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## Umbutfo Swaziland Defence Force Order, 1977

### Kings Order in Council 10 of 1977

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/order-in-council/1977/10/eng@1998-12-01

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## eSwatini

# Umbutfo Swaziland Defence Force Order, 1977

## Kings Order in Council 10 of 1977

Assented to on 25 February 1977

Commenced on 6 May 1977

*[This is the version of this document at 1 December 1998.]*

A King's Order-in-Council to provide for the establishment of the Umbutfo Swaziland Defence Force of which the King is to be the Commander-in-Chief and for other allied and incidental matters thereto and for the repeal of the Armed Forces Order, No. 5 of 1973.

### Part I – General

#### 1. Short title and commencement

This King's Order-in-Council may be cited as The Umbutfo Swaziland Defence Force Order, 1977, and shall come into force on a day to be appointed by the Prime Minister by notice in the *Gazette*.

#### 2. Interpretation

(1) In this King's Order-in-Council any reference to the King is to His Majesty the King as Head of State and as the Ngwenyama of the Swazi Nation.

(2) In this King's Order-in-Council unless the context otherwise requires—

“**Army Commander**” means the officer appointed under [section 9\(3\)](#);

“**Cadet Force**” means the Cadet Force established under [section 8](#);

“**Code**” means the Military Discipline Code set forth in the Second Schedule hereto;

“**Commanding officer**” in relation to a member of the Defence Force means a prescribed officer having powers to command over such person;

“**confirming officer**” in relation to a member of the Defence Force means a person who has power to confirm the conviction and sentence of a court martial;

“**Council**” means the Defence Force Council established under [section 10](#);

“**Constabulary**” means the Constabulary Force established under [section 7](#);

“**Court**” means any court of competent jurisdiction;

“**Court Martial**” means a court established under [section 25](#);

“**decorations**” includes a medal, medal ribbon, clasp and a good conduct badge;

“**Date of attestation**” in relation to any person means the date on which he took oath as a member of the Defence Force in accordance with Section 5 of the Order;

*[Added A.5/1993]*

“**Defence Council**” means the Defence Council established under [section 10](#);

“**Defence Force**” means the Umbutfo Swaziland Defence Force established under [section 3](#);

“**enemy**” includes all persons engaged in armed operations against any of the Defence Forces;

“**non-commissioned officer**” means a member of the Defence Force holding a rank of a staff sergeant, sergeant, corporal or lance corporal or a rank corresponding to any such rank;

“**officer**” means a commissioned person in the Defence Force or a person attached or seconded as a commissioned officer to the Defence Force;

“**Permanent Force**” means the permanent forces established under [section 5](#);

“**police officer**” means a member of the Royal Swaziland Police Force established under Act [No. 29 of 1957](#);

“**Reserve**” means the reserve established in terms of [section 6](#);

“**service**” used adjectively means belonging to or connected with the Armed Forces;

“**serviceman**” means any member in the service of the Defence Force who is not an officer;

“**Unit Commander**” in relation to a person charged with an offence, means the officer for the time being commanding the unit or detachment to which the person belongs or is attached;

*[Added A.5/1993]*

“**visiting force**” means a military force of any country present in Swaziland at any time with the consent of the King acting with a member of the Defence Force;

*[Amended A.5/1993]*

“**warrant officer**” means a member of the Defence Force holding the rank of warrant officer class I or II or a rank corresponding to any such rank.

- (3) Save where otherwise provided any reference in this Order—
- (a) to a particular rank or to such rank in the Defence Force;
  - (b) to a person holding a particular rank;
- includes reference to a person acting in such rank.

## Part II – Establishment and command of the Defence Force

### 3. Establishment of the Defence Force

- (1) There is hereby established the Umbutfo Swaziland Defence Force, which shall consist of all or any of the following units, namely, the Swaziland Army, the Swaziland Air Force and the Swaziland Navy, and which shall not exceed such strength as may from time to time be determined by the King, and they shall rank in precedence in that order.
- [Amended K.O-I-C. 29/1978]*
- (2) The Defence Force is charged with the defence of the Kingdom of Swaziland and the support of the civil power in the maintenance of order and the performances of such other functions and duties as may from time to time be assigned to it by the King.
- [Amended K.O-I-C. 29/1978]*
- (3) The King shall be Commander-in-Chief of the Defence Force and shall be responsible for its operational use.
- (4) The King may, after consultation with the Council, order any unit of the Defence Force to be employed outside Swaziland.
- (5) The King in consultation with the Council, may order any member of the Defence Force to proceed to a place outside Swaziland for the purpose of undergoing instruction or training or for other duties or employment, in time of peace, war or insurrection.

#### 4. Composition of Defence Force

The Swaziland Army, Air Force and Navy comprising the Defence Force of Swaziland shall each consist of the following units—

- (a) a permanent force;
- (b) a voluntary force;
- (c) a reserve, consisting of—
  - (i) permanent reserve; and
  - (ii) a voluntary reserve;should it be established under the authority of the King.
- (d) a cadet force, should it be established under the authority of the King;
- (e) a constabulary.

#### 5. The Permanent Force

- (1) The Permanent Force shall consist of persons of the ages of 18 to 35 years, recruited on a voluntary basis or, if in the opinion of the King circumstances so demand, on a conscription basis.
- (2) The Permanent Force shall be organised in such manner as the King in consultation with the Army Commander may prescribe by regulation:

*[Amended K.O-I-C. 29/1978]*

Provided that until any regulations are made under this Order, such Force shall be organised in accordance with the Armed Forces Order No. 5 of 1973.

- (3) Every member of the Permanent Force shall be bound to serve therein until he has attained the age of 35 years or he has been discharged therefrom.
- (4) Any member of the Permanent Force may obtain his discharge therefrom by purchase on such terms and conditions as the King may prescribe by regulation.
- (5) Every member of the Permanent Force shall on enlistment take an oath of allegiance in the form set out in the First Schedule hereto.
- (6) Subject to subsection (7) hereof no person who is not a citizen of Swaziland shall be enlisted as a member of the Permanent Force.
- (7) The King may attach to the Permanent Force any person who is not a citizen of Swaziland on such terms and conditions as he may determine.
- (8) A member of the Permanent Force shall be entitled to such pay, allowance, pension or gratuity, leave or other benefits as the King in consultation with the Army Commander may determine.

*[Amended K.O-I-C. 29/1978]*

#### 6. Reserve

- (1) The King may establish a Reserve which shall consist of—
  - (a) persons transferred by him from the Permanent Force on such terms and conditions as he may determine; and
  - (b) such other persons as may be specially enlisted for service therein.
- (2) Section 5(5) shall apply to every member of the Reserve enlisted under subsection (1)(b).

- (3) Every member of the Reserve enlisted under subsection (1)(b) shall be liable to undergo military training in a military camp or military institution designated by the King for such purpose.
- (4) Any member of the Permanent Force on whom a commissioned rank has been conferred shall on being transferred to the Reserve retain his commissioned rank.
- (5) The Reserve or a portion or member thereof shall perform such functions as the King may assign to it.

*[Amended K.O-I-C. 29/1978]*

- (6) Every member of the Reserve to whom the function of strengthening or supporting the Permanent Force has been assigned under subsection (5) shall serve in the Permanent Force until his service therein is no longer required and whilst he is so serving, shall be deemed to be a member of the Permanent Force for all intents and purposes.
- (7) A member of the Reserve shall be entitled to such pay allowance, pension or gratuity, leave or other benefits as the King may determine.

*[Amended K.O-I-C. 29/1978]*

## 7. Constabulary

- (1) The Constabulary shall consist of members of the Permanent Force to whom the King in consultation with the Army Commander has assigned police functions.  
*[Amended K.O-I-C. 29/1978]*
- (2) Every member of the Constabulary shall in the execution of his duties as such have all such powers and functions as are by law conferred on a police officer, and shall in respect of any act be liable to the same extent as a police officer would be liable in like circumstances and shall have such indemnities as a police officer would have in like circumstances.

## 8. The Cadet Force

- (1) Subject to [section 4\(d\)](#) the Cadet Force shall be organised in such manner as the King in consultation with the Army Commander may prescribe by regulation.  
*[Amended K.O-I-C. 29/1978]*
- (2) Every citizen of Swaziland of the age of 18 years or more who is a scholar or a student at a school, university, college, or other educational institution in Swaziland shall be liable to undergo military training as a cadet.
- (3) Every member of the Cadet Force shall be subject to such Cadet disciplinary code as the King in consultation with the Army Commander may prescribe.  
*[Amended K.O-I-C. 29/1978]*
- (4) The military training to be undergone by members of the Cadet Force shall be given at such places and by such persons as the King in consultation with the Army Commander may determine.  
*[Amended K.O-I-C. 29/1978]*
- (5) The King may call out the Cadet Force, or a portion or a member thereof to perform such functions as he in consultation with the Army Commander may assign to it.  
*[Amended K.O-I-C. 29/1978]*



## 9. Commander-in-Chief

- (1) The King shall be the Commander-in-Chief of the Defence Force, and as such, shall do or cause to be done all things which in his opinion are necessary for the defence of the Kingdom of Swaziland or for the prevention or suppression of any internal disorder or insurrection in Swaziland.
- (2) Without derogating from the generality of the foregoing the King may—
  - (a) appoint such military councils as he may deem necessary;
  - (b) appoint such military officers as he may deem necessary and confer on such officers such commissioned ranks as he may deem necessary;
  - (c) terminate the services of any member of the Defence Force;
  - (d) call out any force or person to service in defence of the Kingdom of Swaziland in time of war or for service in the prevention or suppression of internal disorder or insurrection in Swaziland.
- (3) The King in his capacity as Commander-in-Chief may appoint—
  - (a) an officer to be Army Commander of the Defence Force who shall be chief of the defence forces and who until the King revokes his appointment or appoints someone else, be the person appointed under [Legal Notice No. 111 of 1975](#);
  - (b) for each service of the Defence Force an officer to be a commander of such service, with such rank as the King may consider appropriate.

## Part III – Defence Council Colonel-in-Chief and Commander

### 10. Defence Council

- (1) There is hereby established a Defence Council which shall consist of eight (8) members or more, who shall be appointed by the King at his pleasure on such terms and conditions as he may stipulate:

Provided that the members of the Defence Council appointed under [General Notice No. 40 of 1975](#) shall remain in office until removed by the King as if appointed under this subsection.
- (2) The Council shall elect one of its members as Chairman of such Council and others as vice-chairman, secretary and vice-secretary, respectively.

*[Subsections (3) and (4) repealed by K.O-I-C. 29/1978]*

Provided that the exercise of powers and the performance of duties specifically conferred or imposed on the Council by this Order may not be assigned under this subsection.
- (5) The Council may make standing instructions providing for—
  - (a) the organisation of the work of the Council, the manner in which it may perform its functions, subject to any assignment of responsibility by the Council under subsection (4);
  - (b) the procedure to be followed by the Council in conducting its business; and
  - (c) all matters which the Council may consider it necessary or desirable to provide for, in order to secure the better performance of the functions of the Council.

*[Please note: numbering as in original.]*
- (6) Any acts of the Council may be signified by command of the Council, under the hand of the Chairman of the Council.

- (7) The Council shall, subject to the powers of the King as Commander-in-Chief of the Defence Force and to this Order, be responsible to advise the King on all matters concerning the Defence Force and shall perform such other functions and duties as are given to it by this Order.
- (8) The Council appointed by the King under the Armed Forces Order No. 5 of 1973 shall be deemed to have been appointed under this Order.

## 11. Establishment of training centres and institutions

The King/Ngwenyama may establish such training centres and institutions in Swaziland as it may deem fit.

## 12. Army Commanders

- (1) Subject to this Order, the Army Commander, shall subject to the general directions of the King, be responsible for the control, direction and general superintendence of the Defence Force.
- (2) Subject to the directions of the Army Commander each commander shall have a command and the administration of the service of which he is a commander.
- (3) The Army Commander and each of the commanders may delegate to an officer under his command any of his powers under this Order, except a power of delegation for the exercise of which specific rank seniority or qualifications are stipulated by this Order.

## Part IV – Commissioning of officers and enlistment and discharging of officers and servicemen

## 13. Granting of Commissions

- (1) The King may in consultation with the Army Commander grant a commission in the Defence Force to any citizen of Swaziland.  
*[Amended K.O-I-C. 29/1978]*
- (2) Every person who is granted a commission shall immediately thereupon take an oath of allegiance in the form set forth in the First Schedule hereto.

## 14. Terms of Commission

- (1) A commission granted in terms of [section 13](#) may be either a regular commission or a short-service commission.
- (2) A short-service commission shall in the first instance not exceed five (5) years.
- (3) An officer holding a regular commission who retires from the Defence Force with a pension or gratuity shall automatically thereupon be transferred to the Permanent Reserve established in terms of [section 4\(c\)\(i\)](#) and shall serve in it until the age of—
  - (a) 60 years in the case of an officer retiring with the rank of
    - (i) Colonel or corresponding rank or higher;
    - (ii) Lieutenant Colonel or corresponding rank or lower;
  - (b) 50 years in the case of an officer retiring with the rank of Major or corresponding rank or lower.

*[Replaced A.5/1993]*

- (4) An officer holding a short-service commission who completes the terms of his commission with a pension or gratuity shall on such completion be transferred to the permanent reserve on which he shall remain for a period of three years.

## 15. Termination of commission

The King may in consultation with the Army Commander at any time terminate the commission of an officer.

*[Amended K.O-I-C. 29/1978]*

## 16. Recruiting officers

Any person authorised in that behalf by the Ngwenyama/King may recruit servicemen into the Defence Force in the prescribed manner:

*[Amended K.O-I-C. 29/1978]*

Provided that the provisions of [Legal Notice No. 103 of 1975](#) shall apply until revoked or amended by the King.

## 17. Enlistment

- (1) Any person enlisting in the Defence Force shall complete the questions on a prescribed form to be answered on attestation which form shall state the general conditions of enlistment.
- (2) No recruiting officer shall recruit any person as a serviceman unless such person Satisfies him that he has seen the said form, understands it and wishes to enlist.
- (3) No recruiting officer shall recruit a person under the apparent age of 18 years without the written consent to the enlistment of his father or guardian, or if his father or guardian is dead or unknown, by the District Commissioner or by the Chief of the District or area in which such person resides.
- (4) No recruiting officer shall recruit a person who is not a citizen of Swaziland.
- (5) On attestation a person enlisting shall take the oath of allegiance in the form set out in the First Schedule hereto.
- (6) In the event of a dispute as to the age of a person desiring to enlist such dispute shall be referred to the Army Commander and his decision shall be final.

## 18. Period of enlistment

The period for which a person may be enlisted shall be prescribed by the King in such manner as he deems fit.

## 19. Prolongation of Service

The King may in consultation with the Army Commander prolong the term of service of any servicemen.

*[Amended K.O-I-C. 29/1978]*

## 20. Discharge of service

A serviceman may be discharged by the King in consultation with the Army Commander at any time during his period of service—

*[Amended K.O-I-C. 29/1978]*

- (a) if, within two years, after the date of his attestation his commanding officer considers that he is unlikely to be an efficient member of the armed forces;

- (b) for activities or behaviour likely to be prejudicial to the preservation of public security;
- (c) if he is convicted of an offence under the civil law without the option of a fine;  
*[Amended A.5/1993]*
- (d) if he is pronounced by a medical officer to be mentally or physically unfit for further service;
- (e) on reduction of establishment;
- (f) at his own request on compassionate grounds;
- (g) if for any reason his services are no longer required;
- (h) if he is granted a commission; or
- (i) if he is sentenced by court martial to be dismissed from the armed forces.

## 21. Right to discharge on reduction to ranks

A warrant officer who is reduced to the rank of private or corresponding rank may thereupon claim to be discharged, except during a state of war, insurrection, hostilities or public emergency or at a time when he is on active Service.

## 22. Mode of discharge

- (1) Subject to this Part, every serviceman becoming entitled or liable to be discharged shall be so discharged with all convenient speed, but until discharged he shall remain subject to this Order.
- (2) When a serviceman who is entitled or liable to be discharged is serving outside Swaziland, he shall be returned to Swaziland free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within six months after his arrival.
- (3) A serviceman shall not be discharged unless his discharge has been authorised by order of the competent service authority.
- (4) Every serviceman shall be given on his discharge a certificate of discharge containing the prescribed particulars.
- (5) A serviceman who is discharged in Swaziland shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested, or to any place in Swaziland at which he intends to reside and to which he can be conveyed at no greater cost.
- (6) A soldier of the Permanent Force shall on being discharged under [section 20](#), be transferred to the Reserve Force and shall serve in the Reserve Force for a period of five (5) years from the date of such discharge or until he attains the age of fifty (50) years whichever period is the shorter.

*[Added A.5/1993]*

## 23. Validity of attestation and enlistment

- (1) If a person has made the prescribed declaration upon his attestation and has thereafter received pay as a serviceman—
  - (a) the validity of his enlistment shall not be called in question on the grounds of any error or omission in his attestation paper;
  - (b) after the expiry of three months from the date on which he made the declaration, he shall be deemed to have been validly enlisted notwithstanding any non-compliance with the requirements of this Order or any other matter whatsoever (not being an error or omission in his attestation paper), and he shall be a serviceman until his discharge.

- (2) If a person has received pay as a serviceman without having previously made the prescribed declaration upon his attestation—
  - (a) he shall be a serviceman until discharged;
  - (b) he may claim to be discharged at any time within three months after the first day in respect of which he has received pay.
- (3) Nothing in this section shall prejudice the determination of any question as to the term for which a person enlisted or prevent the discharge of a person who has not claimed his discharge.

## **Part V – Discipline, courts and procedures**

### **24. Discipline, courts and procedures**

- (1) The provisions of the Second Schedule together with the rules made under subsection (3) shall comprise, and may for all purposes be cited as, the Military Discipline Code.
- (2) The King may in consultation with the Army Commander by notice in the *Gazette* insert any new provision in or amend or repeal any provision of the Second Schedule.  
*[Amended K.O-I-C. 29/1978]*
- (3) The King may in consultation with the Army Commander, make, alter or repeal, such rules for giving effect to the Second Schedule as he may deem necessary or expedient or as may be provided for in such Schedule.  
*[Amended K.O-I-C. 29/1978]*
- (4) No rule or alteration or repeal of a rule made under subsection (3) shall come into operation until a period of 30 days from the date of promulgation hereto has elapsed.
- (5) The Code shall to the extent and subject to the conditions prescribed therein, apply to all members of the Defence Force:

*[Proviso deleted by K.O-I-C. 29/1978]*

### **25. Court Martial**

There is hereby established a Court Martial which is empowered to try any person for an offence under the military laws of Swaziland or review investigations in respect of such offences, and which shall consist of a chairman and such other persons as may be appointed by the King in consultation with the Council from time to time.

### **26. Jurisdiction of courts**

- (1) Any court may try any person for an offence under the Code and may impose any punishment which may be imposed for that offence under the Code and is within its jurisdiction.
- (2) Any person who has been tried by a court for an offence under the Code shall not be tried for that offence by a Court Martial.
- (3) In a trial of a person by a court for an offence, a previous conviction of such person by a Court Martial for a similar offence shall be a previous conviction of such court.
- (4) A Court Martial may try any person for an offence under this Order or the Code.

## 27. Arrest and detention of persons for military offences

Any person who has committed an offence, or is suspected on reasonable grounds to have committed an offence, under this Order or the Code may be arrested by a Constabulary and detained in a place designated by the King for such purpose.

## Part VI – Visiting forces

### 28. Discipline and administration

- (1) Any visiting force shall be subject to its discipline military Code, the jurisdiction of its Martial Court and the administration of its commanding officers.
- (2) The King may attach to any of the units established under [section 3](#) a member of a visiting force for the purpose of performing therein any functions assigned by him to such member.
- (3) Any member of a visiting force to whom certain functions have been assigned under subsection (2) shall be subject to this Order and shall have such powers of command and punishment over members of the Defence Force as members of the Defence Force of an equivalent rank have.
- (4) If the Defence Force or a portion thereof is required to act in cooperation with a visiting force or a portion thereof, the King may place the Defence Force or a portion thereof under the command of a member of the Defence Force or the visiting force who is senior in rank to other officers of the Defence Force or the visiting Defence Force, as the case may be.
- (5) No member of a visiting force shall be charged in a court or a Court Martial in Swaziland unless at the request of the competent authority of such visiting force who shall bear the expenses incidental thereto.

## Part VII – Offences

### 29. Offences

Any person shall be guilty of an offence and shall be liable on conviction to imprisonment for 5 years or a fine of two thousand emalangeni or both if he—

- (a) wears or uses any uniform of the Defence Force unless he is a member thereof or has been permitted to do so;
- (b) wears or uses any military decorations unless he is authorised to wear or use such decoration;
- (c) uses in any manner whatsoever the name, title or description purporting to have been established under this Order if it has not been so established;
- (d) publishes in any manner whatsoever any information relating to the composition, movements or disposition of the Defence Force;
- (e) takes photographs, makes any plan, sketch or note of a military camp or military arms, if he is not authorised to do so;
- (f) wilfully obstructs or interferes with any member of the Defence Force in the execution of his lawful duties;
- (g) agrees with or induces or attempts to induce a member of the Defence Force to neglect or act in conflict with his duties in the Defence Force;
- (h) supplies any member of the Defence Force with intoxicating liquor when such member is on duty or is otherwise prohibited from taking liquor;

- (i) falsely holds himself in any manner whatsoever to be a member of the Defence Force;
- (j) sues, lends, pledges or otherwise disposes of any article entrusted to him for service in the Defence Force or as a result of his negligence loses such article;
- (k) neglects, or evades his duties in the Defence Force.

## **Part VIII – Miscellaneous**

### **30. Order of precedence**

- (1) Officers, warrant officers, non-commissioned officers and members of the Defence Force below the rank of non-commissioned officers shall stand in relation to one another in order of precedence in which they are named in this section.
- (2) Officers, warrant officers and non-commissioned officers of the same rank shall among themselves stand in the order of precedence and command according to any order which the King may make or, if no such order has been made, according to their seniority determined with reference to their respective appointments to the ranks concerned.

### **31. Particulars to be given by members of the Defence Force**

- (1) Every member of the Defence Force on enlistment and every officer on being commissioned shall give particulars of the place and district where he ordinarily resides and the name and address of his next of kin and a record thereof shall be kept at the headquarters of the Defence Force.
- (2) Every member of the Defence Force or officer shall report to the headquarters of the Defence Force any change in the particulars furnished under subsection (1).

### **32. Disposal of uniform and decorations on the death of a member of the Defence Force**

Upon the death of a member of the Defence Force, such of his uniform and decorations as may be found, shall be delivered to the headquarters of the Defence Force and shall be disposed of in the manner prescribed by regulations.

### **33. Limitation of actions**

No civil action shall be capable of being instituted against the Government or any person in respect of anything done or omitted to be done in pursuance of this Order, if a period of six months (or where the cause of action arose outside Swaziland, two years) has elapsed since the date on which the cause of action arose and notice in writing of any such civil action and of the cause thereof shall be given to the Defendant one month at least before the commencement thereof.

### **34. Regulations**

The King may make any regulations, rules, routine and standing orders for the better carrying out of the provisions of this Order.

*[Amended K.O-I-C. 27/1978]*

### **35. Repeal**

Subject to [section 5\(2\)](#) the Armed Forces Order No. 5 of 1973 is hereby repealed.

## First Schedule

### Oath of allegiance

I, \_\_\_\_\_ do hereby swear by Almighty God (or do hereby solemnly and sincerely affirm) that—

1. I shall be faithful and bear true allegiance to the King and to the Kingdom of Swaziland.
2. I shall faithfully serve the King and the Kingdom of Swaziland as an officer (or serviceman) of the Defence Force of Swaziland (or as a member of the Defence Force Constabulary); and
3. I shall discharge all the duties of an officer (or serviceman) of the Defence Force of Swaziland (or as a member of the Defence Force Constabulary) according to the law, without fear, favour, affection or ill-will.

\_\_\_\_\_  
Signature or Thumbprint of the person making the Oath.

Sworn (or affirmed) by the said \_\_\_\_\_ after the oath had been read over, explained to him in the siSwati language and which he acknowledges to understand at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ 20

\_\_\_\_\_  
Commanding Officer/Commissioner of Oaths

## Second Schedule

### Military Discipline Code of the Umbutfo Swaziland Defence Force

#### 1. Interpretation

- (1) In this Code any expression to which a meaning has been assigned in the Order, bears the meaning so assigned thereto, and unless the context otherwise requires—

“**Adjutant General**” means an officer appointed by the General Officer Commanding as such;

“**Aircraft**” means any machine for flying whether propelled by mechanical means or not and includes a balloon used in an aircraft.

*[Added L.N.42/1993]*

“**board of inquiry**” means a board of inquiry convened under paragraph 136 or paragraph 137, as the case may be;

“**board of review**” means a board of review established under paragraph 147;

“**camp**” includes a ship;

“**capital offence**” means any offence, whether under this Code or otherwise, in respect of which a sentence of death may be imposed;

“**chief of staff**” means the chief military executive officer of the army, the air force and the navy of the Umbutfo Swaziland Defence Force, and in paragraphs 65, 66 and 109 includes any officer of rank not below that of a major general or its equivalent who has been empowered in writing by the General Officer Commanding to exercise the powers conferred upon a chief of staff by those paragraphs;

“**Civil Court**” means any court of criminal jurisdiction but does not, except where otherwise expressly provided, include any such court outside Swaziland in Swaziland;

*[Amended L.N.42/1993]*



“**civil offence**” means any offence in respect of which any penalty may be imposed by a court of law, not being an offence under paragraphs 4 to 50, inclusive, of this Code;

“**convening authority**” means any person empowered by warrant to convene courts martial;

“**counsel**” means any advocate or attorney entitled to practise and appear before the High Court and includes any defending officer;

“**council of review**” means the council of review established under paragraph 146;

“**court martial**” means a court martial convened by virtue of paragraph 67 or 68;

“**defending officer**” means an officer subject to this Code appointed by a convening authority to undertake the defence at a trial by court martial of an accused not represented by any other counsel;

“**desert**”, in relation to any person, includes, without in any way limiting its ordinary meaning—

- (a) be absent without authority while on service from the unit or formation of such person with the intention of avoiding service;
- (b) miss any form of transport, by which such person has been warned to travel, with the intention of not accompanying his unit or formation on service or not proceeding on service; and
- (c) fail to report for any service under the Order or any regulations made under it within seven days after having been called up for such service;

“**enemy**” includes any armed rebels or mutineers;

“**field punishment**” means the performance in custody in the field of such labour and extra drills and duties as may be prescribed;

“**field rank**” means any rank not lower than that of major or any equivalent rank;

“**General Officer Commanding**” means the chief military executive officer of the Umbutfo Swaziland Defence Force, and in paragraph 129 includes the officer commanding any portion of the Umbutfo Swaziland Defence Force on service beyond the borders of Swaziland;

“**hospital**” includes any military medical institution for the treatment of patients;

“**imprisonment**” means imprisonment with or without compulsory labour;

“**institution**” means a club, mess or trading or other institution established under any law;

“**member**”, when used in relation to a court martial or board of inquiry, includes the chairman;

“**military court**” means any court or officer deriving jurisdiction from this Code or from an officer, to try persons subject to this Code who are charged under this Code with offences and to impose punishments;

“**oath**” includes a solemn declaration or affirmation;

“**Order**” means the Armed Forces Order, 1973;

“**pay**” in relation to any person, includes all amounts to which such person is entitled in respect of any training, duty or service undergone or performed by him as a member of the Umbutfo Swaziland Defence Force, except amounts payable to him under any Pensions law;

“**public property**” means any property belonging to or in the possession or under the control of the Government of Swaziland, the Ngwenyama in trust for the Swazi nation, or to any force acting in cooperation with the Umbutfo Swaziland Defence Force;

“**safeguard**” means a party of soldiers detached for the protection of any person or of any place, including any village or house or other property;

“**service**” means military service in defence of the Kingdom of Swaziland or in the prevention or suppression of internal disorder in Swaziland, and includes service while being trained as a soldier;

“**vary**” includes alter, remit, mitigate and commute.

- (2) Any reference in this Code to the Umbutfo Swaziland Defence Force shall be construed as including a reference to any portion of such Force.

## 2. **Application of Code**

- (1) Save as otherwise provided herein, the provisions of this Code shall apply only to the persons who are in terms thereof or in terms of the Order subject to them, and to persons not otherwise subject to them who, with the consent of the commanding officer of any portion of the Umbutfo Swaziland Defence Force which is on service, are with or accompany or perform duty with such portion of such Force.
- (2) Any person subject to this Code by virtue of any consent given under subsection (1), shall be so subject thereto—
- (a) if such consent has been given in writing, on the basis indicated in such consent; or
  - (b) if consent has not been given in writing, on the basis on which he has been accepted and treated for living and messing facilities.

## 2bis. **Imposition of field punishment**

Notwithstanding any other law, any commissioned and/or non-commissioned officer of the Umbutfo Swaziland Defence Force may summarily try any member of the Defence Force below his rank for the breach of any disciplinary order and, on conviction, sentence him to undergo such field punishment as may be prescribed by the Army Commander in respect of such breach.

*[Added L.N. 14/1975]*

## 3. **Application of Code beyond area of compulsory service**

Any person subject to this Code who in time of war and owing to circumstances connected with such war is moved or taken beyond the area in which he may be required to render service, shall at all times remain subject to this Code as if he were within such area until his return thereto can reasonably be effected.

## 4. **Offences endangering safety of Forces punishable with death**

Any person who, being on service shall be guilty of an offence and liable on conviction to be sentenced to death if he—

- (a) shamefully abandons or surrenders or induces or compels any other person on service shamefully to abandon or surrender any garrison, place, post, guard, aircraft or vessel which it was the duty of such person or, as the case may be, such other person to defend;
- (b) treacherously communicates with or gives intelligence to the enemy; without proper authority discloses any information concerning the numbers, movements, location or preparations of the Umbutfo Swaziland Defence Force or any weapons, aircraft, vessels, stores, machines, instruments, devices or signal codes used or intended for use by such Force or forces, to the prejudice of such Force or forces;
- (c) treacherously makes known the parole, watchword or countersign to any person not entitled to receive it or treacherously gives a parole, watchword or countersign different from what he received;
- (d) goes over to the enemy;
- (e) having been made a prisoner of war, voluntarily serves with or aids the enemy;
- (f) gives to the enemy or assists the enemy to acquire arms or ammunition or any material or equipment;

- (g) knowingly commits any act calculated to imperil the success or safety of the Umbutfo Swaziland Defence Force or any forces cooperating with the Umbutfo Swaziland Defence Force or any part of any such forces; or
- (h) conspires with any other person to mutiny or cause mutiny in the Umbutfo Swaziland Defence Force or joins in any such mutiny.

**5. Offences by a person in command of troops, vessels or aircraft**

Any person in command of troops of the Umbutfo Swaziland Defence Force or of any vessel or aircraft shall be guilty of an offence and liable on conviction to imprisonment for twenty years if he—

- (a) when his duty requires him to engage the enemy, fails to do so or to do so as expeditiously or effectively as circumstances permit;
- (b) being in action without proper cause withdraws from the action or forsakes his post; or
- (c) improperly fails to pursue any enemy or to consolidate any position gained.

**6. Offences in relation to conduct in action**

Any person shall be guilty of an offence and liable on conviction to imprisonment for ten years if he—

- (a) shamefully and in the presence of the enemy abandons or casts away any arms, ammunition, equipment or tools;
- (b) behaves before the enemy in such a manner as to show cowardice;
- (c) improperly delays or discourages any action against the enemy;
- (d) improperly does or omits to do anything which results or is calculated to result in the capture by the enemy of any member of the Umbutfo Swaziland Defence Force or of any forces cooperating with the Umbutfo Swaziland Defence Force, or endangers or is calculated to endanger any such member, or which results or is calculated to result in the capture or destruction by the enemy of any aircraft, vessel, arms, ammunition or other war material;
- (e) in action or prior to going into action, acts in a manner or uses words calculated to create alarm or despondency;
- (f) without authority communicates with the enemy or sends a flag or signal of truce to the enemy;
- (g) knowingly harbours or protects an enemy, not being a prisoner of war; or
- (h) is taken prisoner of war through want of precaution, neglect of duty or disobedience to orders, or having been taken prisoner of war fails to rejoin the Umbutfo Swaziland Defence Force when able to do so.

**7. Offences relating to failure to report activities likely to endanger safety of force**

Any person shall be guilty of an offence and liable on conviction to imprisonment for ten years if he, being aware or having reasonable suspicion that any other person—

- (a) is communicating with the enemy or giving intelligence to the enemy;
- (b) is giving to the enemy or is assisting the enemy to acquire arms, ammunition or any material or equipment; or
- (c) is about to commit any act calculated to imperil the success or safety of the Umbutfo Swaziland Defence Force or any forces cooperating with the Umbutfo Swaziland Defence Force or any part of any such forces; and
- (d) fails to report without delay to his superior officer the facts within his knowledge concerning the activities or contemplated or suspected activities of such other person.

**8. Offences relating to signals, watchwords and disclosure of information**

Any person shall be guilty of an offence and liable on conviction, if he committed the offence while on service, to imprisonment for five years, and in any other case, to imprisonment for two years if he—

- (a) without authority or contrary to his duty in any way uses, alters, adjusts or interferes with any instrument, machine or device designed or used for signalling, directing or detecting;
- (b) without authority or contrary to his duty alters, mutilates or delays any signal;
- (c) makes known the parole, watchword or countersign to any person not entitled to receive it;
- (d) wilfully or negligently gives or conveys to a person entitled to receive it, any parole, watchword or countersign different to that which he has received;
- (e) without proper authority discloses any information concerning the numbers, movements, location or preparation of the Umbutfo Swaziland Defence Force or any forces operating therewith, or concerning any weapons, aircraft, vessels, stores, machines, instruments, devices or signal codes used or intended for use by such Force or forces to its or their prejudice;
- (f) contrary to his duty discloses the contents of any document, or is negligent in the performance of any duty, in consequence of which an unauthorised person becomes or might become aware of the contents of any documents, to the prejudice of the Umbutfo Swaziland Defence Force.

**9. Interference with aircraft, vehicles, vessels, etc.**

Any person who, in circumstances not amounting to an offence under any other provision of this Code, contrary to his duty or without proper authority alters, adjusts or interferes with any aircraft, motor vehicle, vessel, weapon, machine or instrument used or intended for use by the Umbutfo Swaziland Defence Force or any part or accessory of any such aircraft, motor vehicle, vessel, weapon, machine or instrument, shall be guilty of an offence and liable on conviction to imprisonment for five years.

**10. Mutiny**

Any person who, being aware or suspecting that any other person is conspiring to cause any mutiny or has joined in any mutiny, fails to report without delay to his superior officer all the facts within his knowledge in that regard, shall be guilty of an offence and liable on conviction to imprisonment for five years.

**11. Interference with guards, sentries, etc.**

Any person shall be guilty of an offence and liable on conviction to imprisonment for five years if he—

- (a) forces or evades any safeguard;
- (b) assaults any sentry or watchkeeper;
- (c) in any manner whatever prevents a sentry or watchkeeper from doing his duty; or
- (d) occasions false alarm.

**12. Dereliction of duty by sentry, watchkeeper, etc.**

Any person shall be guilty of an offence and liable on conviction to imprisonment for five years, if he—

- (a) while on sentry duty or on duty as a watchkeeper leaves his post before he is regularly relieved or sleeps or is under the influence of intoxicating liquor or narcotic drugs; or
- (b) while on duty with his unit or at a post or guard leaves such unit, post or guard without orders or good and sufficient cause.

**13. Desertion**

Any person who deserts from the Umbutfo Swaziland Defence Force shall be guilty of an offence and liable on conviction to imprisonment for ten years.

**14. Absence without leave and non-attendance where required to attend**

Any person shall be guilty of an offence and liable on conviction to imprisonment for one year, if he—

- (a) absents himself without leave;
- (b) fails to appear at a place of parade or duty or at any other place appointed by his commanding officer, or leaves any such place without good and sufficient cause;
- (c) without good and sufficient cause goes into any prohibited area or beyond the fixed confines of his camp; or
- (d) being required to attend any school or other educational institution, whether civilian or otherwise, fails to attend thereat or absents himself therefrom without leave.

**15. Assaulting superior officer**

Any person who assaults or points a firearm at or draws any weapon against his superior officer, shall be guilty of an offence and liable on conviction to imprisonment for ten years.

**16. Assaulting or ill-treating subordinate**

Any person who assaults or points a firearm at or draws any weapon against or ill-treats any person who is by reason of rank or appointment subordinate to him, shall be guilty of an offence and liable on conviction to imprisonment for three years.

**17. Using threatening, insubordinate or insulting language**

Any person who uses threatening or insulting language to, or by word or conduct displays insubordination or behaves with contempt towards his superior officer, shall be guilty of an offence and liable on conviction to imprisonment for one year.

**18. Malingering, feigning or producing disease, maiming, etc.**

Any person shall be guilty of an offence and liable on conviction to imprisonment for five years if he—

- (a) malingers or feigns or produces disease or infirmity;
- (b) maims or injures himself with the intention of avoiding any service or duty;
- (c) wilfully commits or omits to perform an act, in consequence whereof he becomes or is likely to become unable to perform any service or duty; or
- (d) wilfully maims or injures any other person subject to this Code, whether at the request or with the connivance of such other person or otherwise, thereby rendering such person unfit for service or duty.

**19. Disobeying lawful commands or orders**

- (1) Any person who in wilful defiance of authority disobeys any lawful command given personally by his superior officer in the execution of his duty, whether orally, in writing or by signal, shall be guilty of an offence and liable on conviction to imprisonment for five years.
- (2) Any person who disobeys any lawful direction of the commander of any aircraft or vessel in which he is being conveyed, whether such commander is a member of any armed force or a civilian, and irrespective of the rank or status of such commander, shall be guilty of an offence and liable on conviction to imprisonment for one year.
- (3) Any person who, being a patient in any hospital, wilfully disobeys any lawful direction concerning his hospital or medical treatment, given to him by any member of the hospital staff within whose hospital duty and authority it is to give such a direction, shall be guilty of an offence and liable on conviction to imprisonment for six months.
- (4) Any person who neglects to obey any unit, formation or Force order of which it is his duty to have knowledge, shall be guilty of an offence and liable on conviction to imprisonment for six months.

**20. Theft of public property or property belonging to a comrade, mess, etc.**

- (1) Any person if he—
- (a) steals any public property or property belonging to any institution of the Umbutfo Swaziland Defence Force; or
  - (b) steals any property belonging to a person subject to this Code; or
  - (c) receives any property referred to in paragraph (a) or (b) knowing it to have been stolen;
- shall be guilty of an offence and liable on conviction, in the case of—
- (i) an offence referred to in subparagraph (a), to imprisonment for ten years;
  - (ii) an offence referred to in subparagraph (b), to imprisonment for two years; or
  - (iii) an offence referred to in subparagraph (c), to the punishment provided in subparagraph (c) (i) or in subparagraph (c)(ii), according as to whether the property received was property referred to in subparagraph (a) or property referred to in subparagraph (b).
- (2) Any person who is subject to this Order who, during a state of war, wilfully and without proper care or negligently causes the sequestration in a neutral state of any public service property shall, on conviction by a court martial, be liable to imprisonment for five years.

*[Added L.N.42/1993]*

**21. Offences in relation to the acquisition or disposal of public property**

Any person shall be guilty of an offence and liable on conviction to imprisonment for ten years, if he—

- (a) without authority sells, barter or otherwise disposes of or lends or pledges any public property belonging to any institution or, being aware or suspecting that any other person is without authority selling, bartering or in any other way disposing of or lending or pledging such property, fails to report the facts within his knowledge in that regard to his superior officer without delay;
- (b) when it is his duty to acquire by purchase or otherwise any property for the use of the Umbutfo Swaziland Defence Force or any institution, demands, solicits or accepts contrary to his duty any commission, fee, reward or personal advantage in respect of such acquisition;
- (c) having acquired property which it was his duty to acquire by purchase or otherwise for the use of the Umbutfo Swaziland Defence Force or any institution, fails or neglects to cause such property to be delivered to an appropriate place or store; or
- (d) agrees to pay or connives at the payment of any exorbitant price for any property purchased for the use of the Umbutfo Swaziland Defence Force or any institution.

**22. Causing or allowing a vessel or aircraft to be hazarded, stranded or wrecked**

Any person who wilfully or negligently causes or allows a vessel or aircraft to be hazarded, stranded or wrecked, shall be guilty of an offence and, where no other penalty is prescribed in this Code, liable on conviction to imprisonment for five years.

**23. Abandoning or diverting national property or supplies**

Any person shall be guilty of an offence and liable on conviction to imprisonment for five years, if he—

- (a) without good and sufficient cause wilfully abandons, damages or destroys any public property, or property belonging to any institution, or
- (b) improperly diverts or detains supplies.

**24. Negligently losing kit, equipment, arms, etc.**

- (1) Any person shall be guilty of an offence and liable on conviction to imprisonment for five years, if he—
- (a) negligently loses his kit, arms or equipment or any public property or any property issued to him at public expense for personal use in the execution of his duties; or
  - (b) negligently damages or destroys any public property or any property issued to him at public expense for personal use in the execution of his duties.
- (2) If in any proceedings for a contravention of subparagraph (1)(a), it is proved that any article or property mentioned in such subparagraph which is alleged in the charge to have been lost, was issued to the accused and that on a date subsequent to such issue the accused was found not to be in possession of such article or property, it shall be presumed unless the contrary is proved, that such article or property was negligently lost by the accused.

**25. Negligently or wilfully causing damage to or destruction of national property**

Any person shall be guilty of an offence and liable on conviction to imprisonment for one year, if he—

- (a) negligently or wilfully commits any act which causes or is likely to cause damage to or destruction of public property, or property belonging to any institution, or
- (b) negligently or wilfully omits to take action to prevent damage to or destruction of public property, or property belonging to any institution.

**26. Deficiencies in stores, etc.**

- (1) Any person who, being responsible for stores, stocks or moneys in any Umbutfo Swaziland Defence Force store, office or institution, so negligently performs his duties as to cause any deficiency in such stores, stocks or moneys, shall be guilty of an offence and liable on conviction to imprisonment for ten years.
- (2) If in any prosecution for a contravention of subparagraph (1) it is proved that the accused as alleged in the charge was responsible for stores, stocks or moneys in any Umbutfo Swaziland Defence Force store, office or institution, and that while he was so responsible a deficiency in such stores, stocks or moneys was caused, it shall be presumed, unless a satisfactory explanation to the contrary is given by the accused, that he so negligently performed his duties that the said deficiency was caused.

**27. Using or taking article issued to or under control of another person**

Any person shall be guilty of an offence and liable on conviction to imprisonment for one year, if he—

- (a) improperly uses or takes or removes from the possession or control of any other person subject to this Code any article issued to such other person for personal use in the execution of his duties or the personal property of such other person without the permission of such person; or
- (b) without proper authority takes or removes any article of public property from its appointed place, or uses such article for any purpose otherwise than in the public interest; or
- (c) without proper authority uses or takes or removes from its appointed place any article belonging to any institution.

**28. Offences in relation to the driving of vehicles and the flying of aircraft**

Any person shall be guilty of an offence and liable on conviction, where no other penalty is prescribed in this Code, to imprisonment for five years, if he—

- (a) drives any motor vehicle being public property in a negligent or reckless manner or at an excessive speed or while he is under the influence of intoxicating liquor or narcotic drugs; or

- (b) flies any aircraft being public property in a negligent or reckless manner or at an unauthorised altitude or while he is under the influence of intoxicating liquor or narcotic drugs.

**29. Fraudulent enlistment**

- (1) Any person shall be guilty of an offence and liable on conviction to imprisonment for five years, if he—
  - (a) being a member of any portion of the Umbutfo Swaziland Defence Force and not having been regularly discharged therefrom, enrolls in any other portion of that Force;
  - (b) having been discharged with disgrace from the Umbutfo Swaziland Defence Force or from a military, naval or air force of any country, enrolls in the Umbutfo Swaziland Defence Force without disclosing such discharge with disgrace at the time of enrolment; or
  - (c) wilfully gives a false answer to any question set forth on any enrolment or enlistment paper.
- (2) For the purposes of this paragraph the expression “discharge with disgrace” means cashiered, discharged with ignominy, dismissed because of misconduct or discharged on account of imprisonment.
- (3) Any person who, having given a false answer to any question set forth on an enlistment or enrolment paper, is thereupon enrolled as a member of the Umbutfo Swaziland Defence Force, shall be deemed to have been subject to this Code at the date upon which such false answer was given.

**30. False statements in official documents**

Any person shall be guilty of an offence and liable on conviction to imprisonment for five years, if he—

- (a) knowingly or negligently makes a false statement or entry in a document made or signed by him that is required or made for official purposes;
- (b) orders any other person to make or sign a statement or entry in a document that is required or made for official purposes, well knowing such statement or entry to be false;
- (c) when signing a document that is required or made for official purposes leaves in blank any material part for which his signature is a voucher;
- (d) with intent to deceive, alters, defaces, suppresses or makes away with any document required, made, kept or issued for official purposes; or
- (e) forges any signature upon any document required, made, kept or issued for official purposes or uses any document for official purposes knowing the signature thereon to be forged.

**31. False accusation or statements**

Any person who makes any false accusation or statement against or concerning any other person subject to this Code, shall be guilty of an offence and liable on conviction to imprisonment for five years.

**32. Scandalous behaviour**

Any officer who behaves in a scandalous manner unbecoming the character of an officer and a gentleman, shall be guilty of an offence and liable on conviction to imprisonment for five years or cashiered.

**33. Drunkenness**

Any person shall be guilty of an offence and liable on conviction, if he committed the offence while on service and on duty, to imprisonment for one year, if he—

- (a) is drunk whether on or off duty; or
- (b) unfits himself for the proper performance of his duty by excessive use of alcohol or narcotic drugs.



**34. Offences in relation to a court martial**

- (1) Any person shall be guilty of an offence and liable on conviction to imprisonment for twenty-four months, if he—
  - (a) having been duly summoned or warned to attend as a witness before a court martial, fails to attend or to remain in attendance until authorised to leave;
  - (b) being present at a court martial after having been duly summoned or warned to attend as a witness, refuses to be sworn or to affirm;
  - (c) when giving evidence at a court martial, refuses to answer any questions which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his possession or under his control which in law he could be compelled to produce; or
  - (d) uses threatening or insulting language at a court martial or wilfully causes a disturbance or interruption thereat or wilfully commits any other act calculated or likely to bring such court martial into contempt, ridicule or disrepute.
- (2) The court martial at a sitting whereof an offence mentioned in paragraph 1(d) is committed, may summarily order the offender to be imprisoned for a period not exceeding twenty-one days, or to undergo any less severe punishment to which a person convicted of an offence under this Code by a court martial could be sentenced, and any such order shall have the same effect and may be executed in the same manner as if it were a sentence imposed by a court martial in the course of a trial in respect of an offence under this Code before such Court, and the provisions of paragraph 97 shall apply in connection with any such order.

**35. False evidence before a court martial**

Any person who at a court martial wilfully gives false evidence, shall be guilty of an offence and liable on conviction to imprisonment for the maximum period of imprisonment which could in terms of this Code be imposed in respect of any offence which formed the subject of the charge in connection with which such evidence was given.

**36. Refusing to answer questions or produce documents or giving false evidence at preliminary investigation, summary trial or board of inquiry**

- (1) Any person shall be guilty of an offence and liable on conviction to imprisonment for one year, if he—
  - (a) having been duly summoned or warned to attend as a witness before a preliminary investigation, summary trial or board of inquiry, fails to attend or to remain in attendance until authorised to leave;
  - (b) being present at a preliminary investigation, summary trial or board of inquiry after having been duly summoned or warned to attend as a witness, refuses to be sworn or to affirm;
  - (c) when giving evidence at a preliminary investigation, summary trial or board of inquiry, refuses to answer any questions which in law he could be compelled to answer, or refuses or fails to produce any document or thing in his possession or under his control which in law he could be compelled to produce; or
  - (d) uses threatening or insulting language at a preliminary investigation, summary trial or board of inquiry or wilfully causes a disturbance or interruption thereat or wilfully commits any other act calculated or likely to bring the recording officer, trial officer or board of inquiry into contempt, ridicule or disrepute.
- (2) Any person who at any board of inquiry, preliminary investigation or summary trial under this Code wilfully gives false evidence, shall be guilty of an offence and liable on conviction to imprisonment for one year.

**37. Obstruction in relation to the arrest, custody or confinement of a person subject to the Code**

- (1) Any person shall be guilty of an offence and liable on conviction to imprisonment for one year, if he—
- (a) resists or wilfully obstructs any member of the Umbutfo Swaziland Defence Force in the performance of any duty relating to the arrest, custody or confinement of a person subject to this Code;
  - (b) when called upon by any such member, refuses or neglects to assist that member in the performance of any such duty; or
  - (c) when called upon by an appropriate civil authority to deliver over any person under his control, accused of an offence punishable by civil court, fails or neglects to do so.
- (2) Any person arrested under this section may be released from arrest by his Commanding Officer to any officer superior in command to the Commanding Officer and any such release from arrest shall be without prejudice to the re-arrest of such person:

Provided that any such re-arrest shall only be made upon the order of the Commanding Officer or that officer superior in command as the case may be or the Army Commander.

*[Added L.N.42/1993]*

**38. Offences in relation to arrest**

Any person shall be guilty of an offence and liable on conviction to imprisonment for six months, if he—

- (a) without due and just cause orders any person into arrest or custody;
- (b) unnecessarily detains a person in arrest or custody;
- (c) contrary to his duty fails to bring the case of a person in arrest or custody before the proper authority within the prescribed time; or
- (d) having committed a person to the custody of any authorised person, fails to deliver to such authorised person within twenty-four hours of such committal an account in writing signed by himself of the offence with which the person so committed is charged.

**39. Resisting arrest**

Any person shall be guilty of an offence and liable on conviction to imprisonment for two years, if he—

- (a) being ordered into arrest, refuses to obey such order or assaults the person ordering him into arrest;
- (b) being ordered into arrest, resists the person whose duty it is to apprehend him or have him in charge;
- (c) assaults any person in whose custody he has been placed;
- (d) escapes from custody; or
- (e) hinders or obstructs any person lawfully carrying out a search of his personal kit or belongings or his living quarters.

**40. Offences in relation to a person in custody**

Any person shall be guilty of an offence and liable on conviction to imprisonment for two years, if he—

- (a) without reasonable excuse allows any person committed to his custody or charge to escape;
- (b) without proper authority releases any person committed to his custody or charge; or
- (c) uses unnecessary violence to any person in custody or otherwise ill-treats such person.

**41. False complaints in writing**

Any person, who in any complaint made and lodged by him or in any document made or signed by him relating to the Umbutfo Swaziland Defence Force or any member thereof or affecting any interest of such Force or any such member, knowingly makes a false statement, shall be guilty of an offence and liable on conviction to imprisonment for one year.

**42. Offences in relation to the redress of wrongs**

Any person shall be guilty of an offence and liable on conviction to imprisonment for one month, if he—

- (a) if a complaint by another person subject to this Code has been made to him unduly delays in redressing the wrong complained of or sending the complaint to higher authority in accordance with this Code; or
- (b) complains to higher authority when it is his duty to direct his complaint to his commanding officer or other authority as directed in this Code.

**43. False representations concerning rank**

Any person who holds himself out to be the holder of a rank other than his own rank in the Umbutfo Swaziland Defence Force, whether such holding out is by the wearing of rank badges, rank stripes or other insignia of rank or in any other manner, shall be guilty of an offence and liable on conviction to imprisonment for six months.

**44. Offences in relation to decorations or medals**

Any person shall be guilty of an offence and liable on conviction to imprisonment for three months, if he knowingly wears—

- (a) any decoration, medal or clasp or any decoration or medal ribbon or wound stripe to which he is not entitled; or
- (b) any badge, emblem, colours or other insignia of a political organisation.

**45. Riotous or unseemly behaviour**

Any person shall be guilty of an offence and liable on conviction to imprisonment for six months, if he—

- (a) at any time behaves in a riotous or an unseemly manner; or
- (b) when able to do so, does not suppress any riotous or unseemly behaviour by any person subject to this Code.

**46. Conduct to the prejudice of military discipline**

Any person who by act or omission causes actual or potential prejudice to good order or military discipline, shall be guilty of an offence and liable on conviction to imprisonment for one year.

**47. Civil offences committed outside Swaziland**

Any person, who beyond the borders of Swaziland commits or omits to do any act in circumstances under which he would, if he had committed or omitted to do such act in Swaziland, have been guilty of a civil offence, shall be guilty of an offence under this Code and liable on conviction to any penalty which could under paragraph 92 be imposed by a court martial in respect of such offence:

Provided that no such penalty of such a nature that it could, if the offence in question had been committed within Swaziland, have been imposed by any competent civil court, shall exceed the maximum penalty that could be imposed in respect of such offence by such civil court.

**48. Aiding, abetting, inciting, etc.**

Any person who aids, abets, induces, incites, instigates, instructs or commands any person to commit an offence under this Code, or who procures the commission of such an offence, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the principal offence.

**49. Defeating the course of justice**

Any person who, with intent to defeat or obstruct the course of justice, assists or harbours any person who to his knowledge has committed an offence under this Code, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the offence committed by the person he so assisted or harboured.

**50. Attempt**

Any person who attempts to commit any offence under this Code, shall be guilty of an offence and liable on conviction to the penalties prescribed in this Code for the offence he so attempted to commit.

**51. Alternative punishments**

The court convicting any person—

- (a) of an offence under paragraph 4 may, instead of imposing sentence of death on that person, impose upon him any other punishment within the jurisdiction of that court;
- (b) of any other offence under this Code may, instead of imposing upon such person any penalty prescribed herein in respect of such offence,

impose upon him any other penalty within the court's jurisdiction which is provided for in this Code in respect of any offence, not being a more severe penalty than the maximum penalty so prescribed.

**52. Arrest**

- (1) Any person who in the presence of his superior officer commits or who is on reasonable grounds suspected by his superior officer of having committed an offence under this Code, may be arrested or ordered into arrest by such superior officer.
- (2) Any person who is engaged in any mutiny or riotous or unseemly behaviour or who commits a capital civil offence or any offence under paragraph 4 of this Code or any other prescribed offence, may be arrested by any person subject to this Code in whose presence he is so engaged or commits any such offence:

Provided that an officer shall not be liable to arrest by any other person other than an officer.

- (3) Any person who in terms of this section arrests any other person or orders any other person into arrest, shall forthwith inform the person arrested or ordered into arrest of the cause of the arrest.
- (4) The allegations against any person who is subject to this Order who is under arrest shall be investigated without unnecessary delay, and as soon as may be possible, proceedings shall be instituted against him failing which he shall be released.

*[Added L.N.42/1993]*

- (5) If a person who is subject to this Order has been taken into military custody, remains in such custody for a longer period than fourteen (14) days without the date of trial being fixed by the court-martial, a special report on the necessity for further remand shall be made by his commanding officer to the Army Commander and such report shall be made every fourteen (14) days unto the trial by the court martial is commenced or he is release from such custody.

*[Added L.N.42/1993]*

**53. Search**

- (1) If it appears to a convening authority from information contained in at least one sworn statement that there are reasonable grounds for suspecting that there is upon any person under his command who is subject to this Code, or upon or at any premises, place, vehicle, vessel, aircraft or receptacle

of whatever nature belonging to or occupied by or under the control of the Umbutfo Swaziland Defence Force within the area in which he exercises command—

- (a) stolen property or anything with respect to which any offence under this Code has been or is suspected on reasonable grounds to have been committed;
- (b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence,

may in writing authorise any superior officer of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which such property or thing is suspected to be, to search such person, premises, place, vehicle, vessel, aircraft or receptacle or any person found in or upon such premises, place, vehicle, vessel, aircraft or receptacle, to seize any such property or thing, if found, and to deliver it safely to the commanding officer of the person on whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which such property or thing was found.

- (2) If an officer of field rank believes on reasonable grounds that the delay in obtaining written authority in terms of subparagraph (1), would defeat or prejudice the object of a search, he may, if he is the superior officer of the person upon whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which such property or thing is suspected to be, authorise the search without such authority.
- (3) Any search in terms of subparagraph (1) or (2) shall be conducted in the presence of the person upon whom or the person in charge or control of the premises, place, vehicle, vessel, aircraft or receptacle upon or at which the property or thing in question is suspected to be:

Provided that if the delay in securing the presence of such person is likely to prejudice the object of the search or if his presence cannot with due regard to the exigencies of the service be readily secured, the search may be made in his absence but in the presence of one or more other persons subject to this Code.

#### 54. **Jurisdiction of civil courts**

Nothing in this Code shall affect the jurisdiction of any civil court in Swaziland to try a person for any offence within its jurisdiction.

#### 55. **Person convicted or acquitted may not be tried again**

No person who has been convicted or acquitted by a competent civil or military court of any offence shall be triable by a military court for any offence of which he might have been found guilty by the court which tried him in the first instance.

#### 56. **Civil offence may be tried under Code**

A person subject to this Code may be tried by a military court having jurisdiction for any civil offence (other than treason, murder, rape or culpable homicide) committed by him within Swaziland, and may in respect of such offence be sentenced to any penalty within the jurisdiction of the court convicting him.

#### 57. **Territorial jurisdiction of military courts**

Any person charged with an offence in respect of which a military court has jurisdiction, may be tried and punished for such offence at any place by such a court having jurisdiction in respect of such person at the time of the commencement of the trial.

#### 58. **Prescription of offences**

No person shall be triable by a military court for any offence in respect of which such a court has jurisdiction unless the trial is commenced within three years after the date of the commission of the offence:

Provided that a person charged with a capital civil offence or an offence under paragraph 4 or 13 of this Code may be tried by a military court at any time after the commission of the offence.

**59. Trial under Code when accused no longer subject to Code**

- (1) Any person who, while he is subject to this Code, commits an offence under this Code, may be tried and punished for such offence at any time within a period of one year after he has ceased to be so subject, and any person who commits an offence under paragraph 4, 10, 13 or 29 may be tried and punished for such offence at any time after he has ceased to be subject to this Code.
- (2) For the purpose of effecting the arrest of any such person, bringing him to trial and imposing punishment, such person shall be deemed to be subject to this Code in the rank and status he had at the time of the commission of the offence.

**60. Person arrested to be brought before officer**

- (1) Any person charged with an offence other than an offence which in terms of paragraph 56 may not be tried by a military court, shall within the prescribed period be brought before a prescribed officer who shall try the accused summarily or direct that a preliminary investigation be held.
- (2) Any preliminary investigation shall be held by a prescribed officer in the manner prescribed.

**61. Jurisdiction of chief of staff**

Subject to paragraph 64, a chief of staff may in such manner, under such conditions and for such offences as may be prescribed, try summarily any officer of the rank of commandant or major or of equivalent rank and subject to this Code who is under his command, and may on conviction sentence the offender to—

- (a) a fine of fifty emalangeni;
- (b) reversion from any acting or temporary rank to his substantive rank; or
- (c) a reprimand.

**62. Jurisdiction of convening authority**

Subject to paragraph 64, a convening authority may in such manner, under such conditions and for such offences as may be prescribed, try summarily any officer below field rank or any warrant officer under his command, and may on conviction sentence the offender to a fine not exceeding forty emalangeni or such lesser punishment as may be prescribed.

**63. Jurisdiction of commanding officer**

- (1) Subject to paragraph 64, any commanding officer may in such manner, under such conditions and for such offences as may be prescribed, try summarily any person (other than an officer or a warrant officer) subject to this Code who is under his command, and may on conviction sentence the offender—
  - (a) in the case of a non-commissioned officer to — a fine not exceeding twenty emalangeni; reversion from any acting or temporary non-commissioned rank to his substantive rank; or a reprimand;
  - (b) in the case of a private to — detention or field punishment for a period not exceeding twenty days; a fine not exceeding ten emalangeni; or a reprimand; or
  - (c) in either case to such other punishment as may be prescribed:

Provided that field punishment shall be imposed only beyond the borders of Swaziland.

- (2) A commanding officer may delegate in writing to any officer under his command, all or any of the powers conferred upon him under this paragraph.
- (3) For the purposes of this paragraph, “commanding officer” means any officer under the command of a convening authority who has been empowered in writing by such convening authority to exercise

all or any of the powers conferred upon a commanding officer by subparagraph (1), and includes any officer to whom powers have been delegated under subparagraph (2).

**64. Objections to trial officer**

- (1) No person charged with an offence in respect of which a military court has jurisdiction, shall have the right to object to being tried by an officer authorised thereto by or under paragraph 61, 62, 63 or this paragraph, except on the ground that the officer in question has such knowledge concerning the facts of the case that his decision is likely to be prejudiced thereby.
- (2) Any objection under subparagraph (1) shall be heard and determined by the person against whom the objection is raised, and such person shall record such objection and his finding thereon, and—
  - (a) if he overrules the objection, he shall proceed with the trial of the accused; or
  - (b) if the objection is upheld, the chief of staff, convening authority or Commanding officer concerned shall delegate power to try the accused to some other appropriate officer:

Provided that a commanding officer with delegated powers shall report to the Commanding officer concerned, who may thereupon himself try the accused or delegate power to try the accused to some other appropriate officer.

**65. Review of sentences passed by commanding officer**

- (1) If an officer has in pursuance of powers vested in him by or under paragraph 63 or 64, convicted an offender, he shall as soon as possible cause the record of the proceedings to be sent for review to the appropriate convening authority, who may after the expiration of a period of three days from the date of the conviction exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by paragraph 116(1), (2) and (3).
- (2) Such convening authority shall thereupon submit the record of proceedings to the appropriate chief of staff who may thereupon exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by paragraph 116(1), (2) and (3).

**66. Review of sentences passed by convening authority**

If a convening authority or an officer authorised thereto by him in terms of section 64, has convicted an offender in pursuance of a trial under section 62, he shall as soon as possible cause the record of the proceedings to be sent for review to the appropriate chief of staff who may, after the expiration of a period of three days from the date of the conviction, exercise *mutatis mutandis* in respect of such proceedings the powers conferred upon the council of review by paragraph 116(1), (2) and (3), and shall thereafter submit the record of the proceedings to the Adjutant General.

**67. Review of sentence passed by chief of staff**

If a chief of staff or an officer authorised thereto by him in terms of section 64, has convicted an offender in pursuance of a trial under section 61, he shall as soon as possible cause the record of the proceedings to be sent to the Adjutant General, who shall as soon as possible after the expiry of a period of three days from the date of the conviction, submit them with his views for review to the General Officer Commanding, Umbutfo Swaziland Defence Force, who may thereupon exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by paragraph 116(1), (2) and (3).

**68. Power to convene general courts martial**

His Majesty may for the trial of persons subject to this Code for any offence triable by a general court martial—

- (a) convene general courts martial;
- (b) issue a warrant to the General Officer Commanding, Umbutfo Swaziland Defence Force, to convene general courts martial; and

- (c) delegate power by warrant to the General Officer Commanding, Umbutfo Swaziland Defence Force, to issue warrants to officers under his command, of rank and command not below that of a brigadier or its equivalent, to convene general courts martial.

**69. Power to convene ordinary courts martial**

- (1) Any officer authorised by warrant to convene a general court martial may also, unless such warrant is for the convening of one or more general courts martial for the trial of named persons or a fixed number of persons—
  - (a) convene ordinary courts martial; and
  - (b) issue warrants to officers commanding commands or to officers under his command, of rank and command not below that of a commandant or its equivalent, to convene ordinary courts martial, for the trial of persons subject to this Code for any offence triable by an ordinary court martial.
- (2) For the purpose of subparagraph (1), “officer commanding command” means any officer commanding a command, group, brigade or any equivalent command.

**70. Limitation of power to confirm findings and sentences of courts martial**

- (1) Notwithstanding paragraph 100, every person authorised by this Code to issue to an officer a warrant to convene courts martial, may in such warrant limit either generally or specially the powers of such officer to confirm the findings and sentences of courts martial convened by him or may prohibit him from exercising such powers.
- (2) Any person who has under subparagraph (1) limited the powers of any officer to confirm the findings and sentences of courts martial convened by him, or prohibited such officer from exercising those powers, may confirm the finding or sentence or the unconfirmed finding or sentence of any court martial which but for such limitation or prohibition might have been confirmed by that officer.

**71. Convening of court martial for trial of more than one person**

Where two or more persons are charged jointly with the same offence, the officer having power to convene a court martial for the trial of the most senior in rank of such persons may convene a court martial for the joint trial of all such persons.

**72. Jurisdiction of general court martial**

A general court martial shall have jurisdiction to try any person subject to this Code for any offence other than an offence which in terms of paragraph 56 is not triable by a military court, and may, subject to this Code, impose in respect of any such offence—

- (a) in the case of an offence under this Code, any penalty prescribed therein in respect of such offence; or
- (b) in the case of a civil offence, any penalty that might under paragraph 92 be imposed in respect of an offence under this Code by a court martial:

Provided that no such penalty of such a nature that it could be imposed in respect of such offence by any competent civil court shall exceed the maximum penalty that could be imposed in respect of that offence by that civil court.

**73. Jurisdiction of ordinary court martial**

An ordinary court martial shall have jurisdiction to try any person subject to this Code, not being an officer, for any offence, other than a capital civil offence or culpable homicide committed by him within Swaziland or an offence under paragraph 4 or 5, may in respect of any such offence impose any penalty which could be imposed in respect thereof by a general court martial, except imprisonment for a period exceeding two years.



**74. Composition of general court martial**

- (1) A general court martial shall, subject to subparagraph (2), consist of not less than three or (in the case of a trial for a capital offence or culpable homicide) not less than five members, all of whom shall be officers of the Umbutfo Swaziland Defence Force who have held commissioned rank, and shall be constituted and convened as may be prescribed:

Provided that—

- (a) the chairman of a general court martial shall, subject to subparagraph (d), be any officer appointed to such office by the General Officer Commanding;
  - (b) no member thereof shall be of lower rank than the accused or the most senior in rank of the accused or the accused in a joint trial, and not more than one member shall be of the same as the accused or the most senior in rank of the accused in a joint trial;
  - (c) a clerk shall be appointed to every general court martial; and
  - (d) subject to subparagraphs (a) and (b) any officer who has held commissioned rank may be appointed as chairman or as another member of such court martial.
- (2) A general court martial convened by the King shall consist of so many members, not being more than five, as the King may determine, and no person other than an officer of the Umbutfo Swaziland Defence Force shall be a member of any such general court martial.
- (3) Subparagraph (b) of the proviso to subparagraph (1) shall apply with reference to any officer appointed as a member of a court martial convened by the King.

**75. Composition of ordinary court martial**

An ordinary court martial shall consist of not less than three members, all of whom shall be officers of the Umbutfo Swaziland Defence Force who have held commissioned rank, and shall be constituted and convened as may be prescribed:

Provided that the chairman of an ordinary court martial shall not be below the rank of captain or its equivalent:

Provided further that any officer who has held commissioned rank may be appointed as chairman as another member of such court martial.

**76. Disqualifications for service on court martial**

- (1) No officer shall be qualified to serve on a court martial as chairman, member or clerk, if he—
- (a) convened that court martial;
  - (b) investigated the charge or any of the charges to be tried by that court martial;
  - (c) being the commanding officer of the accused, applied for his trial by court martial;
  - (d) is the prosecutor or defending officer of a witness; or
  - (e) has personal knowledge of any material fact or evidence relating to the charge or any of the charges.
- (2) The provisions of subparagraph (1)(d) shall not be deemed to prevent any member of a court martial which has convicted an offender of any offence from being called by the defence as a witness to give evidence in respect of the offender's character or his service in the Umbutfo Swaziland Defence Force or any other military force or in mitigation of sentence.
- (3) An officer appointed to serve as chairman, member or clerk on any court martial, who is not qualified to serve on such court martial, or who has any doubt as to whether he is so qualified, shall report to the convening authority or the chairman of the court martial as soon as he becomes aware that he is not qualified or of the fact giving rise to his doubt, and shall not serve or continue to serve

on such court martial unless the convening authority or the chairman is satisfied that he is qualified to serve.

**77. Accused may object to members of court martial**

When a court martial has assembled, the names of the members shall be read out to the accused who shall be asked if he objects to be tried by any of them, and any objection by the accused shall be decided by the court martial in the manner prescribed.

**78. Members of court martial to be sworn**

- (1) A court martial composed of members in respect of whom no objection has been made and sustained, shall be sworn in, and for that purpose the chairman may administer the prescribed oath to each of the members and to the clerk, if one has been appointed, and the clerk or, in the absence of a clerk, the most senior in rank of the members of the court may administer the prescribed oath to the chairman.
- (2) The chairman of a court martial or the clerk may administer the prescribed oath to any witness at a trial before that court martial and to any interpreter or shorthand writer employed at or during the trial.

**79. Vacancies in membership of court martial**

- (1) If after the commencement of a trial by court martial—
  - (a) the number of members thereof is, through death or otherwise, reduced below the minimum number required in terms of this Code, the court martial shall be adjourned;
  - (b) the chairman dies or is for any other reason unable to attend, and the number of members is not reduced below the said minimum number, the convening authority may appoint the most senior in rank of the members of the court, if of sufficient rank, to be chairman and if that member is not of sufficient rank, the court shall be adjourned.
- (2) If on account of the illness of the accused before the finding or for any other reason it is impossible to continue the trial, the court martial shall be adjourned.
- (3) If a court martial is adjourned under any provision of this paragraph, the accused may be tried again.

**80. Trial to be in open court in presence of accused**

- (1) Save as provided in subparagraph (2), (3) or (4), the trial of any person by court martial shall be in open court in the presence of such person.
- (2) If an accused person so conducts himself at his trial that the continuance of the proceedings in his presence is impracticable, the court martial may after due warning to the accused, order his removal and continue the trial in his absence.
- (3) If it appears to a convening authority or a court martial that, in the interests of good order or public morals or the administration of justice or for reasons of security, a trial ought not to be conducted or continued in open court, the convening authority or the court martial may at any time either before the commencement or during the course of the trial, order that persons other than the accused, his defending officer and the necessary court officials, or females, juveniles or other classes of persons, shall not be permitted to be present at the trial.
- (4) A court martial may at any time order any witness, whether for the prosecution or the defence, to leave the courtroom.

**81. How charge to be framed**

Every charge and every charge sheet shall be framed as prescribed, but so that every charge shall disclose the nature of the offence, the time and place of the commission of the offence and sufficient particulars to enable the accused to identify the act or omission with which he is charged.

**82. More than one charge may be joined in same charge sheet**

- (1) Any number of charges, including alternative charges, may be brought against an accused either separately or on the same charge sheet.
- (2) If an accused is charged with more than one offence in the same charge sheet, except in the alternative, the court may, on the application of the accused, dispose of each charge or some of the charges separately if it is satisfied that the accused will be prejudiced in his defence if the trial were to proceed on all the charges simultaneously.

**83. Joinder of persons**

- (1) Any number of persons may be charged jointly in one charge sheet with the same offence.
- (2) Any person who is charged jointly with one or more other persons and whose defence is likely to be prejudiced by a joint trial, may apply to be tried separately.
- (3) A court martial may in the case of a joint trial in its discretion direct that the trial of the accused persons or any of them shall be held separately from the trial of the other or others of such persons.

**84. Accused entitled to make his defence**

Every person charged with an offence before a court martial shall be entitled to make his defence at his trial and to be represented thereat by his defending officer.

**85. Rules of evidence applicable in civil courts to apply also in military courts**

The rules of evidence as applied by the civil courts of Swaziland shall be followed in and by military courts, and no person shall be required to answer any question or to produce any document or thing which he could not be compelled to answer or produce in similar proceedings before a civil court.

**86. Evidence must be given *viva voce* and in open court**

- (1) Every witness appearing to give evidence at a trial by a court martial shall give his evidence *viva voce* and on oath.
- (2) If through incapacity a witness is unable to attend court to give evidence, the court martial may hear the evidence of such witness at his home or at any other place where the witness may be, in the presence of the accused, his defending officer and the prosecutor.

**87. Proceedings must be recorded**

The clerk of the court martial or, in the absence of a clerk the chairman of a court martial shall be responsible for the proper recording as may be prescribed of the proceedings at any trial.

**88. Court martial may adjourn from time to time and place to place**

- (1) A court martial may adjourn from time to time and from place to place:

Provided that if the adjournment is for a period longer than fourteen days, the accused may be released from custody for the period of the adjournment:

Provided further that if the accused is not released from custody for such period, the chairman of the court martial shall immediately report that fact to the appropriate convening authority who may give such directions in the matter as he may deem necessary including the release or otherwise of the accused without prejudice to re-arrest.

- (2) A court martial may adjourn to view any place or any object which cannot conveniently be brought to the court, but such viewing shall be in the presence of the accused, his defending officer and the prosecutor.

**89. Alternative verdicts**

- (1) An accused who is charged—
  - (a) with desertion, may be found guilty of having been absent without leave;
  - (b) with having used threatening language to his superior officer, may be found guilty of having used insulting language to or of having by word or conduct displayed insubordination or of having behaved with contempt towards his superior officer;
  - (c) with having by word or conduct displayed insubordination or of having behaved with contempt towards his superior officer, may be found guilty of having used insulting or threatening language to his superior officer;
  - (d) with malingering, may be found guilty of feigning or producing disease or infirmity;
  - (e) with feigning disease or infirmity, may be found guilty of producing disease or infirmity;
  - (f) with producing disease or infirmity, may be found guilty of feigning disease or infirmity;
  - (g) with maiming, may be found guilty of injuring;
  - (h) with an offence under paragraph 19(1), may be found guilty of having committed an offence under paragraph 19(2);
  - (i) with theft, may be found guilty of receiving stolen property knowing it to have been stolen;
  - (j) with any other offence under this Code, may failing proof of the commission of an offence in circumstances involving a higher degree of punishment, be found guilty of the same offence as having been committed in circumstances involving a lesser degree of punishment;
  - (k) with any offence under this Code, may be found guilty of having attempted to commit that offence or of having aided, abetted, induced, incited, instigated, instructed or commanded any person to commit that offence or having procured the commission of that offence.
- (2) If an accused is charged before a court martial with an offence under paragraph 47, and the charge is one of which he could, if he had been tried by a civil court for such offence committed in Swaziland, have been found guilty of any other offence, the court martial may find him guilty of that other offence.
- (3) If an accused is charged before a court martial with a civil offence, and the charge is one on which he could, if he had been tried by a civil court in Swaziland for such an offence, have been found guilty of any other offence, the court martial may find him guilty of such other offence.

**90. How finding and sentence of court martial to be arrived at**

- (1) The finding of a court martial shall be determined by the vote of a majority of its members, all of whom shall vote, and in the event of an equality of votes the accused shall be acquitted:  
  
Provided that a finding of guilty of a capital offence shall require the votes of at least two-thirds of the members of a court martial.
- (2) The sentence of a court martial and all other questions arising for decision at a trial shall be determined by the vote of the majority of the members, all of whom shall vote, and in the event of an equality of votes the chairman shall have and exercise a casting vote:  
  
Provided that sentence of death shall not be imposed unless at least two-thirds of the members of the court martial vote in favour of that sentence.

**91. Finding and sentence to be announced in open court**

The finding and sentence and the decision on any other question arising at a trial shall be announced by the chairman of the court martial to the accused in open court.

**92. Punishments**

- (1) If a court martial convicts any person of any offence it may subject to the maximum punishment provided in this Code for that offence, the limits of its own penal jurisdiction, and paragraphs 32 and 94 impose upon the person convicted a penalty of—
- (a) in the case of an officer—
    - (i) death;
    - (ii) imprisonment;
    - (iii) cashiering;
    - (iv) dismissal from the Umbutfo Swaziland Defence Force;
    - (v) reduction to any lower commissioned rank;
    - (vi) reduction in seniority in rank;
    - (vii) a fine not exceeding two hundred emalangeni; or
    - (viii) reprimand;
  - (b) in the case of a warrant officer or non-commissioned officer—
    - (i) death;
    - (ii) imprisonment;
    - (iii) discharge with ignominy from the Umbutfo Swaziland Defence Force;
    - (iv) discharge from the Umbutfo Swaziland Defence Force;
    - (v) detention for a period not exceeding two years;
    - (vi) reduction to any lower rank, to non-commissioned rank or to the ranks;
    - (vii) reduction in seniority in rank;
    - (viii) a fine not exceeding fifty emalangeni; or
    - (ix) reprimand; or
  - (c) in the case of a private—
    - (i) death;
    - (ii) imprisonment;
    - (iii) discharge with ignominy from the Umbutfo Swaziland Defence Force;
    - (iv) discharge from the Umbutfo Swaziland Defence Force;
    - (v) detention for a period not exceeding two years;
    - (vi) field punishment for a period not exceeding three months;
    - (vii) reduction in seniority in rank;
    - (viii) a fine not exceeding twenty-five emalangeni; or
    - (ix) reprimand.
- (2) Any penalty provided for in subparagraph (1)(a), (b) or (c) shall for the purposes of this Code be deemed to be less severe and less serious in its consequences than any penalty provided for in any preceding subparagraph of the applicable paragraph.

**93. One sentence imposed in respect of all the charges**

If an accused is convicted by court martial of more than one offence alleged in the same charge sheet, such court shall, subject to paragraph 94, impose a sentence which is a valid sentence in respect of any one of the charges on which the accused has been convicted, it shall be deemed to be a valid sentence in respect of all the charges on which he has been convicted.

**94. Certain provisions to apply in case of particular punishments**

- (1) No other punishment may be combined with the punishment of death.
- (2) Save as provided in paragraph 34(2), no sentence of imprisonment shall be for a shorter period than thirty days.
- (3) The punishment of imprisonment shall not be combined with field punishment or the punishment of detention.
- (4) An officer sentenced to imprisonment shall also be sentenced to be cashiered, and the latter sentence shall be executed before the officer concerned is lodged in any prison, gaol or other place to serve the sentence of imprisonment.
- (5) A warrant officer, non-commissioned officer or private who is sentenced to imprisonment, shall also be sentenced to be discharged with ignominy.
- (6) A warrant officer or non-commissioned officer who is sentenced to detention, shall also be sentenced to reduction to the ranks, and may also be sentenced to be discharged from the Umbutfo Swaziland Defence Force.
- (7) Field punishment may be imposed beyond the borders of Swaziland and shall not be combined with the punishment of detention.
- (8) Any person whose trial commences or is concluded after he has ceased to be subject to this Code, may on conviction, if a sentence of a fine is imposed, be sentenced to imprisonment for two months in default of the payment of the fine.
- (9) A sentence of imprisonment or detention shall continue to run even though the offender ceases to be subject to this Code during the currency of the sentence.

**95. Suspension of sentences**

- (1) If a military court sentences any offender to detention or to imprisonment, it may order the operation of the whole or any portion of the sentence of detention, or the whole of the sentence of imprisonment to be suspended for a period not exceeding three years on such conditions as it may specify in the order.
- (2) A confirming or reviewing authority may when considering any sentence of detention for confirmation or on review, or at any later stage during the currency of the sentence, order the operation of the whole or any portion of the sentence or the unexpired portion thereof to be suspended for a period not exceeding three years on such conditions as may be specified in the order.
- (3) If the operation of any sentence or the unexpired portion of a sentence has been suspended under subparagraph (1) or (2), and the offender has, during the period of suspension, observed all the conditions of suspension or is promoted to a higher rank in terms of the regulations, the sentence or the unexpired portion of the sentence shall not be enforced.
- (4) Any authority empowered by this Code to suspend a sentence, may cause investigation to be made in the prescribed manner during the period of suspension of a sentence, concerning any complaint or allegation that the offender has not fulfilled any condition of the suspension of his sentence, and may, if satisfied that the offender has not fulfilled any such condition which he could reasonably have fulfilled, order that he be committed to serve the unexpired portion of his sentence.

- (5) An offender who during the period of suspension of his sentence ceases to be subject to this Code, shall be absolved from the sentence and from compliance with the conditions, if any, of suspension of the sentence.
96. **Court may where applicable, order deductions or forfeitures of pay**  
If a military court imposes upon any person any punishment mentioned in this Code, it may order such deductions from or forfeitures of pay of such person as may be authorised by this Code.
97. **Sentence may not be enforced unless it has been confirmed**  
The sentence of a court martial shall not be enforced or executed unless and until the finding and the sentence have been confirmed in accordance with the applicable provisions of this Code.
98. **Acquittal is not subject to confirmation**  
A finding of “not guilty” shall not be subject to confirmation and shall become effective when announced in open court.
99. **Convening authority may confirm sentences and findings of courts martial convened by him**  
Subject to paragraph 101, and any limitation or prohibition which may have been imposed under paragraph 70 upon the powers of any convening authority, every convening authority may confirm the findings and sentences of courts martial convened by him.
100. **Convening authority with full or limited power of confirmation must reserve confirmation**  
An officer having full or limited power to confirm the finding and the sentence of a court martial, who has served on or at a court martial as a member, clerk, defending officer or prosecutor or has given material evidence thereat, shall not confirm the finding or the finding and the sentence of such court martial, but shall reserve confirmation in terms of paragraph 103.
101. **Offender may make representations to confirming authority**  
Any offender may within forty-eight hours of his sentence by court martial lodge any written representations he may wish to make concerning the validity or justice of the finding or the sentence with the authority who has power to confirm the finding and the sentence, and such authority shall take cognisance of such representations in considering for confirmation the finding and the sentence.
102. **Power of confirming authority**
- (1) Any authority with power of confirmation may, within the limits of his powers, in respect of a court martial—
- (a) confirm the finding or some of the findings;
  - (b) refuse to confirm the finding or any of the findings;
  - (c) if he confirms the finding or any of the findings, confirm the sentence;
  - (d) vary the sentence, but so that such varied sentence is not either in itself or in its consequences more unfavourable to the accused than the sentence of the court martial; or
  - (e) reserve confirmation of the finding and the sentence in whole or in part in terms of paragraph 101.
- (2) If a confirming authority has, under paragraph (1)(b), refused to confirm any finding of a court martial, the accused shall be deemed to have been acquitted of the charge to which such finding relates.
- (3) A confirming authority may, if satisfied that a finding is invalid or is not supported by the evidence on record, but that the evidence on record fully supports any other finding which the court martial could have brought under paragraph 89, either set aside the first-mentioned finding and sentence, and refer the case back to the court martial to bring in some other finding and impose sentence

afresh if that other finding calls for a sentence or substitute such other finding and sentence, if any, for the finding and sentence of the court martial.

- (4) A confirming authority may correct any patent error in any finding or sentence:

Provided that the result will not be more unfavourable to the accused.

- (5) If a finding or sentence of a court martial has been ambiguously expressed or seemingly incorrectly recorded, the confirming authority may refer the case back to the court martial to record an unambiguous or correctly worded finding or sentence or may himself record an unambiguous or correctly worded finding or sentence, but in doing so the confirming authority shall give the offender the benefit of any reasonable doubt arising out of the finding or sentence as recorded by the court.

- (6) If a court martial has imposed an invalid sentence, the confirming authority may, if he confirms the finding, refer the sentence back to the court martial to impose and record a valid sentence:

Provided that if through death or other reason it is not reasonably possible to re-assemble the court, the confirming authority may record a valid sentence.

**103. Confirming authority may reserve confirmation**

Every officer having full or limited power to confirm the finding and the sentence of a court martial, may reserve the finding and the sentence, or the finding or some of the findings and the sentence, or the sentence for confirmation by the authority under whose warrant he convened such court martial, and such authority may thereupon confirm such finding and sentence or the unconfirmed portions thereof or reserve confirmation for the authority from whom he derives his powers to confirm findings and sentences of courts martial.

**104. Certain sentence to be reviewed by board or council of review before executed**

Notwithstanding anything to the contrary in this Code, a sentence of cashiering or of dismissal of an officer or of discharge with ignominy of a warrant officer or a non-commissioned rank or of imprisonment for a period of three months or more, shall not be executed although confirmed, unless and until the proceedings of the case have been reviewed by a board of review or the council of review and any such sentence shall not be subject to review by any other reviewing authority.

**105. Sentence of death must be endorsed by council of review and approved by His Majesty**

Notwithstanding anything to the contrary in this Code, a sentence of death, although confirmed by a confirming authority, shall not be executed unless and until the finding and the sentence have been endorsed by the council of review as being in accordance with real and substantial justice and have been approved by the King.

**106. Custody and execution of person sentenced to death**

An offender sentenced to death shall be kept in military custody until his execution which shall be by shooting.

**107. When sentence to be executed**

Subject to paragraphs 104 and 105, any sentence shall be executed as soon as possible after it has been confirmed.

**108. Reasons for judgment**

- (1) A confirming or reviewing authority, a board of review or the council of review may direct a court martial to give written reasons for any ruling or finding of such court, which reasons shall show—
- (a) the facts the court found to be proved;
  - (b) the grounds upon which the court arrived at the finding;



- (c) the reasons for any ruling of law or for the admission or rejection of any evidence, as may be specified in the direction.
- (2) Such reasons shall be furnished within such period as the direction may stipulate, not being less than four days from the date of receipt of the direction by the court martial.
- (3) The reasons shall be prepared and signed by the full court martial:  
Provided that if all the members are not reasonably available, such member or members as are available shall prepare and sign the reasons, indicating the reason which precluded the other member or members from signing.
- (4) An offender shall, if he so requests, be supplied with a copy of any reasons for judgment furnished in terms of this section.
109. **Review of sentences passed by court martial convened by officer commanding command, group, brigade, etc.**
- (1) If an offender has been convicted by a court martial convened by order of an officer commanding a command, group, brigade or any equivalent command, the confirming authority shall as soon as possible after the date of promulgation of the sentence, send the record of the proceedings for review to the appropriate chief of staff or divisional or equivalent commander, who may, after the expiry of a period of three days from the said date, exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by paragraph 116(1), (2) and (3).
- (2) After exercising such powers the chief of staff or divisional or equivalent commander concerned shall forward the record of proceedings to the Adjutant General.
110. **Review of sentences passed by court martial convened by chief of staff or divisional or equivalent commander**
- If an offender has been convicted by a court martial convened by order of a chief of staff or a divisional or equivalent commander, the chief of staff or divisional or equivalent commander, shall as soon as possible after the date of promulgation of the sentence, send the record of proceedings to the Adjutant General, who shall as soon as possible after the expiry of a period of three days from the said date, submit them with his views for review to the General Officer Commanding, who may thereupon exercise *mutatis mutandis* in respect of those proceedings the powers conferred upon the council of review by paragraph 116(1), (2) and (3).
111. **Review by Adjutant General**
- If the Adjutant General considers that the proceedings in any case submitted to him in terms of paragraph 65 or paragraph 109(2) are not in accordance with real and substantial justice, he shall submit the record of the proceedings together with his views on the case to the General Officer Commanding, who may thereupon exercise in respect of these proceedings the powers conferred upon the council of review by paragraph 116(1), (2) and (3).
112. **Offender may make representations to reviewing authority**
- If the record of the proceedings in any case is required to be sent for review, the person convicted may not later than three days after the date of the conviction or promulgation of the sentence, as the case may be, furnish the person to whom the case must be sent for review, with such representations in writing concerning the facts or law of the case, as he may wish to make, and such representations shall together with the record of the proceedings be duly considered by the reviewing authority.
113. **Offender may ask for review by council of review**
- An offender may within the prescribed time and in the prescribed manner, apply for the review of the proceedings of his case by the council of review.

**114. Prosecutor may make representations to council of review**

If the record of the proceedings of a case is referred for review to the council of review on the application of an offender, the officer who prosecuted at the trial may submit written representations in the prescribed manner and time to the council of review.

**115. Council of review to hear argument in certain cases**

In any case in which sentence of death or a sentence of twelve months imprisonment or more or of cashiering has been imposed, or where application has been made by the offender in terms of paragraph 113 for the review of the proceedings of his case, the council of review shall, at the request of the offender, allow the offender or his defending officer and the officer who prosecuted at the trial or any other person appointed for the purpose by the Adjutant General in his stead, to appear before it and hear argument on the issues in the case.

**116. Powers of council of review**

- (1) The council of review may, after due consideration of the record of the proceedings of any case and of any representations submitted to it in terms of this Code—
  - (a) endorse the finding or the finding and the sentence;
  - (b) quash the finding and set aside the sentence;
  - (c) substitute for the finding any finding which the evidence on record supports beyond a reasonable doubt and which could have been brought on the charge by the court martial under paragraph 89; or
  - (d) if it has endorsed the finding or substituted a finding, vary the sentence, but (subject to subparagraph (4)) so that the varied sentence is not either in itself or in its consequences more unfavourable to the offender than the sentence of the court martial.
- (2) The council of review may correct any patent error in the finding or sentence as recorded in respect of any case referred to it:

Provided that the consequences will not be more unfavourable to the offender.
- (3) The council of review may refer back to a court martial any finding or sentence not clearly or correctly recorded or any invalid sentence, to be clearly and correctly recorded or to impose a valid sentence, and if it is not reasonably practicable in the opinion of the council of review so to refer back to the court martial, the council of review may itself record a finding or sentence or impose a valid sentence:

Provided that in so doing the council of review shall give the benefit of any reasonable doubt to the offender in regard to both the finding and the sentence.
- (4) The council of review may in its discretion increase any sentence of imprisonment, detention, field punishment, fine, reprimand or of reduction in rank, if the review is held on the application of the offender.
- (5) For the purposes of subparagraph (1), (2) and (3), “sentence” includes an order under paragraph 130(1).

**117. Finding and sentence as confirmed, substituted or varied deemed to be sentence of court martial**

Any finding or sentence as confirmed, substituted or varied by a confirming or reviewing authority or the council of review, shall be deemed to be the finding or sentence of the court which passed the original sentence.

**118. General officer commanding may remit, mitigate or commute any sentence**

The General Officer Commanding may—

- (a) in his discretion mitigate, remit or commute any sentence imposed upon an offender by a military court; and
- (b) order a confirming authority who has refused to confirm the finding or any of the findings of a court martial convened by order of an officer commanding a command, group, brigade or any equivalent command to furnish written reasons for such refusal.

**119. When sentence commences**

- (1) Save as otherwise provided or prescribed, every sentence shall commence or be deemed to commence immediately after the sentence has been announced in open court.
- (2) If a sentence is varied to one of imprisonment, detention or field punishment, such imprisonment, detention or field punishment shall be deemed to have commenced on the date of commencement of the sentence which is so varied.

**120. Where sentences of imprisonment, detention or field punishment to be served**

The whole or any portion of any sentence of imprisonment or field punishment imposed by a military court may by order of the Adjutant General, and any sentence of detention shall, be served in a detention barracks.

**121. The King may establish prisons and detention barracks and make regulations in regard thereto**

- (1) The King may establish one or more prisons to which offenders sentenced to imprisonment under this Code may be committed to serve such sentences, or may direct that offenders so sentenced be committed to any prison established or deemed to have been established under the Prisons Act, [No. 40 of 1964](#).
- (2) The King may establish one or more detention barracks to which offenders sentenced to detention may be committed to serve such sentences, or may direct that certain premises or portions of premises be detention barracks to which such offenders may be so committed.
- (3) The King may command the Commanding Officer to make regulations, not inconsistent with the Order or this Schedule, relating to all or any of the following matters or things in regard to any prisons or detention barracks established or premises or portions thereof deemed to be detention barracks under this section, namely—
  - (a) supervision and management;
  - (b) discipline of the staff, offenders and inmates;
  - (c) the admission, safe custody and release of offenders and inmates;
  - (d) the remission of sentences for good behaviour;
  - (e) the labour or compulsory labour that may be performed by offenders;
  - (f) the punishments, not including corporal punishment which may be imposed for offences in such establishments and the persons by whom and the manner in which such punishments may be imposed or executed;
  - (g) the powers of the officers in charge of such establishments;
  - (h) the restraint which may be applied to offenders;
  - (i) visitors;
  - (j) inspections;
  - (k) death of offenders and inmates;

- (l) the extent to which all or any of the regulations under the Prisons Act, [No. 40 of 1964](#), may be applied to such prisons;
- (m) any matters which he considers necessary or expedient for the purposes for which such prisons or barracks are established or such premises or portions thereof are intended.

**122. How sentences of imprisonment and detention imposed outside Swaziland to be served**

- (1) The General Officer Commanding may authorise any officer in command of troops on service beyond the borders of Swaziland to establish such detention barracks as may be deemed necessary by such officer, to which offenders sentenced to detention under this Code may be committed to serve such sentences.

- (2) Any offender sentenced beyond the borders of Swaziland to imprisonment under this Code, shall be removed to Swaziland to serve such sentence:

Provided that if owing to distance, lack of means of conveyance or other circumstances such removal is not reasonably practicable, the offender may serve his sentence or any portion thereof in detention barracks established under subparagraph (1).

- (3) The King may direct that offenders sentenced beyond the borders of Swaziland to imprisonment or detention under this Code, may serve any such sentence or portion thereof in any prison, detention barracks or like place of confinement established or controlled or supervised by any country or by the commander of any force serving in cooperation with the Umbutfo Swaziland Defence Force.

- (4) Any person beyond the borders of Swaziland who is charged or to be charged with an offence under this Code, which offence would normally be tried by a general court martial, may be committed to and detained in any prison, detention barracks or like place of confinement mentioned in subparagraph (3), while such offender is awaiting trial or confirmation of sentence:

Provided that no officer shall be so committed or detained unless the consent of the convening authority under whose command such officer is serving has been obtained.

- (5) The regulations applicable to detention barracks in Swaziland shall apply to detention barracks established under subparagraph (1):

Provided that the officer in general command of the Umbutfo Swaziland Defence Force in the area in which such detention barracks are situated may in writing authorise such amendments or additions to the regulations for such detention barracks as local or service conditions render necessary or advisable:

Provided further that such amendments or additions shall not make the conditions more severe for offenders or inmates.

**123. Person in charge of prison, etc., must receive and detain person charged under Code**

Every officer or other person in charge of any prison, police cell or lock-up in Swaziland shall receive, admit, keep in custody or release from custody any person charged with an offence or committed or sentenced under this Code, in accordance with the regulations in force in respect of such prison, cell or lock-up and in compliance with the warrant of committal or release given to him by the commanding officer of the person charged or sentenced or by any other prescribed officer.

**124. Unsoundness of mind at time of commission of offence**

If a military court trying an accused for an offence is satisfied from evidence (including medical evidence) given before it that at the time of the commission of the offence the accused was mentally disordered or defective so as not to be responsible according to law for the act or omission constituting the offence, it shall find the accused guilty but insane.

**125. Unsoundness of mind while under arrest or in custody**

- (1) If any person while under arrest or in custody under this Code in Swaziland on a charge of an offence is committed by a court martial to an institution under the provisions of the mental

disorders Act [No. 48 of 1963](#), the adjutant general may direct that the charge be proceeded with when such person is fit to stand his trial.

- (2) If any person under arrest or in custody beyond the borders of Swaziland on a charge under this Code is, in the opinion of two registered medical practitioners appointed by the senior military medical authority in the area concerned, mentally disordered or defective as defined in the Mental Disorders Act, [No. 48 of 1963](#), he shall be committed by his commanding officer to such hospital, prison, detention barracks or other place as the circumstances may permit and shall be detained therein in safe custody until his removal to Swaziland can reasonably be effected or until he is fit to stand his trial, whichever is the earlier.

**126. Unsoundness of mind upon arraignment or during trial in Swaziland**

- (1) If upon arraignment before a military court in Swaziland on a charge of an offence or at any time during the trial and before the finding, an accused appears to be incapable of understanding the proceedings at the trial, the court shall report the condition of the accused to the commanding officer who may order that the accused be detained in proper custody until the decision of the commanding officer is made known.
- (2) If such accused is not committed by the commanding officer to an institution under the provisions of the Mental Disorders Act, [No. 48 of 1963](#), he may be charged before the same or some other court.
- (3) If the accused is committed by the commanding officer to an institution under the provisions of that Act, the charge against him may, in the discretion of the Adjutant General be withdrawn or may, when the accused is fit to stand his trial, be proceeded with before the same court or be commenced de novo before another court.

**127. Unsoundness of mind upon arraignment or during trial outside Swaziland**

- (1) If when an accused is arraigned before a military court beyond the borders of Swaziland on a charge for an offence under this Code, or at any time during the trial and before the finding, it appears to the court that the accused is not capable of understanding the proceedings at the trial, the court shall hear evidence, including medical evidence, to determine whether the accused is capable of understanding the proceedings at the trial so as to make a proper defence.
- (2) If the court finds that the accused is so capable the trial shall proceed.
- (3) If the court finds that the accused is not so capable, it shall order that—
  - (a) the accused be removed to Swaziland and there detained in detention barracks or some other prescribed place pending the signification of the King's decision; and
  - (b) pending his removal to Swaziland, he be detained in a hospital, prison, detention barracks or other place as circumstances may permit.
- (4) If an accused so found incapable of understanding the proceedings becomes fit to stand his trial, whether before removal to Swaziland or thereafter, he may be charged and tried for the offence.

**128. Only authorised deductions may be made from pay**

The pay of any member of the Umbutfo Swaziland Defence Force shall be paid without any deductions other than—

- (a) such deductions as are authorised by virtue of any provision of the Finance and Audit Act, [No. 18 of 1967](#);
- (b) deductions in settlement of a debt due to the Army or Government; or
- (c) deductions in pursuance of a garnishee order issued in terms of any law in force in Swaziland.

**129. Forfeitures of pay**

- (1) Every person subject to this Code shall forfeit his full pay for every period during which he—
- (a) has been absent from duty, whether on desertion or without leave, in respect of which he has been convicted by a competent court;
  - (b) has been detained under arrest or in custody for an offence in respect of which—
    - (i) he has been sentenced to imprisonment; or
    - (ii) a sentence referred to in subparagraph (d) has been imposed upon him;
  - (c) has been imprisoned in pursuance of a sentence of a competent court;
  - (d) has been under detention in pursuance of a sentence of a competent court with which there has been combined a sentence of discharge;
  - (e) is in hospital in consequence of an offence under paragraph 18(b) of which he has been convicted by a competent court;
  - (f) has been detained under arrest by or in the custody of the Royal Swaziland Police for an offence in respect of which he has been convicted by a competent court;
  - (g) is absent from duty as a prisoner of war due to his own wilful act or omission;
  - (h) voluntarily serves the enemy;
  - (i) has been on bail or released on his own recognisance by a civil court but failed to return to duty; or
  - (j) is not on duty owing to his having been ordered by the Adjutant General not to return to duty during any period subsequent to his release from arrest or custody pending or during trial, whether on bail or on his own recognisance or otherwise in respect of an offence of which he has thereafter been convicted:

Provided that this subparagraph shall also apply to a person who has been convicted and intends appealing against his conviction or applying for the review of the proceedings of his case.

- (2) Any person subject to this Code shall in respect of any period of detention under arrest or in custody for an offence in respect of which a sentence other than imprisonment or a sentence referred to in subparagraph (1)(d) has been imposed upon him, or any period of field punishment or detention served by him in pursuance of a sentence of a competent court than a sentence referred to in subparagraph (1)(d), forfeit—
- (a) if he is married or is a widower or divorced person who has a child, stepchild or legally adopted child who lives with and is maintained by him, one-third of his pay; or
  - (b) if he is unmarried, two-thirds of his pay.
- (3) For the purpose of this paragraph the full pay of any person subject to the Code or such portion thereof as the General Officer Commanding, or an officer authorised by him may determine, shall be withheld as from the date upon which such person has been absent without leave, was arrested or taken into custody or detained as prisoner of war or admitted to hospital or released from arrest or custody, whether on bail, his own recognisance or otherwise, for the period during which he is so absent, under arrest or in custody, a prisoner of war, in hospital or released from arrest or custody, until such time as it has been established whether he shall forfeit his pay in terms of subparagraph (1) or (2).
- (4) The full amount withheld under subparagraph (3) shall be paid to the person from whom it has been withheld if he is exonerated by any court of competent jurisdiction or if, in the opinion of the Adjutant General, he is not charged before any such court within a reasonable time.

**130. Deductions from pay**

- (1) If a competent court convicts any person subject to this Code of an offence, other than an offence relating to the driving of a motor vehicle, and any act or omission constituting such offence has caused any loss of or damage to public property or property belonging to any institution the court, shall, subject to subparagraph (4) order that the accused be placed under deductions of pay to the amount of the loss or damage:

Provided that where the court is satisfied that the offence was not committed wilfully, it may order that the accused be placed under deductions of pay to such lesser amount as it may in its discretion determine.

- (2) Any amount deducted from a member's pay in pursuance of an order made under subparagraph (1) in respect of loss of or damage to property belonging to any institution shall be paid to the institution concerned.
- (3) If more than one person has been so convicted, the court shall for the purpose of making an order under subparagraph (1), order that all the offenders be placed under deductions of pay in such a manner as to ensure that the amount in question will be recovered from them jointly and severally.
- (4) If a competent court convicts a person subject to this Code of having in contravention of paragraph 24 negligently lost, damaged or destroyed his equipment, arms, kit or any other property issued to him at public expense for personal use in the execution of his duties, it shall order that such equipment, arms, kit or other property be replaced or repaired and that the costs involved in such replacement or repair be recovered from the person concerned:

Provided that no such order shall be made in the case of a sentence of cashiering, dismissal from, discharge with ignominy from, or discharge from, the Umbutfo Swaziland Defence Force, if such equipment, arms, kit or other property has at the time of sentence become the property of the accused pursuant to the regulations.

**131. Fine may be deducted from pay**

If a military court sentences any person subject to this Code to pay a fine, it may order that such person be placed under deductions of pay in the amount of the fine, and such amount may thereupon be deducted from such person's pay in such monthly instalments as may be determined by the Chief Paymaster of the Umbutfo Swaziland Defence Force.

**132. Maintenance orders**

- (1) If the General Officer Commanding is satisfied that—
  - (a) a magistrate's court or the High Court has made an order against a member of the Umbutfo Swaziland Defence Force performing service in defence of Swaziland, for the regular payment of a specified amount towards the maintenance of such member's wife or child, he may order that the member concerned be placed under deductions of pay for the amount of the order of court;
  - (b) any member of the Umbutfo Swaziland Defence Force performing service in defence of Swaziland, is not maintaining or adequately maintaining his wife or child, he may order that the member concerned be placed under deductions of pay for such amount as, in all the circumstances of the case, he considers to be reasonable.
- (2) Any amount deducted from a member's pay in pursuance of an order made under subparagraph (1), shall be paid to the wife of the member concerned or to the legal guardian of the child concerned or to the District Commissioner of the district in which such wife or child resides for distribution to or on behalf of such wife or child as the District Officer may determine.

**133. Garnishee orders**

- (1) Notwithstanding anything in any other law no garnishee order shall be issued in terms of any law in force in Swaziland in respect of the pay of any member of the Umbutfo Swaziland Defence Force

while he is on service beyond the borders of Swaziland or before the expiry of a period of three months after his return to Swaziland.

- (2) Paragraph 128(1)(c) shall not apply to the pay of any such member while he is on such service or during such period in respect of any garnishee order issued while such member was not on such service.

**134. General Officer Commanding may remit deduction or forfeitures**

If the General Officer Commanding is satisfied that any forfeiture of the pay of a member of the Umbutfo Swaziland Defence Force, made under paragraph 129 will, having regard to the member's pay and the nature of the offence, if any, create or result in undue hardship, he may remit the whole or any portion of such forfeiture.

**135. Redress of wrongs**

- (1) Any person subject to this Code (hereinafter in this paragraph referred to as "the complainant") who is aggrieved by any act or omission of any person subject to this Code, may complain in writing to his commanding officer, and if such complaint is against the commanding officer or such commanding officer is unable to redress the wrong or otherwise to satisfy the complainant within a reasonable time, such commanding officer shall refer the complaint to the officer under whose command he is serving who holds a warrant to convene courts martial.
- (2) Such latter officer shall, if he is unable to redress the wrong or otherwise to satisfy the complainant, without unreasonable delay transmit the complaint to the appropriate chief of staff for decision, and such chief of staff shall, if he is unable to redress the wrong or to satisfy the complainant, without delay transmit the complaint to the General Officer Commanding.
- (3) If the General Officer Commanding is unable to redress the wrong or otherwise to satisfy the complainant, he shall, if requested by the complainant to do so, transmit the complaint to the King, whose decision shall be final.
- (4) If an officer who has received a complaint transmits such complaint to higher authority in terms of this paragraph, he shall notify the complainant of such transmission at the time thereof.
- (5) Any person who has lodged a complaint with his commanding officer and whose wrong is not redressed or who is not otherwise satisfied within a reasonable time, or who has not been advised within a reasonable time that his complaint has been sent to higher authority, may complain directly to such higher authority and ultimately to the General Officer Commanding:

Provided that such complainant shall send a copy of such further complaint to his commanding officer at the same time as he complains to higher authority or the General Officer Commanding.

**136. Board of inquiry in relation to absence without leave**

- (1) If any person has been absent without leave for more than thirty days, a board of inquiry may be convened to inquire into such absence and into any deficiencies there may be in his kit, arms and equipment or any articles of public property whatsoever on issue to him.
- (2) Such board of inquiry shall be convened and shall conduct its inquiry in the prescribed manner and take evidence on oath, for which purpose the chairman may administer the prescribed oath to witnesses, interpreters and shorthand writers.
- (3) If the board of inquiry finds that such person has been so absent for more than thirty days and is still so absent, it shall record such finding, including the date of the commencement of the absence without leave, as also its finding on any deficiencies of his kit, arms and equipment and any articles of public property on issue to him and the estimated value thereof.
- (4) If such person is not thereafter arrested, or until he is arrested, the finding of the board of inquiry shall have the force and effect of a finding of guilty by a court martial on a charge of desertion, and if there is any finding by the board of inquiry of any deficiencies, such finding shall have the force and effect of a finding of guilty on a charge of an offence under paragraph 24(1)(a).



- (5) A copy of any finding of a board of inquiry under this section, if duly certified to be a true copy of the original by the commanding officer of the person or the appropriate chief of staff or the officer in charge of the records of the said chief of staff, shall on its mere production be admissible in evidence against such person on a charge of desertion or absence without leave or on a charge under paragraph 24(1)(a) as proof of his absence without leave and of any deficiencies and the value thereof:

Provided that such proof shall be rebuttable by such person.

**137. Boards of inquiry**

- (1) The General Officer Commanding or any prescribed officer may at any time or place convene a board of inquiry to inquire into any matter concerning the Umbutfo Swaziland Defence Force, any member thereof or any public property or the property or affairs of any institution or any regimental or sports funds of such Force, and to report thereon or to make a recommendation as may be directed.
- (2) The chairman of any such board of inquiry is empowered to administer the prescribed oath to witnesses, interpreters and shorthand writers at such inquiry.

**138. Attendance of witnesses at and composition of boards of inquiry**

- (1) The chairman of any board of inquiry convened under paragraph 136 or 137 may summon any person in Swaziland, whether or not otherwise subject to this Code, to attend such board of inquiry and to give evidence thereat:

Provided that no person shall be required to answer any question at such inquiry which he could not in a civil court be compelled to answer.

- (2) The composition of boards of inquiry, the method of convening such boards and the procedure to be followed by such boards shall be as prescribed.

**139. Attendance of witnesses at military courts, preliminary investigations or boards of inquiry**

- (1) Any person not subject to this Code who is required to give evidence or to produce any document or thing at any military court, a preliminary investigation or board of inquiry in Swaziland, may be summoned in the prescribed manner to attend such court, preliminary investigation or board and to give such evidence or produce such document or thing.
- (2) Any person not subject to this Code who has been summoned in the prescribed manner to attend any military court, preliminary investigation or board of inquiry to give evidence or to produce any document or thing, and who fails to attend or to remain in attendance until authorised to leave or refuses to be sworn or to affirm or to answer any question which in similar proceedings in a civil court he could be compelled to answer, or fails or refuses to produce any document or thing which in similar proceedings in a civil court he could be compelled to produce, shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni or imprisonment for a period of one month,

**140. Competent but not compellable witness giving evidence outside Swaziland**

If at any trial by a military court beyond the borders of Swaziland a competent but not compellable witness gives evidence but refuses to answer any question put to him by the court, or by the defence if he has been called by the prosecution, or by the prosecutor if he has been called by the defence, to which question he would be bound in law to reply if he were a witness at such a trial in Swaziland, the court shall, if satisfied that the answer to the question is material, order the witness to stand down and strike the whole of his evidence from the record of the proceedings.

**141. Evidence**

- (1) If a person subject to this Code is required to produce at the trial before a civil or a military court of any person for an offence, any document made or intended for official use, such person may in lieu of the original document produce a copy certified by him to be a true copy of the original and

such copy shall be admissible in evidence as proof of its existence and of its contents as if it were the original:

Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of such document shall be produced.

- (2) A photographic reproduction of a document, if certified by the officer having the custody of the original to be a photographic reproduction of the original, shall be admissible in evidence before a military or civil court trying an offence as proof of its existence and of its contents as if it were the original:

Provided that, if the accused so requests or if the charge is in respect of any alteration, defacement or forgery of a document, the original of the document shall be produced.

- (3) Any entry in the records of the Umbutfo Swaziland Defence Force concerning the pay or any allowances of any person subject to this Code may, unless objection is made by any interested party, be proved in a civil or military court trying an offence by the production of a copy or a photographic reproduction of such entry if such copy or reproduction purports to be certified by the officer having charge of the original record to be a true copy or reproduction, as the case may be, of such entry.
- (4) Any attestation or enrolment paper purporting to have been signed by any person, shall be evidence of such person having given the answers to questions which he is therein represented as having given, and the existence and contents of such attestation paper may, unless objection is made by any interested party, be proved in evidence before a civil court or military court by the production of a copy or a photographic reproduction thereof, if certified to be a true copy or reproduction of the original by the officer having charge of the original.

- (5) A certificate purporting to be signed by an officer having charge of the records of any person charged with an offence, stating—

- (a) the rank or appointment held by such person at any time during his service;
- (b) the date of his enrolment or discharge;
- (c) the decorations, medals, clasps, good conduct or long service badges or wound stripes or other emblems of merit to which such person is or is not entitled; or
- (d) the rate of pay or any allowances to which such person is or was at any time entitled,

shall upon its mere production be admissible as evidence of the contents thereof at the trial of such person for an offence by a civil or military court:

Provided that the accused shall have the right to require such officer to be called to give oral evidence.

#### 142. **How persons arrested for desertion or absence without leave to be dealt with**

- (1) If a person surrenders himself to or is arrested by the chief disciplinary officer, an assistant disciplinary officer, a military policeman, a superior officer or a member of the Royal Swaziland Police on a charge under this Code of desertion or absence without leave, the person to whom he surrenders himself or who arrests him shall prepare and sign a certificate stating the fact of such surrender or arrest and the time, date and place thereof.
- (2) A certificate prepared and signed in terms of subparagraph (1) shall at the trial of such person on such charge by a civil or military court on its mere production be admissible in evidence as proof of the surrender or arrest, as the case may be, and of the time, date and place thereof as stated in the certificate.
- (3) If a person is arrested by, or surrenders himself to, a member of the Royal Swaziland Police on a charge of desertion or absence without leave and such person cannot be delivered over within forty-eight hours to his commanding officer or the chief disciplinary officer or an assistant disciplinary officer, he shall without delay be brought before a magistrate of the district in which he then is and such magistrate, if satisfied after due enquiry that such person is a deserter or an illegal absentee

or that there are reasonable grounds for suspecting that such person is a deserter or an illegal absentee, may order that he be delivered over to his commanding officer or to the chief disciplinary officer or an assistant disciplinary officer and that he be committed to custody in a prison, police cell or lock-up or other place of confinement until such delivery over can be effected:

Provided that if such person is not so delivered over within fourteen days of his committal to custody by the magistrate, he shall again be brought before a magistrate who may order his committal for a further period not exceeding fourteen days.

- (4) If there is not sufficient evidence available to the magistrate when a person is brought before him under subparagraph (3) to enable the magistrate to determine whether such person is a deserter or an illegal absentee or whether there are reasonable grounds for so suspecting him, the magistrate may remand him in custody from time to time not exceeding seven days at a time.
- (5) If a person referred to in subparagraph (3) on being brought before a magistrate voluntarily confesses to being a deserter or an illegal absentee, the magistrate shall record such confession and obtain the signature of such person thereto, if he is willing to sign it, and shall thereafter himself sign such record and cause a true copy thereof to be made and certified by himself or the clerk of the court, and such certified copy shall be admissible in evidence on its mere production at the trial of such person by a civil or military court on a charge of desertion or absence without leave as proof of such confession.

**143. Orders by General Officer Commanding may be signified by order, instruction or letter**

- (1) If any order is authorised by this Code to be made by the General Officer Commanding, or any other commanding officer, such order may be signified by an order, instruction or letter under the hand of any officer authorised to issue such order on behalf of the General Officer Commanding, or other commanding officer, and an order, instruction or letter purporting to be signed by any officer appearing therein to be so authorised shall be evidence of his being so authorised.
- (2) An order deviating from any form that may be prescribed for it shall not be rendered invalid merely because of such deviation.

**144. Registrar or clerk of a civil court must furnish particulars of trial by civil court of persons subject to Code**

If any person subject to this Code has been tried by a civil court, the registrar or clerk of such court shall, if required by the commanding officer of such person or by any other officer, transmit to him a certificate setting forth the offence for which such person was tried, the judgment and the sentence and any order of the court or, if he was acquitted, a statement to that effect, and such certificate shall for all purposes be proof of the conviction and sentence, or of the order of the court or of the acquittal of such person.

**145. Members of Umbutfo Swaziland Defence Force deemed to have been properly attested or enrolled in certain circumstances**

- (1) Every person who has served as a member of the Umbutfo Swaziland Defence Force for a period of not less than one month, or who has accepted pay as a member of such Force, shall be deemed to have been properly attested or enrolled and shall have no right to claim his discharge or release on the ground of any error, illegality or misunderstanding in his attestation or enrolment.
- (2) If a person claims his discharge or release within one month of engagement for service on the ground of any error, illegality or misunderstanding in his attestation or enrolment, and obtains his discharge as a result of such claim, he shall nevertheless be deemed to have been properly attested or enrolled to the date of his claim.

**146. Council of review**

- (1) The King shall establish a council of review consisting of a chairman and two other persons.
- (2) The chairman shall if possible be a judge or a retired judge or a magistrate or retired magistrate of at least ten years experience as such in Swaziland.

- (3) The members of the council of review may be employed on a part-time basis or on a full-time basis and may in the case of members who are not in full-time employment of the Government be remunerated at such rates as may be determined by the King,

**147. Boards of review**

- (1) The General Officer Commanding may during service establish so many boards of review in the field as he may deem necessary.
- (2) A board of review shall consist of not less than three members, one of whom shall be appointed as chairman.
- (3) The duties, powers and status of members of a board of review shall be as prescribed.

**148. Appointment and powers of chief disciplinary officer and assistants**

- (1) The General Officer Commanding, or an officer authorised thereto by him may appoint an officer as chief disciplinary officer of the Umbutfo Swaziland Defence Force and as many assistant disciplinary officers as he may deem necessary.
- (2) The chief disciplinary officer or, subject to paragraph 52(2), any assistant disciplinary officer may at any time or place arrest any person subject to this Code for an offence and detain such person as prescribed.
- (3) The chief disciplinary officer or any assistant disciplinary officer may under warrant take such steps as may be prescribed for the execution of any sentence of death, imprisonment, detention or field punishment imposed by a military court:

Provided that the provisions of this subparagraph shall also apply in respect of a sentence of detention imposed by a civil court.

**149. Restitution or confiscation of property**

- (1) If any person is convicted by a military court of theft or any other offence whereby he has unlawfully obtained any property, and such property or any portion thereof is found in the possession or under the control of such person, the court may order that such property or such portion thereof be restored to the lawful owner.
- (2) A military court convicting any person of an offence which was committed by means of any weapon, instrument or other article produced to the court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the state.

**150. Field punishment**

- (1) An offender undergoing field punishment may be required to perform any or all of his normal military duties.
- (2) Field punishment may be carried out regimentally when the unit to which the offender belongs is on the move or about to move or if the chief disciplinary officer or an assistant disciplinary officer is not reasonably available, and to prevent the escape of the offender he may be handcuffed or otherwise secured.
- (3) If a unit is not on the move or about to move, and the chief disciplinary officer or an assistant disciplinary officer is available to the unit, an offender sentenced to field punishment shall be handed over to such disciplinary officer to undergo the sentence.

**151. Exercise of powers vested in holders of military office**

Any power or jurisdiction given to and any act or thing to be done by, to, or before any person holding any office in the Umbutfo Swaziland Defence Force, may be exercised or done by or before any other person for the time being authorised in that behalf according to the customs of the service or as may be prescribed.

**152. Contempt of military court by person not subject to the Code**

- (1) Any person not subject to this Code who wilfully causes any disturbance or interruption at any military court or wilfully commits any act calculated or likely to bring such court into contempt, ridicule or disrepute, shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni or in default of payment to imprisonment for two months.
- (2) Any person who, within the precincts of a military court, commits any act or causes any disturbance or interruption mentioned in subparagraph (1) may be ordered by the court to be removed from the precincts of the court by any member of the Military Force and to be taken into custody and handed over to the Royal Swaziland Police.

**153. Corporal punishment may not be imposed**

Notwithstanding anything in any other law, no civil or military court may in respect of any offence under this Code sentence an offender to any form of corporal punishment.

**154. Defending officer as a witness**

No defending officer appointed in terms of this Code to defend an accused person shall be competent to give evidence against such person at his trial without the consent of such person, concerning any fact, matter or thing which came to his knowledge after and by reason of his appointment and duties as the defending officer of such person.

**155. Trials commenced prior to commencement of Code**

- (1) The trial of any person subject to this Code which was commenced prior to the date of the coming into operation of this Code shall be proceeded with and concluded in all respects as if this Code had not been in operation.
- (2) In respect of any trial referred to in subparagraph (1), the finding and the sentence shall be confirmed, the sentence or any order shall be executed and the proceedings shall be reviewed as if this Code had not been in operation.
- (3) Any proceedings which may be instituted in any civil court arising out of or based on any proceedings under subparagraph (1) or (2) shall likewise in all respects be dealt with as if this Code had not been in operation.
- (4) For the purposes of this paragraph, a trial shall be deemed to have commenced if the accused has pleaded or has been required to plead to the charge or charges against him or if any evidence has been recorded at a summary of evidence in respect of any charge or charges against him.