

⁵ Set out the finding on each charge in the appropriate form set out in the Seventh Schedule to the Rules.

PAGE E

PROCEEDINGS ON PLEA(S) OF GUILTY

The accused ² is found guilty of ³.....

The finding(s) (is) (are) read in open court and (is) (are) announced.

The prosecutor informs the court of the facts of the case and the circumstances in which the offence was committed, including facts which show the nature and gravity of the offence and factors affecting mitigation or aggravation.

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 Seventh Schedule to the Rules.

PAGE F

PROCEEDINGS ON CONVICTION

The prosecutor calls evidence as to the accused's character and record ¹ 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 the witness (and the cross- examination is recorded on pages).

¹ Rule 86.

PAGE G

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.....

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

A.

The ¹ (makes an address in mitigation of punishment, which is summarised (below) (on page.....) (hands in an address in mitigation of punishment, which is read, marked, signed by the president and attached to the record). ²

The list of offences which the court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked, signed by the president and attached to the record. ³

¹ Insert "accused", "defending officer" or "counsel" as the case may be.

² Delete this paragraph if not applicable.

³ Delete this paragraph if the accused has not requested other offences to be taken into consideration

PAGE H

SENTENCE 1

The court sentences the accused ².....to ³

Sentence ⁴

ANNOUNCEMENT OF SENTENCE

The court being re-opened, the accused is again brought before it. The sentence is announced in open court.

¹ Remove this page if not applicable.

² Insert the number, rank, name, unit or other description of the accused.

³ Record the sentence in the appropriate form of words set out in the Ninth Schedule to the Rules.

⁴ Insert type of sentence in margin only and not amount.

PAGE I

JUDGEMENT

The judgement(s) of the court is/are read:

The president announces that the trial is concluded.

Signed at thisday.... of....., 19.....

Judge Advocate President.

ELEVENTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 99 (1) and (7))

(A)

CONFIRMATION

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 125 of the Armed Forces Act 1972, but (remit ¹.....) (commute ²

I confirm the court's finding(s), sentence and order under section 125 of the Armed Forces Act 1972, but mitigate the sentence so that it shall be as follows: ³

I vary the sentence so that it shall be as follows... and confirm the finding and sentence as so varied. ⁴

I confirm the finding(s) and sentence but (postpone the carrying out of the sentence of .until.....) ⁵ suspend the sentence of.....).

I confirm the finding(s) but substitute the sentence of for the sentence of the court. ⁶

I substitute a finding of for the finding of the court and confirm the sentence but (remit ¹.....) (commute ²..).

I substitute a finding of..... for the finding of the court on the, charge and confirm the findings(s) of the court on the ..charge(s) and the sentence.

Not confirmed (on the grounds that). ⁷

I confirm the finding(s) of the court on the.....charge(s) but do not confirm their finding(s) on the charge(s) (on the grounds that) ⁷

I confirm the sentence but (remit*) (commute²...). I refer the finding(s) and sentence to ⁸ 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 ⁸ for confirmation.

I confirm the finding(s) of the court but refer the sentence to ⁸ for confirmation. (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

.....
(Signature, rank and appointment of confirming officer) ⁹

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 have expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.

⁵ Insert the date or event to which the carrying out of the sentence is postponed.

⁶ This form of words is appropriate when the court have passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.

⁷ 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.

⁸ Insert the appointment of the higher authority to whom the matter is to

be referred.

⁹ The rank and appointment of the confirming officer should be clearly stated after or under his signature.

(B)

DETERMINATION BY A CONFIRMING OFFICER OR REVIEWING AUTHORITY OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY

I,.....(the confirming officer) (the reviewing authority) hereby order the accused to be committed to (imprisonment) (detention) under the sentence passed on him by the court-martial held aton the.....day of.....19and direct that that sentence and the sentence passed on the accused by (this court-martial) (the court-martial held at on.. .day of.....19.....) shall run (concurrently) (consecutively).....(date)(signature)

1. When the confirming officer is making the determination this form of words should be inserted in the record of the proceedings of the court-martial in the confirming officer's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation

(C)

PROMULGATION

Promulgated and extracts taken at.....(place) this day..... of....., 19.....

.....

(Signature, rank and appointment of officer making the promulgation)

TWELFTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 101)

PETITIONS

(1)

PETITIONS.

(2)

LIST OF PERSONS TO WHOM PETITIONS MAY BE PRESENTED.

Petition to confirming officer (before confirmation)

To the confirming officer, I,¹ having been convicted by court-martial on ² at.....³ and having been sentenced to hereby petition against the finding(s) on the charge(s)⁴ and the sentence⁵ on the following grounds:

Signed.....⁶

Dated.....

Petition to reviewing authority (after promulgation)

To..... ⁸

I, ¹ having been convicted by court-martial on ² at
³ and having been sentenced to.: and having had the finding(s) and
sentence promulgated to me on..... ⁷ hereby petition against the
finding(s) on the.....charge(s) ⁴ and sentence ⁵ on the following
grounds:.....

Signed ⁶

Dated.....

¹ Insert the accused's number, rank, name, unit 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 ne-
cessary, 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.

(3) LIST OF PERSONS TO WHOM PETITIONS MAY BE PRESENTED

(4) Circumstances Person to whom a petition may be presented

1. Petitioner serving in or in custody on board a ship Captain of the ship
2. Petitioner in custody on board a ship other than one of the ships Of-
ficer commanding forces on board
3. Petitioner serving with an army or air force unit Officer commanding
the unit
4. Petitioner confined in naval detention quarters Officer in charge of the
naval detention quarters
5. Petitioner confined in military or air force establishment Commandant
of such establishment
6. Petitioner confined in a civil prison Superintendent of the prison

THIRTEENTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 103 (5))

RECORD OF RECONSIDERATION OF FINDING

The judge advocate advises the court that the finding(s) on the ¹ 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:.....²

The court is closed for reconsideration of finding.

The court on reconsideration find that the accused is ³.....

The finding(s) on reconsideration (is) (are) read in open court and (with the exception of the finding(s) of "not guilty" ⁴) (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.

FOURTEENTH SCHEDULE

ARMED FORCES ACT 1972

ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976

(Rule 107 (2))

SUMMONS TO WITNESS

To ¹

WHEREAS a court-martial (has been ordered to assemble at.....²) (has assembled at.....²) on the dayof....., 19.... for the trial of ³ on the following charge(s):.....⁴

YOU ARE PURSUANT TO SECTION 119 OF THE ARMED FORCES ACT 1972 AND RULE 107 OF THE ARMED FORCES (COURT-MARTIAL) RULES OF PROCEDURE 1976 HEREBY SUMMONED and required to attend, as a witness before the said Court at.....on..... the.....day of....., 19..... at o'clock in the.....noon⁵ to testify as to what you know concerning the charge(s) made against the said accused and to have with you then and there any documents in your possession or control relating to the charge(s) and more particularly the documents hereafter mentioned, viz⁶

.. and so to attend from day to day until you are excused by the Court; whereof you shall fail at your peril.

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

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

An officer authorised to convene a court-martial*.

President of the court*⁷ authorised to sign for⁸

An officer authorised to convene a court-martial⁹.

¹ Insert name and address of the persons to whom the summons are to be sent.

² Insert place

³ Insert number, rank, name, unit or other description of the accused.

⁴ State the offence(s) concisely with time and place.

⁵ Insert "fore" or "after".

⁶ Delete words relating to documents if witness is not required to bring any documents.

⁷ Insert appointment of staff officer who signs.

⁸ Insert the appointment of the officer for whom the staff officer is signing

⁹ Strike out if not applicable.

Made this 10th day of May, 1976.

[KP. 2759 Jil. 3/(8); PN. (PU²) 140.]