



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 406

CAPE TOWN, 23 APRIL 1999

No. 19966

KAAPSTAD, 23 APRIL 1999

OFFICE OF THE PRESIDENT

No. 498.

23 April 1999

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 16 of 1999: Military Discipline Supplementary Measures Act, 1999.

KANTOOR VAN DIE PRESIDENT

No. 498.

23 April 1999

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 16 van 1999: Wet op Aanvullende Maatreëls vir Militêre Dissipline, 1999.

Act No. 16, 1999**MILITARY DISCIPLINE SUPPLEMENTARY
MEASURES ACT, 1999****GENERAL EXPLANATORY NOTE:**

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 14 April 1999.)*

ACT

To provide for a new system of military courts with a view to improved enforcement of military discipline; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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WET OP AANVULLENDE MAATREËLS
VIR MILITÈRE DISSIPINE, 1999

Wet No. 16, 1999

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 14 April 1999.)

WET

Om voorsiening te maak vir 'n nuwe stelsel van militêre howe met die oog op verbeterde toepassing van militêre dissipline; en om vir bykomstige aangeleenthede voorsiening te maak.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:

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SCHEDULES

Repeal of laws
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Definitions

1. In this Act, unless the context otherwise indicates— 5
- (i) “Adjutant General” means the Adjutant General referred to in section 27;
 - (ii) “appropriately qualified” includes the passing of a departmental course in military law;
 - (iii) “assigned” means assigned in terms of this Act;
 - (iv) “civilian court” means any competent court in the Republic having jurisdiction in criminal matters; 10
 - (v) “Code” means the Military Discipline Code referred to in section 104(1) of the Defence Act, 1957;
 - (vi) “commanding officer” means an officer who has been appointed to command any unit or formation in the South African National Defence Force and also an officer subordinate in rank to and authorised by such commanding officer to conduct disciplinary hearings; 15
 - (vii) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - (viii) “corrective punishment” means additional supervised training, work or drill for two hours per working day, done or carried out within unit lines; 20
 - (ix) “Court of Military Appeals” means the Court of Military Appeals referred to in section 6(1)(a);
 - (x) “Defence Act, 1957” means the Defence Act, 1957 (Act No. 44 of 1957);
 - (xi) “defence counsel” means a person referred to in section 13(2)(c); 25
 - (xii) “degree” means a degree conferred by any university in the Republic or a degree recognised in law to be equivalent to that degree;
 - (xiii) “degree in law” means a degree which has a preponderance of courses in law, including courses in— 30
 - (a) criminal law;
 - (b) the law of evidence;
 - (c) civil procedure;
 - (d) criminal procedure; and
 - (e) the interpretation of statutes;
 - (xiv) “disciplinary hearing” means a hearing referred to in section 6(1)(d); 35
 - (xv) “local representative of the Adjutant General” means an appropriately qualified officer with at least three years experience in the administration of criminal justice or military justice and assigned and authorised in writing by the Adjutant General to—
 - (a) manage, promote, facilitate and co-ordinate activities ensuring the effective administration of military justice and military legal services; 40 and
 - (b) otherwise execute the functions of the Adjutant General in any designated area or place or in respect of any specific deployment, operation or exercise; 45
 - (xvi) “member” means any member of the South African National Defence Force in terms of the Defence Act, 1957;
 - (xvii) “military assessor” means a person referred to in section 20(1);
 - (xviii) “military disciplinary offence” means any offence in terms of the Code and any offence deemed in law to be an offence in terms of the Code, for which the maximum punishment prescribed in the Code does not exceed imprisonment for a period of one year; 50
 - (xix) “military court” means any one of the courts and the disciplinary hearing referred to in section 6;
 - (xx) “military judge” means a person referred to in section 10(1)(a); 55
 - (xxi) “Minister” means the Minister of Defence;
 - (xxii) “officer” means an officer as defined in section 1 of the Defence Act, 1957;
 - (xxiii) “Permanent Force” means the component referred to in section 5(a) of the Defence Act, 1957;

BYLAES

Bepalings herroep
Wysiging van wette

Woordomskrywing

- 5 1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- (i) “Adjudant-generaal”, die Adjudant-generaal in artikel 27 bedoel;
 - (ii) “bevelvoerder”, 'n offisier wat aangestel is om oor enige eenheid of formasie van die Suid-Afrikaanse Nasionale Weermag bevel te voer, asook 'n offisier ondergeskik in rang aan en gemagtig deur sodanige bevelvoerder om dissiplinêre verhore te hou;
 - (iii) “burgerlike hof”, 'n bevoegde hof in die Republiek met regbsbevoegdheid in strafregtelike aangeleenthede;
 - (iv) “dissiplinêre verhoor”, 'n verhoor in artikel 6(1)(d) bedoel;
 - (v) “graad”, 'n graad deur enige universiteit in die Republiek toegeken of 'n graad wat regtens erken word as gelykstaande aan daardie graad;
 - (vi) “graad in die regte”, 'n graad wat 'n meerderheid kursusse in die reg bevat, met inbegrip van kursusse in—
 - (a) strafreg;
 - (b) bewysreg;
 - (c) siviele prosesreg;
 - (d) strafprosesreg; en
 - (e) uitleg van wette;
 - (vii) “Grondwet”, die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996);
 - (viii) “hersieningsregsverteenvoerdiger”, 'n persoon in artikel 13(2)(b) bedoel;
 - (ix) “korrekttiewe straf”, bykomende opleiding, werk of dril vir twee ure per werksdag, wat gedoen of uitgevoer word onder toesig binne eenheidslyne;
 - (x) “lid”, 'n lid van die Suid-Afrikaanse Nasionale Weermag ingevolge die Verdedigingswet, 1957;
 - (xi) “militêre assessor”, 'n persoon in artikel 20(1) bedoel;
 - (xii) “militêre dissiplinêre oortreding”, 'n oortreding ingevolge die Reglement, en ook 'n oortreding wat regtens geag word 'n oortreding ingevolge die Reglement te wees, waarvoor die maksimum straf voorgeskryf in die Reglement nie gevangerisstraf vir 'n tydperk van een jaar oorskry nie;
 - (xiii) “Militêre Appèlhof”, die Militêre Appèlhof in artikel 6(1)(a) bedoel;
 - (xiv) “militêre hof”, enigeen van die howe en die dissiplinêre verhoor in artikel 6 bedoel;
 - (xv) “militêre regter”, 'n persoon in artikel 10(1)(a) bedoel;
 - (xvi) “Minister”, die Minister van Verdediging;
 - 40 (xvii) “offisier”, 'n offisier soos omskryf in artikel 1 van die Verdedigingswet, 1957;
 - (xviii) “plaaslike verteenwoordiger van die Adjudant-generaal”, 'n toepaslik gekwalificeerde offisier met minstens drie jaar ondervinding in straf- of militêre regspleging wat deur die Adjudant-generaal toegewys en skriftelik gemagtig is om—
 - (a) die bedrywighede ter versekering van die doeltreffende administrasie van die militêre regspleging en die militêre regsdienste te bestuur, te bevorder, te vergemaklik en te koördineer; en
 - (b) andersins uitvoering te gee aan die funksies van die Adjudant-generaal in of op enige aangewese gebied of plek of ten opsigte van enige spesifieke ontplooiing, operasie of oefening;
 - 50 (xix) “reël van die Reglement”, 'n reël beoog in artikel 104(3) van die Verdedigingswet, 1957, en ook 'n regulasie beoog in artikel 44(3)(b);
 - (xx) “Reglement”, die Reglement van Discipline in artikel 104(1) van die Verdedigingswet, 1957, bedoel;
 - 55 (xxI) “reserwemag”, die komponente bedoel in artikels 5(b) en (c) en 6 van die Verdedigingswet, 1957;
 - (xxII) “senior militêre regter”, 'n persoon in artikel 9(1)(a) bedoel;

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- (xxiv) “presiding judge” means a senior military judge or a military judge, as the case may be;
- (xxv) “prosecution counsel” means, in relation to any trial before or in a court referred to in section 6(1)(b) or (c), any person assigned to act as prosecution counsel;
- (xxvi) “Reserve Force” means the components referred to in sections 5(b) and (c) and 6 of the Defence Act, 1957;
- (xxvii) “review counsel” means a person referred to in section 13(2)(b);
- (xxviii) “rule of the Code” means a rule contemplated in section 104(3) of the Defence Act, 1957, and includes a regulation contemplated in section 44(3)(b);
- (xxix) “senior military judge” means a person referred to in section 9(1)(a).

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CHAPTER 1**APPLICATION OF ACT****Objects of Act**

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- 2.** The objects of this Act are to—
- (a) provide for the continued proper administration of military justice and the maintenance of discipline;
 - (b) create military courts in order to maintain military discipline; and
 - (c) ensure a fair military trial and an accused’s access to the High Court of South Africa.

Application of Act

- 3.** (1) This Act shall, subject to subsection (2), apply to any person subject to the Code irrespective whether such person is within or outside the Republic.
- (2) For the purposes of the application of this Act and the Code, “person subject to the Code” includes, to the extent and subject to the conditions prescribed in this section and in the Code—
- (a) all members of the Permanent Force;
 - (b) every member of the Reserve Force—
 - (i) while rendering any service, undergoing any training or doing any duty in terms of the Defence Act, 1957; or
 - (ii) when liable or called up therefor, fails to render that service or to undergo that training or to do that duty;
 - (c) all persons, other than members of a visiting force, lawfully detained by virtue of or serving sentences of detention or imprisonment imposed under the Code or this Act;
 - (d) every member of the auxiliary services established in terms of section 80 of the Defence Act, 1957, being on service as defined in the Code;
 - (e) every person attached to the South African National Defence Force in terms of section 131 of the Defence Act, 1957;
 - (f) all students under instruction at a military training institution, in accordance with section 77(3) of the Defence Act, 1957;
 - (g) every person not otherwise subject to the Code who, with the consent of the commanding officer of any portion of the South African National Defence Force, is with or accompanies or performs duty with that portion of the Defence Force which is—
 - (i) outside the borders of the Republic; or
 - (ii) on service:
- Provided that any person who is subject to the Code by virtue of any consent given under this paragraph shall be so subject—
- (aa) where that consent has been given in writing, on the basis indicated in that consent; or
 - (bb) where consent has not been given in writing, on the basis on which he or she has been accepted and treated for living and messing facilities; and

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- (xiii) "staande mag", die komponent bedoel in artikel 5(a) van die Verdedigingswet, 1957;
- (xxiv) "toegewys", ingevolge hierdie Wet toegewys;
- (xxv) "toepaslik gekwalifiseerd", ook geslaagde aflegging van 'n departementele kursus in die militêre reg;
- 5 (xxvi) "verdedigingsregsverteenvoerder", 'n persoon in artikel 13(2)(c) bedoel;
- (xvii) "Verdedigingswet, 1957", die Verdedigingswet, 1957 (Wet No. 44 van 1957);
- 10 (xviii) "vervolgingsregsverteenvoerder", ten aansien van 'n verhoor voor of deur 'n hof waarna in artikel 6(1)(b) of (c) verwys word, 'n persoon wat toegewys is om as vervolgingsregsverteenvoerder te dien;
- (xxix) "voorsittende regter", 'n senior militêre regter of 'n militêre regter, na gelang van dié geval.

HOOFSTUK 1

TOEPASSING VAN WET

Oogmerke van Wet

- 2.** Die oogmerke van hierdie Wet is om—
- (a) voorsiening te maak vir voortgesette behoorlike militêre regsgespleging en die handhawing van dissipline;
 - 20 (b) militêre howe daar te stel ten einde militêre dissipline te handhaaf; en
 - (c) 'n regverdige militêre verhoor en 'n beskuldigde se toegang tot die Hoë Hof van Suid-Afrika te verseker.

Toepassing van Wet

3. (1) Hierdie Wet is, behoudens subartikel (2), van toepassing op enige persoon wat aan die Reglement onderhewig is, ongeag of sodanige persoon binne of buite die Republiek is.

(2) By die toepassing van hierdie Wet en die Reglement beteken "persoon wat aan die Reglement onderhewig is" ook, tot die mate en behoudens die voorwaardes in hierdie artikel en in die Reglement voorgeskryf—

- 30 (a) alle lede van die staande mag;
 - (b) alle lede van die reserwemag—
 - (i) terwyl hulle enige diens doen, opleiding ondergaan of plig verrig ingevolge die Verdedigingswet, 1957; of
 - (ii) wanneer hulle daartoe verplig of opgeroep is, nalaat om sodanige diens te doen, opleiding te ondergaan of plig te verrig;
 - 35 (c) alle persone, anders as lede van 'n besoekende mag, wat wettiglik aangehou word uit hoofde van of besig is met die uitdiening van vonnisse van detensie of gevangenisstraf wat kragtens die Reglement of hierdie Wet opgelê is;
 - (d) alle lede van die hulpdienste wat kragtens artikel 80 van die Verdedigingswet, 1957, ingestel is, wat krygsdiens verrig soos omskryf in die Reglement;
 - 40 (e) alle persone wat ingevolge artikel 131 van die Verdedigingswet, 1957, tot die Suid-Afrikaanse Nasionale Weermag toegevoeg is;
 - (f) alle studente wat by 'n militêre opleidingsinrigting instruksie geniet, in ooreenstemming met artikel 77(3) van die Verdedigingswet, 1957;
 - 45 (g) alle persone wat andersins nie aan die Reglement onderhewig is nie wat met die toestemming van die bevelvoerder van enige deel van die Suid-Afrikaanse Nasionale Weermag, saam met daardie gedeelte van bedoelde Mag is, of dit vergesel of dienspligte daarin verrig, wat—
 - (i) buite die grense van die Republiek is; of
 - (ii) krygsdiens verrig:
- Met dien verstande dat 'n persoon wat aan die Reglement onderhewig is uit hoofde van toestemming kragtens hierdie paragraaf sodanig onderhewig sal wees—
- 50 (aa) waar daardie toestemming skriftelik verleen is, op die grondslag in daardie toestemming vermeld; of
 - (bb) waar toestemming nie skriftelik verleen is nie, op die grondslag waarop hy of sy aangeneem en behandel is vir woon- en tafelgeriewe; en

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(h) every prisoner of war as contemplated in Articles 4 and 33 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, or by customary international law, and who is in the power of the Republic and detained by the South African National Defence Force.

(3) When a person who is subject to the Code is suspected of having committed murder, treason, rape or culpable homicide in the Republic, the matter will be dealt with in accordance with section 27 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), and any ensuing trial shall take place in a civilian court. 5

Conflict with other acts

4. (1) If any conflict relating to any matter dealt with in this Act arises between this Act and the provisions of any other law, save the Constitution or any Act expressly amending this Act, the provisions of this Act shall prevail. 10

(2) Subject to subsection (1) and sections 43 and 44, the provisions of the Defence Act, 1957, and the Code shall remain in force and shall be applied subject to the changes required by the context. 15

Extra-territorial application

5. Whenever this Act is enforced outside the Republic, any finding, sentence, penalty, fine or order made, pronounced or imposed in terms of its provisions shall be as valid and effectual, and shall be carried into effect, as if it had been made, pronounced or imposed in the Republic. 20

CHAPTER 2**MILITARY COURTS AND DISCIPLINARY FORUMS****Establishment of military court system**

6. (1) There is hereby established a military court system, consisting of—

- (a) the Court of Military Appeals;
- (b) the Court of a Senior Military Judge;
- (c) the Court of a Military Judge; and
- (d) the commanding officer's disciplinary hearing.

(2) Every military court contemplated in subsection (1) shall exercise the jurisdiction and powers conferred on it by this Act. 30

(3) A Court of Military Appeals shall be the highest military court and a judgement thereof shall bind all other military courts.

Composition and jurisdiction of Court of Military Appeals

7. (1) The Minister shall appoint a Court of Military Appeals—

- (a) in matters where treason, murder, rape or culpable homicide committed outside the Republic, or where contraventions of section 4 or 5 of the Code are involved, composed of five members, being—

- (i) three judges or retired judges of any division of the High Court of South Africa, of whom one shall be appointed by the Minister as chairperson;
- (ii) one appropriately qualified officer of the Permanent Force who holds a degree in law and has not less than 10 years experience as a practising advocate or attorney of the High Court of South Africa, or 10 years experience in the administration of criminal justice or military justice; and

- (iii) one person who has experience in exercising command in the field in the conducting of operations; and

- (b) in matters other than those referred to in paragraph (a), composed of three members, being—

- (i) a chairperson who shall be a judge or a retired judge of the High Court of South Africa, or a magistrate or retired magistrate who has held that office for a continuous period of not less than 10 years; 50

(h) elke krygsgevangene soos beoog in Artikels 4 en 33 van die Geneefse Konvensie met betrekking tot die Behandeling van Krygsgevangenes van 12 Augustus 1949, of deur volkerelike gewoontereg, en wat in die mag van die Republiek is en deur die Suid-Afrikaanse Nasionale Weermag aangehou word.

5 (3) Wanneer 'n persoon wat aan die Reglement onderhewig is, verdink word van die pleging van moord, hoogverraad, verkragting of strafbare manslag binne die Republiek, word met die aangeleentheid gehandel in ooreenstemming met artikel 27 van die Wet op die Nasionale Vervolgingsgesag, 1998 (Wet No. 32 van 1998), en enige 10 daaropvolgende verhoor vind plaas in 'n burgerlike hof.

Strydigheid met ander wette

4. (1) Indien daar 'n strydigheid tussen hierdie Wet en die bepalings van enige ander wet, behalwe die Grondwet of 'n Wet waarby hierdie Wet uitdruklik gewysig word, ontstaan met betrekking tot enige aangeleentheid waarmee hierdie Wet handel, 15 geniet die bepalings van hierdie Wet voorrang.

(2) Behoudens subartikel (1) en artikels 43 en 44, bly die bepalings van die Verdedigingswet, 1957, en die Reglement geldig, en word toegepas onderhewig aan die veranderinge vereis deur die samehang.

Ekstra-territoriale werking

20 5. Wanneer hierdie Wet ook al buite die Republiek toegepas word, is enige bevinding, vonnis, straf, boete of bevel gemaak, uitgespreek of opgelê ingevolge die bepalings daarvan, net so geldig en van krag, en word dit uitgevoer, asof dit binne die Republiek gemaak, uitgespreek of opgelê is.

HOOFSTUK 2

MILITÈRE HOWE EN DISSIPLINÈRE FORUMS

Instelling van militêre hofstelsel

6. (1) Daar word hierby 'n militêre hofstelsel ingestel wat bestaan uit—
 (a) die Militêre Appèlhof;
 (b) die Hof van 'n Senior Militêre Regter;
 30 (c) die Hof van 'n Militêre Regter; en
 (d) die bevelvoerder se dissiplinêre verhoor.
 (2) Elke militêre hof in subartikel 1 beoog, oefen die jurisdiksie en bevoegdhede uit wat deur hierdie Wet daaraan verleen word.
 (3) 'n Militêre Appèlhof is die hoogste militêre hof en 'n uitspraak daarvan is 35 bindend op alle ander militêre howe.

Samestelling en jurisdiksie van Militêre Appèlhof

7. (1) Die Minister stel 'n Militêre Appèlhof aan—
 (a) in aangeleenthede waar hoogverraad, moord, verkragting of strafbare manslag buite die Republiek gepleeg is, of waar oortredings van artikel 4 of 40 5 van die Reglement betrokke is, bestaande uit vyf lede, te wete—
 (i) drie regters of afgetrede regters van enige afdeling van die Hoë Hof van Suid-Afrika, van wie een deur die Minister as voorsitter aangestel word;
 (ii) een toepaslik gekwalificeerde offisier van die staande mag met 'n graad 45 in die regte en minstens 10 jaar ondervinding as 'n praktiserende advokaat of prokureur van die Hoë Hof van Suid-Afrika, of 10 jaar ondervinding in straf- of militêre regsgespleging; en
 (iii) een persoon met ondervinding in die voer van bevel te velde in die uitvoering van operasies; en
 (b) in ander aangeleenthede as die in paragraaf (a) bedoel, bestaande uit drie lede, te wete—
 (i) 'n voorsitter wat 'n regter of afgetrede regter van die Hoë Hof van Suid-Afrika is, of 'n landdros of afgetrede landdros wat daardie amp beklee het vir 'n ononderbroke tydperk van minstens 10 jaar;

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- (ii) one appropriately qualified officer of the Permanent Force who holds a degree in law and has not less than 10 years experience as a practising advocate or attorney of the High Court of South Africa, or 10 years experience in the administration of criminal justice or military justice; and
- (iii) one person who has experience in exercising command in the field in the conducting of operations.

(2) The Minister may appoint more than one Court of Military Appeals and the Adjutant General shall determine which particular case or classes of cases otherwise cognisable by such a Court of Military Appeals shall serve before each such Court.

(3) The Minister may appoint one or more alternates who meets the criteria referred to in subsection (1) for any member, including the chairperson, of a Court of Military Appeals.

(4) A Court of Military Appeals may sit at any place within or outside the borders of the Republic.

(5) A member of a Court of Military Appeals may be employed on a part-time basis.

(6) A member of a Court of Military Appeals who is not in the full-time employment of the State or an organ of state shall receive remuneration and may be paid travelling, subsistence or other allowances in connection with the execution of his or her duties as a member of that Court.

(7) The Minister, in consultation with the Minister in the national sphere of government responsible for State expenditure, may determine the amount, terms and conditions of the remuneration and allowances contemplated in subsection (6).

(8) This section shall not be interpreted to exclude the appointment of any otherwise qualified member of the Reserve Force as a member of a Court of Military Appeals as contemplated in subsection (1)(a)(iii) or (b)(iii).

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Powers of Court of Military Appeals

8. (1) A Court of Military Appeals shall exercise full appeal and review competencies in respect of the proceedings of any case or hearing conducted before any military court and may, after due consideration of the record of the proceedings of any case or hearing and of any representations submitted to it or argument heard by it in terms of this Act—

- (a) uphold the finding or the finding and the sentence;
- (b) refuse to uphold the finding and set the sentence aside;
- (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 as a competent alternative verdict by the military court under section 88 of the Code, or any other law; or
- (d) if it has upheld the finding, or substituted a finding, vary the sentence.

(2) A Court of Military Appeals may correct any patent error in any finding, sentence or order as recorded in respect of any case referred to that Court.

(3) A Court of Military Appeals may refer any finding or sentence not clearly or correctly recorded or any invalid sentence back to a military court, to be clearly and correctly recorded or to impose a valid sentence, or that Court may itself record a finding, sentence or order, or impose a valid sentence or make a valid order that a military court could or should have made: Provided that in the latter case the Court of Military Appeals shall give the benefit of any reasonable doubt to the offender in respect of any finding, sentence or order.

(4) For the purposes of subsections (1), (2) and (3), “sentence” includes any order which may or must be made by a military court in terms of any provision of this Act or the Code.

Composition and jurisdiction of Court of Senior Military Judge

9. (1) Subject to subsection (3), a Court of a Senior Military Judge shall consist of—

- (ii) een toepaslik gekwalifiseerde offisier van die staande mag met 'n graad in die regte en minstens 10 jaar ondervinding as 'n praktiserende advokaat of prokureur van die Hoë Hof van Suid-Afrika, of 10 jaar ondervinding in straf- of militêre regsgpleging; en
- 5 (iii) een persoon met ondervinding in die voer van bevel te velde in die uitvoering van operasies.
- (2) Die Minister kan meer as een Militêre Appèlhof aanstel, en die Adjudant-generaal bepaal welke besondere saak of kategorie van sake, andersins beregbaar deur so 'n Militêre Appèlhof, voor elke sodanige Hof dien.
- 10 (3) Die Minister kan een of meer plaasvervangers wat voldoen aan die maatstawwe in subartikel (1) bedoel vir enige lid, met inbegrip van die voorsitter, van 'n Militêre Appèlhof, aanstel.
- (4) 'n Militêre Appèlhof mag te enige plek binne of buite die grense van die Republiek sit.
- 15 (5) 'n Lid van 'n Militêre Appèlhof kan op 'n deeltydse basis in diens geneem word.
- (6) Aan 'n lid van 'n Militêre Appèlhof wat nie in die heeltydse diens van die Staat of 'n staatsorgaan is nie, word vergoeding betaal en kan reis-, verblyf- en ander toelaes in verband met die uitvoering van sy of haar pligte as 'n lid van daardie Hof betaal word.
- 20 (7) Die Minister, in oorleg met die Minister wat binne die nasionale regeringsfeer vir staatsbesteding verantwoordelik is, kan die bedrag, bedinge en voorwaardes van die vergoeding en toelaes beoog in subartikel (6) bepaal.
- (8) Hierdie artikel word nie so uitgelê dat dit die aanstelling van 'n andersins gekwalifiseerde lid van die reserwemag as 'n lid van 'n Militêre Appèlhof soos beoog
- 25 in subartikel (1)(a)(iii) of (b)(iii), uitsluit nie.

Bevoegdhede van Militêre Appèlhof

8. (1) 'n Militêre Appèlhof oefen volledige appèl en hersieningsbevoegdhede uit ten opsigte van die verrigtinge van enige saak of verhoor wat voor enige militêre hof plaasgevind het en kan, na behoorlike oorweging van die notule van die verrigtinge van enige saak of verhoor en van enige vertoe wat daaraan voorgelê word of betoog wat dit aangehoor het ingevolge hierdie Wet—
- (a) die bevinding of die bevinding en die vonnis bevestig;
- (b) weier om die bevinding te bevestig en die vonnis tersyde stel;
- (c) enige bevinding wat deur die genotuleerde getuienis bo redelike twyfel gestaaf word en wat kragtens artikel 88 van die Reglement, of enige ander wet, deur die militêre hof as 'n bevoegde alternatiewe uitspraak op die aanklag uitgebring kon word, in die plek van die bevinding stel; of
- 35 (d) indien dit die bevinding bevestig of vervang het, die vonnis wysig.
- (2) 'n Militêre Appèlhof kan enige klaarblyklike fout in 'n genotuleerde bevinding, vonnis of bevel ten opsigte van 'n saak wat na daardie Hof verwys is, verbeter.
- (3) 'n Militêre Appèlhof kan enige bevinding of vonnis wat nie duidelik of korrek genotuleer is nie of enige ongeldige vonnis na 'n militêre hof terugverwys om duidelik en korrek genotuleer te word of om 'n geldige vonnis op te lê, of daardie Hof kan self 'n bevinding, vonnis of bevel notuleer of 'n geldige vonnis oplê of 'n geldige bevel
- 45 maak wat 'n militêre hof kon gemaak of moes gemaak het: Met dien verstande dat in laasgenoemde geval die Militêre Appèlhof die voordeel van enige redelike twyfel ten opsigte van die bevinding, vonnis of bevel aan die oortreder moet gee.
- (4) By die toepassing van subartikels (1), (2) en (3), beteken "vonnis" ook enige bevel wat gemaak kan of moet word deur 'n militêre hof ingevolge enige bepaling van
- 50 hierdie Wet of die Reglement.

Samestelling en jurisdiksie van Hof van Senior Militêre Regter

9. (1) Behoudens subartikel (3), bestaan 'n Hof van 'n Senior Militêre Regter uit—

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- (a) an officer of a rank not below that of colonel or its equivalent and with not less than five years' experience as a practising advocate or attorney of the High Court of South Africa, or five years' experience in the administration of criminal justice or military justice, assigned in terms of section 14(1)(b) to act as a senior military judge; and 5
- (b) subject to sections 20 and 30(24), a military assessor.
- (2) A Court of a Senior Military Judge may, subject to subsection (3), try any person subject to the Code for any offence, other than murder, treason, rape or culpable homicide committed within the Republic, and may on conviction sentence the offender to any punishment referred to in section 12. 10
- (3) In any case where the charge or one of the charges brought or to be brought against an accused is murder, treason, rape or culpable homicide committed beyond the borders of the Republic, or is a contravention of section 4 or 5 of the Code, the powers conferred by this section shall be exercised by three senior military judges sitting together under the presidency of the senior of those judges. 15

Composition and jurisdiction of Court of Military Judge

- 10.** (1) A court of a Military Judge shall consist of—
- (a) an officer of not less than field rank and with not less than three years experience as a practising advocate or attorney of the High Court of South Africa or three years experience in the administration of criminal justice or 20 military justice, assigned in terms of section 14(1)(b) to act as a military judge; and
- (b) subject to sections 20 and 30(24), a military assessor.
- (2) A Court of a Military Judge may try any person subject to the Code, other than an officer of field or higher rank, for any offence, other than murder, treason, rape or 25 culpable homicide, or an offence under section 4 or 5 of the Code, and may on conviction sentence the offender to any punishment referred to in section 12, subject to a maximum sentence of imprisonment for a period of two years.

Jurisdiction of commanding officer

- 11.** (1) Every commanding officer and every officer subordinate in rank to such 30 commanding officer and of a rank not less than field rank, who is authorised thereto in writing by such commanding officer, shall have the jurisdiction conferred by this section.
- (2) A commanding officer may conduct a disciplinary hearing of any person subject to the Code, other than an officer or warrant officer, who has elected in terms of this Act 35 to be heard by a commanding officer, for any military disciplinary offence and may on conviction sentence the offender to any punishment referred to in section 12(1)(i), (j), (k), (l) and (m), subject to a maximum fine of R600,00.

Penalties

- 12.** (1) Whenever a military court convicts any person of any offence, it may, subject 40 to the maximum penalty provided by law for that offence, the limits of its own penal or disciplinary jurisdiction, and sections 32, 92 and 93 of the Code, impose upon the convicted person a sentence consisting of one or more of—
- (a) imprisonment;
- (b) in the case of an officer— 45
- (i) cashiering; or
- (ii) dismissal from the South African National Defence Force;
- (c) in the case of any other rank than that of an officer—
- (i) discharge with ignominy from the South African National Defence Force; or
- (ii) discharge from the South African National Defence Force;
- (d) in the case of any other rank than that of an officer, detention for a period not exceeding two years;
- (e) in the case of a private or equivalent rank, field punishment for a period not exceeding three months; 50
- (f) in the case of an officer—
- (i) reduction to any lower commissioned rank; or 55

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- (a) 'n offisier van 'n rang nie laer as 'n kolonel of 'n gelykstaande rang nie, met minstens vyf jaar ondervinding as 'n praktiserende advokaat of prokureur van die Hoë Hof van Suid-Afrika, of vyf jaar ondervinding in straf- of militêre regsglewing, wat ingevolge artikel 14(1)(b) toegewys is om as senior militêre regter op te tree; en
- 5 (b) behoudens artikels 20 en 30(24), 'n militêre assessor.
- (2) 'n Hof van 'n Senior Militêre Regter kan, behoudens subartikel (3), enige persoon wat aan die Reglement onderhewig is, verhoor weens enige misdryf, behalwe moord, hoogverraad, verkringting of strafbare manslag binne die Republiek gepleeg, en
- 10 kan by skuldigbevinding die oortreder vonnis tot enige straf in artikel 12 bedoel.
- (3) In enige saak waarin die aanklag, of een van die aanklagte wat teen die oortreder ingebring is of gaan word, moord, hoogverraad, verkringting of strafbare manslag gepleeg buite die grense van die Republiek, of 'n oortreding van artikel 4 of 5 van die Reglement is, word die bevoegdhede wat deur hierdie artikel verleen word, uitgeoefen
- 15 deur drie senior militêre regters wat saam onder die voorsitterskap van die senior van daardie regters sit.

Samestelling en jurisdiksie van Hof van Militêre Regter

- 10.** (1) 'n Hof van 'n Militêre Regter bestaan uit—
- (a) 'n offisier van minstens hoofoffisersrang met minstens drie jaar ondervinding as 'n praktiserende advokaat of prokureur van die Hoë Hof van Suid-Afrika, of drie jaar ondervinding in straf- of militêre regsglewing, wat ingevolge artikel 14(1)(b) toegewys is om as militêre regter op te tree; en
- 20 (b) behoudens artikels 20 en 30(24), 'n militêre assessor.
- (2) 'n Hof van 'n Militêre Regter kan enige persoon wat aan die Reglement onderhewig is, behalwe 'n offisier van hoofoffisersrang of 'n hoër rang, verhoor weens enige misdryf behalwe moord, hoogverraad, verkringting of strafbare manslag, of 'n
- 25 oortreding van artikel 4 of 5 van die Reglement, en kan by skuldigbevinding die oortreder vonnis tot enige straf in artikel 12 bedoel, onderhewig aan 'n maksimum vonnis van gevangenisstraf vir 'n tydperk van twee jaar.

30 Jurisdiksie van bevelvoerder

- 11.** (1) Elke bevelvoerder en elke offisier met 'n rang nie laer nie as hoofoffisersrang en ondergeskik in rang tot sodanige bevelvoerder, wat skriftelik deur sodanige bevelvoerder gemagtig is, het die jurisdiksie wat deur hierdie artikel verleen word.
- 35 (2) 'n Bevelvoerder kan 'n dissiplinêre verhoor hou weens enige militêre dissiplinêre oortreding ten opsigte van enige persoon wat aan die Reglement onderhewig is, behalwe 'n offisier of 'n adjudant-offisier, wat ingevolge hierdie Wet die keuse uitgeoefen het om deur 'n belvoerder aangehoor te word, en kan by skuldigbevinding die oortreder vonnis tot enige straf in artikel 12(1)(i),(j), (k), (l) en (m) bedoel,
- 40 onderhewig aan 'n maksimum boete van R600,00.

Strawwe

- 12.** (1) Wanneer ook al 'n militêre hof iemand aan 'n misdryf skuldig bevind, kan daardie hof, onderhewig aan die maksimum straf regtens vir daardie misdryf neergelê, die perke van die hof se eie strafbevoegdheid, en artikels 32, 92 en 93 van die Reglement, die veroordeelde persoon 'n vonnis oplê wat bestaan uit een of meer van—
- (a) gevangenisstraf;
- (b) in die geval van 'n offisier—
- (i) kassering; of
- (ii) afdanking uit die Suid-Afrikaanse Nasionale Weermag;
- 50 (c) in die geval van enige rang anders as die van 'n offisier—
- (i) ontslag met oneer uit die Suid-Afrikaanse Nasionale Weermag; of
- (ii) afdanking uit die Suid-Afrikaanse Nasionale Weermag;
- (d) in die geval van enige ander rang as die van 'n offisier, detensie vir 'n tydperk van hoogstens twee jaar;
- 55 (e) in die geval van 'n weerman of 'n gelykstaande rang, veldstraf vir 'n tydperk van hoogstens drie maande;
- (f) in die geval van 'n offisier—
- (i) degradering na 'n laer offisiersrang; of

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- (ii) reversion from any acting or temporary rank to his or her substantive rank;
- (g) in the case of any other rank than that of an officer—
 - (i) reduction to any lower rank, to any non-commissioned rank or to the ranks; or
 - (ii) reversion from any acting or temporary rank to his or her substantive rank;
- (h) reduction in seniority in rank;
- (i) a fine not exceeding R6 000,00;
- (j) in the case of a private or equivalent rank, confinement to barracks for a period not exceeding 21 days;
- (k) in the case of a private or equivalent rank, corrective punishment for a period not exceeding 21 days;
- (l) in the case of any other rank than that of an officer, extra non-consecutive duties for a period not exceeding 21 days; or
- (m) a reprimand:

Provided that for the purposes of this Act and of the Code, each penalty provided for in this section shall be deemed to be less severe and less serious than the preceding penalty for the relevant rank.

(2) A military court which has convicted an offender in terms of this Act may, if it is of the opinion that it is impractical to impose the punishment of detention or confinement to barracks, including where the offender is serving outside the Republic or on a ship which is at sea, in lieu of that punishment, sentence the offender to be deprived of his or her pay in an amount calculated at the rate of one-half day's pay for every day's detention or one-quarter day's pay for every day's confinement to barracks, which, but for this provision, the military court would have imposed upon the offender.

(3) When 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 the conditions that it may determine in the order.

CHAPTER 3

FUNCTIONS, SYSTEMS, STAFF, DIRECTION, CONTROL AND ACCOUNTABILITY OF MILITARY LEGAL SERVICES

Assignment of functions

13. (1) Only an appropriately qualified officer holding a degree in law and of a rank not below that of colonel or its equivalent, with not less than five years appropriate experience as a practising advocate or attorney of the High Court of South Africa, or five years experience in the administration of criminal justice or military justice, may be assigned to the function of—

- (a) Director: Military Judges;
- (b) Director: Military Prosecutions;
- (c) Director: Military Defence Counsel; or
- (d) Director: Military Judicial Reviews.

(2) Only an appropriately qualified officer holding a degree in law may be assigned to the function of—

- (a) senior military judge or military judge;
- (b) review counsel;
- (c) senior defence counsel or defence counsel; or
- (d) senior prosecution counsel.

(3) Only an appropriately qualified officer or other member who holds a degree in law or who has otherwise been trained in law may be assigned to the function of prosecution counsel.

Minister's powers in respect of assignment

14. (1) The Minister shall assign officers to the functions—

- (a) at the level of Director referred to in section 13(1); and
- (b) of senior military judge or military judge referred to in section 13(2)(a),

- (ii) terugkeer van enige waarnemende of tydelike rang tot sy of haar substantiewe rang;
- (g) In die geval van enige rang anders as die van 'n offisier—
 (i) degradering na 'n laer rang, na onderoffisiersrang of na die geledere; of
 (ii) terugkeer van enige waarnemende of tydelike rang tot sy of haar substantiewe rang;
- (h) degradering in rangsansiënniteit;
- (i) 'n boete wat nie R6 000,00 oorskry nie;
- (j) in die geval van 'n weerman of 'n gelykstaande rang, kasernearres vir 'n tydperk van hoogstens 21 dae;
- (k) in die geval van 'n weerman of 'n gelykstaande rang, korrekttiewe straf vir 'n tydperk van hoogstens 21 dae;
- (l) in die geval van 'n weerman of 'n gelykstaande rang, ekstra nieopeenvolgende dienste vir 'n tydperk wat nie 21 dae oorskry nie; of
- (m) 'n berispings:
- Met dien verstande dat vir die doeleindes van hierdie Wet en die Reglement, elke straf waarvoor in hierdie artikel voorsiening gemaak word, geag word ligter en minder ernstig, wat betref die gevolge, te wees as enige voorafgaande straf vir die betrokke rang.
- (2) 'n Militêre hof wat 'n oortreder kragtens hierdie Wet skuldig bevind het, kan, indien dit ondoenlik is om 'n straf van detensie of kasernearres op te lê, met inbegrip van waar 'n oortreder besig is om buite die Republiek of aan boord van 'n skip ter see te dien, in die plek van so 'n straf, die oortreder vonnis om sy of haar soldy ontneem te word in 'n bedrag bereken teen 'n tarief van 'n halwe dag se soldy vir elke dag se detensie, of 'n kwart dag se soldy vir elke dag se kasernearres wat, as dit nie vir hierdie bepaling was nie, die militêre hof die oortreder sou opgelê het.
- (3) Wanneer 'n militêre hof 'n oortreder tot detensie of tot gevangenisstraf vonnis, kan daardie hof beveel dat die toepassing van die geheel of enige deel van die vonnis van detensie, of die geheel van die vonnis van gevangenisstraf vir 'n tydperk van hoogstens drie jaar opgeskort word op die voorwaardes wat daardie hof in die bevel mag bepaal.

HOOFSTUK 3

WERKSAAMHEDE, STELSELS, PERSONEEL, LEIDING, BEHEER EN AANSPREEKLIKHEID VAN MILITÊRE REGSDIENSTE

Toewysing van funksies

- 35 13. (1) Slegs 'n toepaslik gekwalifiseerde offisier met 'n graad in die regte, van 'n rang nie laer nie as kolonel of 'n gelykstaande rang en met minstens vyf jaar toepaslike ondervinding as 'n praktiserende advokaat of prokureur van die Hoë Hof van Suid-Afrika, of vyf jaar ondervinding in straf- of militêre regpleging, kan toegewys word aan die funksie van—
 (a) Direkteur: Militêre Regters;
 (b) Direkteur: Militêre Vervolgings;
 (c) Direkteur: Militêre Verdedigingsregsverteenwoordiging; of
 (d) Direkteur: Militêre Geregtelike Hersienings.
 (2) Slegs 'n toepaslik gekwalifiseerde offisier met 'n graad in die regte kan toegewys word aan die funksie van—
 (a) senior militêre regter of militêre regter;
 (b) hersieningsregsverteenwoordiger;
 (c) senior verdedigingsregsverteenwoordiger of verdedigingsregsverteenwoordiger; of
 (d) senior vervolgingsregsverteenwoordiger.
 (3) Slegs 'n toepaslik gekwalifiseerde offisier of ander lid met 'n regsgraad of wat andersins opleiding in die regte ondergaan het kan toegewys word aan die funksie van vervolgingsregsverteenwoordiger.

Minister se bevoegdhede ten opsigte van toewysing

- 55 14. (1) Die Minister wys offisiere toe aan die funksies—
 (a) op die vlak van Direkteur, bedoel in artikel 13(1); en
 (b) van senior militêre regter of militêre regter bedoel in artikel 13(2)(a),

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on the recommendation of the Adjutant General: Provided that the Director: Military Judges shall be deemed to have been assigned the function of senior military judge.

(2) The Adjutant General shall not recommend any officer for assignment to any function referred to in subsection (1) unless, upon due and diligent enquiry, the Adjutant General is convinced that the officer is a fit and proper person of sound character who meets the requirements prescribed in this Act for such assignment. 5

(3) Subject to section 16 and the control of the Minister, the Adjutant General may assign any officer or member to any function—

(a) referred to in section 13(2)(b), (c) and (d) or (3); or

(b) attached to any approved military legal services post other than those referred to in this Act. 10

(4) Officers and members assigned to functions in terms of this section shall perform those functions in a manner which is consistent with properly given policy directives, but which is otherwise free from executive or command interference.

Period of assignment

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15. An assignment in terms of this Chapter shall be for a fixed period or coupled to a specific deployment, operation or exercise.

Members to be assigned

16. The provisions of this Chapter shall not be interpreted to exclude members of the Permanent Force or the Reserve Force from being so assigned. 20

Removal from assignment

17. The Minister, acting upon the recommendation of the Adjutant General, may remove a person from the function assigned to him or her for the reason of that assignee's incapacity, incompetence or misconduct, or at his or her own written request.

Oath or affirmation

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18. (1) Every person assigned a function in terms of this Chapter shall, before commencing to perform his or her duties in accordance with that assignment, take an oath or make an affirmation which shall be subscribed in the manner and form prescribed in a rule of the Code.

(2) Subject to subsection (3), every oath or affirmation contemplated in subsection (1), shall be taken or made before the Chairperson of a Court of Military Appeals or a serving senior military judge. 30

(3) An oath or affirmation by the appointed Adjutant General shall be taken or made before the chairperson of a Court of Military Appeals.

General duties of military judges and senior military judges

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19. Every military judge and every senior military judge shall in the exercise of his or her judicial authority under this Act—

(a) be independent and subject only to the Constitution and the law;

(b) apply the Constitution and the law impartially and without fear, favour or prejudice; 40

(c) conduct every trial and proceedings in a manner befitting a court of justice;

(d) ensure that the accused, whether represented or unrepresented, does not suffer any disadvantage because of his or her position as such, or because of ignorance or incapacity to examine or cross-examine witnesses, or to make his or her defence clear and intelligible, or otherwise; 45

(e) not express any opinion whatsoever on any matter relating to any trial or on the finding or any sentence except in the prescribed course of the proceedings or as may otherwise be required by law; and

(f) be responsible for the safe custody of the record of proceedings and of every exhibit produced at the trial. 50

op aanbeveling van die Adjudant-generaal : Met dien verstande dat die Direkteur: Militêre Regters geag word die funksie senior militêre regter toegewys te wees.

(2) Die Adjudant-generaal beveel geen offisier aan vir toewysing aan enige funksie in subartikel (1) bedoel nie tensy, na behoorlike en pliggetroue navrae, die Adjudant-generaal daarvan oortuig is dat die offisier 'n geskikte en gepaste persoon van goeie karakter is wat voldoen aan die vereistes vir sodanige toewysing in hierdie Wet voorgeskryf.

(3) Die Adjudant-generaal kan, behoudens die bepalings van artikel 16 en onderhewig aan die beheer van die Minister, enige offisier of lid toewys aan 'n funksie—
 10 (a) in artikel 13(2)(b), (c) en (d) of (3) bedoel; of
 (b) gekoppel aan enige goedgekeurde militêre regsdienste pos benewens die poste in hierdie Wet bedoel.

(4) Offisiere en lede wat ingevolge hierdie artikel aan funksies toegewys word, verrig daardie funksies op 'n wyse wat ooreenstem met behoorlik uitgerekte beleidsdirek-
 15 tiewe, maar wat andersins vry is van uitvoerende- of bevelsinmenging.

Tydperk van toewysing

15. 'n Toewysing ingevolge hierdie Hoofstuk is vir 'n vasgestelde tydperk of gekoppel aan 'n bepaalde ontplooiing, operasie of oefening.

Lede wat toegewys word

20 16. Die bepalings van hierdie Hoofstuk word nie so uitgelê dat dit die toewysing van lede van die staande mag of die reserwemag verhoed nie.

Ontheffing van toewysing

17. Die Minister kan, handelende op aanbeveling van die Adjudant-generaal, enige persoon van die funksie aan hom of haar toegewys, onthef as gevolg van daardie 25 toegewysde persoon se onvermoë, onbevoegdheid of wangedrag, of op sy of haar eie versoek.

Eed of bevestiging

18. (1) 'n Persoon aan wie 'n funksie ingevolge hierdie Hoofstuk toegewys is, moet, alvorens die uitvoering van sy of haar pligte in ooreenstemming met daardie 30 toewysing 'n aanvang neem, 'n eed neem of bevestiging afle wat onderskryf word op die wyse en in die vorm in 'n reël van die Reglement voorgeskryf.

(2) Behoudens subartikel (3), word elke eed of bevestiging in subartikel (1) beoog voor die voorsitter van 'n Militêre Appèlhof of 'n dienende senior militêre regter geneem of afgelê.
35 (3) 'n Eed of bevestiging deur die aangestelde Adjudant-generaal word voor die voorsitter van 'n Militêre Appèlhof geneem of afgelê.

Algemene pligte van militêre regters en senior militêre regters

19. 'n Militêre regter en senior militêre regter, in die uitoefening van sy of haar regterlike gesag kragtens hierdie Wet—
40 (a) is onafhanklik en slegs aan die Grondwet en die reg onderhewig;
 (b) moet die Grondwet en die reg onpartydig en sonder vrees, guns of vooroordeel toepas;
 (c) voer elke verhoor en verrigtinge op 'n wyse wat 'n gereghof betaam;
 (d) sien toe dat die beskuldigde, hetsy verteenwoordig aldan nie, nie benadeel word nie vanweë die posisie waarin hy of sy as sodanig verkeer of vanweë onkunde of onbekwaamheid om getuies te ondervra of om te kruisondervra of om sy of haar verweer te verduidelik en verstaanbaar te maak, of andersins;
 (e) spreek nie enige mening hoegenaamd uit oor enige aangeleentheid wat betrekking het op enige verhoor of die bevinding of enige vonnis nie, behalwe in die voorgeskrewe verloop van die verrigtinge of soos andersins van regswêe vereis mag word nie; en
50 (f) is verantwoordelik vir die veilige bewaring van die notule van die verrigtinge en van elke bewysstuk by die verhoor voorgelê.

Military assessors

- 20.** (1) When military assessors have to be appointed in terms of this Act, the Director: Military Judges, or an officer referred to in section 13(2)(a) appointed by him or her for that purpose, shall appoint, subject to section 30(24)(a)(ii), two assessors from the register of military assessors maintained by the local representative of the Adjutant General. 5
- (2) When the assessors contemplated in subsection (1) are appointed, the person who does the appointment shall take into account—
 (a) the military, cultural and social environment of the accused;
 (b) the educational background of the accused; and 10
 (c) the nature and seriousness of the offence in respect of which the accused is to stand trial.
- (3) Each register of military assessors contemplated in subsection (1) shall consist of the names and particulars of—
 (a) appropriately qualified officers; and 15
 (b) warrant officers,
 who can be made available for such duty.
- (4) A military assessor shall in the performance of his or her duties in terms of the Act—
 (a) be independent and subject only to the Constitution and the law; 20
 (b) be impartial and without fear, favour or prejudice;
 (c) participate in a trial or proceedings in a manner befitting a member of a court of justice; and
 (d) not express any opinion whatsoever on any matter relating to any trial or on the finding or any sentence except in the prescribed course of the proceedings 25 or as may otherwise be required by law.
- (5) A military assessor shall only commence his or her functions at a trial after—
 (a) the accused's plea has been recorded; and
 (b) that assessor has taken an oath or made an affirmation in the manner and form prescribed in a rule of the Code, in open Court before the presiding judge. 30
- (6) A military assessor participates in the proceedings of a military court on the following basis:
 (a) Any question of law arising for decision at the proceedings, and any question during such proceedings as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the presiding judge; 35
 (b) the presiding judge shall adjourn the proceedings regarding any matter or question referred to in paragraph (a) and shall sit alone for the hearing of such proceedings and the decision of such matter or question; and
 (c) in respect of all matters of fact, the decisions or findings of the majority of the military court shall be the decisions or findings of that court. 40
- (7) The presiding judge shall after conclusion of the arguments by the prosecution counsel and the defence, but before judgement, explain to any military assessor assisting him or her any specific rule of evidence or any other matter that is relevant in respect of the evidence tendered to the court.
- (8) The record of any proceedings where a presiding judge has been assisted by 45 military assessors, shall—
 (a) in respect of the evidence adduced at the proceedings, include any explanation or instruction given to the assessors by the presiding judge in respect of any applicable rule of evidence or any other matter; and
 (b) in respect of the judgement, indicate clearly whether the findings in respect of 50 each material aspect of the evidence—
 (i) are the unanimous findings of the members of the court; and
 (ii) in the event of any member of the court making a finding of fact different to that of the other members, set out the reasons for that different finding.

Militêre assessor

- 20.** (1) Wanneer militêre assessor ingevolge hierdie Wet aangestel moet word, wys die Direkteur: Militêre Regters, of 'n offisier bedoel in artikel 13(2)(a) wat deur hom of haar vir daardie doel aangewys is, behoudens artikel 30(24)(a)(ii), twee assessor⁵ aan vanuit die register van militêre assessor wat deur die plaaslike verteenwoordiger van die Adjudant-generaal bygehou word.
- (2) Wanneer die assessor beoog in subartikel (1) aangewys word, moet die persoon wat die aanwysing doen—
- (a) die militêre, kulturele en sosiale omgewing van die beskuldigde;
 - 10 (b) die opvoedkundige agtergrond van die beskuldigde; en
 - (c) die aard en die erns van die misdryf ten opsigte waarvan die beskuldigde tereg moet staan,
- in ag neem.
- (3) Elke register van militêre assessor beoog in subartikel (1) bevat die name en 15 besonderhede van—
- (a) toepaslik gekwalifiseerde offisiere; en
 - (b) adjudant-offisiere,
- wat beskikbaar gestel kan word vir sodanige diens.
- (4) 'n Militêre assessor, in die uitvoering van sy of haar pligte ingevolge hierdie 20 Wet—
- (a) is onafhanklik en slegs aan die Grondwet en die reg onderhewig;
 - (b) is onpartydig en sonder vrees, guns of vooroordeel;
 - (c) neem deel aan 'n verhoor of verrigtinge op 'n wyse wat gepas is vir 'n lid van 'n gereghof; en
 - 25 (d) spreek nie enige mening hoegenaamd uit oor enige aangeleenthed wat betrekking het op enige verhoor of die bevinding of enige vonnis behalwe in die voorgeskrewe verloop van die verrigtinge of soos andersins van regswêë vereis mag word nie.
- (5) 'n Militêre assessor se werksaamhede by 'n verhoor begin slegs nadat— 30
- (a) die beskuldigde se pleit genotuleer is; en
 - (b) daardie assessor in die ope hof voor die voorsittende regter 'n eed geneem of 'n plegtige bevestiging afgelê het op die wyse en in die vorm in 'n reël van die Reglement voorgeskryf.
- (6) 'n Militêre assessor neem op die volgende grondslag deel aan die verrigtinge van 35 'n militêre hof:
- (a) 'n Regsvraag wat vir beslissing by die verrigtinge ontstaan en enige vraag wat daartydens ontstaan of 'n aangeleenthed vir beslissing 'n feiteaangeleenthed of 'n regsaangeleenthed is, word deur die voorsittende regter beslis;
 - 40 (b) die voorsittende regter verdaag die verrigtinge betreffende 'n aangeleenthed of vraag in paragraaf (a) bedoel en hou alleen sitting vir die verhoor van sodanige verrigtinge en die beslissing van die aangeleenthed of vraag; en
 - (c) ten opsigte van alle feiteaangeleenthede is die beslissings of bevindinge van die meerderheid van die lede van die militêre hof die beslissings of bevindinge van daardie hof.
- 45 (7) Die voorsittende regter moet na afsluiting van die betoë van die vervolgingsregsverteenvoordiger en die verdediging, maar voor uitspraak, enige besondere reël van die bewysreg of enige ander aangeleenthed wat ter sake is met betrekking tot die getuenis wat aan die hof aangebied is, aan enige assessor wat hom of haar bystaan, verduidelik.
- (8) Die notule van verrigtinge waar 'n militêre regter bygestaan is deur militêre 50 assessor, moet—
- (a) ten opsigte van die getuenis wat by die verrigtinge geleei is, enige verduideliking of instruksie insluit wat die voorsittende regter aan die assessor gegee het ten opsigte van 'n toepaslike reël van die bewysreg of enige ander aangeleenthed; en
 - 55 (b) ten opsigte van die uitspraak, duidelik aandui of die bevindinge ten opsigte van elke wesenlike aspek van die getuenis—
 - (i) die eenparige bevindinge van die lede van die hof is; en
 - (ii) in die geval waar 'n lid van die hof se feitebevinding verskil van so 'n bevinding van die ander lede, die redes vir so 'n verskillende bevinding uiteensit.

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(9) A presiding judge may of his or her own accord or on application by the prosecution counsel or the defence, order the recusal of a military assessor from the proceedings if that judge is satisfied that—

- (a) the assessor has a personal interest in the proceedings;
 - (b) there are reasonable grounds for believing that there is—
 - (i) likely to be a conflict of interest as a result of the assessor's participation in the proceedings; or
 - (ii) a likelihood of bias on the part of the assessor; or
 - (c) the assessor is disqualified from serving as such for the reason that he or she—
 - (i) investigated the charge or any of the charges to be tried;
 - (ii) is the commanding officer of the accused, or is in the chain of command between the accused and his or her commanding officer;
 - (iii) is a prosecution counsel, defending counsel or a witness in the case; or
 - (iv) has personal knowledge of any material fact or evidence relating to the charge or any of the charges.
- (10) Before the power contemplated in subsection (9) is exercised—
- (a) the prosecution counsel and the defence shall be afforded the opportunity to apply for and to address arguments to the presiding judge on the desirability of the recusal of the assessor;
 - (b) an application and arguments contemplated in paragraph (a) and any decision in terms of subsection (9) shall be made in the absence of the assessor; and
 - (c) the presiding judge shall give reasons for any order made in respect of the recusal.

(11) A military assessor may recuse himself or herself from the proceedings for any reason contemplated in subsection (9).

(12) If an assessor dies, becomes unable to act, is absent for any reason, has been ordered to recuse himself or herself or has recused himself or herself at any stage before the completion of the proceedings, those proceedings shall continue before the remaining members of the military court and if the finding or decision of the presiding judge differs from that of the remaining assessor, the finding of that judge shall be the finding of that court.

General duties of prosecution and defence counsel

21. (1) In addition to any other duty imposed by this Act, every prosecution counsel and every defence counsel at a trial by a military court shall—

- (a) assist the court in the administration of justice;
- (b) treat the court and every member thereof with due respect;
- (c) present their cases fairly;
- (d) act in conformity with the provisions of this Act and, in relation to the examination, cross-examination and re-examination of witnesses, the practice of the civilian courts in the Republic;
- (e) not refer to any matter which is not relevant to any charge preferred against the accused; and
- (f) not state as a fact any matter which has not been proved or which is not intended to be proved in evidence.

(2) In addition to the duties imposed by subsection (1), the prosecution counsel shall bring before the court the whole of any transaction on which any charge is based and shall not take any unfair advantage of or withhold from the court any evidence in favour of the accused.

(3) Where, in a trial preceded by a preliminary investigation, a prosecution counsel closes the case for the prosecution without having called all the witnesses contemplated in section 30(8), (9), (10) and (11), that counsel shall advise the court that any witness not called by him or her is available to be called either by the court or the defence.

Functions, direction and control of military prosecution authority

22. (1) Prosecutions in any military court shall be conducted, and the prosecuting authority shall be exercised, on behalf of the State.

(9) 'n Voorsittende regter kan uit eie beweging of op aansoek van die vervolgingsregsverteenwoordiger of die verdediging die rekusering van 'n militêre assessor van die verrigtinge gelas, indien daardie regter oortuig is dat—

- (a) die assessor 'n persoonlike belang by die betrokke verrigtinge het;
- 5 (b) daar redelike gronde is om te vermoed dat daar waarskynlik—
 - (i) 'n botsing van belang sal ontstaan as gevolg van die assessor se deelname aan die verrigtinge; of
 - (ii) vooroordeel aan die kant van die assessor kan wees; of
- 10 (c) die assessor onbevoeg is om as sodanig te dien omrede hy of sy—
 - (i) die aanklag of enige van die aanklagte wat verhoor staan te word, ondersoek het;
 - (ii) die bevelvoerder is van die beskuldigde, of in die bevelslyn is tussen die beskuldigde en sy of haar bevelvoerder;
 - (iii) 'n vervolgingsregsverteenwoordiger, verdedigingsregsverteenwoorder of getuie in die saak is; of
 - (iv) persoonlike kennis het van enige wesenlike feit of getuienis met betrekking tot die aanklag of enige van die aanklagte.
- 15 (d) Alvorens die bevoegdheid beoog in subartikel (9) uitgevoer word, moet—
 - (a) die vervolgingsregsverteenwoordiger en die verdediging die geleentheid gebied word om aansoek te doen om en betoë aan die voorsittende regter terig oor die wenslikheid van die rekusering van die assessor;
 - (b) 'n aansoek en betoë beoog in paragraaf (a) en enige beslissing bedoel in subartikel (9), in die afwesigheid van die betrokke assessor gemaak word; en
 - (c) die voorsittende regter redes aanvoer vir enige bevel in verband met die rekusering gemaak.
- 20 (e) 'n Militêre assessor kan homself of haarself rekuseer van die verrigtinge op grond van enige van die redes in subartikel (9) beoog.
- 25 (f) Indien 'n assessor te sterwe kom, onbekwaam raak om op te tree, om enige rede afwesig is, gelas is om homself of haarself te rekuseer of homself of haarself gerekuseer het te eniger tyd voor die afhandeling van die betrokke verrigtinge, word daardie verrigtinge voor die oorblywende lede van die militêre hof voortgesit, en indien die bevinding of beslissing van die voorsittende regter verskil van die van die oorblywende assessor, is die bevinding van daardie regter die bevinding van daardie hof.

35 Algemene pligte van vervolgings- en verdedigingsregsverteenwoordigers

21. (1) Benewens enige ander plig deur hierdie Wet opgelê, moet elke vervolgingsregsverteenwoordiger en elke verdedigingsregsverteenwoordiger in 'n verhoor deur 'n militêre hof—

- (a) die hof bystaan in die regspiegeling;
- 40 (b) die hof en elke lid daarvan met die nodige respek behandel;
- (c) hulle sake regverdiglik aanbied;
- (d) in ooreenstemming met die bepalings van hierdie Wet optree en tydens die ondervraging, kruisondervraging en herondervraging van getuies, die gebruikte van die burgerlike howe van die Republiek navolg;
- 45 (e) nie verwys na enige aangeleentheid wat nie ter sake is by enige aanklag teen die beskuldigde nie; en
- (f) nie enige aangeleentheid wat nie bewys is, of nie beoog word om bewys te word nie, as 'n feit voorhou nie.

(2) Benewens die pligte in subartikel (1) opgelê, moet die vervolgingsregsverteenwoordiger die geheel van enige transaksie waarop enige aanklag gebaseer is aan die hof openbaar, en mag nie die beskuldigde uitbuit of enige getuienis tot die voordeel van die beskuldigde van die hof weerhou nie.

(3) Wanneer 'n vervolgingsregsverteenwoordiger in 'n saak wat deur 'n voorlopige ondersoek voorafgegaan is, die saak vir die vervolging sluit sonder om al die getuies bedoel in artikel 30(8), (9), (10) en (11) te roep, moet daardie regsverteenwoordiger die hof meedeel dat enige getuie wat nie deur hom of haar geroep is nie, beskikbaar is om deur die hof of die verdediging geroep te word.

Werksaamhede, leiding en beheer van militêre vervolgings

22. (1) 'n Vervolging in enige militêre hof word gevoer, en die vervolgingsgesag word uitgeoefen, namens die Staat.

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(2) Where the available evidence against any person subject to the Code *prima facie* discloses the commission of an offence, that person shall be prosecuted unless the charge has been rendered non-justiciable, or has prescribed, or any other legal impediment renders the charge or person incapable of being tried, either by a military court or at all.

(3) The Director: Military Prosecutions—

- (a) shall institute and conduct prosecutions on behalf of the State;
- (b) shall carry out all necessary functions incidental to instituting and conducting prosecutions, including the determination of whether or not investigations are complete; and
- (c) may discontinue prosecutions.

(4) An assigned senior prosecution counsel shall, subject to the functional control and the directions of the Director: Military Prosecutions, exercise the powers referred to in subsection (3), in respect of the area of jurisdiction for or field of responsibility to which he or she has been appointed, and in respect of any offence not excluded, either generally or in any specific case, from his or her competence by the Director: Military Prosecutions.

(5) An assigned prosecution counsel and any adjutant of a unit or any prosecutor appointed under any rule of the Code, shall exercise the powers referred to in subsection (3), subject to the control and directions of the relevant assigned senior prosecution counsel: Provided that such senior prosecution counsel may withdraw, limit or regulate such authority and upon doing so shall forthwith report that action, together with the reasons therefor, to the Director: Military Prosecutions.

(6) The Director: Military Prosecutions shall, subject to the approval of the Chief of the South African National Defence Force and after consultation with the Secretary of Defence, determine prosecution policy and issue policy directives which shall be observed in the prosecution process, and shall exercise the powers and perform the duties in respect of prosecution policy that may be determined in this Act or any other law.

Right to legal representation

23. Every person subject to the Code has the right—

- (a) to legal representation of own choice at his or her own expense, or to be assigned military defence counsel at State expense when he or she is to appear before or to be tried by a Court of a Military Judge or Senior Military Judge; and
- (b) to consult with his or her legal representative or with a military defence counsel prior to making any election to be heard at a disciplinary hearing.

Functions, direction and control of military legal defence counsel authority

24. (1) The defence counsel authority—

- (a) may represent persons subject to the Code against whom prosecutions are being instituted or conducted in a military court referred to in section 6(1)(b) and (c), or who have been convicted by any military court and who still have a remedy or recourse provided for in this Act;
- (b) shall perform any necessary duty incidental to such representation; and
- (c) may discontinue representation for sound reasons and, during a trial, with the leave of the court.

(2) An assigned senior defence counsel shall, subject to the functional control and the directions of the Director: Military Defence Counsel, exercise the powers referred to in subsection (1) in respect of the area of jurisdiction for or field of responsibility to which he or she has been appointed, and in respect of any offence not excluded, either generally or in any specific case, from his or her competence by the Director: Military Defence Counsel.

(3) An assigned defence counsel shall exercise the powers referred to in subsection

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- (2) Wanneer die beskikbare getuienis teen enige persoon wat aan die Reglement onderhewig is, *prima facie* die pleging van 'n misdryf openbaar, word daardie persoon vervolg, tensy die aanklag nie beregbaar is nie, of verjaar het, of daar enige ander beletsel van regswēe bestaan wat verhoed dat die aanklag of die persoon deur 'n militêre hof, of enigsins, verhoor kan word.
- (3) Die Direkteur: Militêre Vervolgings—
- (a) stel vervolgings in en neem dit waar namens die Staat;
 - (b) verrig die werkzaamhede wat in verband met die instel en waarneming van vervolgings nodig is, met inbegrip van die beslissing of ondersoek volledig is al dan nie; en
 - (c) mag vervolgings staak.
- (4) 'n Toegewysde senior vervolgingsregsverteenwoordiger oefen, onderhewig aan die funksionele beheer en voorskrifte van die Direkteur: Militêre Vervolgings, die bevoegdhede bedoel in subartikel (3) uit ten opsigte van die regsgebied of verantwoordelikhedsveld waarvoor hy of sy aangestel is, en ten opsigte van enige misdryf wat nie, in die algemeen of in enige besondere geval, van sy of haar bevoegdheid deur die Direkteur: Militêre Vervolgings uitgesluit is nie.
- (5) 'n Toegewysde vervolgingsregsverteenwoordiger en enige adjudant van 'n eenheid, of enige aanklaer aangestel kragtens enige reël van die Reglement, oefen die bevoegdhede bedoel in subartikel (3) uit, onderhewig aan die beheer en voorskrifte van die toepaslike toegewysde senior vervolgingsregsverteenwoordiger. Met dien verstande dat daardie senior vervolgingsregsverteenwoordiger sodanige bevoegdheid mag terugtrek, beperk of beheer en indien dit gedoen word, daardie optrede, met die redes daarvoor, onmiddellik aan die Direkteur: Militêre Vervolgings moet rapporteer.
- (6) Die Direkteur: Militêre Vervolgings bepaal, onderhewig aan die goedkeuring van die Hoof van die Suid-Afrikaanse Nasionale Weermag en na oorleg met die Sekretaris vir Verdediging, vervolgingsbeleid en vaardig beleidsdirektiewe uit wat nagekom moet word tydens die vervolgingsproses, en oefen die bevoegdhede en voer die pligte in verband met vervolgingsbeleid uit wat in hierdie Wet of enige ander wet vasgestel mag word.

Reg op regsverteenwoordiging

23. Elke persoon wat aan die Reglement onderhewig is, het die reg—
- (a) tot regsverteenwoordiging van eie keuse op sy of haar eie koste, of om 'n militêre verdedigingsregsverteenwoordiger toegewys te word op staatskoste wanneer hy of sy moet verskyn voor of verhoor staan te word deur 'n Hof van 'n Militêre Regter of Senior Militêre Regter; en
 - (b) om te beraadslaag met sy of haar regsverteenwoordiger of 'n militêre verdedigingsregsverteenwoordiger voordat 'n keuse uitgeoefen word om verhoor te word by 'n dissiplinêre verhoor.
- 40 **Werksaamhede, leiding en beheer van militêre verdedigingsregsverteenwoordigersgesag**
24. (1) Die verdedigingsregsverteenwoordigersgesag—
- (a) kan persone verteenwoordig wat aan die Reglement onderhewig is en teen wie vervolging in enige militêre hof bedoel in artikel 6(1)(b) en (c) ingestel of gevoer word, of wat skuldig bevind is deur enige militêre hof en wat nog 'n remedie of middel beskikbaar het waarvoor in hierdie Wet voorsiening gemaak word;
 - (b) verrig enige plig wat redelikerwys verband hou met sodanige verteenwoordiging; en
 - (c) kan om gegronde redes, en gedurende 'n verhoor met die toestemming van die hof, verteenwoordiging staak.
- (2) 'n Toegewysde senior verdedigingsregsverteenwoordiger oefen, onderhewig aan die funksionele beheer en voorskrifte van die Direkteur: Militêre Verdedigingsregsverteenwoordiging, die bevoegdhede bedoel in subartikel (1) uit ten opsigte van die regsgebied of verantwoordelikhedsveld waarvoor hy of sy aangestel is, en ten opsigte van enige misdryf wat nie, in die algemeen of in enige besondere geval, van sy of haar bevoegdheid deur die Direkteur: Militêre Verdedigingsregsverteenwoordiging uitgesluit is nie.
- (3) 'n Toegewysde verdedigingsregsverteenwoordiger oefen die bevoegdhede be-

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(1) subject to the control and directions of the relevant assigned senior defence counsel: Provided that such senior defence counsel may withdraw, limit or regulate such authority and upon doing so shall forthwith report that action, together with the reasons therefor, to the Director: Military Defence Counsel.

(4) The Director: Military Defence Counsel shall after consultation with the assigned senior defence counsel and with the concurrence of the chairperson of the Court of Military Appeals, determine defence counsel policy and issue policy directives which shall be observed in the defence counsel process, and shall exercise the powers and perform the duties in respect of defence representation and defence counsel policy that may be determined in this Act or any other law.

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Right to review of trial

25. Every person subject to the Code who is convicted and sentenced by a military court has the right to the automatic, speedy and competent review of the proceedings of his or her trial to ensure that any proceedings, finding, sentence or order is either valid, regular, fair and appropriate, or remedied.

15

Functions, direction and control of military review authority

26. (1) Every review authority shall—

- (a) review proceedings in accordance with this Act;
- (b) perform any necessary duty incidental to such review;
- (c) draw attention to any matter requiring comment; and
- (d) recommend to the appropriate authority the taking of any remedial action required.

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(2) A review counsel shall exercise the review powers in respect of the area of jurisdiction for or field of responsibility to which he or she has been appointed by the Adjutant General.

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(3) The Director: Military Judicial Reviews shall—

- (a) have the responsibility and authority to ensure that review counsel perform their functions competently;
- (b) in consultation with the chairperson of the Court of Military Appeals, determine review counsel policy and issue policy directives which shall be observed in the review process; and
- (c) exercise the powers and perform the duties in respect of reviews and review policy that may be determined in this Act or any other law.

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Appointment of Adjutant General

27. The Minister shall appoint an appropriately qualified serving officer of the South African National Defence Force who has been admitted or has been qualified for admission as an advocate or attorney of the High Court of South Africa for not less than seven years and with not less than seven year's experience in the administration of criminal or military justice, as Adjutant General.

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Functions of Adjutant General

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28. (1) The Adjutant General shall—

- (a) be responsible for the overall management, promotion, facilitation and co-ordination of activities in order to ensure the effective administration of military justice and the military legal services; and
- (b) annually, not later than three months after the end of the preceding financial year, submit to the Minister a written report on all his or her functions during that year.

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(2) Any power or duty that a local representative of the Adjutant General may exercise or perform in terms of this Act—

- (a) shall be exercised or performed under the control of the Adjutant General; and
- (b) may be exercised or performed by the Adjutant General.

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doel in subartikel (1) uit, onderhewig aan die beheer en voorskrifte van die toepaslike toegewysde senior verdedigingsregsverteenwoordiger: Met dien verstande dat daardie senior regsverteenwoordiger sodanige bevoegdheid mag terugtrek, beperk of beheer en indien dit gedoen word, daardie optrede, met die redes daarvoor, onmiddellik aan die

5 Direkteur: Militêre Verdedigingsregsverteenwoordiging moet rapporteer.

(4) Die Direkteur: Militêre Verdedigingsregsverteenwoordiging bepaal, na oorleg met die toegewysde verdedigingsregsverteenwoordigers en met die instemming van die voorste van die Militêre Appèlhof, verdedigingsbeleid en vaardig beleidsdirektiewe uit wat nagekom moet word tydens die verdedigingsproses en oefen die bevoegdhede 10 en voer die pligte uit in verband met verdedigingsregsverteenwoordiging wat deur hierdie Wet of enige ander wet vasgestel mag word.

Reg op hersiening van verhoor

25. 'n Persoon wat aan die Reglement onderhewig is en wat deur 'n militêre hof skuldig bevind en gevonnis is, het die reg op outomatiese, spoedige en bevoegde 15 hersiening van die verrigtinge om te verseker dat die verrigtinge, bevinding, vonnis of bevel óf geldig, reëlmatrik, regverdig en gepas is, óf reggestel word.

Werksaamhede, leiding en beheer van militêre hersieningsgesag

26. (1) 'n Hersieningsgesag—
 (a) hersien verrigtinge in ooreenstemming met hierdie Wet;
 20 (b) oefen enige plig uit wat redelikerwys verband hou met sodanige hersiening;
 (c) vestig die aandag op enige aangeleentheid wat kommentaar verg; en
 (d) maak aanbevelings aan die toepaslike gesag rakende die neem van nodige regstellingsaksies.
 (2) 'n Toegewysde hersieningsregsverteenwoordiger of senior hersieningsregsverteenwoordiger oefen die hersieningsbevoegdheid uit ten opsigte van die regsgebied of verantwoordelikhedsveld waarvoor hy of sy deur die Adjudant-generaal aangewys is.
 (3) Die Direkteur: Militêre Geregtelike Hersienings—
 (a) dra die verantwoordelikheid en gesag om toe te sien dat hersieningsregsverteenwoordigers hulle werksaamhede op bekwame wyse verrig;
 30 (b) bepaal in oorleg met die voorste van die Militêre Appèlhof hersieningsbeleid en reik beleidsdirektiewe uit wat tydens die hersieningsproses nagekom moet word; en
 (c) oefen die bevoegdheid uit en verrig die pligte ten opsigte van hersiening en hersieningsbeleid wat in hierdie Wet of enige ander wet vasgestel mag word.

35 Aanstelling van Adjudant-generaal

27. Die Minister wys 'n toepaslik gekwalifiseerde dienende offisier van die Suid-Afrikaanse Nasionale Weermag wat minstens sewe jaar toegelaat of gekwalifiseer is vir toelating as 'n advokaat of 'n prokureur van die Hoë Hof van Suid-Afrika en wat minstens sewe jaar ondervinding in straf- of militêre regspiegeling het, aan as 40 Adjudant-generaal.

Werksaamhede van Adjudant-generaal

28. (1) Die Adjudant-generaal—
 (a) is verantwoordelik vir die oorhoofse bestuur, bevordering, vergemakliking en koördinering van aktiwiteite ten einde die effektiewe administrasie van die militêre regspiegeling en die militêre regsdienste te verseker; en
 45 (b) moet jaarliks, nie later nie as drie maande na die einde van die voorafgaande boekjaar, aan die Minister 'n skriftelik verslag voorlê van al sy of haar werksaamhede gedurende daardie jaar.
 (2) Enige bevoegdheid of plig wat 'n plaaslike verteenwoordiger van die Adjudant-generaal ingevolge hierdie Wet kan uitoefen of verrig—
 50 (a) word uitgeoefen of verrig onder die beheer van die Adjudant-generaal; en
 (b) kan deur die Adjudant-generaal uitgeoefen of verrig word.

CHAPTER 4**PRE-TRIAL PROCEDURES****Arraignment**

- 29.** (1) Any person arrested in terms of section 52 or 147(2) of the Code shall be brought before a military court within two days after such arrest: Provided that if the period of two days expires on a Saturday, Sunday or public holiday or before four o'clock in the afternoon on the next day not being a Saturday, Sunday or public holiday, it shall be deemed to expire at four o'clock in the afternoon on such next day. 5
- (2) Any person warned in terms of a rule of the Code in respect of an offence shall be brought before a military court as soon as possible after receipt by the adjutant of that person's unit or by a prosecution counsel of the written signed account of offence prescribed in a rule of the Code. 10
- (3) When a person is brought in terms of this section before a military court other than a disciplinary hearing, that court— 15
- (a) shall ascertain whether or not the accused is in custody;
 - (b) shall ascertain what charge against that person is being brought or investigated;
 - (c) shall ensure that that person understands his or her rights in respect of legal representation and a disciplinary hearing;
 - (d) may, for sound reasons, including the need to complete the case or the investigation of the case, remand the case from time to time: Provided that— 20
 - (i) the court shall release an arrested person from detention if the interests of justice permit such release, and may determine reasonable conditions for such release;
 - (ii) in every case where a person is remanded in custody, the court shall give full reasons, which shall be recorded, for that decision to that person; and 25
 - (iii) in every case where a person is remanded in custody, such remand shall not exceed seven days at any one time;
 - (e) may direct that a preliminary investigation be held in the case;
 - (f) shall in every case where the offence charged is not a military disciplinary offence cognisable by a disciplinary hearing, direct that a preliminary investigation be held; 30
 - (g) may, subject to paragraph (f), try that person either summarily, or upon completion of a preliminary investigation, if that court has jurisdiction to do so; and
 - (h) may refer the case to another military court with jurisdiction in the matter. 35
- (4) When a person is brought before a commanding officer, that commanding officer—
- (a) shall, subject to the changes required by the context, have the powers and duties referred to in subsection (3); 40
 - (b) may hear that person, either directly or upon completion of a preliminary investigation, if that person has elected to be heard at a disciplinary hearing; and
 - (c) may convict and impose a penalty on a person who has elected to be heard at a disciplinary hearing and who has tendered a plea of guilty to the charge. 45
- (5) A person subject to the Code of a rank not higher than staff sergeant or its equivalent rank may, in respect of a charge relating to a military disciplinary offence on which that person intends to tender a plea of guilty and be so heard without legal representation, elect to be dealt with in terms of subsection 4(b) and (c). 50
- (6) The certification by an accused of his or her election to be heard by a commanding officer, upon having taken or waived the taking of legal advice, and of the decision to tender such plea of guilty, shall be in writing and witnessed by an officer other than the commanding officer, while the accused is not in the presence of the commanding officer.

HOOFSTUK 4**PROSEDURES VOOR VERHOOR****Verskyning**

- 29.** (1) Iemand wat ingevolge artikel 52 of 147(2) van die Reglement gearresteer word, moet binne twee dae na sodanige arres voor 'n militêre hof gebring word: Met dien verstande dat indien die tydperk van twee dae op 'n Saterdag, Sondag of openbare vakansiedag verstryk, of voor vieruur die middag op die volgende dag wat nie 'n Saterdag, Sondag of openbare vakansiedag is nie, word die tydperk geag te verstryk om vieruur daardie volgende middag.
- 10 (2) Iemand wat ten opsigte van 'n misdryf ingevolge die bepalings van die Reglement gewaarsku is, word so spoedig moontlik nadat die adjudant van daardie persoon se eenheid of 'n vervolgingsregsverteenvoerdiger 'n skriftelike ondertekende verslag oor 'n misdryf ontvang het in die vorm deur 'n reël van die Reglement voorgeskryf, voor 'n militêre hof gebring.
- 15 (3) Wanneer 'n persoon ingevolge hierdie artikel voor 'n militêre hof anders as 'n dissiplinêre verhoor gebring word—
- (a) moet die hof vasstel of die beskuldigde in aanhouding is al dan nie;
 - (b) moet die hof vasstel watter aanklag teen daardie persoon gebring of ondersoek word;
- 20 (c) moet die hof toesien dat daardie persoon sy of haar regte ten opsigte van regsveteenwoording en 'n dissiplinêre verhoor, verstaan;
- (d) kan die hof, om gegronde redes, met inbegrip van die noodsaaklikheid om die saak of die ondersoek daarvan te voltooi, die saak van tyd tot tyd uitstel: Met dien verstande dat—

25 (i) die hof 'n gearresteerde persoon uit aanhouding moet vrylaat indien dit in die belang van geregtigheid is, en redelike voorwaardes vir sodanige vrylating kan vasstel;

 - (ii) in elke geval waar 'n persoon se saak in aanhouding uitgestel word, die hof volledige redes aan daardie persoon moet verstrek, wat genotuleer word; en

30 (iii) in elke geval waar 'n persoon se saak in aanhouding uitgestel word, die uitstel vir nie langer as sewe dae op 'n keer mag wees nie;

 - (e) kan die hof gelas dat 'n voorlopige ondersoek in die saak gehou word;
 - (f) moet die hof, in elke geval waar die oortreding nie 'n militêre dissiplinêre oortreding is wat deur 'n dissiplinêre verhoor beregbaar is nie, gelas dat 'n voorlopige ondersoek gehou word;

35 (g) kan die hof, behoudens paragraaf (f), daardie persoon of summier of na voltooiing van 'n voorlopige ondersoek, verhoor, indien daardie hof jurisdiksie het om dit te doen; en

40 (h) kan die hof die saak na 'n ander militêre hof met jurisdiksie in die aangeleentheid verwys.

(4) Wanneer 'n persoon voor 'n bevelvoerder gebring word—

 - (a) het die bevelvoerder, onderhewig aan die veranderinge vereis deur die samehang, die bevoegdhede en pligte in subartikel (3) bedoel;
 - (b) kan die bevelvoerder daardie persoon of summier of na voltooiing van 'n voorlopige ondersoek, verhoor, indien die persoon die keuse uitgeoefen het om verhoor te word in 'n dissiplinêre verhoor;
 - (c) kan die bevelvoerder 'n persoon wat 'n keuse uitgeoefen het om by 'n dissiplinêre verhoor aangehoor te word en wat op die aanklag skuldig gepleit het, skuldig bevind en 'n vonnis oplê.

50 (5) 'n Persoon wat aan die Reglement onderhewig is en van 'n rang nie hoër nie as stafsersant of 'n gelykstaande rang, kan ten opsigte van 'n aanklag met betrekking tot 'n militêre dissiplinêre oortreding waarop daardie persoon van voorneme is om skuldig te pleit en om so aangehoor te word sonder regsveteenwoording, die keuse uitoefen om mee gehandel te word ingevolge subartikel (4)(b) en (c).

(6) 'n Beskuldigde moet in die afwesigheid van die bevelvoerder, na die neem van regadvies of nadat afstand gedoen is daarvan, die keuse om deur 'n bevelvoerder aangehoor te word en die besluit om skuldig te pleit, op skrif voor 'n ander offisier as die bevelvoerder sertifiseer.

(7) If the commanding officer considers the proceedings to be inappropriate for any reason, including the possible existence of a valid defence, the commanding officer shall strike out the finding, and shall refer the case to be tried afresh by another military court with jurisdiction in the matter.

(8) If an accused is not tried, heard or otherwise dealt with within 14 days after the date of the first remand in terms of this section and such accused is in custody, the commanding officer or, in the case of an accused who was brought directly before another military court, the appropriate senior prosecution counsel, shall report the fact of the delay, as well as the reasons therefor, to the local representative of the Adjutant General. 5

(9) When a person is brought before a military court, that person's first appearance shall interrupt and absolutely bar the further passing of time in respect of the periods prescribed in sections 58 and 59(1)(b) and any rule of the Code. 10

Preliminary investigations

30. (1) If a military court directs that a preliminary investigation be held in respect of allegations made against a person subject to the Code, the presiding judge or commanding officer may— 15

- (a) himself or herself record the evidence available in respect of such allegations or any other allegation against that person that may be disclosed in the evidence; or
- (b) appoint an officer holding a degree in law or otherwise trained in law as recording officer. 20

(2) If a recording officer cannot for any reason complete a preliminary investigation, the presiding judge or commanding officer who appointed that recording officer, may appoint another recording officer to continue with the recording of the evidence. 25

(3) The proceedings at a preliminary investigation shall be held in private in the presence of the accused and—

- (a) a prosecution counsel;
- (b) the accused's legal representative of choice, or, if in the opinion of the relevant senior defence counsel the complexities of the case warrant it, the assigned defence counsel; and
- (c) where necessary, an escort, an operator, an interpreter, any witness giving evidence and any other official that may be necessary for the proper conduct of the proceedings. 30

(4) The presiding judge, commanding officer or recording officer, as the case may be, shall, before any evidence is recorded in a preliminary investigation, inform the accused— 35

- (a) of the offence or offences in respect of which the preliminary investigation is to be held;
- (b) that if the evidence discloses any other offence, that offence will also be 40 inquired into during the proceedings;
- (c) of the investigatory and disclosure nature of the proceedings;
- (d) that the proceedings will not constitute a trial; and
- (e) that subject to subsections (10) and (11), the accused has the right to cross-examine witnesses, to give evidence or to make an unsworn statement, 45 and to call witnesses or to remain silent.

(5) Subject to subsections (10) and (11), the evidence of every witness called at a preliminary investigation shall be given *viva voce* and on oath.

(6) The presiding judge, commanding officer or recording officer may administer to any witness, interpreter, operator or shorthand writer or other necessary official that may be required, the appropriate oath in the manner and form prescribed in a rule of the Code. 50

(7) The evidence taken at a preliminary investigation shall be recorded in writing, in the narrative or in the form of question and answer or partly in the one and partly in the other, or by mechanical or electronic means and by or under the supervision of the presiding judge, commanding officer or recording officer. 55

(8) When a preliminary investigation is held in respect of treason, murder, rape or culpable homicide, committed outside the Republic, or a contravention of section 4 or 5 of the Code or any offence punishable by imprisonment exceeding a period of 10 years, the prosecution counsel shall, subject to subsection (10), lead the evidence of every

(7) Indien die bevelvoerder die verrigtinge om enige rede, met inbegrip van die moontlike bestaan van 'n geldige verweer, as misplaas beskou, moet die bevelvoerder enige bevinding skrap en die saak verwys om van nuuts af deur 'n ander militêre hof met jurisdiksie in die aangeleentheid verhoor te word.

- 5 (8) Indien 'n beskuldigde wat in aanhouding is nie binne 14 dae na die eerste uitstel ingevolge hierdie artikel verhoor of aangehoor of andersins mee gehandel word nie, moet die bevelvoerder of, waar 'n beskuldigde direk voor 'n ander militêre hof gebring is, die toepaslike senior vervolgingsregsverteenwoordiger, die feit van die vertraging, sowel as die redes daarvoor, aan die plaaslike verteenwoordiger van die Adjudant-10 generaal rapporteer.

(9) Wanneer 'n persoon voor 'n militêre hof gebring word, onderbreek en stuit die eerste verskyning die verdere verstryking van tyd ten opsigte van die tydperke voorgeskryf in artikels 58 en 59(1)(b) en enige reël van die Reglement ten volle.

Voorlopige ondersoek

- 15 30. (1) Indien 'n militêre hof gelas dat 'n voorlopige ondersoek gehou word ten opsigte van bewerings gemaak teen 'n persoon wat aan die Reglement onderhewig is, kan die voorsittende regter of bevelvoerder—

- (a) self die getuenis ten opsigte van so 'n bewering, of van enige ander bewering teen daardie persoon wat uit die getuenis blyk, notuleer; of
20 (b) 'n offisier met 'n graad in die regte of wat andersins in die regte opgelei is as notulerende offisier aanstel.

- (2) Indien 'n notulerende offisier weens enige rede nie 'n voorlopige ondersoek kan voltooi nie, kan die voorsittende regter of die bevelvoerder wat daardie notulerende offisier aangestel het, 'n ander notulerende offisier aanstel om voort te gaan met die 25 notulering van die getuenis.

- (3) Die verrigtinge by 'n voorlopige ondersoek word agter geslote deure gehou in die teenwoordigheid van die beskuldigde en—
30 (a) 'n vervolgingsregsverteenwoordiger;
(b) die beskuldigde se regsvetteenwoordiger van eie keuse of, indien die toepaslike senior verdedigingsregsverteenwoordiger van oordeel is dat die ingewikkeldheid van die saak dit regverdig, die aangewese militêre verdedigingsregsverteenwoordiger; en
(c) waar nodig, 'n eskort, 'n operateur, 'n tolk, enige getuie wat getuenis aflê en enige ander beampete wat nodig mag wees vir die ordelike verloop van die 35 verrigtinge.

- (4) Voordat enige getuenis tydens 'n voorlopige ondersoek genotuleer word, lig die voorsittende regter, bevelvoerder of notulerende offisier, na gelang van die geval, die beskuldigde in—
40 (a) aangaande die misdryf of misdrywe ten opsigte waarvan die voorlopige ondersoek gehou staan te word;
(b) dat indien die getuenis enige ander misdryf openbaar, daardie misdryf ook tydens die verrigtinge ondersoek sal word;
(c) aangaande die ondersoekende en blootleggende aard van die verrigtinge;
(d) dat die verrigtinge nie 'n verhoor uitmaak nie; en
45 (e) dat, behoudens subartikels (10) en (11), die beskuldigde die reg het om getuies te kruisondervra, self getuenis af te lê of 'n onbeëdigde verklaring te maak en om getuies te roep, of om te swyg.

- (5) Behoudens subartikels (10) en (11), word die getuenis van elke getuie by 'n voorlopige ondersoek mondeling en onder eed afgelê.
50 (6) Die voorsittende regter, bevelvoerder of notulerende offisier kan enige getuie, tolk, operateur, snelskrywer of ander noodsaaklike beampete die toepaslike eed op die wyse en in die vorm voorgeskryf deur 'n reël van die Reglement, laat aflê.

- (7) Die getuenis wat by 'n voorlopige ondersoek afgeneem word, word deur of onder die toesig van die voorsittende regter, bevelvoerder of notulerende offisier 55 skriftelik, in verhalende vorm of in die vorm van vraag en antwoord, of deels in die een en deels in die ander, of op meganiese of elektroniese wyse, genotuleer.

- (8) Wanneer 'n voorlopige ondersoek gehou word ten opsigte van hoogverraad, moord, verkring of strafbare manslag, gepleeg buite die Republiek, of 'n oortreding van artikel 4 of 5 van die Reglement of enige misdryf strafbaar met gevangenisstraf vir 60 'n tydperk wat 10 jaar oorskry, lei die vervolgingsregsverteenwoordiger, behoudens subartikel (10), die getuenis van elke getuie deur hom of haar geroep en kan

witness called by him or her and any witness may be cross-examined by the accused and may thereafter be re-examined by the prosecution counsel in relation to any evidence given by that witness under cross-examination and may at any stage of the proceedings be recalled by the presiding judge, commanding officer or recording officer for the purpose of being further examined or cross-examined, as the case may be.

5

(9) Any evidence recorded in writing shall be read over to the witness in question who may cause the amendments or additions to be made thereto that the witness may deem necessary and the accused and the prosecution counsel may question the witness on any such amendment or addition, whereupon the witness and the presiding judge, commanding officer or recording officer shall sign the recorded evidence and initial any amendment or addition thus made: Provided that the provisions of this subsection shall not apply where the evidence is recorded by mechanical or electronic means and it appears clearly from the records that the witness was properly sworn in as contemplated in subsection (5).

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(10) When any witness cannot by reason of illness or the exigencies of the service or for any other reason which the presiding judge, commanding officer or recording officer deems fit, attend a preliminary investigation to give evidence, a sworn statement purporting to have been signed by such person may be read over to the accused and shall thereupon form part of the record of the proceedings of the preliminary investigation: Provided that the inability of the accused to exercise the rights in terms of subsection (8) which would have accrued to the accused if such person had been called to give evidence shall not be taken or construed in any subsequent proceedings to the prejudice of the accused.

15

(11) When a preliminary investigation is held in respect of any offence other than an offence referred to in subsection (8), the prosecution counsel shall —

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- (a) read over to the accused the particulars of each witness and—
 - (i) a summary of the available evidence from whichever sources which each such witness will give; or
 - (ii) a signed statement of a witness; or
- (b) call witnesses to give evidence *viva voce* and under oath, in which event subsections (8), (9) and (10) shall apply, subject to the necessary changes.

30

(12) The presiding judge, commanding officer or recording officer shall, after recording the evidence of the witnesses led by the prosecution counsel and taking charge of the sworn statements, signed statements and summaries of evidence read over to the accused—

35

- (a) call upon the prosecution counsel to read over to the accused the preliminary charges framed by that counsel in relation to the evidence disclosed; and
- (b) explain to the accused—
 - (i) the accused's right to call witnesses and to give evidence, or to make an unsworn statement, or to remain silent;
 - (ii) that the accused may voluntarily decide which of those rights he or she prefers to exercise; and
 - (iii) that, if the accused elects to give evidence or to make a statement, that evidence or statement will be recorded and may be used in evidence at any trial involving the accused which may follow.

45

(13) The presiding judge, commanding officer or recording officer shall record the fact that the accused has been informed and cautioned in terms of subsection (12)(b).

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(14) The presiding judge, commanding officer or recording officer shall record the evidence given by any witness called by the accused, or by the accused, or any unsworn statement made by the accused.

50

(15) Any witness called by the accused, and the accused if he or she elects to give evidence, may be cross-examined by the prosecution counsel, and thereafter any such witness may be re-examined by the accused, and the accused may give the further evidence, in relation to the accused's evidence under such examination, that the accused may deem necessary.

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(16) When an accused makes an unsworn statement, the recording officer may put questions to the accused that may serve to elucidate any matter raised in the statement.

(17) Subject to subsection 12(b)(i) and the changes required by the context, the

WET OP AANVULLENDE MAATREËLS
VIR MILITÈRE DISSIPINE, 1999

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enige sodanige getuie deur die beskuldigde gekruisondervra word en daarna deur die vervolgingsregsverteenvoerdiger herondervra word met betrekking tot enige getuenis deur daardie getuie onder kruisondervraging afgelê, en te eniger stadium tydens die verrigtinge deur die voorsittende regter, bevelvoerder of notulerende offisier herroep 5 word om verder ondervra of gekruisondervra te word, na gelang van die geval.

- (9) Skriftelik genotuleerde getuenis word oorgelees aan die betrokke getuie, wat die wysings of byvoegings wat die getuie nodig ag daarop laat aanbring, en die beskuldigde en die vervolgingsregsverteenvoerdiger kan die getuie oor enige sodanige wysiging of byvoeging ondervra, waarna die getuie en die voorsittende regter, bevelvoerder of notulerende offisier die genotuleerde getuenis onderteken en enige sodanige wysiging of byvoeging parafeer: Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar die getuenis op meganiese of elektroniese wyse genotuleer is en dit duidelik uit die notule blyk dat die getuie behoorlik ingesweer is soos in subartikel (5) bedoel.
- 10 (10) Wanneer iemand weens siekte of dringende diensvereistes of om enige ander rede wat die voorsittende regter, bevelvoerder of notulerende offisier goedvind, nie 'n voorlopige ondersoek kan bywoon om getuenis af te lê nie, kan 'n beëdigde verklaring wat voorgee deur so 'n persoon onderteken te wees, aan die beskuldigde oorgelees word en maak dit daarna deel uit van die notule van die verrigtinge van die voorlopige ondersoek: Met dien verstande dat die onvermoë van die beskuldigde om die regte uit te oefen wat hom of haar ingevolge subartikel (8) sou toegekom het indien so 'n persoon geroep was om te getuig, nie tydens enige latere verrigtinge tot nadeel van die beskuldigde geag of vertolk mag word nie.

(11) Wanneer 'n voorlopige ondersoek gehou word ten opsigte van enige misdryf anders as 'n misdryf bedoel in subartikel (8), moet die vervolgingsregsverteenvoerdiger—

- (a) die besonderhede van elke getuie aan die beskuldigde oorlees en—
 (i) 'n opsomming van die beskikbare getuenis, vanaf welke oorsprong ook al, wat elke getuie sal lewer; of
 (ii) 'n ondertekende getuieverklaring; of
 (b) getuies roep om mondeline getuenis onder eed te lewer, in welke geval subartikels (8), (9) en (10), behoudens die veranderinge vereis deur die samehang, toepassing vind.

(12) Die voorsittende regter, bevelvoerder of notulerende offisier moet, na die notulering van die getuenis wat deur die vervolgingsregsverteenvoerdiger geleei is en die ontvangs van die eedsverklarings, ondertekende verklarings en opsommings van getuenis wat aan die beskuldigde persoon oorgelees is—

- (a) die vervolgingsregsverteenvoerdiger aansê om aan die beskuldigde die voorlopige aanklagte, soos deur daardie regsverteenvoerdiger op grond van die geopenbaarde getuenis geformuleer, oor te lees; en
 (b) aan die beskuldigde—
 (i) die beskuldigde se reg om getuies te roep en getuenis af te lê, of 'n onbeëdigde verklaring te maak of om te swyg, verduidelik;
 (ii) verduidelik dat die beskuldigde vrywilliglik kan besluit watter van daardie regte hy of sy verkieks om uit te oefen; en
 (iii) verduidelik dat, indien die beskuldigde verkieks om getuenis af te lê of om 'n verklaring te maak, daardie getuenis of verklaring genotuleer sal word en in getuenis gebruik mag word by enige toekomstige verhoor waarby die beskuldigde betrokke mag wees.

50 (13) Die voorsittende regter, bevelvoerder of notulerende offisier moet die feit dat die beskuldigde ingevolge artikel 12(b) ingelig en gewaarsku is, notuleer.

(14) Die voorsittende regter, bevelvoerder of notulerende offisier moet die getuenis gelewer deur 'n getuie wat deur die beskuldigde geroep is, of deur die beskuldigde, of enige onbeëdigde verklaring wat deur die beskuldigde gemaak word, notuleer.

55 (15) 'n Getuie wat deur die beskuldigde geroep is en die beskuldigde, indien hy of sy die keuse uitoefen om te getuig, kan deur die vervolgingsregsverteenvoerdiger gekruisondervra word, en daarna kan so 'n getuie deur die beskuldigde herondervra word, en die beskuldigde kan die verdere getuenis in verband met sy of haar getuenis tydens sodanige ondervraging aflê wat die beskuldigde nodig ag.

60 (16) Wanneer 'n beskuldigde 'n onbeëdigde verklaring maak, kan die notulerende offisier vrae aan die beskuldigde stel wat kan dien ter verduideliking van enige aangeleentheid in die verklaring geopper.

(17) Die bepalings van subartikels (5), (6), (7), (8), (9) en (10) is, behoudens

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provisions of subsections (5), (6), (7), (8), (9) and (10) shall apply to the evidence given by any witness called by the accused and any evidence given by the accused.

(18) Any unsworn statement made by an accused shall be read back and the accused may cause the amendments or additions to be made thereto that may be deemed necessary by the accused and the recorded statement and such amendments or additions shall, subject to subsection (9), be signed by the accused and the recording officer. 5

(19) Upon completion of a preliminary investigation, the presiding judge, commanding officer or recording officer shall sign and date the record of the proceedings or a certified copy of the evidence recorded by mechanical or electronic means and deliver them without delay to the relevant prosecution counsel, and the recording officer shall inform the presiding judge or commanding officer who directed the investigation to be held of the completion of the proceedings. 10

(20) When any person subject to this Code is to be joined with an accused against whom a preliminary investigation is being or has been held, the recording officer shall inform such person in accordance with the provisions of sub-section (4), read over to the accused the evidence recorded up to the time of such joinder and, if so requested, recall any witness who has given evidence *viva voce* for the purpose of being cross-examined. 15

(21) A recording officer shall, whenever it appears that an accused in respect of whom the preliminary investigation is being held is of unsound mind, report to the presiding judge or commanding officer who appointed the recording officer and that presiding judge or commanding officer may thereupon take the steps for the medical or other examination of the accused that he or she may deem fit. 20

(22) Any evidence given or statement made by an accused at a preliminary investigation subsequent to the caution referred to in subsection (12) shall, if it purports to be signed in accordance with subsection (18) or (19), or recorded by mechanical or electronic means in terms of subsection (9) or (11), be admissible in evidence against the accused. 25

(23) When a preliminary investigation has been held in respect of allegations made against any accused, that accused shall not have the right to object to any charge preferred against that accused at his or her later trial before any military court on the ground that such charge was not preferred against him or her at the preliminary investigation or that it differs in any respect from the charge read over to that accused at such investigation. 30

(24) Upon the completion of a preliminary investigation, the presiding judge, commanding officer or recording officer shall— 35

- (a) inform the accused of the accused's right to elect—
 - (i) to be tried by a military court consisting of a presiding judge and two assessors; and
 - (ii) that one of the assessors shall be a warrant officer; and
- (b) explain section 20(1), (2), (3) and (4) to the accused. 40

Confinement of arrested persons

31. The confinement of arrested persons shall be regulated as prescribed by a rule of the Code.

Trial Scheduling and notification of trial dates and charges

32. (1) In this section— 45

- (a) "military judge" means a military judge or senior military judge; and
- (b) "particulars" include the force number, rank, full names, arm of service, division, corps and unit of the indicated accused, presiding military judge, military assessors and other officers of the court.

(2) The local representative of the Adjutant General shall, in consultation with the Director: Military Judges or the military judges in question, as the case may be, plan and schedule the availability of military judges and military assessors within his or her area or field of responsibility, in order to promote speedy, effective dispensing of justice and certainty with regard to access to military courts. 50

(3) Every case to be tried by a military judge where a preliminary investigation has been completed, shall be placed on the roll by means of a written notice of enrolment 55

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subartikel 12(b)(i) en die veranderinge vereis deur die samehang, van toepassing op die getuienis van die beskuldigde en enige getuie deur hom of haar geroep.

(18) 'n Onbeëdigde verklaring wat deur 'n beskuldigde afgelê is, word aan die beskuldigde oorgelees en die beskuldigde kan die wysigings of byvoegings wat hy of sy nodig ag daarvan laat aanbring, en die genotuleerde verklaring en sodanige wysigings of byvoegings word, behoudens subartikel (9), deur die beskuldigde en die notulerende offisier onderteken.

(19) By voltooiing van 'n voorlopige ondersoek, onderteken en dateer die voorsittende regter, bevelvoerder of notulerende offisier die notule van die verrigtinge of 'n gesertifiseerde afskrif van die getuienis wat op meganiese of elektroniese wyse genotuleer is en oorhandig dit sonder versuim aan die toepaslike vervolgingsregsverteenwoordiger, en die notulerende offisier deel die voorsittende regter of bevelvoerder wat die ondersoek gelas het mee dat die verrigtinge afgehandel is.

(20) Wanneer 'n persoon wat aan hierdie Wet onderhewig is, by 'n beskuldigde teen wie 'n voorlopige ondersoek gehou word of gehou is, gevoeg moet word, moet die notulerende offisier so 'n persoon in ooreenstemming met die bepalings van subartikel (4) inlig, die getuienis tot op die tydstip van die byvoeging genotuleer aan daardie persoon oorlees en indien hy of sy aldus versoek, enige getuie wat mondeling getuig het, herroep vir die doel om gekruisondervra te word.

(21) 'n Notulerende offisier moet, wanneer dit voorkom asof 'n beskuldigde ten opsigte van wie 'n voorlopige ondersoek gehou word, in sy of haar geestesvermoë gekrenk is, dit aan die voorsittende regter of bevelvoerder wat die notulerende offisier aangestel het, rapporteer, en daardie voorsittende regter of bevelvoerder kan daarna die stappe doen wat hy of sy vir die geneeskundige of ander ondersoek van die beskuldigde persoon goedvind.

(22) Enige getuienis of verklaring deur 'n beskuldigde by 'n voorlopige ondersoek afgelê of gemaak na die waarskuwing in subartikel (12) bedoel, is, indien dit voorgee om ooreenkomsdig subartikel (18) of (19) onderteken te wees of ooreenkomsdig subartikel (9) of (11) op meganiese of elektroniese wyse genotuleer te wees, as getuienis teen die beskuldigde toelaatbaar.

(23) Wanneer 'n voorlopige ondersoek gehou is ten opsigte van bewerings teen 'n beskuldigde gemaak, het so 'n beskuldigde nie die reg om teen enige aanklag by sy of haar latere verhoor voor 'n militêre hof beswaar te maak op grond daarvan dat so 'n aanklag nie by die voorlopige ondersoek teen hom of haar ingebring is nie of dat dit in enige opsig verskil van die aanklag wat by sodanige ondersoek aan daardie beskuldigde persoon voorgelees is.

(24) By die voltooiing van 'n voorlopige ondersoek moet die voorsittende regter, bevelvoerder of notulerende offisier—

- (a) die beskuldigde medeeel dat hy of sy 'n keuse het—
 - (i) om verhoor te word deur 'n militêre hof bestaande uit 'n voorsittende regter en twee assessore; en
 - (ii) dat een van die assessore 'n adjudant-offisier sal wees; en
- (b) artikel 20(1), (2), (3) en (4) aan die beskuldigde verduidelik.

Opsluiting van gearresteerde persone

45 31. Die aanhouding van gearresteerde persone word geregeleer soos deur 'n reël van die Reglement voorgeskryf.

Verhoorskedulering en kennisgewing van verhoordatums en klagtes

32. (1) In hierdie artikel—

- (a) beteken "militêre regter" 'n militêre regter of senior militêre regter; en
- (b) sluit "besonderhede" ook die magsnommer, rang, volle name, weermagsdeel, divisie, korps en eenheid van die aangeduide beskuldigde, voorsittende militêre regter, militêre assessor en ander beampetes van die hof in.

(2) Die plaaslike verteenwoordiger van die Adjudant-generaal, in oorleg met die Direkteur: Militêre Regters of die betrokke militêre regters, na gelang van die geval, beplan en skeduleer die beskikbaarheid van militêre regters en militêre assessor binne sy of haar gebied of verantwoordelikhedsveld ten einde spoedige en effektiewe regspleging en sekerheid oor die toegang tot militêre howe te bevorder.

(3) 'n Saak waar 'n voorlopige ondersoek afgehandel is en wat deur 'n militêre regter verhoor moet word, word ter rolle geplaas deur 'n skriftelike kennisgewing van ter

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issued by the local representative of the Adjutant General or an officer under the command of that local representative, duly authorised to sign and issue notices of enrolment in the name and on behalf of that representative.

- (4) A notice of enrolment contemplated in subsection (3) shall state the particulars—
 (a) of the accused to be tried;
 (b) of the date, time and place for the commencement of the military court's sitting;
 (c) and the qualifications of—
 (i) the presiding military judge;
 (ii) the waiting or relief military judge to be called upon to preside in the event of the non-availability or recusal of the military judge scheduled to preside;
 (iii) the defence counsel or other legal representative; and
 (iv) the prosecution counsel; and
 (d) where applicable, of the military assessors.

(5) No notice of enrolment is necessary to authorise a military court contemplated in section 6(1)(b) and (c) to summarily try any person brought before that court for trial on a charge sheet signed by or on behalf of the appropriate prosecution counsel where the accused and the offences disclosed in the charge sheet are within the jurisdiction of a commanding officer: Provided that the local representative of the Adjutant General shall through the senior defence counsel ensure that a defence counsel is made available to consult with, advise and appear for any accused thus arraigned, unless such accused elects not to use the services of such defence counsel.

CHAPTER 5**TRIAL PROCEDURES**

25

Trial procedures

33. (1) Every trial or hearing conducted by a military court shall be conducted, subject to the changes required by the context, in accordance with the provisions of the Code regulating the conducting of summary trials: Provided that—

- (a) this section shall not be interpreted to authorise the imposition of the punishment of detention at a disciplinary hearing;
 (b) no limitation of penal jurisdiction shall apply to a Court of a Military Judge or of a Senior Military Judge; and
 (c) the proceedings may be recorded by mechanical or electronic means.

(2) When a Court of a Military Judge or a Senior Military Judge convicts a person of an offence, and—

- (a) it appears from that person's record of service that the execution of a sentence or portion of a sentence imposed upon that person, on a date prior to such conviction, was suspended in terms of this Act or the Code on conditions stipulated in the said record of service;
 (b) such sentence and the conditions of suspension have been admitted by that person or the court finds that the sentence was in fact imposed and suspended on the said conditions; and
 (c) that court is with due regard to the evidence led in the case before it and any representations, satisfied that—
 (i) a condition of suspension has not been complied with by that person; and
 (ii) that condition of suspension could reasonably have been complied with by that person,

the court may order that the person be committed to serve that sentence or unexpired portion thereof: Provided that where a person has been so committed, such sentence or portion of a sentence shall commence after expiration of any other sentence imposed upon him or her at that time or which he or she may then be serving.

(3) Every trial conducted by a military court shall be conducted in open court: Provided that such military court may—

rolleplasing uitgevaardig deur die plaaslike verteenwoordiger van die Adjudant-generaal of deur 'n offisier onder bevel van daardie verteenwoordiger, behoorlik daartoe gemagtig om kennisgewings van ter rolleplasing namens en ten behoeve van daardie verteenwoordiger te teken en uit te reik.

5 (4) 'n Kennisgewing van ter rolleplasing beoog in subartikel (3) moet die besonderhede vermeld—

- (a) van die beskuldigde wat verhoor staan te word;
- (b) van die datum, tyd en plek vir die aanvang van die sitting van die militêre hof;

10 (c) en die kwalifikasies van—

- (i) die voorsittende militêre regter;
- (ii) die wagtende of aflos- militêre regter wat geroep kan word om voor te sit in die geval van die nie-beskikbaarheid of rekusering van die militêre regter wat geskeduleer is om voor te sit;

15 (iii) die verdedigingsregsverteenwoordiger of ander regsverteenwoordiger; en

- (iv) die vervolgingsregsverteenwoordiger; en

(d) waar toepaslik, van die militêre assessor.

(5) Geen kennisgewing van ter rolleplasing is nodig om 'n militêre hof bedoel in artikel 6(1)(b) en (c) te magtig om enige persoon summier te verhoor wat voor daardie hof vir verhoor gebring word op 'n klagstaat onderteken deur of namens die toepaslike vervolgingsregsverteenwoordiger nie, indien die beskuldigde en die misdrywe in die klagstaat binne die jurisdiksie van 'n bevelvoerder val: Met dien verstande dat die plaaslike verteenwoordiger van die Adjudant-generaal deur middel van die senior

25 verdedigingsregsverteenwoordiger moet toesien dat 'n verdedigingsregsverteenwoordiger beskikbaar gestel word om met die beskuldigde wat so voorgebring word te konsulteer, die beskuldigde te adviseer en vir hom of haar te verskyn, tensy so 'n beskuldigde die keuse uitoefen om nie van so 'n verdedigingsregsverteenwoordiger se dienste gebruik te maak nie.

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HOOFSTUK 5

VERHOORPROSEDURES

Verhoorprosedures

33. (1) Elke verhoor deur 'n militêre hof word, behoudens die veranderinge vereis deur die samehang, gehou in ooreenstemming met die bepalings van die Reglement wat

35 die hou van summiere verhore reguleer: Met dien verstande dat—

(a) hierdie artikel nie so uitgelê word dat dit die oplegging van 'n straf van detensie by 'n dissiplinêre verhoor magtig nie;

(b) geen beperking op die strafjurisdiksie van die hof van 'n militêre regter of 'n senior militêre regter geplaas word nie; en

40 (c) die verrigting op meganiese of elektroniese wyse genotuleer kan word.

(2) Wanneer 'n Hof van 'n Militêre Regter of 'n Senior Militêre Regter 'n persoon skuldig bevind aan 'n misdryf en—

(a) dit blyk uit daardie persoon se diensrekord dat die uitvoering van 'n vonnis of 'n gedeelte van 'n vonnis wat daardie persoon opgelê is, op 'n datum voor

45 sodanige skuldigbevinding opgeskort is ingevolge hierdie Wet of die Reglement op voorwaardes vermeld in die vermelde diensrekord;

(b) sodanige vonnis en die opskortingsvoorraarde deur daardie persoon erken word of die hof bevind dat die vonnis wel opgelê en opgeskort was op die vermelde voorwaardes; en

50 (c) daardie hof is, met behoorlike inagneming van die getuenis in die saak geleid en van enige vertoë, oortuig dat—

- (i) 'n opskortingsvoorraarde nie deur daardie persoon nagekom is nie; en
- (ii) daardie opskortingsvoorraarde redelikerwys nagekom kon word,

kan die hof gelas dat daardie persoon verwys word om daardie vonnis of die 55 onverstreke gedeelte daarvan uit te dien: Met dien verstande dat waar 'n persoon so verwys word, sodanige vonnis of gedeelte daarvan 'n aanvang sal neem na verstryking van enige ander vonnis wat hom of haar op daardie tydstip opgelê is of wat hy of sy besig is om uit te dien.

(3) Elke verhoor deur 'n militêre hof vind in ope hof plaas: Met dien verstande dat

60 so 'n militêre hof—

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- (a) if an accused so conducts himself or herself at his or her trial that the continuance of the proceedings in his or her presence is impracticable, the military court may after due warning to the accused, order his or her removal and continue the trial in his or her absence; 5
- (b) at any time order any witness, whether for the prosecution or the defence, to leave the courtroom;
- (c) upon the commencement of or during the course of a trial order that persons other than the accused, the accused's counsel and the necessary court officials, or that juveniles or other classes of persons, shall not be permitted to be present at the trial, if and to the extent that it is in the opinion of the court necessary in the interest of justice, public safety, the administration of justice, national security, or to protect the identity of juveniles or the privacy of any party other than the accused; and 10
- (d) only announce its judgement or finding as well as any sentence, in open court.
- (4) A military court may adjourn from time to time and from place to place, and if the accused is not released from custody where the adjournment is for a period longer than 14 days, the senior prosecution counsel in question shall immediately report the fact of the delay, as well as the reasons therefor, to the local representative of the Adjutant General. 15
- (5) A military court may adjourn to view any place or any object which cannot conveniently be brought to the court, and such viewing shall be in the presence of the accused, his or her counsel and the prosecution counsel. 20
- (6) When a military court adjourns—
- (a) that court shall release an arrested person from detention if the interests of justice permit such release and may determine reasonable conditions for that release; and 25
- (b) in a case where a person is remanded in custody—
- (i) full reasons shall be given for the decision, communicated to that person, and recorded; and
- (ii) such remand shall not exceed 14 days at any one time. 30
- (7) When a military court has convicted an accused, it shall, after announcing the sentence, inform the accused of—
- (a) the review authority to whom the record of proceedings will be submitted for review and of the accused's right to submit written representations to that authority within the time limits prescribed in this Act or in a rule of the Code; 35
- (b) his or her right to approach a Court of Military Appeals for relief; and
- (c) his or her right to approach the High Court for relief at his or her own cost.

CHAPTER 6**POST-TRIAL PROCEDURES****Appeal and Review**

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34. (1) Whereas every acquittal or discharge of an accused shall be final, every finding of guilty, any sentence imposed and every order made by a military court shall be subject to the process of review.

(2) Every sentence of imprisonment, including a suspended sentence of imprisonment, cashiering, discharge with ignominy, dismissal or discharge shall be reviewed by a Court of Military Appeals and shall not be executed until that review has been completed. 45

(3) Every sentence other than a sentence referred to in subsection (2) shall be reviewed by a review counsel who may uphold the finding and the sentence: Provided that, if the review counsel is of the opinion that the finding or sentence should not be upheld or on the request of the Director: Military Judicial Reviews, that counsel shall submit the record or the requested record of the proceedings, together with his or her views on the case, to the Director: Military Judicial Reviews, who may thereupon, subject to the changes required by the context, exercise in respect of those proceedings, 50

- (a) indien 'n beskuldigde hom of haar by die verhoor op so 'n wyse gedra dat die voortsetting van die verrigtinge in sy of haar teenwoordigheid ondoenlik is, na behoorlike waarskuwing aan die beskuldigde, sy of haar verwijdering kan gelas en die verhoor in sy of haar afwesigheid kan voortsit;
- 5 (b) te eniger tyd enige getuie, hetsy vir die vervolging of die verdediging, kan gelas om die hofsaal te verlaat;
- (c) by die aanvang van of gedurende die verloop van 'n verhoor, kan gelas dat persone anders as die beskuldigde, die beskuldigde se regsvteenwoordiger en die nodige hofbeamptes, of dat jeugdige persone of ander klasse persone, nie toegelaat word om teenwoordig te wees by die verhoor nie, indien en tot die mate wat die hof van oordeel is dit nodig is in die belang van gerechtigheid, openbare veiligheid, die regsvlewing, nasionale veiligheid, of om die identiteit van jeugdiges of die privaatheid van enige party anders as die beskuldigde te beskerm; en
- 10 (d) die uitspraak of bevinding asook enige vonnis slegs in ope hof mag aankondig.
- (4) 'n Militêre hof mag van tyd tot tyd en van plek tot plek verdaag, en indien die beskuldigde nie uit bewaring vrygelaat word nie waar die verdaging vir 'n tydperk langer as 14 dae is, moet die betrokke senior vervolgingsregsvteenwoordiger 20 onmiddellik die vertraging sowel as die redes daarvoor by die plaaslike veteenwoorder van die Adjudant-generaal aammeld.
- (5) 'n Militêre hof kan 'n verhoor verdaag om enige plek of voorwerp wat nie geredelik na die hof gebring kan word nie te gaan besigtig, en sodanige besigtiging vind plaas in die teenwoordigheid van die beskuldigde, sy of haar regsvteenwoorder 25 ger en die vervolgingsregsvteenwoordiger.
- (6) Wanneer 'n militêre hof verdaag—
- (a) moet daardie hof of bevelvoerder 'n gearresteerde persoon uit bewaring vrylaat indien dit in die belang van gerechtigheid is, en kan redelike voorwaardes vir daardie vrylating stel; en
- 30 (b) in die geval waar 'n persoon se saak in aanhouding uitgestel word—
- (i) moet volledige redes vir so 'n besluit gegee word, aan daardie persoon meegedeel word en dit genotuleer word; en
- (ii) mag die uitstel vir nie langer as 14 dae op 'n keer wees nie.
- (7) Wanneer 'n militêre hof 'n beskuldigde skuldig bevind het, word die beskuldigde 35 na aankondiging van die vonnis, ingelig omtrent—
- (a) die hersieningsgesag aan wie die notule van die verrigtinge voorgelê sal word vir hersiening en van die beskuldigde se reg om skriftelike vertoe aan daardie gesag voor te lê binne die tydsbeperkings in hierdie Wet of deur 'n reël van die Reglement voorgeskryf;
- 40 (b) sy of haar reg om die Militêre Appèlhof te nader vir verligting; en
- (c) sy of haar reg om die Hoë Hof op eie koste vir verligting te nader.

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PROSEDURES NA VERHOOR

Appèl en hersiening

- 45 34. (1) Terwyl elke vryspraak of ontslag van 'n beskuldigde finaal is, is elke skuldigbevinding, opgelegde vonnis en bevel gemaak deur 'n militêre hof aan die hersieningsproses onderhewig.
- (2) Elke vonnis van gevangenisstraf, met inbegrip van 'n opgeskorte vonnis van gevangenisstraf, kassering, ontslag met oneer, afdanking en ontslag word deur 'n 50 Militêre Appèlhof hersien en word nie uitgevoer voordat daardie hersiening afgehandel is nie.
- (3) Elke vonnis anders as 'n vonnis in subartikel (2) bedoel, word hersien deur 'n hersieningsregsvteenwoordiger wat die bevinding en vonnis kan bevestig: Met dien verstande dat, indien die hersieningsregsvteenwoordiger van mening is dat die 55 bevinding of die vonnis nie bevestig behoort te word nie of indien die Direkteur: Militêre Geregtelike Hersienings so versoek, daardie regsvteenwoordiger die notule of die aangevraagde notule van die verrigtinge, met sy of haar siening oor die saak, aan die Direkteur: Militêre Geregtelike Hersienings, moet voorlê, wat daarop, behoudens die veranderinge vereis deur die samehang, ten opsigte van daardie verrigtinge die

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the powers conferred on a Court of Military Appeals by this Act, or refer the case to a Court of Military Appeals as if it were a case to which subsection (2) applies.

(4) When the Director: Military Judicial Review or a Court of Military Appeals, exercises a power referred to in section 8(1), he, she or it shall furnish the reasons therefor in writing to the Adjutant General who shall ensure that every affected party is notified thereof. 5

(5) An offender may within the time limits and in the manner prescribed in a rule of the Code, apply for the review of the proceedings of his or her case by a Court of Military Appeals.

(6) When an offender has been convicted by a military court, the presiding judge or commanding officer shall as soon as possible after the completion of the trial submit the record of the trial's proceedings to a review counsel or, where subsection (2) is applicable, to the Director: Military Judicial Reviews. 10

(7) A convicted person may as soon as possible, but not later than 14 days after the announcement of sentence, furnish the relevant review counsel or the Director: Military Judicial Reviews with the representations in writing concerning the facts or law of the case, or the validity or justice of any finding, sentence or order, that he or she may wish to make, and those representations shall together with the record of proceedings be duly considered by every review authority to which the record of proceedings is subsequently submitted for review. 15

(8) Where the period referred to in subsection (7) appears to him or her to be impractical, the local representative of the Adjutant General may on application authorise an extension of the period of up to 28 days, and on granting any such extension shall ensure that every affected party is notified of the extension. 20

(9) Subject to subsections (10) and (11), every accused convicted and sentenced by a military court shall be detained in custody pending the review of his or her case. 25

(10) An accused—

- (a) who has been sentenced by a military court—
 - (i) to a reprimand;
 - (ii) to extra duties;
 - (iii) to corrective punishment;
 - (iv) to confinement to barracks;
 - (v) save as provided in paragraph (b), to a fine;
 - (vi) to reversion from any acting or temporary rank to his or her substantive rank; 30
 - (vii) to reduction to any lower rank, to a non-commissioned rank, or to the ranks;
 - (viii) to reduction in seniority in rank; or
 - (ix) to imprisonment or detention which is suspended in its entirety, shall be released from custody immediately after the announcement of the sentence; or 40
- (b) whose trial has been proceeded with or commenced at a time when he or she was no longer subject to the Code shall, if he or she is sentenced to a fine, be released from custody upon payment of such fine.

(11) The local representative of the Adjutant General may without prejudice to re-arrest on application direct that, pending the completion of any review, the accused be released from custody on the conditions that he or she may determine: Provided that where an accused fails or refuses to attend the promulgation of the findings, sentence and orders pronounced, imposed or made in his or her case and upheld during such review, the accused shall be re-arrested and detained in custody where the sentence in question includes any penalty authorised by section 12(1)(a), (b), (c) or (d). 45

(12) The provisions of section 118(1) and (2) of the Code shall not be interpreted to authorise the inclusion, when calculating the period of any sentence entailing the deprivation of liberty, of any period on release in terms of subsection (10) or (11) or of any period of absence, with or without leave, subsequent to the announcement of the sentence. 50

bevoegdhede wat hierdie Wet aan 'n Militêre Appèlhof verleen, uitoefen, of die saak na 'n Militêre Appèlhof verwys asof dit 'n saak is waarop subartikel (2) van toepassing is.

(4) Wanneer die Direkteur: Militêre Geregtelike Hersienings of 'n Militêre Appèlhof 'n bevoegdheid in artikel 8(1) bedoel, uitoefen, verskaf hy of sy die redes daarvoor 5 skriftelik aan die Adjudant-generaal, wat moet toesien dat elke belanghebbende party daaromtrent ingelig word.

(5) 'n Oortreder kan binne die tydsbeperkings en op die wyse in 'n reël van die Reglement voorgeskryf, aansoek doen om die hersiening van die verrigtinge van sy of haar saak deur 'n Militêre Appèlhof.

10 (6) Wanneer 'n oortreder deur 'n militêre hof beskuldig bevind is, moet die voorsittende regter of bevelvoerder so spoedig moontlik na die afhandeling van die verhoor die oorkonde van die saak voorlê aan 'n hersieningsregsverteenwoordiger of, waar subartikel (2) van toepassing is, aan die Direkteur: Militêre Geregtelike Hersienings.

15 (7) 'n Veroordeelde persoon kan so gou doenlik, maar nie later nie as 14 dae na die oplegging van die vonnis, die betrokke hersieningsregsverteenwoordiger of die Direkteur: Militêre Geregtelike Hersienings voorsien van skriftelike vertoë oor die feite of regsaspekte van die saak of die geldigheid of geregtigheid van enige bevinding, vonnis of bevel, wat hy of sy wil rig, en daardie vertoë word saam met die oorkonde 20 van die saak behoorlik oorweeg deur elke hersieningsgesag aan wie die oorkonde daarna vir hersiening voorgelê word.

(8) Waar die tydperk in subartikel (7) bedoel vir hom of haar onprakties blyk te wees, kan die plaaslike verteenwoordiger van die Adjudant-generaal by aansoek die verlenging van die tydperk tot 'n tydperk wat nie 28 dae oorskry nie magtig, en moet by die 25 verlening van sodanige uitstel toesien dat elke belanghebbende party daarvan in kennis gestel word.

(9) Behoudens subartikels (10) en (11), word 'n beskuldigde wat deur 'n militêre hof veroordeel en gevonnis is, in bewaring aangehou hangende die hersiening van sy of haar saak.

30 (10) 'n Beskuldigde—

(a) wat deur 'n militêre hof gevonnis is tot—

- (i) 'n berispeling;
- (ii) ekstra dienste;
- (iii) korrektiewe straf;
- (iv) kasernearres;

35 (v) behalwe soos in paragraaf (b) bepaal, 'n boete;

(vi) terugkeer van enige tydelike of waarnemende rang tot 'n substantiewe rang;

40 (vii) degradering na enige laer rang, na 'n onder-offisiersrang of na die geledere;

(viii) degradering in rangsansiënniteit; of

(ix) gevangenisstraf of detensie wat in geheel opgeskort is, word onmiddellik uit aanhouding vrygelaat na die aankondiging van die vonnis; of

45 (b) wie se verhoor voortgegaan of 'n aanvang geneem het toe hy of sy nie langer aan die Reglement onderhewig was nie, word, indien hy of sy gevonnis is tot 'n boete, uit bewaring vrygelaat by betaling van die boete.

(11) Die plaaslike verteenwoordiger van die Adjudant-generaal kan sonder benadeling van die reg op herarrestasie by aansoek gelas dat, hangende die afhandeling van 50 enige hersiening, die beskuldigde uit aanhouding vrygelaat word op die voorwaardes wat hy of sy mag bepaal: Met dien verstande dat waar 'n beskuldigde nalaat of weier om die promulgasie van die bevindinge, vonnis en bevele wat aangekondig, opgelê of gemaak is in sy of haar saak en wat bevestig is tydens hersiening, by te woon, die beskuldigde herarresteer moet word en in bewaring aangehou moet word indien die 55 betrokke vonnis enige straf insluit wat ingevolge artikel 12(1)(a); (b), (c) of (d) gemagtig is.

(12) Die bepalings van artikel 118(1) en (2) van die Reglement word nie so uitgelê nie dat dit toelaat dat enige tydperk van vrylating ingevolge subartikel (10) of (11) of 60 enige tydperk van afwesigheid, hetsy met of sonder verlof, wat gevolg het na die aankondiging van die vonnis, ingerekken word by die berekening van die tydperk van enige vonnis wat vryheidsontneming behels.

Administration

40. (1) The Adjutant General may determine longer working hours or additional working days with a view to efficient completion of cases by military courts.

(2) Despite the provisions of any other law, every determination contemplated in subsection (1) shall be deemed to be a valid authorisation for the payment of prescribed overtime remuneration to the personnel affected thereby. 5

(3) For the purposes of any enquiry contemplated in section 14(2), the Adjutant General shall be entitled to require the consent of the person in question in order to obtain any and all information pertaining to his or her financial status, educational qualification and competency from any department of State, financial institution, 10 educational institution or any other source which the person may indicate.

(4) Refusal to give the consent contemplated in subsection (3) may disqualify the applicant or member for appointment to such office.

Delegation of powers

41. (1) The Adjutant General may, either generally or subject to conditions, in 15 writing delegate to any member or person any power vested in him or her by or under this Act or the Code and may revoke or amend such delegation at any time.

(2) A delegation in terms of this section does not prevent the exercise of a delegated power by the Adjutant General.

Suspension awaiting trial or appeal

20

42. (1) When in the opinion of the Chief of the South African National Defence Force, it will be in the interest of the good governance or reputation of the South African National Defence Force, or in the interest of justice, he or she may order any person subject to the Code not to return to duty during any period subsequent to that person—

(a) appearing as an accused before any civil court or military court; or 25

(b) having been convicted by any civil court or military court, if that person intends appealing against the conviction or applying for the review of the case, pending the conclusion of the trial, appeal or review, as the case may be.

(2) The Chief of the South African National Defence Force shall give written notice of his or her intention to consider exercising the power contemplated in subsection (1) 30 to the affected person and shall allow that person to respond in writing within 24 hours, or any longer period that the Chief may determine, of that person's receipt of such notice.

Repeal and amendment of laws

43. The provisions of the Defence Act, 1957, and the Code, set out— 35

(a) in Schedule 1, are hereby repealed; and

(b) in Schedule 2, are hereby amended to the extent indicated in the third column thereof.

Transitional provisions

44. (1) Every Council of Review established and constituted by the Minister of Defence under section 145 of the Code prior to the commencement of this Act, shall be deemed to have been constituted and established as a Court of Military Appeals under this Act. 40

(2) All trial and disciplinary proceedings which immediately before the commencement of this Act were underway or pending before a court martial or a commanding officer shall be terminated and may start afresh under the control of the relevant prosecution counsel in accordance with the provisions of this Act. 45

(3) All review and appeal processes which immediately before the commencement of this Act were underway or pending shall proceed in accordance with the provisions of this Act. 50

Administrasie

40. (1) Die Adjudant-generaal kan langer werksure of addisionele werksdae vasstel met die oog op die effektiewe afhandeling van sake in militêre howe.

(2) Ondanks die bepalings van enige ander wet, word elke vasstelling beoog in 5 subartikel (1) geag 'n geldige magtiging te wees vir die betaling van voorgeskrewe oortydbetaalting aan die personeel wat daardeur geraak word.

(3) Vir die doeleindes van enige ondersoek beoog in artikel 14(2), is die Adjudant-generaal geregtig om die toestemming van die betrokke persoon te versoek met die oog daarop om alle inligting van enige staatsdepartement, finansiële of opvoedkundige 10 instelling of enige ander bron wat daardie persoon mag aanwys, rakende sy of haar finansiële status, opvoedkundige kwalifikasies en bevoegdheid, te verkry.

(4) Weiering om die toestemming beoog in subartikel (3) te gee, kan die applikant of lid diskwalifiseer vir aanstelling in so 'n amp.

Delegering van bevoegdhede

15 **41.** (1) Die Adjudant-generaal kan in die algemeen of onderhewig aan voorwaardes, skriftelik enige bevoegdheid wat by of kragtens hierdie Wet by hom of haar berus aan enige lid of persoon deleer en kan sodanige delegasie te eniger tyd intrek of wysig.

(2) 'n Delegasie ingevolge hierdie artikel verhoed nie die Adjudant-generaal om daardie bevoegdheid uit te oefen nie.

20 Skorsing hangende verhoor of appèl

42. (1) Wanneer dit na die oordeel van die Hoof van die Suid-Afrikaanse Nasionale Weermag in die belang van die goeie bestuur of reputasie van die Suid-Afrikaanse Nasionale Weermag of in die belang van gerechtigheid is, kan hy of sy beveel dat 'n persoon wat aan die Reglement onderhewig is nie terugkeer na diens nie gedurende 25 enige tydperk nadat daardie persoon—

- (a) verskyn het as 'n beskuldigde in 'n burgerlike of militêre hof; of
- (b) nadat hy of sy deur 'n burgerlike of militêre hof skuldig bevind is, indien daardie persoon van voornemens is om te appelleer teen die skuldigbevinding of aansoek te doen vir die hersiening van die saak,

30 hangende die afhandeling van die verhoor, appèl of hersiening, na gelang van die geval.

(2) Die Hoof van die Suid-Afrikaanse Nasionale Weermag moet skriftelike kennis gee aan die betrokke persoon van sy of haar voorneme om die uitoefening van die bevoegdheid beoog in subartikel (1) te oorweeg, en moet die persoon die geleentheid bied om binne 24 uur na ontvangs van die kennisgewing deur die persoon, of sodanige 35 langer tydperk as wat die Hoof mag bepaal, skriftelik daarop te antwoord.

Herroeping en wysiging van wette

43. Die bepalings van die Verdedigingswet, 1957, en die Reglement, vermeld—
40 (a) in Bylaag 1, word hierby herroep; en
(b) in Bylaag 2, word hierby gewysig in die mate in die derde kolom daarvan aangedui.

Oorgangsbepalings

44. (1) 'n Hersieningsraad ingestel en saamgestel deur die Minister ingevolge artikel 145 van die Reglement voor die inwerkingtreding van hierdie Wet, word geag ingestel en saamgestel te wees as 'n Militêre Appèlhof ingevolge hierdie Wet.

45 (2) Alle verhoor- en dissiplinêre verrigtinge wat onmiddellik voor die inwerkingtreding van hierdie Wet voor 'n krygsraad of bevelvoerder 'n aanvang geneem het of hangende was, word beëindig en kan onder die beheer van 'n toepaslike senior vervolgingsregverteenvoerdiger van nuuts af begin word ingevolge die bepalings van hierdie Wet.

50 (3) Alle hersienings- en appèlverrigtinge wat onmiddellik voor die inwerkingtreding van hierdie Wet 'n aanvang geneem het of hangende was, word voortgesit ingevolge die bepalings van hierdie Wet.

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(4) Notwithstanding the provisions of section 104(3) and (4) of the Defence Act, 1957, the Minister may—

- (a) by notice in the *Gazette*, make, alter or repeal the rules contemplated in the said provisions, so that the said rules—
(i) shall not be in conflict with the provisions of this Act; and 5
(ii) shall provide for matters contemplated in this Act to be prescribed in those rules; and
- (b) make regulations regarding, generally, all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act. 10

Short Title

45. This Act shall be called the Military Discipline Supplementary Measures Act, 1999, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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(4) Ondanks die bepalings van artikel 104(3) en (4) van die Verdedigingswet, 1957, kan die Minister—

- (a) by kennisgewing in die *Staatskoerant* die reëls beoog in genoemde bepalings uitvaardig, wysig of herroep sodat genoemde reëls—
 - 5 (i) nie strydig is met die bepalings van hierdie Wet nie;
 - (ii) voorsiening maak vir aangeleenthede beoog in hierdie Wet wat deur daardie reëls voorgeskryf word; en
- (b) regulasies uitvaardig in die algemeen betreffende alle aangeleenthede wat redelikerwys nodig of wenslik is om voorgeskryf te word ten einde die doelstellings van hierdie Wet te bereik.

Kort titel en inwerkingtreding

45. Hierdie Wet heet die Wet op Aanvullende Maatreëls vir Militêre Dissipline, 1999, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

Act No. 16, 1999**MILITARY DISCIPLINE SUPPLEMENTARY
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(Section 43(a))

| Number and year of law | Short Title | Extent of repeal |
|------------------------|-------------------|--|
| Act No. 44 of 1957 | Defence Act, 1957 | Section 107 First Schedule to the Defence Act, 1957 Sections 2, 60A, 61, 62, 63, 64, 65, 65A, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 83, 86, 87, 90, 91, 93(1), 94, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 115, 117, 145 and 146. |

BYLAE 1**BEPALINGS HERROEP**

(Artikel 43(a))

| 5 | Nommer en jaar van wet | Kort titel | Omvang van herroeping |
|----|-------------------------------|--|--|
| | Wet No. 44 van 1957 | Verdedigingswet, 1957 | Artikel 107 |
| 10 | | Eerste Bylaag by die Verdedigingswet, 1957 | Artikels 2, 60A, 61, 62, 63, 64, 65, 65A, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 78, 83, 86, 87, 90, 91, 93(1), 94, 96, 98, 99, 100, 101, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 115, 117, 145 en 146. |

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MEASURES ACT, 1999****SCHEDULE 2****AMENDMENT OF LAWS****(Section 43(b))**

| Number and year of law | Short Title | Extent of amendment |
|-------------------------------|--|---|
| Act No. 44 of 1957 | Defence Act, 1957 | <p>Amendment of section 1 by the substitution in subsection (1) for the definition of "military court" of the following definition:</p> <p style="padding-left: 2em;">" 'military court' means a military court as defined in section 1 of the Military Discipline Supplementary Measures Act, 1999;".</p> |
| | First Schedule to the Defence Act, 1957. | <p>Amendment of section 1—</p> <p>(a) by the substitution in subsection (1) for the definition of defending officer of the following definition:</p> <p style="padding-left: 2em;">" 'defending officer' means a defence counsel in terms of the Military Discipline Measures Act, 1999;";</p> <p>(b) by the substitution in subsection (1) for the definition of "military court" of the following definition:</p> <p style="padding-left: 2em;">" 'military court' means a military court as defined in section 1 of the Military Discipline Supplementary Measures Act, 1999;"; and</p> <p>(c) by the deletion of the definitions of "board of review", "convening authority", "council of review" and "court martial".</p> <p>2. Amendment of section 47 by the substitution for the expression "ninety-one" of the expression "twelve of the Military Discipline Supplementary Measures Act, 1999.".</p> <p>3. Amendment of section 53 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 2em;">"Whenever it appears to a [convening authority] local representative of the Adjutant General 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 South African National Defence Force [within the area in which he exercises command]—".</p> |

BYLAE 2

WYSIGING VAN WETTE

(Artikel 43(b))

| Nommer en jaar van wet | Kort Titel | Omvang van wysiging |
|------------------------|--|---|
| Wet No. 44 van 1957 | Verdedigingswet, 1957 | Wysiging van artikel 1 deur die omskrywing van "militêre hof" in subartikel (1) deur die volgende omskrywing te vervang: " 'militêre hof', ' <u>n militêre hof soos omskryf in artikel 1 van die Wet op Aanvullende Maatreëls vir Militêre Dissipline, 1999;</u> '". |
| | Eerste Bylaag by die Verdedigingswet, 1957 | 1. Wysiging van artikel 1— (a) deur die omskrywing van "militêre hof" in subartikel (1) deur die volgende omskrywing te vervang: " 'militêre hof' ' <u>n militêre hof soos omskryf in artikel 1 van die Wet op Aanvullende Maatreëls vir Militêre Dissipline, 1999;</u> '"; (b) deur na die omskrywing "veldstraf" die volgende omskrywing in te voeg: " 'verdedigingsregsverteenvoerdiger', ' <u>n verdedigingsregsverteenvoerdiger ingevolge die Wet op Aanvullende Maatreëls vir Militêre Dissipline, 1999;</u> '"; en (c) deur die omskrywings van "beleggende outhoriteit", "hersieningskommissie", "hersieningsraad" en "krygsraad" te skrap. 2. Wysiging van artikel 47 deur die uitdrukking "een-en-negentig" deur die uitdrukking "twaalf van die Wet op Aanvullende Maatreëls vir Militêre Dissipline, 1999," te vervang. 3. Wysiging van artikel 53 deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan, deur die volgende woorde te vervang: "Wanneer volgens inligting in ten minste een beëdigde verklaaring vervat, daar na die oordeel van 'n [beleggende outhoriteit] plaaslike verteenwoordiger van die Adjudant-generaal redelike grond bestaan om te vermoed dat daar by iemand [<u>onder sy bevel</u>] wat aan hierdie Reglement onderworpe is, of op of by 'n perseel, plek, voertuig, vliegtuig of houer van water aard ookal, wat behoort aan of geokkupeer word deur of onder die beheer is van die Suid-Afrikaanse <u>Nasionale Weermag, [binne die gebied waarin hy bevel voer]</u> —". |

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| Number and year of law | Short Title | Extent of amendment |
|------------------------|-------------|--|
| | | <p>4. Substitution for section 69 of the following section:</p> <p style="padding-left: 40px;">"Trial of more than one person"</p> <p style="padding-left: 40px;">69. Where two or more persons are charged jointly with the same offence, the joint trial of such persons shall be conducted by the military court which have jurisdiction to try the most senior in rank of such persons."</p> <p>5. Substitution for section 89 of the following section:</p> <p style="padding-left: 40px;">"How finding and sentence of military court to be arrived at under certain circumstances"</p> <p style="padding-left: 40px;">89. The finding, sentence or any other decision of a Court of Military Appeals as defined in section (1) of the Military Discipline Supplementary Measures Act, 1999, and a Court of Senior Military Judges composed in terms of section 9(3) of the said Act, shall be determined by the vote of the majority of its members, all of whom shall vote.</p> <p>6. Amendment of section 107 by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">"A [confirming or reviewing authority, a board of review or the council of] review authority may direct a military court [martial] to give written reasons for any ruling or finding of such court, which reasons shall show—".</p> <p>7. Substitution for section 116 of the following section:</p> <p style="padding-left: 40px;">"Reviewed finding or sentence deemed to be finding or sentence of military court"</p> <p style="padding-left: 40px;">116. Any finding, [or] sentence or order of a military court as [confirmed] upheld, substituted or varied by a [confirming or reviewing authority or the council of] review authority, shall be deemed to be the finding of the court which passed the original sentence or made the original finding or order."</p> |

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| Nommer en jaar van wet | Kort Titel | Omvang van wysiging |
|------------------------|------------|--|
| | | <p>4. Vervanging van artikel 69 deur die volgende artikel:</p> <p style="padding-left: 2em;">"Verhoor van meer as een persoon"</p> <p style="padding-left: 2em;">69. <u>Waar twee of meer persone gesamentlik weens dieselfde misdryf aangekla word, word die gesamentlike verhoor van sodanige persone gehou voor die militêre hof wat jurisdiksie het om die mees senior persoon in rang van sodanige persone te verhoor."</u></p> <p>5. Vervanging van artikel 89 deur die volgende artikel:</p> <p style="padding-left: 2em;">"Hoe bevinding en vonnis van militêre hof onder sekere omstandighede bepaal word"</p> <p style="padding-left: 2em;">89. <u>Die bevinding, vonnis, of enige ander beslissing van 'n Militêre appèlhof soos omskryf in artikel (1) van die Wet op Aanvullende Maatreëls vir Militêre Dissipline, 1999, en 'n Hof van Senior Militêre Regters saamgestel ingevolge artikel 9(3) van genoemde Wet, word bepaal by meerderheidstem van sy lede, wat almal moet stem."</u></p> <p>6. Wysiging van artikel 107 deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:</p> <p style="padding-left: 2em;">" 'n [Bekragtigende of hersieningsouitoriteit, 'n hersieningskommissie of die hersieningsraad] Hersieningsgesag kan 'n [krygsraad] militêre hof beveel om skriftelike redes vir enige beslissing of bevinding van [die krygsraad] sodanige hof te verstrek, en daardie redes moet aandui—".</p> <p>7. Vervanging van artikel 116 deur die volgende artikel:</p> <p style="padding-left: 2em;">"Hersiene bevinding of vonnis geag bevinding of vonnis van militêre hof te wees"</p> <p style="padding-left: 2em;">116. <u>'n Bevinding, [of] vonnis of bevel van 'n militêre hof soos deur 'n [bekragtigende of hersieningsouitoriteit of die hersieningsraad] hersieningsgesag bevestig [bekragtig], vervang of gewysig, word geag die bevinding of vonnis te wees van die hof wat die oorspronklike vonnis gevel of die oorspronklike bevinding of bevel gemaak het."</u></p> |

Act No. 16, 1999**MILITARY DISCIPLINE SUPPLEMENTARY
MEASURES ACT, 1999**

| Number and year of law | Short Title | Extent of amendment |
|------------------------|-------------|--|
| | | <p>8. Amendment of section 121 by the substitution in subsection (4) for the expression “general court martial” of the expression “Court of a Senior Military Judge”.</p> <p>9. Amendment of section 128 by the substitution in paragraph (j) of subsection (1) for the expression “Adjutant General” of the expression “Chief of the South African National Defence Force”.</p> <p>10. Amendment of sections 1, 34, 35, 47, 82(3), 85, 88, 92, 107(2) and (3) and 135(4) by the substitution for the expression “court martial” wherever it occurs, of the expression “military court”.</p> |

WET OP AANVULLENDE MAATREËLS
VIR MILITÈRE DISSIPINE, 1999

Wet No. 16, 1999

| Nommer en jaar van wet | Kort Titel | Omvang van wysiging |
|------------------------|------------|---|
| | | <p>8. Wysiging van artikel 121 deur in subartikel (4) die uitdrukking "algemene krygsraad" deur die uitdrukking "Hof van 'n Senior Militêre Regter" te vervang.</p> <p>9. Wysiging van artikel 128 deur in paragraaf (<i>j</i>) van subartikel (1) die uitdrukking "Adjudant-generaal" deur die uitdrukking "Hoof van die Suid-Afrikaanse Nasionale Weermag" te vervang.</p> <p>10. Wysiging van artikels 1, 34, 35, 47, 82(3), 85, 88, 92, 107(2) en (3) en 135(4) deur die uitdrukking "krygsraad" oral waar dit voorkom, deur die uitdrukking "militêre hof" te vervang.</p> |

