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ACT NO. 4 OF 1996**LESOTHO DEFENCE FORCE ACT 1996**

To provide for the command, control and administration of the Defence Force of Lesotho and to provide for incidental matters.

Enacted by the Parliament of Lesotho

PART I - PRELIMINARY**Short title and commencement**

1. This Act may be cited as the Lesotho Defence Force Act 1996 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires -

"aircraft" means any machine for flying, whether propelled by mechanical means or not, and includes any description of balloon;
"aircraft material" includes-

- (a) parts of, and components of or accessories for, aircraft, whether for the time being in the aircraft or not;
- (b) engines, armaments, ammunition and bombs, and other missiles of any description in, or for use in, aircraft;
- (c) any other gear, apparatus or instruments in, or for use in, aircraft;

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

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

"superior authority" in relation to an officer charged with an offence, means-

- (a) in the case of officers of the rank of Major and below, any officer not below the rank of Colonel; and
- (b) in the case of members of the rank of warrant officers and below, any officer not below the rank of Lieutenant Colonel who is not the commanding officer of the officer charged;

"arrest" includes open arrest;

"before the enemy" in relation to a person means that the person is in action against the enemy or about to go into action against the enemy or is under attack or threat of imminent attack by the enemy;

"Board of Enquiry Rules" means rules made under this Act;

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

"civil offence" means an offence against any law of Lesotho which is not a military offence;

"Commander of the Defence Force" means the person appointed as such under this Act;

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

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

"court-martial" means a court-martial constituted under this Act;

"damage" includes destruction, and references to damaging shall be construed accordingly;

"date of attestation" in relation to any person means the date on which he is attested in accordance with the provisions of regulations made under this Act;

"decoration" includes medal, medal ribbon, clasp and good-conduct badge;

"Defence Council" means the Defence Council established under this Act;

"Defence Force" means the Lesotho Defence Force established under the Constitution of Lesotho;

"desertion" shall be construed in accordance with section 54(2);

"detachment" means a part of a unit which is so separated from the unit to which it belongs that the officer commanding that unit cannot effectively exercise his disciplinary powers as commanding officer over it;

"director of legal services" means the person appointed as director of legal service to the Defence Force or his deputy;

"enemy" includes all persons engaged in armed operations against the Defence Force or any forces co-operating with the Defence Force mutineers, rebels and rioters;

"field rank" means the rank of Major and any higher rank and "field officer" shall be construed accordingly;

"Imprisonment and Detention Regulations" means regulations made by the Minister under this Act;

"military court" means court-martial or a court of summary jurisdiction;

"Minister" means the Minister responsible for defence;

"oath" includes a solemn affirmation;

"Provost Officer" means a provost marshal or officer appointed to exercise the functions conferred on him by or under this Act;

"public property" means any property belonging to any department of the Government or held for the purposes of any such department;

"recruiting officer" means a person authorised as such under this Act;

"regular force" means the Regular Force of the Defence Force referred to in this Act;

"reserve force" means the Defence Force Reserve referred to in this Act;

"rules of procedure" means the Rules of Procedure made by the Minister under this Act;

"service" when used adjectively, means belonging to or connected with the Defence Force, or any force co-operating with the Defence Force;

"soldier" does not include an officer but where the context otherwise provides, includes a warrant officer and a non-commissioned officer;

"stoppages" means the recovery by deductions from the pay of the offender, of a specified sum of money by way of compensation for any expense, loss or damage occasioned by the offence;

"unit" means-

- (a) any independent portion of the Defence Force which is not higher in the organisation of the Defence Force than a battalion or any equivalent formation of troops; or
- (b) any other body of the Defence Force declared to be a unit.

(2) References in this Act to officers and soldiers of the Defence Force shall be construed as including references to officers and soldiers attached or seconded to the Defence Force.

Active service

3. (1) In this Act the expression "on active service" in relation to any unit, means that it is engaged in operations against the enemy, and, in

relation to a person, means that he is serving in or with a unit which is on active service.

(2) Where it appears to the Minister that it is necessary in the public interest that a unit should be deemed to be on active service, he may declare that for such period not exceeding 6 months, that unit shall be deemed to be on active service.

(3) Where it appears to the Minister that it is necessary in the public interest that the period specified in a declaration under subsection (2) should be extended or, if previously extended under this section, should be further extended, he may declare that the period shall be extended by such period, not exceeding 6 months as may be specified in the declaration under this subsection.

(4) If at any time while a unit is deemed to be on active service by virtue of this section, it appears to the Minister that it is no longer necessary for the unit to continue to be treated as being on active service, the Minister may declare that from the coming into operation of the declaration the unit shall cease to be deemed to be on active service.

(5) Any declaration under this section shall be made by notice published in the Gazette.

PART II - DEFENCE FORCE

Composition and maintenance of the Defence Force

4. (1) There shall be maintained in Lesotho a force, not exceeding such strength as may be determined from time to time, by the Minister, to be known as the Lesotho Defence Force, which shall consist of -

(a) the regular force;

(b) the reserve force; and

- (c) the volunteer element.
- (2) The Minister may,
- (a) establish such units of the Defence Force as he may deem necessary;
 - (b) determine the style and designation of any unit; and
 - (c) disband any unit.

Employment of the Defence Force

5. The Defence Force shall be employed -

- (a) in the defence of Lesotho;
- (b) in the prevention or suppression of
 - (i) terrorism;
 - (ii) internal disorder;
- (c) the maintenance of essential services including maintenance of law and order and prevention of crime,

and such other duties as may, from time to time, be determined by the Minister.

Employment of the Defence Force outside Lesotho

6. The King, acting in accordance with the advice of the Prime Minister, may at any time order that the whole or any part of the Defence Force shall be employed out of or beyond Lesotho.

Attachments and secondment to other military forces

7. (1) The Minister may accept for duty members of other military forces on such terms and conditions as the Minister may determine.

(2) The Minister may, for purposes of training, duty or employment, attach or second to any foreign military force any member of the regular force, or any member of the reserve force with his consent on such terms and conditions as the Minister may determine.

(3) The Minister, may attach or second to the public service any member of the force under such terms and conditions as may be agreed upon by the Minister responsible for the public service.

PART III - DEFENCE COUNCIL

Establishment and Composition of Defence Council

8. (1) There shall be a Defence Council which shall consist of-

- (a) the Minister of Defence who shall be the Chairman;
- (b) the Principal Secretary, Ministry of Defence;
- (c) the Commander of the Defence Force;
- (d) the Secretary to be appointed by the Minister;
- (e) two other members to be appointed by the Prime Minister hereinafter referred to as "the appointed members."

(2) The Defence Council may co-opt persons from time to time, to assist them in their deliberations.

Tenure of office

9. (1) An appointed member of the Defence Council shall hold office for a period of 3 years and shall be eligible for re-appointment.

(2) An appointed member of the Defence Council may at any time resign by giving notice in writing to the Prime Minister.

(3) If an appointed member of the Defence Council is absent for 3 consecutive meetings without the permission of the Chairman he shall cease to be a member of the Defence Council.

(4) The Prime Minister may at any time revoke the appointment of an appointed member.

Meetings of the Defence Council

10. (1) The Chairman shall preside at all meetings of the Defence Council and in his absence the Principal Secretary, Ministry of Defence shall preside.

(2) The quorum at meetings of the Defence Council shall be the Chairman and 2 other members one of whom shall be the Commander of the Defence Force.

(3) The decisions of the Defence Council shall be by majority of members present and voting.

(4) In the event of an equality of votes the Chairman shall have a casting vote.

Functions of the Defence Council

11. (1) The functions of the Defence Council are-

- (a) to make recommendations to the Cabinet on the formulation and implementation of defence policy;
- (b) to make recommendations to the Cabinet on the terms and conditions of service of members of the Defence Force; and
- (c) to inquire into and deal with complaints and grievances (other than complaints relating to disciplinary matters) by any member of the Defence Force.

(2) In the exercise of its functions in terms of this Act, the Defence Council, after consultation with the Commander of the Defence Force, may-

- (a) carry out any inquiry or investigation into the administrative or financial practices and procedures of the Defence Force;
- (b) require the production of any document, book or other record;
- (c) summon and examine any witness who the Defence Council considers may be able to assist it in the conduct of any inquiry or investigation; and
- (d) obtain information and advice from any member of the Defence Force:

Provided that, no document, book or record may be examined or information or advice obtained without the consent of the Commander of the Defence Force, in terms of this subsection if it relates solely to military dispositions or strategies adopted by the Defence Force.

(3) For the purposes of any inquiry or investigation carried out by it in terms of this Act, the Defence Council shall have the same powers as are conferred upon the Commissions of Inquiry in terms of the Public Inquiries Act 1994 in relation to such an inquiry or investigation and to any person summoned to give or giving evidence at that inquiry or investigation.

(4) No person shall be required by the Defence Council to disclose information or to produce any official document, book or other record if-

- (a) its disclosure or production is prohibited or restricted in terms of any enactment prohibiting or restricting the disclosure of information; or
- (b) the Minister certifies in writing that its disclosure or production would be contrary to the interest of the Defence Force.

PART IV - COMMAND AND ADMINISTRATION

Commander of the Defence Force

12. (1) The King, acting in accordance with the advice of the Prime Minister shall-

- (a) appoint an officer to be the Commander of the Defence Force in whom the command and inspection of the Defence Force shall vest; and
- (b) determine the rank and title of the Commander of the Defence Force.

(2) It shall be the duty of the Commander of the Defence Force to determine and implement such measures as he may consider necessary for-

-
- (a) commanding and controlling the members and equipment of the Defence Force and using them to best advantage;
- (b) maintaining proper discipline within the Defence Force;
- (c) improving or simplifying the organisation, methods and procedures of the Defence Force; and
- (d) securing the most economic and efficient utilisation of the resources provided for the maintenance of the Defence Force.
- (3) The Commander of the Defence Force shall-
- (a) report to the Minister on all matters under his charge in the day-to-day discharge of his duties;
- (b) advise the Minister on matters of general policy relating to the Defence Force; and
- (c) carry out any other duties that the Prime Minister may require him to execute.

(4) The Commander of the Defence Force shall account to the Principal Secretary for the Ministry of Defence for the efficient and economic use of the funds and assets of the Defence Force and in securing the most economic and efficient utilisation of the resources provided for the maintenance of the Defence Force.

Delegation of functions of the Commander of the Defence Force

13. The Commander of the Defence Force may delegate to any officer under his command such duties, functions and powers, other than the power of further delegation, as he may from time to time deem expedient.

Command and precedence

14. Officers and soldiers of the Defence Force shall stand with each other in order of rank and seniority or in such order of precedence as may be prescribed by the Minister.

Powers of command of members of co-operating forces

15 (1) A member of a defence force from any country outside Lesotho which is acting with the Defence Force shall have the same powers as a member of the Defence Force of corresponding rank.

(2) If the whole or any part of the Defence Force is required to act with any other force the Minister may place the Defence Force or such part of the Defence Force under the command of the officer commanding such other force.

(3) Where the Defence Force is acting in cooperation with any other force, the Commander of the Defence Force may, in agreement with the officer commanding that other force, define the powers of command and the order of precedence of the officers and other ranks of the Defence Force in relation to the officers and other ranks of such other force.

Provost Marshall

16. (1) There shall be a Provost Marshall who shall be appointed by the Commander of the Defence Force from among the officers of the Defence Force.

(2) The Provost Marshall shall -

- (a) be responsible for the enforcement of discipline within the Defence Force; and
- (b) carry out such other duties as may be assigned to him by the Commander of the Defence Force.

Directorate of Legal Services

17. (1) There shall be a Directorate of Legal Services within the Defence Force .

(2) The Commander of the Defence Force shall appoint an officer to be the Director of Legal Services within the Defence Force.

(3) The Director of Legal Services shall-

- (a) advise the Commander of the Defence Force on all legal matters affecting the Defence Force;
- (b) prosecute charges before courts-martial; and
- (c) perform such other duties as may be assigned to him by the Commander of the Defence Force.

PART V - OFFICERS

Power to grant commission

18. (1) The power to grant a commission in the Defence Force is vested in the King acting on the advice of the Prime Minister.

(2) Every officer on being granted a commission shall be issued with a commission in the form set out in the First Schedule.

(3) The Prime Minister may promote or temporarily appoint any officer to a higher rank.

Appointment and transfer of officers

19 (1) Every officer, on being granted a commission, shall be appointed to the regular force, the reserve force or volunteer element.

(2) The Commander of the Defence Force may, upon such terms and conditions as he may determine, transfer any officer between the regular force, the reserve force or the volunteer element.

Resignation of officers

20. An officer may, in writing, tender the resignation of his commission to the Commander of the Defence Force, but shall not, unless otherwise ordered by the Minister, be relieved of the duties of his appointment until he has received notification, in writing within sixty days, of the acceptance of his resignation by the Commander of the Defence Force.

Removal of officers

21. The King, acting on the advice of the Prime Minister, may terminate the commission of an officer of the Defence Force on the grounds that:-

- (a) the officer is incapable of carrying out his duties efficiently;
- (b) it is not in the interests of the Defence Force that the officer remains in the Defence Force; or
- (c) the officer has been convicted of a civil or military offence;
- (d) the officer engages in active politics; or
- (e) the public interest so requires.

Discharge on redundancy

22. (1) The Minister may, at any time, place any officer in the regular force on a retired list on the grounds that the abolition of his office or the reorganisation of the regular force necessitates such action.

(2) The Commander of the Defence Force may, at any time discharge any member of the regular force, other than an officer, on the grounds that the abolition of his office or the reorganisation of the regular force necessitates such action.

(3) The Commander of the Defence Force shall not discharge a member of the regular force under subsection (2) unless the Minister has approved-

- (a) the abolition of office; or
- (b) the reorganisation of the regular force; or
- (c) the discharge of the member of the regular force concerned.

(4) A person retired or discharged under this section shall be entitled to his pension benefits.

Retirement of officers

23. (1) An officer shall retire from the Defence Force on attaining the age of **55** years.

(2) The Minister may, on giving 12 months' written notice to the officer of his intention to do so, require an officer whose pensionable service amounts to 20 years or more to retire, and he shall be retired accordingly.

(3) An officer shall have the right to retire at any time on or after completing 20 years of pensionable service, or, on or after attaining the age of 45 on giving 6 months notice in writing to the Minister of his intention to do so and he shall be retired accordingly.

(4) An officer shall be required to retire from the force on being given 3 months notice in writing by the Minister should there be no

establishment for him in his present rank and no reasonable future prospects of promotion for him.

(5) The Minister may, on the recommendation of the Commander of the Defence Force, with the consent of the officer concerned, extend the date of retirement of an officer to a date beyond that on which the officer attains the retirement age.

Retirement of officers on medical grounds

24. (1) If the Commander of the Defence Force is of the opinion that an officer is incapable of performing his duties by reason of infirmity of body or mind, he shall report the circumstances to the Principal Secretary of the Ministry responsible for health, who, if he considers that there is evidence to substantiate the opinion of the Commander of the Defence Force, shall appoint a medical board to enquire into the officer's physical or mental condition. The finding of a medical board shall be reported to the Minister.

(2) An officer may, at any time, be required to present himself for examination to a medical board in order to ascertain whether he is physically and mentally capable of performing the duties of his office, and in order that he may be afforded an opportunity to make representations to a medical board in that behalf.

(3) The Minister may, on the recommendation of a medical board, remove an officer from office on medical grounds.

Gazettement of appointment, transfer etc.

25. The appointment, transfer, substantive promotion, retirement, resignation or removal from office of any officer shall be notified in the Gazette.

PART VI - ENLISTMENT AND TERMS OF SERVICE IN THE REGULAR FORCE

Recruiting officers

26. Any officer authorised by the Commander of the Defence Force to operate as a recruiting officer may enlist recruits in the regular force.

Enlistment

27. (1) A person to enlist in the regular force shall be given a notice set out in the Second Schedule specifying the information required to be provided by that person and stating the general conditions of the engagement to be entered into by that person, and a recruiting officer shall not enlist any person in that force unless satisfied by that person that he has been given such notice, understands it, and wishes to be enlisted.

(2) On being satisfied of the matters referred to in subsection (1), the recruiting officer shall request the recruit to take the oath or, as the case may be, make a solemn affirmation of allegiance as prescribed in the Second Schedule.

Extension of service

28. Any soldier of the regular force whose service expires during a state of war, insurrection, hostilities or public emergency may be retained in the regular force and his service prolonged for such period as the Minister may direct.

Discharge

29. (1) Except where otherwise provided by this Act, every soldier of the regular force upon becoming entitled to be discharged, shall be discharged as soon as possible, but until discharged remains subject to military law.

(2) Every soldier of the Regular Force **shall on discharge** be

given a certificate of discharge containing particulars as to conduct and service.

(3) Any soldier of the regular force upon discharge may be transferred to the Reserve.

Voluntary discharge

30. (1) Except where otherwise provided by this Act, every soldier of the regular force upon becoming entitled to be discharged, shall be discharged as soon as practicable, but until discharged remains subject to this Act.

(2) Every soldier of the regular force shall on discharge be given a certificate of discharge containing particulars as to conduct and service.

(3) A soldier of the regular force upon discharge may be transferred to the reserve force.

Discharge by Commander of the Defence Force

31. A soldier of the Defence Force may be discharged by order of the Commander of the Defence Force at any time during the currency of the term of engagement on the grounds that -

- (a) the soldier cannot carry out his duties efficiently;
- (b) it is not in the best interests of the Defence Force for the soldier to remain in the force;
- (c) the soldier has been convicted of a civil or military offence;
- (d) the soldier engages in active politics; or
- (e) the public interest so requires.

Purchase of discharge

32. (1) Subject to the provisions of this section, a soldier of the regular force is entitled to be discharged at any time within 3 months after the date of enlistment and if the soldier makes such a claim the soldier shall on payment of M100, be discharged as soon as practicable but until discharged, remains subject to this Act.

(2) A soldier of the regular force is not entitled to claim a discharge under subsection (1) while soldiers of that force are required to continue their regular service under section 28.

Discharge on medical grounds

33. The provisions of section 24 shall apply to soldiers.

Postponement of discharge or transfer pending proceedings for offences

34. (1) A soldier of the regular force is not entitled to be discharged or transferred to the reserve if liable to be proceeded against for an offence under this Act.

(2) A soldier of the regular force who is serving a sentence of imprisonment or detention imposed by a court-martial or by his commanding officer is not entitled to be discharged or transferred to the reserve during the currency of the sentence.

Restrictions in reduction in rank of warrant officer and non-commissioned officer

35. (1) A warrant officer or a non-commissioned officer of the regular force, other than a lance-corporal, may not be reduced in rank for inefficiency except by a sentence of a court-martial or by order of the Commander of the Defence Force.

(2) For the purposes of this section, reduction in rank does not include reversion to substantive rank.

Right of warrant officer to discharge on reduction to the ranks

36. A warrant officer of the regular force who is reduced to the ranks may claim to be discharged, unless a state of war, insurrection, hostilities or public emergency exists.

Rules for reckoning service

37. In reckoning the service of a soldier of the regular force towards discharge or re-engagement or transfer to the reserve all periods during which that soldier was absent from his duty for any of the following causes:

- (a) imprisonment;
- (b) desertion; or
- (c) absence without leave,

are excluded.

Validity of enlistment

38. (1) Where a person has taken the oath of allegiance and has received pay as a soldier of the regular force -

- (a) the validity of that soldier's enlistment shall not be called in question on the grounds of any error or omission in the enlistment paper; and
- (b) after the expiration of the period of 3 months from the date on which the soldier took the oath the soldier shall be deemed to have been validly enlisted notwithstanding any non-compliance with the

requirements of this Act or any other ground whatsoever.

(2) Where a person has received pay as a soldier of the regular force without having previously taken an oath of allegiance-

- (a) he shall be deemed to be a soldier of that force until discharged;
- (b) he may claim his discharge at any time and if he makes such claim the claim shall be submitted as soon as may be to the competent military authority who shall, if the claim is well founded, cause him to be discharged with all convenient speed.

(3) Nothing in subsection (1) and (2) affects the determination of any question of the term for which a person was enlisted or the discharge of a person who has not claimed discharge.

Retirement of soldiers

39. (1) A soldier shall retire from the Defence Force on attaining the age of 55 years.

(2) The Commander the Defence Force may on giving 12 months' written notice to the soldier of his intention to do so, require a soldier whose pensionable service amounts to 20 years or more to retire, and he shall be retired accordingly.

(3) A soldier shall have the right to retire at any time on or after completing 20 years of pensionable service, or, on or after attaining the age of 40 years on giving 3 months notice in writing to the Commander of the Defence Force of his intention to do so and he shall be retired accordingly.

(4) A soldier shall be required to retire from the force on being given 3 months notice in writing by the Commander of the Defence Force

should there be no establishment for him in his present rank and no reasonable future prospects of promotion for him.

(5) The Commander of the Defence Force, with the consent of the soldier concerned, may extend the date of retirement to a date beyond that on which the soldier attains the retirement age.

Resignation of soldiers

40. A soldier may, in writing, tender his resignation from the Defence Force to the Commander of the Defence Force, but shall not, unless otherwise ordered by the Minister, be relieved of the duties of his appointment until he has received notification, in writing, of the acceptance of his resignation by the Commander of the Defence Force.

PART VII - MILITARY OFFENCES AND PUNISHMENTS

Aiding the enemy

41. (1) Any person subject to this Act who with intent to assist the enemy -

- (a) abandons or delivers up any place or post which it is his duty to defend, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend;
- (b) does any act calculated to imperil the success of operations of the Defence Force, or of any forces co-operating therewith, or any part of the Defence Force or of those forces;
- (c) having been made a prisoner of war, serves with or aids the enemy in the prosecution of hostilities or of

measures calculated to influence morale, or in any other manner whatsoever not authorised by international usage;

- (d) furnishes the enemy with arms or ammunition or with supplies of any description or with any thing likely to assist him (whether similar to any of the things aforesaid or not); or
- (e) harbours or protects an enemy not being a prisoner of war,

commits an offence and shall, on conviction be liable to suffer death.

(2) Any person subject to this Act who knowingly and without lawful excuse does any of the acts specified in subsection (1) shall, where it is not proved that he acted with intent to assist the enemy, be liable on conviction for a term not exceeding 10 years.

(3) Any person subject to this Act who negligently causes the capture or destruction by the enemy of any aircraft belonging to the Defence Force or any forces co-operating with the Defence Force, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 15 years.

Communication with the enemy

42. (1) Any person subject to this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy commits an offence and shall, on conviction, be liable to suffer death.

(2) Any person subject to this Act who without authority communicates with or gives intelligence to the enemy commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding 20 years.

(3) In this section the expression "intelligence" means information which is or purports to be information as to any matter which is of such a nature that information about it would or might be directly or indirectly be useful to an enemy, and in particular (but without prejudice to the generality of subsections (1) and (2)) , means information as to:

- (a) the number, description, armament, equipment, disposition, movement or condition of the Defence Force or of any forces co-operating with the Defence Force, or any aircraft of the Defence Force or aircraft of any such co-operating forces;
- (b) any operations or projected operations of any forces or aircraft of any forces co-operating with the Defence Force or any aircraft of the Defence Force or aircraft of any such co-operating forces;
- (c) any code, cipher, call-sign, password or countersign;
- (d) any measures for the defence or fortification of any place;
- (e) the number, description or location of any prisoners of war; or
- (f) munitions of war.

Cowardly behaviour

43. (1) A person subject to this Act in the presence of the enemy -
- (a) leaves his post, position or other place where it is his duty to be; or
 - (b) throws away his arms, ammunition or tools, in such a manner as to show cowardice, or otherwise

behaves in such a manner as to show cowardice, commits an offence.

(2) A person subject to this Act who in the presence of the enemy induces any other person subject to this Act to commit an offence under subsection (1) commits an offence.

(3) Any person who commits an offence under this section is liable on conviction to suffer death.

Offences against morale

44. A person subject to this Act who -

- (a) spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of the Defence Force or of any forces co-operating with the Defence Force, being reports calculated to create despondency or unnecessary alarm; or
- (b) in the presence of the enemy uses words calculated to spread despondency or unnecessary alarm,

commits an offence and, on conviction is liable to imprisonment for a term not exceeding 5 years.

Disobedience to orders

45. (1) A person subject to this Act who, through disobedience to orders or wilful neglect of his duty, is captured by the enemy commits an offence.

(2) A person subject to this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person subject

to this Act captured by the enemy from taking any reasonable steps to rejoin the Defence Force which are available to him or, as the case may be, to that other person, commits an offence.

(3) A person who commits an offence against this section is liable, on conviction to imprisonment for a term not exceeding 2 years.

Offences by or in relation to sentries, etc

46. (1) Any person subject to this Act who while on guard duty -

- (a) sleeps at his post;
- (b) when not on duty at his post, is asleep at a time when he is not allowed to be asleep;
- (c) is drunk; or
- (d) leaves his post without having been regularly relieved or otherwise absents himself from any place where it is his duty to be,

commits an offence.

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

(3) A person subject to this Act who strikes or otherwise uses force against any person on guard duty, being a member of the Defence Force or of any forces co-operating with the Defence Force, or who by the threat of force compels any such person to let him or any other person pass,

commits an offence.

(4) A person who commits an offence against this section shall, on conviction-

- (a) if the offence was committed on active service is liable to imprisonment for a term not exceeding 5 years; and
- (b) in any other case is liable to imprisonment for a term not exceeding 2 years.

(5) References in this section to a person on guard duty are references to a person who-

- (a) is posted or ordered to patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol,

for the purpose of protecting any person, premises or place.

(6) The provisions of subsections (1), (2), (3), (4) and (5) shall apply in relation to persons posted or ordered to patrol, or members of a party mounted or ordered to patrol, for the purposes of preventing or controlling access to or egress from any premises or place, or regulating traffic by road, by rail or on any inland navigation, as they apply to persons on guard duty.

Looting

47. Any person subject to this Act who -

- (a) steals from, or with intent to steal, searches the person of anyone killed, or wounded in the course of warlike operations or internal disorder;
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations or internal disorder; or
- (c) takes otherwise than for the public service any vehicle, equipment or stores abandoned by the enemy,

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding 10 years.

Mutiny

48. (1) Any person subject to this Act who -

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

commits an offence and shall, on conviction be liable to suffer death.

(2) Any person subject to this Act who, in a case not falling within subsection (1), takes part in a mutiny or incites any person subject to this Act to take part in a mutiny, whether actual or intended, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 20 years.

(3) In this Act the expression "mutiny" means a combination between 2 or more persons subject to this Act, or between persons 2 at least of whom are subject to this Act -

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

Failure to suppress mutiny

49. Any person subject to this Act who, knowing that a mutiny is taking place or is intended -

- (a) fails to use his utmost endeavours to suppress or prevent it; or
- (b) fails to report without delay that the mutiny is taking place or is intended,

commits an offence and shall, on conviction be liable -

- (i) if the offence was committed with intent to assist the enemy, to suffer death;
- (ii) in any other case, to imprisonment for a term not exceeding 10 years.

Insubordinate behaviour

50. (1) Any person subject to this Act who -

- (a) strikes or otherwise uses violence to, or offers violence to a superior officer; or
- (b) uses threatening or insubordinate language to a superior officer,

commits an offence and shall, on conviction be liable -

- (i) if the offence was committed on active service to imprisonment for a term not exceeding 3 years;
- (ii) if the offence was not committed on active service and did not involve the striking of an officer exercising authority as such to a term not exceeding 2 years.

(2) In this section the expression "superior officer", in relation to a person, means an officer, warrant officer or non-commissioned officer of superior rank, and includes an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as the said person's superior.

Disobedience to particular orders

51. (1) Any person subject to this Act who, in such manner as to show defiance of authority, disobeys any lawful command given or sent to him personally commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding 2 years.

(2) Any person subject to this Act who, whether wilfully or through neglect, disobeys any lawful command commits an offence and

shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Obstruction of provost officers

52. Any person subject to this Act who -

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

any person known to him to be a provost officer, or to be a person (whether subject to this Act or not) legally exercising authority under or on behalf of a provost officer commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 2 years.

Disobedience to standing orders

53. (1) Any person subject to this Act who contravenes or fails to comply with any provision of orders to which this section applies, being a provision known to him, or which he might reasonably be expected to know, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 2 years.

(2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit of troops, or for any command or other areas, garrison or place, or for any vessel, train or aircraft.

Desertion

54. (1) Any person subject to this Act who -

- (a) deserts; or

- (b) persuades or procures any other person subject to this Act to desert,

commits an offence and shall, on conviction be liable-

- (i) if the offence was committed on active service to imprisonment for a period not exceeding 5 years;
- (ii) if the offence was committed otherwise to imprisonment for a term not exceeding 2 years.

(2) For the purposes of this section, “desertion” means -

- (a) a person who leaves the Defence Force or, when it is his duty to do so, fails to join or rejoin the Defence Force, with the intention, subsisting at the time of leaving or failure, or formed thereafter, of remaining permanently absent from his duty;
- (b) being an officer, enlists in or enters any other military force without having resigned his commission, or being a soldier enlists in or enters any other military force without having been discharged from his previous enlistment; or
- (c) a person who absents himself without leave when under orders to serve at any place outside Lesotho or to avoid service or any particular service when before the enemy.

(3) Proof that a person has been absent from duty without leave for a period of 14 continuous days or more shall be prima facie evidence of an intention to desert.

(4) In addition to, or in lieu of any other punishment, the court by which a soldier of the regular force is convicted of desertion may direct that the whole or any part of his service previous to the period in respect of which he is convicted of having been a deserter shall be forfeited.

Absence without leave

55. Any person subject to this Act who -

- (a) absents himself without leave; or
- (b) persuades or procures any other person subject to this Act to absent himself without leave,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Assisting and concealing desertion and absence without leave

56. Any person who-

- (a) knowingly assists any other person subject to this Act to desert or absent himself without leave;
- (b) knowing that any person subject to this Act has deserted or absented himself without leave, or is attempting to desert or absent himself without leave fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Failure to perform military duties

57. Any person subject to this Act who, without reasonable excuse, fails to attend any parade or any military duty of any description or leaves any such parade or duty before he is permitted to do so commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Falsely obtaining or prolonging leave

58. Any person subject to this Act who, for the purpose of obtaining leave or prolonging his leave, knowingly makes any false statement, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Malingering

59. (1) Any person subject to this Act who -
- (a) falsely pretends to be suffering from sickness or disability;
 - (b) with intent to render himself unfit for service, injures himself or causes himself to be injured by any person;
 - (c) injures another person subject to this Act, at the instance of that person, with intent thereby to render that person unfit for service; or
 - (d) with intent to render or keep himself unfit for service, does or fails to do anything whereby he produces, or prolongs or aggravates any sickness or disability,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

(2) In this section the expression "unfit" includes temporarily unfit.

Drunkenness

60. Any person subject to this Act who-

- (a) owing to the influence of alcohol or any drug or both-
 - (i) is unfit to be entrusted with his duty or with any duty which he may be called upon to perform; or
 - (ii) behaves in a disorderly manner; or
 - (iii) behaves in any manner likely to bring discredit upon the Defence Force; or
- (b) behaves in a riotous, disorderly or unseemly manner,

commits an offence and shall, on conviction be liable-

- (i) if the offence was committed on active service, to imprisonment for a term not exceeding 2 years;
- (ii) in any other case, to imprisonment for a term not exceeding 6 months.

Dangerous flying and use of state aircraft

21. (1) Any person subject to this Act who flies any aircraft of the State-
- (a) recklessly; or
 - (b) negligently; or
 - (c) to an unauthorised height; or
 - (d) in such a manner as to cause or be likely to cause unnecessary annoyance to any person,

commits an offence.

(2) Any person subject to this Act who, when flying or attempting or preparing to fly any aircraft of the State, is under the influence of alcohol or a drug or both to such an extent as to be incapable of having proper control of the said aircraft commits an offence.

(3) Any person subject to this Act who-

- (a) through any act, omission or neglect in flying or preparing to fly or in the preparation for flight or the use of any aircraft or aircraft material, causes or is likely to cause-
 - (i) loss of life or bodily injury to any person; or
 - (ii) destruction of or damage of the said aircraft or aircraft material or any other property;

- (b) signs any certificate in relation to any aircraft or aircraft material without ensuring the accuracy of such certificate,

commits an offence.

- (4) Any person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding 10 years.

Interference with aircraft, vehicles, vessels or other property of State

62. (1) Any person subject to this Act who wilfully or negligently causes or allows any aircraft or vessel of the State to be hazarded, stranded or wrecked commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 10 years.

(2) Any person subject to this Act who, in circumstances not amounting to any offence in terms of any other provision of this Act, contrary to his duty and without authority, alters, adjusts or interferes with any aircraft, motor vehicle, vessel, weapon, machine, instrument or other equipment of the State, or any part or accessory thereof, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years.

Offences relating to public and service property

63. Any person subject to this Act who-

- (a) steals or fraudulently misapplies any public or service property, or is concerned in or connives at stealing or fraudulent misapplication of any public or service property;
- (b) receives any public or service property knowing it to have been stolen or to have been fraudulently misapplied;

- (c) wilfully damages, or is concerned in the wilful damage of, any public or service property; or
- (d) by wilful neglect causes damage by fire to any public or service property,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years.

Offences in relation to property of members of the force

54. Any person subject to this Act who-

- (a) steals or fraudulently misapplies any property belonging to another person subject to this Act, or is concerned in or connives at the stealing or fraudulent misapplication of any such property;
- (b) receives any such property knowing it to have been stolen or to have been fraudulently misapplied; or
- (c) wilfully damages, or is concerned in the wilful damage of, any property belonging to a person subject to this Act,

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding 4 years.

Miscellaneous offences relating to property

55. (1) Any person subject to this Act who -

- (a) by negligence, causes damage to any State property or service property; or

- (b) fails to take proper care of any animal or bird of the State which is in his charge; or
- (c) fails to take all reasonable precautions to safeguard arms, ammunition or explosives of the State which are in his possession,

commits an offence.

(2) Any member who-

- (a) negligently loses; or
- (b) by negligence, causes damage to; or
- (c) makes away with, whether by pawning, pledging, selling, destroying, abandoning or in any other way.

any -

- (i) state property or service property of which he has the charge or which has been entrusted to his care; or
- (ii) clothing, arms, ammunition or other equipment issued to him for his use for military purposes; or
- (iii) decoration awarded to him,

commits an offence.

(3) Any person subject to this Act who-

- (a) without authority-

- (i) takes or removes from its appointed place; or
- (ii) uses for any purpose other than on State or service duty; or
- (iii) has in his possession,

any State property or service property; or

- (b) improperly uses, takes or removes from the possession or control of any other member any clothing, arms, ammunition or other equipment issued to that member for his use for military purposes,

commits an offence.

(4) Any person subject to this Act who, being responsible for any state property or service property, so negligently performs his duties as to result in any deficiency in such property commits an offence.

(5) Any person guilty of an offence against this section shall be liable to imprisonment for a period not exceeding 5 years.

(6) If, in any prosecution for a contravention of subsection (2), it is proved that the property or article in question was-

- (a) in the charge of the accused; or
- (b) entrusted to the care of the accused; or
- (c) issued to the accused; or
- (d) in the case of decoration, awarded to the accused,

and that at a time subsequent to such issue or otherwise the accused was found not to be in possession of the property or article, it shall be presumed, until the contrary is proved, that the property or article was negligently lost by the accused.

Billeting offences

66. Any person subject to this Act who-

- (a) knowing that no billeting requisition is in force under any written law authorising him to demand any billets, or that he is otherwise not authorised to demand them, obtains those billets or orders or procures another person to obtain them;
- (b) takes or agrees to take, or demands, from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting requisition under any written law, any money or thing as consideration for not requiring; or ceasing to require, the accommodation for himself or the said other person or standing room for the vehicle; or
- (c) commits any offence against the personal property of the occupier of a billeting in which he is billeted in pursuance of a billeting requisition under any written law or of any other person being in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Irregular arrest and confinement

27. (1) Any person subject to this Act who, when another person subject thereto is under arrest-

- (a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person; or
- (b) fails to release, or effect the release of, that other person when it is his duty to do so,

commits an offence.

(2) Any person subject to this Act who, having committed a person (hereinafter referred to as "the prisoner") to the custody of any provost officer or other officer or any warrant officer, or non-commissioned officer, fails without reasonable cause to deliver-

- (a) at the time of the committal; or
- (b) if it is not practicable to do so at the time of the committal, then within 24 hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed, commits an offence.

(3) Where any prisoner is committed to the charge of a person subject to this Act who is in command of a guard, and without reasonable cause, that person does not as soon as he is relieved from his guard and any further duty, or, if he is not sooner relieved, within 24 hours after the committal, give to the officer to whom it is his duty to report-

- (a) a written statement containing so far as known to him the prisoner's name and the alleged offence and the name and rank or other description of the officer or other person by whom the prisoner is alleged to have committed the offence; or
- (b) if he has received it, the report required by subsection (2), commits an offence.

(4) Any person who commits an offence against this section shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Permitting escape and unlawful release of prisoners

68. (1) Any person subject to this Act who intentionally allows any person who is committed to his charge or whom it is his duty to guard, to escape commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 4 years.

(2) Any person subject to this Act who -

- (a) without proper authority releases any person who is committed to his charge; or
- (b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 4 years.

Resistance to arrest

69. (1) Any person subject to this Act who being concerned in any quarrel or disorder, refuses to obey the lawful order of any person senior in

rank who orders him into arrest, or strikes or otherwise uses violence to, or offers violence to, any such person, commits an offence, whether or not the person is his superior officer.

(2) Any person subject to this Act who strikes or otherwise uses violence to, or offers violence to, any person, whether subject to this Act or not, whose duty it is to apprehend him or in whose custody he is, commits an offence.

(3) Any person who commits an offence against this section shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Escape from lawful custody

70. Any person subject to this Act who escapes from arrest, prison or other lawful custody commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Offences in relation to courts-martial

71. (1) Any person subject to this Act who -

- (a) having been duly summoned or ordered to attend as a witness before a court-martial fails to comply with the summons or order;
- (b) refuses to swear an oath when duly required by a court-martial to do so;
- (c) refuses to produce any document in his custody or under his control which a court-martial has required him to produce;
- (d) when a witness refuses to answer any question which a court-martial has required him to answer;

- (e) insults any person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or insults any such person while that person is going to or returning from the proceedings of the court; or
- (f) interrupts the proceedings of a court-martial or otherwise misbehaves before the court,

commits an offence and shall, on conviction, other than by the court in relation to which the offence was committed, be liable to imprisonment for term not exceeding 2 years:

Provided that an answer which a witness shall be compelled by the court to give under paragraph (d) shall not subject him to any prosecution or be proved against him in any civil or criminal proceedings except a prosecution for giving false evidence by such answer.

(2) Notwithstanding anything in subsection (1), where an offence against paragraph (e) or (f) is committed in relation to any court-martial held in pursuance of this Act, that court, if of the opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court, may by order under the hand of the presiding officer order the offender to be imprisoned for a term not exceeding 21 days, or, in the case of a soldier, either to be imprisoned for such a term or to undergo detention for such a term.

False evidence and contradictory statements

72. (1) Any person subject to this Act who, having been sworn as a witness or as an interpreter in proceedings before a military court or before any board or person having power by virtue of this Act to administer oaths makes a statement material in those proceedings which he knows to be false:

or does not believe to be true commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

(2) A person shall not be liable to be convicted of an offence against subsection (1) solely on the evidence of one witness as to the falsity of any statement alleged to be false.

(3) Any person subject to this Act who, having been sworn as a witness or interpreter in proceedings before a military court or before any board or person having power by virtue of this Act to administer oaths, makes a statement of some fact relevant in the proceedings contradicting in a material detail a previous statement made by him on oath before the same court, board or person or any other court, board or person, such witness or interpreter, if either of such statements was made with intent to deceive, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

(4) Upon the trial of any person for an offence under subsection (3), it shall not be necessary to prove the falsity of either of the contradictory statements, but, upon proof that both the statements were made by him, a court, if satisfied that the statements or either of them were or was made with intent to deceive, shall convict such person.

(5) At the trial of any person for an offence under subsection (3) the record of any court, board or person containing any statement made on oath by the person charged shall be prima facie evidence of such statement.

(6) For the avoidance of doubt, it is hereby declared that a person shall be liable to be convicted of an offence under subsection (3) notwithstanding that any statement made by him before any court, board or person was made in reply to a question which he was bound by law to answer, and any such statement shall be admissible in any proceedings under subsection (3).

Making of false statement on enlistment

73. Any person who, when before a recruiting officer for the purpose of being attested in pursuance of this Act, has knowingly made a false answer to any question contained in the attestation paper and put to him by the direction of the recruiting officer commits an offence, and shall, on conviction, be liable to imprisonment for a term not exceeding 3 months.

Making of false documents

74. (1) Any person subject to this Act who-

- (a) makes, signs or makes an entry in any military document, being a military document or entry which is to his knowledge false in a material particular;
- (b) alters any document, or alters any entry which is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce;
- (c) with intent to defraud, fails to make an entry in any military document;
- (d) aids, abets, commands, counsels, procures or connives at the commission by another person subject to this Act of an offence against this section,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 4 years.

(2) In this section, the expression "military document" means a document relating to the Defence Force or other forces co-operating with the Defence Force.

Scandalous conduct of an officer

75. Every officer subject to this Act who behaves in a scandalous manner, unbecoming the character of an officer, commits an offence and, on conviction, is liable to be cashiered or liable to a term of imprisonment not exceeding 10 years.

Ill-treatment of officers or men of inferior rank

76. If -

- (a) an officer strikes or otherwise ill-treats any officer of inferior rank or less seniority, or any soldier subject to this Act; or
- (b) if a warrant officer or non-commissioned officer strikes or otherwise ill-treats any person also subject thereto, being a warrant officer or non-commissioned officer of inferior rank or less seniority, or a private soldier,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Disgraceful conduct

77 (1) Any person subject to this Act who disgracefully conducts himself in a cruel, indecent or unnatural manner commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 4 years.

- (2) Any person subject to this Act who-

- (a) acts in a disorderly manner or in any manner prejudicial to discipline or likely to bring discredit on the reputation of the Defence Force;
- (b) lends money to any person senior to him in rank or borrows money from or accepts any present from any person junior to him in rank;
- (c) incurs debt in or out of the Defence Force without any reasonable prospect or intention of paying the same or, having incurred any debt makes no reasonable effort to pay the same; or
- (d) if called upon by the Commander of the Defence Force to furnish a full and true statement of his financial affairs, fails to do so,

commits an offence and shall, on conviction , be liable to imprisonment for a term not exceeding 2 years.

False accusation

78. Any person subject to this Act who-

- (a) makes an accusation against any officer or soldier also subject thereto, which he knows to be false or does not believe to be true;
- (b) in making a complaint in which he thinks himself wronged, makes a statement affecting the character of an officer or soldier also subject thereto, which he knows to be false or does not believe to be true, or wilfully suppresses any material facts,

commits an offence and shall, on conviction , be liable to imprisonment for a term not exceeding 3 years.

Conduct to the prejudice of military discipline

79. Any person subject to this Act who is guilty of any act, conduct or neglect to the prejudice of good order and military discipline commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years.

Attempts to commit military offences

80. Any person subject to this Act who attempts to commit an offence against this Act commits an offence and shall, on conviction, be liable to the like punishment as for that offence:

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

Civil offences

81. (1) Any person subject to this Act who commits a civil offence, whether in Lesotho or elsewhere, shall be guilty of an offence against this section.

(2) In this Act the expression "civil offence" means any act or omission punishable by the law of Lesotho or which, if committed in Lesotho, would be punishable by the law; and the expression "the corresponding civil offence" means the civil offence the commission of which constitutes the offence against this section.

(3) A person convicted by a military court or by a civil court of an offence against this section shall-

- (a) if the corresponding civil offence is treason or murder, be liable to suffer death;

- (b) in any other case, be liable to suffer any punishment or punishments which a civil court could award for the corresponding civil offence, if committed in Lesotho, being a punishment or punishments provided by this Act, or such punishment less than the maximum punishment which a civil court could so award, as is so provided:

Provided that where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than cashiering in the case of an officer, or detention in the case of a soldier as is so provided.

(4) A person shall not be charged with an offence against this section committed in Lesotho if the corresponding civil offence is treason, murder, culpable homicide or rape.

(5) Where the corresponding civil offence is murder or culpable homicide an offence against this section shall be deemed for the purposes of subsection (4), to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of death.

Punishments of officers

82. (1) The punishments which may be awarded under this Act to an officer by sentence of a military court are those set out in the scale in subsection (2), and in relation to an officer references in this Act to punishments provided by this Act are references to those punishments.

(2) The scale referred to in subsection (1) is-

- (a) death;
- (b) imprisonment;

- (c) cashiering;
- (d) dismissal from the Defence Force;
- (e) reduction in rank, except that an officer appointed directly from cadet training shall not be reduced to a rank below that of second lieutenant;
- (f) forfeiture in the prescribed manner of seniority of rank;
- (g) fine of a sum not exceeding the equivalent of 90 days' pay;
- (h) severe reprimand or reprimand;
- (i) stoppage, where the offence has occasioned any expense, loss or damage.

(3) For the purposes of this Part a punishment specified in any paragraph in the scale in subsection (2) shall, if that paragraph is preceded or followed by paragraphs containing specified punishment, be treated as less than the punishment specified in the preceding paragraphs, and greater than those specified in the following paragraphs, of the said scale.

(4) Except as expressly provided in this Act not more than one punishment shall be awarded by a military court for one offence.

(5) Stoppages may be awarded by a military court either in addition to or without any other punishment.

(6) A severe reprimand or reprimand may be awarded by a military court in addition to forfeiture of seniority of rank or fine.

(7) Where an officer is sentenced by a military court to imprisonment he shall also be sentenced to be cashiered:

Provided that if the military court fails to sentence him to be cashiered, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of cashiering.

Punishment of soldiers

83. (1) The punishments which may be awarded to a soldier by a sentence of a military court under this Act are those set out in the scale in subsection (2); and in relation to a soldier references in this Act to punishments provided by this Act are references to those punishments.

(2) The scale referred to in subsection (1) is-

- (a) death;
- (b) imprisonment;
- (c) discharge with ignominy from the Defence Force;
- (d) in the case of a Warrant officer, dismissal from the Defence Force;
- (e) detention for a term not exceeding two years;
- (f) where the offender is on active service on the day of the sentence, field punishment for a period not exceeding 90 days;
- (g) in the case of a warrant officer or non-commissioned officer, reduction to the ranks or any less reduction in rank;
- (h) in the case of a warrant officer or non commissioned officer, forfeiture in the prescribed manner of seniority of rank;

- (i) where the offence is desertion, forfeiture of service;
- (j) fine of a sum not exceeding the equivalent of 90 days pay;
- (k) severe reprimand or reprimand;
- (l) where the offence has occasioned any expense, loss or damage, stoppages.

(3) For the purposes of this Part a punishment specified in any paragraph in the scale in subsection (2) shall, if that paragraph is preceded or followed by paragraphs containing specified punishment, be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the paragraphs following, of the said scale:

Provided that detention shall not be deemed to be a less punishment than imprisonment if the term of detention is longer than the term of imprisonment.

(4) Except as expressly provided in this Act, not more than one punishment shall be awarded by a military court for any one offence.

(5) A soldier sentenced by a military court to imprisonment may, in addition thereto, be sentenced to be discharged with ignominy from the Defence Force, and a warrant officer sentenced by a military court to imprisonment may, in addition thereto, be sentenced to dismissal from the Defence Force.

(6) Where a warrant officer or non-commissioned officer is sentenced by a military court to imprisonment, detention or field punishment, he shall also be sentenced to be reduced to the ranks:

Provided that if a military court fails to sentence him to be so reduced, the sentence shall not be invalid but shall be deemed to include a sentence of reduction to the ranks.

(7) In the case of a warrant officer or non-commissioned officer, a severe reprimand or reprimand may be awarded by a military court in addition to forfeiture of seniority of rank or a fine.

(8) Where an offender is on active service when sentence of a military court is announced, a fine may be awarded in addition to field punishment.

(9) Stoppages may be awarded by a court-martial either in addition to or without any other punishment.

(10) Where an offender has been sentenced by a court-martial to detention, then if he is subsequently sentenced by a court-martial to imprisonment, any part of the sentence of detention which has been served shall thereupon be remitted by virtue of this subsection.

(11) Without prejudice to the validity of any award, an offender shall not be kept continuously in detention under this Act for more than two years.

Field punishment

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

Lesser punishment

85. Where in this Act a punishment has been prescribed, the court may in its discretion impose a lesser form of punishment.

PART VIII ARREST

Power to arrest offenders

86. (1) Any person subject to this Act found committing an offence against any provision of this Act or reasonably suspected of having committed any such offence may be arrested and taken into military custody in accordance with the provisions of this section.

(2) An officer may be arrested only by an officer of a superior rank or if engaged in a quarrel or disorder, by an officer of any rank.

(3) A soldier may be arrested by any officer, warrant officer or non-commissioned officer:

Provided that a person shall not be arrested by virtue of this subsection except by a person of a superior rank.

(4) A provost officer, or any officer, warrant officer or non-commissioned officer lawfully exercising authority under a provost officer or on his behalf, may arrest any officer, non-commissioned officer or soldier:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given to any person by this subsection may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

Remand warrants

87. (1) A superior officer or a commanding officer or officer commanding may issue a remand warrant for the custody in any detention barracks or civil prison of any member awaiting trial for an offence in terms of this Act.

(2) The officer or soldier or other person who commits a person into custody under this section must deliver at the time of committal or as soon as practicable and in any case within 24 hours, to the officer or soldier into whose custody that person is committed, a signed written report why the person so committed is to be held in custody.

(3) An officer or soldier who receives a person committed to his custody shall, as soon as practicable and in any case within 24 hours, give a written report stating -

- (a) the name of the person committed;
- (b) an account of the offence alleged to have been committed by that person so far as is known to him;
- (c) the name and rank of the officer, soldier or other person who committed the person to custody; and
- (d) an account in writing that has been submitted under subsection (2).

(4) The member in charge of a detention barracks or the officer in charge of a civil prison to whom a warrant referred to in subsection (1) is addressed shall act in accordance with the terms of that warrant.

Search of members or premises

88. (1) If it appears to a field officer from information on oath that there are reasonable grounds for suspecting that there is upon any member or upon or at any premises belonging to the State which are occupied by or are under the control of the Defence Force-

- (a) stolen property or anything with respect to which any offence in terms of this Act has been or is on reasonable grounds suspected to have been committed; or

- (b) any thing as to which there are reasonable grounds for believing-
 - (i) that it will afford evidence as to the commission of any offence ; or
 - (ii) that it is intended to be used for the purpose of committing any offence in terms of this Act,

he may, in writing, authorise the search by any member of such person or premises and the seizure of any such property or thing.

(2) Any member authorised in terms of subsection (1) to carry out any search or to seize any property or thing shall-

- (a) be superior in rank to the member whose person is to be searched or in whose charge or control the said premises are; and
- (b) deliver safely to the commanding officer of the member referred to in paragraph (a) any property or thing thus seized.

(3) If an officer of field rank believes on reasonable grounds that the delay in obtaining written authority in terms of subsection (1) would defeat or prejudice the object of a search, he may, subject to the provisions of subsection (2), authorise such search without such written authority.

(4) Any search carried out in terms of this section shall be conducted in the presence of the member in whose charge or under whose control the premises which are being searched are:

Provided that,

- (a) if the delay in securing the presence of such member is likely to prejudice the object of the search; or
- (b) if, having regard to the exigencies of military operations, his presence cannot be readily secured,

the search may be made in such member's absence but in the presence of at least two other members.

(5) If a member is a female soldier the search shall be made by a female member.

(6) In this section "premises" includes any place, vehicle, vessel, aircraft or receptacle of whatsoever kind.

Provision for avoiding delay after arrest

89. (1) The allegations against any person subject to this Act who is under arrest shall be duly investigated without unnecessary delay, and as soon as may be, either proceedings shall be taken against him or he shall be released from arrest.

(2) Wherever any person subject to this Act, having been taken into military custody, remains under arrest for a period longer than 14 days without a court-martial for his trial being assembled, a special report on the necessity for further delay shall be made by his commanding officer to the Commander of the Defence Force in the prescribed manner, and a similar report shall be made to the like authorities and in the like manner every 14 days until either a court-martial is assembled or the offence is dealt with summarily or he is released from arrest:

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

Investigation of charges by commanding officer

40. (1) Before an allegation against a person subject to this Act hereinafter referred to as "the accused") that he has committed an offence against any provision of this Part is further proceeded with, the allegation shall be reported in the form of a charge, to the accused's commanding officer and the commanding officer shall investigate the charge in the prescribed manner.

(2) The Commander of the Defence Force may, at any time suspend a person referred to in subsection (1) from duty pending the result of an investigation into or any trial before a military court or civil court of any offence alleged on reasonable grounds, to have been committed by that person.

(3) The Commander of the Defence Force shall inform the Minister of all persons suspended and reasons for the suspension.

(4) A suspended person shall not-

- (a) attend at his place of work or carry out any duty unless directed to do so by the Commander of the Defence Force; or
- (b) be entitled to his salary during the period of suspension:

Provided that he may be paid such allowances not exceeding the amount of his salary as the Minister may determine.

(5) If any charge or proceedings against a suspended person are withdrawn, or the person is acquitted on the charges against him, the Commander of the Defence Force shall cancel the person's suspension and that person shall thereupon be entitled to the full amount of his pay for the period of suspension, less the amount of any allowance paid to him in terms

of the proviso to paragraph (b) of subsection (4).

(6) It shall be the duty of the Commander of the Defence Force at periods of not more than fourteen days to inquire into the progress being made on the investigations in terms of subsection (2).

(7) Notwithstanding anything to the contrary contained in this section, the Commander of the Defence Force may direct that a member who has been tried, found guilty and punished for an offence in terms of subsection (2) but is not discharged, be entitled to the full amount of pay or any portion thereof that would otherwise have been paid to him during the period of suspension, less the amount of any allowance paid to him in terms of the proviso to paragraph (b) of subsection (4).

Summary trials

91. (1) A prescribed officer may, subject to such conditions and restrictions as may be prescribed in the regulations try and punish summarily any member whether within or outside Lesotho for an offence in terms of this Act.

(2) In this section the expression "prescribed officer" means superior authority, commanding officer or officer commanding.

PART IX - COURT MARTIAL GENERAL PROVISIONS

Officers having power to convene court-martial

92. (1) The Minister may convene a court-martial and appoint officers to constitute a court-martial.

(2) The Minister may delegate his functions under this section to the Commander of the Defence Force.

Constitution of court-martial

93. (1) A court-martial shall consist of the president and not less than 2 other members:

Provided that a court-martial shall consist of the president and not less than four other members if the only punishment or the maximum punishment which can be awarded in respect of the charge before the court is death.

(2) An officer may not be appointed to be the president or a member of a court-martial unless he is a member of the Defence Force and has been an officer in the Defence Force for a period of not less than 2 years or for periods amounting in the aggregate to not less than 2 years.

(3) At least 2 of the members of a court-martial shall be of a rank not below that of a captain.

(4) The president of a court-martial shall be appointed by order of the convening authority and shall not be under field rank unless in the opinion of the convening authority an officer of field rank having suitable qualifications is not, with due regard to the exigencies of the service, available, and in any event the presiding officer of a court-martial shall not be under the rank of captain.

Supplementary provision as to constitution of courts-martial

94. (1) The officer who convenes a court-martial shall not be a member of that court-martial.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the commanding officer of the accused, and any other officer who has investigated the charge against the accused, or who has held, or has acted as one of the persons holding, an enquiry into matters relating to the subject matter of the charge against the accused, shall not be the president or sit as a member of the court-martial or act as judge advocate at such a court-martial.

(3) Where the officer convening a court-martial appoints a captain to be a presiding officer, being of the opinion that a field officer having suitable qualifications is not, with due regard to the exigencies of the service, available, the order convening the court-martial shall contain a statement of such opinion, and that statement shall be conclusive.

Trial by, and powers of court-martial

95. (1) A court-martial shall have power to try any person subject to this Act for an offence which is triable by court-martial and to award for any such offence any punishment authorised by this Act.

(2) At all proceedings before a court-martial the prosecution and the defence shall be entitled to be represented by counsel.

Place of sitting of court-martial and adjournment to other places

96. (1) Subject to this section, a court-martial shall sit at such place whether within or without Lesotho as may be specified in the order convening the court.

(2) A court-martial sitting at any place, may if the convening authority directs it to sit at some other place, and may without any such direction if it appears to the court requisite in the interests of justice to sit at some other place, adjourn for the purpose of sitting at that other place.

Challenges by accused

97. (1) An accused about to be tried by court-martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in lieu of another officer.

(2) For the purpose of enabling the accused to avail himself of the right conferred by subsection (1), the names of the members of the court shall be read out in the presence of the accused before they are sworn, and he shall be asked whether or not he objects to any of those members.

3) Every objection made by the accused to any officer shall be considered by the other officers appointed as members of the court.

4) If an objection is made to the president, and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening authority shall appoint another presiding officer.

5) If objection is made to a member of the court other than the president and not less than one-half of the other members allow it, the member objected to shall retire and the vacancy may, and if otherwise the number of members would be reduced to below the legal minimum shall, be filled in the prescribed manner by another officer.

Administration of oaths

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

(2) Every witness before a court-martial shall be examined on oath or solemn affirmation:

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

(3) An oath required to be administered under this section shall be in the prescribed form.

Court-martial to sit in open court

99. (1) Subject to this section, a court-martial shall sit in open court and in the presence of the accused unless the accused so conducts himself as to render the continuance of the proceedings impracticable, in which event the court may order him to be removed and may direct that the trial be continued in his absence.

(2) Nothing in subsection (1) shall affect the power of a court-martial to sit in camera on the ground that it is necessary or expedient in the interest of the administration of justice to do so; and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to the disclosure of any information which would or might be directly or indirectly useful to an enemy.

(3) A court-martial shall sit in closed court while deliberating on its finding or sentence on any charge.

(4) A court-martial may sit in closed court on any other deliberation amongst the members.

(5) Where a court-martial sits in closed court no person shall be present except the members of the court and such other persons as the court may allow.

Dissolution of Court-martial

100. (1) Where, whether before or after commencement of the trial it appears to the convening authority necessary or expedient in the interest:

of the administration of justice that the court-martial should be dissolved, the convening authority may by order dissolve the court-martial.

(2) If after the commencement of the trial the number of the members of a court-martial is for any reason reduced to below the legal minimum, it shall be dissolved.

(3) If after the commencement of the trial the president is unable to attend and the court is not reduced below the legal minimum, then, if the senior member of the court is of the rank of captain or is of higher rank, the convening officer may appoint him presiding officer and the trial shall proceed accordingly; but if he is not, the court shall be dissolved.

(4) If after the commencement of the trial it is represented to the convening authority that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening authority may dissolve the court.

(5) Where a court-martial is dissolved under this section the accused may be tried by another court-martial.

Decisions of Court-martial

101. (1) Subject to this section, a court-martial shall be determined by a majority of votes of the members of the court.

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) Where the accused is found guilty and the court has power to sentence him either to death or to some lesser punishment, a sentence of death shall not be passed without the concurrence of all the members of the court.

(4) In the case of an equality of votes on the sentence, the

president shall have a casting vote.

Finding and sentence

102. (1) The president of a court-martial shall announce the finding of each charge in open court.

(2) Any finding of guilty shall be announced as being subject to confirmation.

(3) Any sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court and a sentence of a court-martial shall be announced as being subject to confirmation.

Power to convict of an offence other than that charged

103. (1) An accused charged before a court-martial with an offence under this Act may, on failure of proof of the offence having been committed under circumstances involving a higher degree of punishment, be found guilty of the offence as having been committed under circumstances involving a lesser degree of punishment.

(2) An accused charged before a court-martial with any offence may be found guilty of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed that offence.

(4) Where an accused is charged before a court-martial with an offence against section 80 and the corresponding civil offence is one in proceedings for which, if he had been tried by civil court for committing the offence in Lesotho, he might have been found guilty of another civil offence, then, if the court finds that he has committed that other civil offence, he may be convicted of an offence against section 80 in respect of

the commission of that other civil offence.

(5) An accused charged before a court-martial with an offence specified in the first column of the Third Schedule may be found guilty of an offence specified in relation thereto in the second column of the Third Schedule.

Laws to be observed by Court-martial

104. Save as is otherwise provided by this Act, the law which shall be observed in the trial of any charge before a court-martial as to-

- (a) the onus of proof; and
- (b) the sufficiency or admissibility of evidence, and
- (c) the competency, compellability, examination and cross-examination of witnesses; and
- (d) any matter of procedure,

shall be the law in force in criminal proceedings in the civil courts.

Rules of evidence

105. (1) Subject to this Act, the rules as to the admissibility of evidence to be observed in proceedings before courts-martial shall be the same as those observed in civil courts in Lesotho, and no person shall be required in proceedings before a court-martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court in Lesotho.

(2) Notwithstanding anything in subsection (1), a statutory declaration shall, in a trial by court-martial, be admissible as evidence of the

facts stated in the declaration in a case where, and to the extent to which, oral evidence to the like effect would be admissible in that trial:

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

- (i) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than 7 days before the commencement of the trial, been served on the accused or the accused has given his agreement in writing to its admission;
- (ii) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than 7 days before the commencement of the trial, been served on the prosecuting officer, or the prosecuting officer has given his agreement in writing to its admission;
- (iii) in any case, if, not later than 3 days before the commencement of the trial or within such further time as the court-martial may in special circumstances allow, the accused or, as the case may be, the prosecuting officer serves a notice in the prescribed form on the prosecuting officer or accused requiring that oral evidence shall be given in lieu of the declaration;
- (iv) in any case, if the court-martial is of the opinion that it is desirable in the interests of justice that oral evidence should be given in lieu of the declaration and declares that it is of that opinion.

(3) A court-martial shall take judicial notice of all matters of notoriety including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court in Lesotho.

Privilege of witnesses

106. A witness before a court-martial or any other person whose duty it is to attend on or before the court shall be entitled to the same immunities and privileges as a witness before the High Court.

Offences by civilians in relation to Court-martial

107. (1) Any person who

- (a) having been duly summoned or ordered to attend as a witness before a military court, fails to comply with the summons or order; or
- (b) refuses to swear an oath when duly required by a military court to do so; or
- (c) refuses to produce any document in his custody or under his control which a military court has required him to produce; or
- (d) refuses to answer any question which a military court has required him to answer; or
- (e) insults any person, being a member of a military court or a witness or any other person, whose duty it is to attend on or before a military court, while that person is acting as a member thereof or is so attending or is going to or returning from the proceedings of a military court; or

- (f) interrupts the proceedings of a military court or otherwise misbehaves before a military court,

commits an offence and shall on conviction be liable-

- (i) if he is a member, by a court martial, other than the court martial in relation to which the offence was committed, or a civil court, to imprisonment for a period not exceeding 2 years.
- (ii) if he is not a member, by a civil court, to a fine not exceeding M100-00 (one hundred Maloti) or to imprisonment for a term not exceeding 1 year or both such fine and such imprisonment.

(2) Notwithstanding anything contained in subsection (1) where an offence in terms of paragraph (e) or (f) of subsection (1) is committed in relation to any court martial, that court martial, if of the opinion that it is expedient that any offender who is a member should be dealt with summarily instead of being brought to trial before another court martial, may by order under the hand of the president order that member to be imprisoned for a period not exceeding twenty-one days or, in the case of a non-commissioned officer or soldier, either to be imprisoned for such a period or to undergo detention for such a period.

(3) The provisions of subsection (1) shall, mutatis mutandis apply to any proceedings at-

- (a) the taking of a summary or abstract of evidence; or
- (b) a board of inquiry,

in terms of any regulations.

Affirmation

108. (1) If-

- (a) a person required by virtue of this Act to take an oath for the purposes of proceedings before a court-martial objects to be sworn, and states as the ground of his objection either that he has no religious belief or that the taking of an oath is contrary to his religious belief; or
- (b) it is not reasonably practicable to administer an oath to such a person in the manner appropriate to his religious belief,

he shall be permitted to make a solemn affirmation in the prescribed form instead of taking an oath.

(2) A person permitted under this section to make his solemn affirmation shall thereafter be required to do so, and for the purposes of this section "reasonably practicable" means reasonably practicable without inconvenience or delay.

Confirmation of proceedings of Court-martial

109. (1) The Minister shall be the confirming authority and he may

delegate his functions under this section and sections 110 and 111 to the Commander of the Defence Force.

(2) Where a court-martial finds the accused guilty on any charge, the record of the proceedings of the court-martial shall be transmitted to the confirming authority for confirmation of the finding and sentence of the court on that charge.

(3) A finding of guilty or sentence of a court-martial shall not be treated as a finding or sentence of the court until confirmed:

Provided that this subsection shall not affect the keeping of the accused in custody pending confirmation.

Petition against finding or sentence

110. At any time after a court-martial has sentenced the accused, he may within 30 days of such finding or sentence, present a petition to the confirming authority against the finding or sentence and the confirming authority shall, within 30 days after receipt of such petition, make such order as it may deem fit.

Powers of confirming authority

111. (1) The confirming authority shall, on review of the proceedings of a court martial-

- (a) confirm the finding and sentence; or
- (b) if it appears that the proceedings were not in accordance with real and substantial justice, quash the finding and sentence:

Provided that the confirming authority may-

- (i) if a finding of guilty of some other offence could have been validly made by the court martial on the charge before it; and
- (ii) if it is of the opinion that the court martial must have been satisfied of the facts which justify that other finding,

substitute that other finding and, if it does so, it shall consider in what manner, if at all, the powers conferred by subsection (3) should be exercised.

(2) If it appears to the confirming authority that the sentence of a court martial is invalid it may, instead of quashing it, substitute thereof any sentence which could have been awarded by the court not being more severe than the sentence of the court martial.

(3) In confirming the sentence of a court martial, the confirming authority may-

- (a) remit in whole or in part any punishment awarded by the court; or
- (b) commute any such punishment for one or more punishments provided by this Act, being less than the punishment commuted.

(4) In confirming any sentence the confirming authority may suspend the carrying out of a sentence.

(5) A finding or sentence substituted by the confirming authority for any sentence having effect after the confirming authority has remitted or commuted the punishment shall be treated for all purposes as a finding or sentence of the court duly confirmed.

(6) If the confirming authority determines to quash the finding and sentence of a court martial, the determination shall be promulgated and shall have effect as from the date of conviction and sentence.

(7) In exercising the powers of confirmation the confirming authority shall consult the Attorney General or the Judge Advocate General.

(8) A person aggrieved by the decision of a court-martial may,

within 30 days of such decision, appeal to the court-martial Appeal Court.

Approval of death sentence

112. A sentence of death shall not be carried into effect unless it has been approved by the King on the advice of Pardons Committee as provided for in the Constitution of Lesotho.

Review of proceedings of summary trial

113. (1) The proceedings of any summary trial, other than where the charge was dismissed or the punishment imposed, was not greater than extra duties, may within 7 days of conviction, be reviewed at the instance of the accused or any other person who, in the opinion of the Director of Legal Services, is an interested party.

(2) The reviewing authority, where the summary trial was held by-

- (a) the Commander of the Defence Force shall be the Minister;
- (b) a superior authority other than the Commander of the Defence Force, shall be the Commander of the Defence Force;
- (c) a Commanding officer or an officer commanding shall be a superior authority.

Provisions where accused found insane

114. (1) Where, on the arraignment or during the trial of an accused by court-martial it appears to the court-martial that the accused is insane, the question of the accused's sanity shall be enquired into by the court-martial.

(2) If the court-martial finds that the accused is insane and unfit

to stand trial, it shall issue an order committing the accused to prison pending the signification of the King's Pleasure.

(3) Where, in any indictment or other charge under this Act, there is evidence in the trial of a person that the person was insane so as not to be responsible for his act or omission at the time when the act was done or the omission was made and it appears that the person was insane at the time the offence was committed, the court-martial shall-

- (a) return a finding to the effect that the accused was guilty of that act or omission but was insane at the time when he did the act or made the omission; and
- (b) order the accused to be kept in custody in prison pending signification of the King's Pleasure.

Commencement of sentences

15. A sentence of imprisonment or detention or of field punishment shall begin to run from the day on which the sentence was originally pronounced by the court-martial trying the offender or, as the case may be, was originally imposed by the person's commanding officer.

Duration of sentences of imprisonment and detention

16. (1) Where any person serving a sentence of imprisonment or detention becomes unlawfully at large during the currency of the sentence, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of any time he is at large.

(2) Where any person serving a sentence of imprisonment or detention has in accordance with the Regulations been temporarily released on compassionate grounds, then, in calculating the period for which he is liable to be imprisoned or detained in pursuance of the sentence, no account shall be taken of time elapsing during the period beginning with the day

after that on which he is released and ending with the day on which he is required to return to custody.

(3) A person who for any period is released as mentioned in subsection (2) or who is otherwise allowed, in pursuance of the Regulations out of any military establishment or otherwise out of military custody for any period or subject to any condition shall, on failure to return at the expiration of the period or to comply with the condition, be treated as being unlawfully at large.

(4) A person serving a military sentence of imprisonment or detention in civil custody who, after being temporarily released under civil law, is at large at any time during the period for which he is liable to be detained in civil custody in pursuance of his sentence shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of civil law.

(5) References to "release or recall" under civil law are references to release or recall under the Prisons Proclamation 1957.

Suspension of sentences

117. (1) Whenever a member is convicted before a military court of any offence other than an offence punishable by death, the court may in its discretion-

- (a) pass the sentence of imprisonment or detention but order the operation of the whole or any part of the sentence to be suspended for a period not exceeding 5 years on such conditions whether as to compensation to be made by the offender for damage or pecuniary loss, good conduct or otherwise as the military court may order; or

- (b) pass the sentence of a fine, or, in default of payment, imprisonment or detention, but suspend the issue of the warrant committing the offender to prison or to a detention barracks in default of payment until the expiry of such period, not exceeding 12 months, as the military court may fix for payment, in instalments or otherwise, of the amount of the fine, or until default has been made by the offender in the payment of the fine or any such instalments, the amounts of any instalments and the dates of payment thereof being fixed by order of the military court, which may in respect of the suspension of the issue of the warrant impose such conditions as it deems necessary or advisable in the interest of justice.

(2) If the offender has, during the period of suspension observed all the conditions specified in the order, the sentence shall not be enforced.

(3) If an offender fails to comply with any condition of postponement or suspension made under subsection (1), he may be brought before a confirming authority who may then-

- (a) commit the offender to undergo the sentence which may then be or has been lawfully passed; or
- (b) on good cause shown by the offender, grant a further suspension for a further period not exceeding that originally ordered in terms of subsection (1) on such conditions as might have been imposed at the time of the original suspension.

(4) If during the period of suspension of the whole or part of a sentence the convicted person is sentenced to imprisonment, the remaining portion of the suspended sentence shall be deemed to be consecutive to the sentence of imprisonment subsequently imposed.

(5) An offender who during the period of suspension ceases to be a member shall comply with the conditions of his suspension.

Special provisions as to civil prisons in Lesotho

118. A person sentenced to death or imprisonment and committed or transferred to a civil prison in pursuance of regulations made under this Act shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court.

Special provisions as to carrying out or serving sentences outside Lesotho

119. The Prime Minister may from time to time make arrangements with the authorities of any country or territory outside Lesotho whereby sentences of death passed by courts-martial in such countries may in accordance with regulations made under this Part be carried out in establishments under the control of those authorities, and military sentence of imprisonment or detention passed in such countries may in accordance with the Regulations be served wholly or partly in such establishments.

Country in which sentence of imprisonment or detention to be served

120. (1) A person who is serving a military sentence of imprisonment or detention in Lesotho may insofar as may be specified by or under the Imprisonment and Detention Regulations be removed out of Lesotho to any place where the unit or any part thereof to which for the time being he belongs is serving or is under orders to serve, but not to any other place.

(2) Subject to the following provisions, a person sentenced under this Act by a court-martial held out of Lesotho to imprisonment or detention for more than 12 months shall as soon as practicable after the confirmation of the sentence is completed be removed to Lesotho.

(3) Where a person has been sentenced under this Act by a court-martial held out of Lesotho to imprisonment or detention for more than 12

months, the Minister may, notwithstanding anything in subsection (2), direct that he shall not be required to be removed to Lesotho until he has served such part of his sentence, not exceeding (in the case of a sentence of more than two years' imprisonment) 2 years, as may be specified in the direction, and in determining whether or not to exercise the powers conferred by this subsection the Minister shall have regard to any recommendation in that behalf made by the court-martial.

(4) Any direction under this section may at any time be revoked by the Minister.

(5) Any direction given under this section, and the revocation of any such direction, shall be published by notice in the gazette.

(6) In ascertaining at any time for the purposes of this section the nature or length of a sentence, regard shall be had to any commutation or remission of the sentence previously directed.

Trial and punishment of offences under this Act notwithstanding offender ceasing to be subject thereto

21. (1) Where an offence under this Act triable by court-martial has been committed, or is reasonably suspected to having been committed by any person while subject to this Act, then in relation to that offence he shall be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation of charges, trial and punishment by a military court (including confirmation, review, reconsideration and suspension) and execution of sentences as continuing subject to this Act notwithstanding his ceasing at any time to be subject thereto.

(2) Where, while a person is in military custody by virtue of this section (whether before, during or after trial) he commits, or is reasonably suspected of having committed, an offence which if he were subject to this Act would be an offence under this Act triable by a military court, then in relation to that offence or suspected offence he shall be treated for the purposes of the provisions of this Act mentioned in subsection (1) and the

provisions thereof as to the summary dealing with charges, as having been subject to this Act when the offence was committed and as continuing subject thereto thereafter.

(3) Where by virtue of either subsection (1) or (2) a person is treated as being at any time subject to this Act for the purpose of any provision of this act, that provision shall apply to him-

- (a) if he holds any military rank, as to a person having that rank;
- (b) otherwise as to person having the rank which he has when last actually subject to this Act:

Provided that as regards any time after he has been sentenced for the offence in question and the sentence has been confirmed the said provision shall apply to him (in any case) as to a private soldier.

(4) Where apart from this subsection any provision of this Act would under subsection (3) apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

Limitation of time for trial of offences under this Act

122. (1) No person shall be tried by court martial for any offence other than one against sections 47, 48 or desertion, unless the trial is begun within three years after the commission of the offence, there being disregarded any time during which he was a prisoner of war and any time during which he was illegally absent:

Provided that-

- (a) in the case of an offence against section 80 when proceedings for the corresponding civil offence must, by virtue of any law, be brought within

limited time, that limit of time shall apply to the trial of the offence under the said section 80 in substitution for the foregoing provisions of this subsection.

- (b) subject to any such limit of time as is mentioned in subsection (1), a person may be tried by court-martial for a civil offence committed outside Lesotho notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney-General consents to the trial.

(2) Where a person who has committed an offence of desertion, other than desertion on active service, has since the offence served as a member of the regular force continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

(3) A person shall not be triable unless his trial is begun within three months after he ceases to be subject to this Act, or the trial is for a civil offence committed outside Lesotho and the Attorney-General consents to the trial:

Provided that this subsection shall not apply to an offence against mutiny, failure to suppress mutiny or desertion.

(4) A person shall not be arrested or kept in custody by virtue of section 121 (1) for an offence at any time after he has ceased to be triable for the offence.

Powers of civil courts

123. (1) Where a person subject to this Act-

- (a) has been tried for an offence by court-martial; or
- (b) has been charged with an offence under this Act and has had the charge dealt with summarily,

a civil court is not empowered to try that person for an offence substantially the same as that offence, but apart from that, nothing in this Act shall be construed as restricting the jurisdiction of any civil court to try a person subject to this Act for any offence.

(2) For the purposes of this section a case shall be deemed to have been dealt with summarily notwithstanding that the finding has been quashed, or the sentence quashed or varied, on review.

Persons not to be tried under this Act for offences already disposed of

124. Where a person subject to this Act-

- (a) has been tried for an offence by a competent civil court or a court-martial under this Act; or
- (b) has been charged with an offence under this Act, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the Commander of the Defence Force,

he shall not be liable in respect of that offence to be tried by military court.

Resolution of conflicts of jurisdiction

125. (1) The decision as to whether an offence shall be dealt with by the military authorities under this Act or by the civil authorities shall be determined by the Director of Public Prosecutions acting in consultation with the Commander of the Defence Force.

(2) The civil authorities shall exercise jurisdiction in respect of

offences committed in Lesotho where the offence is treason, murder, culpable homicide or rape.

(3) The military authorities shall have the right to exercise jurisdiction in relation to offences under this Act at all times when the person alleged to have committed an offence against this Act is serving outside Lesotho.

(4) The military authorities shall have the primary right to exercise jurisdiction in respect of offences committed in Lesotho-

- (a) if the offence is against the property or security of the Defence Force;
- (b) if the offence is against the property or person of a person subject to this Act;
- (c) if the offence is against the property or person of a dependant of a person subject to this Act when such dependant is residing with such person;
- (d) if the offence arises out of an act or omission in the course of official duty; or
- (e) if the offence is committed within the cantonment area.

(5) Notwithstanding the primary right of the military authorities to exercise jurisdiction the Commander of the Defence Force may if he considers it expedient refer it to the Director of Public Prosecutions who may deal with it as he considers fit.

PART X - ENQUIRIES

Boards of enquiry

126. (1) The Commander of the Defence Force, or any officer empowered by the Commander of the Defence Force may convene a board of enquiry to investigate and report on the facts relating to-

- (a) the absence of any person subject to this Act;
- (b) the capture of any such person by the enemy;
- (c) the death of any person where an enquiry into the death is not required to be held by any civil authority;
- (d) any other matter of any class or referred to such board by the Commander of the Defence Force or any such officer as aforesaid,

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

(2) A board of enquiry shall consist of such number of persons, as may be provided for by the rules, who shall be persons subject to this Act and the presiding officer of a board of enquiry shall be an officer not below the rank of Lieutenant.

Enquiries into absence

127. (1) Where a board of enquiry into the absence of an officer or soldier of the Defence Force reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than 14 days, a record of the report shall in accordance with the Board of Enquiry Rules be entered in his service record.

(2) A record entered in pursuance of subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of enquiry is annulled by the Commander of the Defence Force or a subsequent board of enquiry, have the like effect as a conviction by a court-martial for desertion.

Restitution or compensation for theft

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

(2) If any of the property unlawfully obtained has been found in the possession of the offender, the offender shall be ordered to deliver the said property to the person appearing to be the owner thereof or pay to him such sum as may represent the reasonable value thereof.

(3) If there has been found in the possession of the offender any property other than money appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

(4) Where money is found in the possession of the offender, then whether or not it appears to have been obtained as aforesaid an order may be made that there shall be paid out of that money to the person appearing to be the owner of the property unlawfully obtained such sum as may be specified in the order as or towards compensation for the loss caused to the said person by the offence, insofar as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pledge to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property sold or given as aforesaid,

there shall be paid to the said other person, out of any money found in the possession of the offender whether or not the money appears to be proceeds of the sale or giving in pledge, such sums as may be specified in the order as or towards compensation for the loss caused to him in consequence of the sale or given in pledge.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know it to have been unlawfully obtained, an order may be made that, subject to the restitution to the owner thereof of the property given as aforesaid, there shall be restored to the said other person the property taken in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court-martial by which the offender is convicted, by the Commander of the Defence Force or by the Minister, and in this section the expression "appearing" means appearing to the court, the Commander of the Defence Force or the Minister, as the case may be.

(8) An order under this section made by a court-martial shall not have effect until confirmed by the confirming authority, and the provisions of this Part as to the confirmation and review of the proceedings of court-martial shall apply to an order under this section as they apply to a sentence.

(9) The operation of any order under this section shall be suspended-

- (a) in any case, until the expiration of any period within which an application for leave to appeal to the appropriate court against the conviction must be lodged;
- (b) if such an application is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned.

(10) Where the operation of such an order as aforesaid is suspended under this section-

- (a) it shall not take effect if the conviction is quashed on appeal;
- (b) the appropriate court may by order annul or vary the order although the conviction is not quashed;
- (c) such steps shall be taken for the safe custody, during the period which the operation of the order is suspended, of the property ordered to be restored or handed over or the money to which the order relates as may be provided by rules of court.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or paid in pursuance of such an order from the person to whom it is delivered or paid.

Judge advocate

129. The appointment of a judge advocate to act at any court-martial may be made by the convening authority acting in consultation with the Attorney-General or the Judge Advocate General.

Promulgation

130. Any finding, sentence, determination or any other thing required by this Act to be published shall be published either by being communicated to the accused or in such other manner as may be prescribed or as the Commander of the Defence Force or the Minister, as the case may be, may direct.

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

131. (1) The record of the proceedings of a court-martial shall be kept in the custody of the Commander of the Defence Force for not less than the prescribed period, being a period sufficient to ensure that the rights conferred by subsection (2) and (3) shall be capable of being exercised.

(2) Subject to this section, any person tried by a court-martial shall be entitled to obtain from the Commander of the Defence Force on demand at any time within the relevant period and on payment of a prescribed fee a copy of the record of the proceedings of the court.

(3) Where a person tried by court-martial dies within the relevant period, his personal representatives or any person who in the opinion of the Commander of the Defence Force ought to be treated for the purposes of this subsection as his personal representative shall, subject to this section, be entitled to obtain from the Commander of the Defence Force on demand at any time within a period of 12 months from the death a copy of the record of any proceedings of the court.

(4) If, on an application in pursuance of either subsection (2) or (3) for a copy of the record of any proceedings, the Minister certifies that it is requisite for reasons of security that the proceedings or any part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or that part to which the certificate relates.

(5) In this section the expression "the relevant period" in relation to any person tried by court-martial, means the period of five years beginning with the date of his acquittal or, when he was convicted, of the promulgation of the findings and sentence.

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

Indemnity for prison officers

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

Rules of procedure

133. (1) Subject to this section, the Minister may make rules with respect to the investigation and trial of, and awarding of punishment for offences cognisable by military courts, and with respect to the confirmation and revision of findings and sentences of military courts.

(2) Without prejudice to the generality of subsection (1), rules of procedure may make provision with regard to all or any of the following matters-

- (a) the procedure to be observed in bringing charges before the military court;
- (b) the manner in which charges so brought are to be investigated, and the taking of evidence;
- (c) the convening and constitution of courts-martial;
- (d) the sittings, adjournment and dissolution of courts-martial;
- (e) the procedure to be observed in trials by courts-martial;
- (f) the representation of the accused at such trials;
- (g) the attendance of witnesses before military courts and the taking of evidence;

- (h) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty subject to exceptions or variations specified in the finding if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;
- (i) prescribe the forms of orders and other documents;
- (j) prescribe anything which may be prescribed under this Act.

(3) Rules shall ensure that the power to amend charges shall not be exercisable in circumstances substantially different from those in which indictments are amendable by a civil court in Lesotho or otherwise are subject to the like conditions as nearly as circumstances admit as those subject to the like conditions as nearly as circumstances admit as those subject to which indictments are so amendable.

(4) Rules of procedure may make provision as to the exercise by a judge advocate of his functions at a trial by court-martial, and without prejudice to the generality of this provision may make provision-

- (a) as to the effect of advice or rulings given to the court by a judge advocate on questions of law;
- (b) for requiring or authorising the president of a court-martial, in such cases as may be prescribed in the Rules, to direct that questions of law shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction.

(5) In subsection (4) reference to questions of law includes references to questions as to the joinder of charges and as to the trial of persons jointly or separately.

(6) Rules of procedure may make provision for determining the cases in which and the extent to which courts-martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused, take into consideration other offences against this Act committed by him.

(7) Where rules of procedure make such provision as provided by subsection (6), they may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offence of which he was in fact found guilty.

Imprisonment and Detention Regulations

134. The Minister may make Regulations with respect to all or any of the following matters-

- (a) the places in which and the establishment of forms of custody (whether military or not) in which persons may be required to serve the whole or any part of sentences of imprisonment and detention passed on them under this Act;
- (b) the committal of persons under sentences of or forms of custody, their removal from one country or place to another and from one establishment or form of custody to another and their release on the coming to an end of any term of imprisonment or detention;

- (c) the provision, classification, regulations and management of military establishments;
- (d) the classification treatment, employment, discipline and control of persons serving sentences of imprisonment or detention in military establishments or otherwise in military custody;
- (e) the temporary release on compassionate grounds of persons serving such sentences in such establishments or custody as aforesaid, the cases in which, periods for which and conditions subject to which they may be allowed out of any such establishment or custody and the remission of part of any such sentence for good conduct and industry;
- (f) the appointment, powers and duties of inspectors, and superintendents, and of officers and other members of the staff of military establishments.

Boards of Enquiry Rules

135. (1) The Minister may make rules with respect to the convening constitution and procedure of boards of enquiry.

(2) Without prejudice to the generality of subsection (1), Boards of enquiry rules may make provision with respect to all or any of the following matters -

- (a) the rules of evidence to be observed by boards of enquiry and the taking of evidence before such boards;
- (b) without prejudice to the provisions of section 127 the entering in service books or records of findings of boards of enquiry in such cases as may be

provided by the rules.

(3) Board of enquiry rules shall contain provision for ensuring that any witness or other person who may be affected by the findings of a board of enquiry shall have an opportunity of being present, and represented, at the sitting of the board or such part thereof.

Miscellaneous Regulations

136. The Minister may make regulations with respect to all or any of the following matters-

- (a) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out, and the custody, treatment and removal of persons under sentence of death;
- (b) field punishment;
- (c) any matter which by this Part is required or authorised to be prescribed;
- (d) such incidental and supplementary matters as may be necessary.

Interpretation of Part X

137. In this Part-

"civil prison" means a prison in Lesotho in which a person sentenced by a civil court to imprisonment can for the time being be confined;

"convening authority", in relation to a court-martial, means the Minister or the Commander of the Defence Force to whom the Minister may delegate his powers;

"military prison" includes detention barracks and some other prisons;

"prison" means a civil prison or a military prison;

"private soldier" means a soldier who is not a non-commissioned officer.

PART XI - APPEALS

Establishment, practice and procedure of court-martial appeal court

138. (1) There shall be a Court Martial Appeal Court (hereinafter referred to as "the Appeal Court") which shall consist of such persons, not being less than three, as the Prime Minister, acting in consultation with the Chief Justice, may from time to time appoint.

(2) The Registrar of the High Court shall be the Registrar of the Court-Martial Appeal Court.

(3) The Chief Justice may make rules of court with respect to all matters of practice and procedure relating to the exercise of the jurisdiction of the Appeal Court and such rules may provide for the summary determination of any appeal which appears to the Appeal Court to be frivolous or vexatious or to be brought for the purpose of delay.

(4) A member of the Appeal Court shall be paid such allowances and other expenses as may be determined by the Minister.

Appeals

139. (1) Subject to the provisions of this section, an appellant may appeal against conviction by a court-martial, to the Appeal Court on any ground of appeal which involves-

- (a) a question of law ; or
- (b) a question of fact ; or
- (c) a question of both law and fact.

(2) The provisions of subsection (1) shall not affect the operation of any sentence of a court-martial, other than a sentence of death.

Determination of appeal against conviction

140. Subject to the provisions of this Act on an appeal in terms of this Part against conviction the Appeal Court shall quash the conviction only if it thinks that the finding of the court-martial is unreasonable or is not justified-

- (a) having regard to the evidence; or
- (b) on the ground of a wrong decision of any question of law,

or that on any ground there was a miscarriage of justice:

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

Powers of appeal court

141. (1) If it appears to the Appeal Court that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred and if the sentence passed by the court-martial on the appellant was not warranted for the offence of which he was convicted on the other charge, the Appeal Court shall pass on him in substitution therefor, such sentence so warranted as it thinks proper.

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence and it appears to the Appeal Court that the court-martial must have been satisfied of facts which prove him guilty of that other offence the Appeal Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence warranted for that other offence but not being a sentence of greater severity than the sentence passed by the court-martial.

(3) Where an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment and it appears to the Appeal Court that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment the Appeal Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment, and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence warranted for the offence specified in the substituted finding but not a sentence of greater severity than the sentence passed by the court-martial.

(4) If it appears to the Appeal Court that the accused did the act or omission charged against him but was a mentally disordered or defective person at the time the act was done or the omission made so as not to be responsible according to law for his actions, the Appeal Court may set aside the sentence passed at the trial and order that the appellant be kept in custody in a civil prison and the provisions of section 114 shall, *mutatis mutandis* apply.

(5) The period of any sentence passed by the Appeal Court under any of the provisions of this section shall, unless the Appeal Court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought and such sentence shall be deemed for the purposes of this Act to be a sentence that has been confirmed.

Powers of Appeal Court to obtain further evidence

142. (1) For the purposes of this Part, the Appeal Court may, if it thinks necessary or expedient in the interests of justice, do all or any of the following-

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case;
- (b) order the president of the court-martial by which the appellant was tried or the person who officiated as judge advocate at the trial to furnish a written report-
 - (i) setting forth the court's statement of the facts found to have been proved and its reasons for judgement and sentence; and
 - (ii) dealing with the grounds upon which the appeal is based;

- (c) order any witness who would have been a compellable witness at the trial to attend and be examined before the Appeal Court, whether he was or was not called at the trial, or order the examination of any such witness to be conducted in the manner required by rules of court before any person appointed by the Appeal Court for the purpose and allow the admission of any deposition so taken as evidence before the Appeal Court;
- (d) receive the evidence, if tendered, of any witness, including the appellant, who is a competent but not a compellable witness and, if the appellant makes application for the purpose, of the wife of the appellant in cases where the evidence of the wife could not have been given at the trial except on such application;
- (e) set aside the conviction and remit the case to the court-martial by which the appellant was originally tried for further hearing with such instructions as regards the taking of further evidence or otherwise as appears to it necessary;
- (f) where any question arising at the appeal involves prolonged examination of documents or accounts or any scientific or other investigation which cannot, in the opinion of the Appeal Court, conveniently be conducted before the Appeal Court, order the reference of the question in the manner required by rules of court for inquiry and report to a special commissioner appointed by the Appeal Court and act upon the report of any such commissioner as far as it may think fit to adopt it;

- (g) appoint any person with special expert knowledge to act as an assessor to the Appeal Court in an advisory capacity in any case where it appears to the Appeal Court that such special knowledge is required for the proper determination of the case;
- (h) issue any warrant necessary for enforcing any order or sentence of the Appeal Court;
- (i) assign to an appellant in any appeal or proceeding preliminary or incidental to an appeal such legal assistance as may be provided by rules of court:

Provided that, whenever the Appeal Court receives further evidence or gives instructions for the taking of further evidence it shall make such order as will secure an opportunity to the parties to the proceedings to examine every witness whose evidence is thus taken.

Written presentation of appellant's case

143. An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the form required by rules of court.

Attendance of appellant at hearing of appeal

144. (1) An appellant shall not be entitled to be present at the hearing of an appeal under this Part or at any proceedings preliminary or incidental to such appeal except where rules of court provide he shall have the right to be present or when the Appeal Court gives him leave to be present.

(2) The power of the Appeal Court under this Part to pass any sentence may be exercised notwithstanding that the appellant is for any reason not present.

Stay of execution of death sentence

145. In the case of a sentence of death by a court-martial, the sentence shall not be executed until after the expiration of the time within which notice of intention to appeal against conviction may be given and, if notice of intention to appeal is so given, the sentence shall not be executed until the appeal has been determined or abandoned.

No retrial where conviction quashed

146. Where the conviction of a member by a court-martial for an offence has been quashed under this Part, he shall not be liable to be tried again for that offence by a military court or a civil court.

Enforcement of orders

147. (1) The process of the Appeal Court shall run throughout Lesotho and all authorities in Lesotho shall act in aid of the Appeal Court.

(2) Any judgement, decision or order of the Appeal Court shall have full force and effect in Lesotho and shall be enforceable by all courts and authorities in Lesotho in like manner as if it were a judgement, decision or order of the High Court.

(3) The decision of the Appeal Court shall be final.

Appeal on charges dealt with summarily

148. A person found guilty of a charge dealt with summarily under this Act may appeal to the Commander of the Defence Force.

Person not to be tried again where conviction quashed

149. Where the conviction of a person by a court-martial for an offence has been quashed under this Part, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

Removal of prisoners for purposes of this Part

150. Imprisonment and Detention Regulations may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at and brought back from any place at which he is entitled to be present for the purposes of this Part.

Furnishing on appeal of documents relating to trial

151. In the case of every appeal under this Part to the Appeal Court against a conviction by court-martial, it shall be the duty of the Commander of the Defence Force to furnish to the Registrar of the Appeal Court in accordance with rules of court, the proceedings of the court-martial with regard to the confirmation of the findings and sentence of the court-martial and any petition presented by the person convicted.

Prerogative of Mercy

152. Nothing in this Part shall affect the exercise of the prerogative of mercy under section 102 of the Constitution of Lesotho.

PART XII - FORFEITURES AND DEDUCTIONS

General provisions

153. (1) No forfeiture of the pay of an officer or soldier of the Defence Force shall be imposed unless authorised by this Act or any other law, and no deduction from such pay shall be made unless so authorised.

(2) The regulations may provide for the imposition of any forfeiture authorised, or for the time at which and manner in which sums may be deducted from pay to give effect to authorised deductions or the manner in which amounts may be so deducted in order to recover any fine imposed in pursuance of this Act, or as to the property of any such sum or amount when deducted, or of providing for the determination of questions relating to forfeitures or deductions.

(3) Notwithstanding any deduction from the pay of an officer or soldier of the Defence Force, he shall remain in receipt of pay at not less than such minimum rate as may be prescribed.

(4) Notwithstanding that forfeiture of pay of an officer or soldier of the Defence Force for any period has been ordered in pursuance of this Act, he may remain in receipt of pay at such minimum rate as aforesaid, but the amount received for that period may be recovered from him by deduction from pay.

(5) Any amount authorised to be deducted from the pay of an officer or soldier of the Defence Force may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or soldier, and references in this Act to the making of deductions from pay shall be construed accordingly and the whole or any part of any sum forfeited from an offender's pay may be recovered by deductions from any such balance.

Forfeiture of pay for absence from duty

154. (1) The pay of an officer or soldier of the Defence Force may be forfeited-

- (a) for any day of absence in such circumstances as to constitute an offence of desertion or absence without leave or if the Commander of the Defence Force so directs, of other absence without leave;
- (b) for any day of imprisonment, detention or field punishment awarded under this Act by a military court, or of imprisonment or detention of any description to which he is liable in consequence of an order or sentence of a civil court;
- (c) where he is found guilty of an offence under this Act, for any day on which he is in hospital or

account of sickness or injury occasioned by the commission of the offence.

(2) The pay of an officer or soldier of the Defence Force may be forfeited for any day of absence by reason of his having been made a prisoner of war if the Commander of the Defence Force or an officer authorised by him is satisfied that-

- (a) he was made a prisoner of war through disobedience to orders or neglect of his duty;
- (b) having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin the Defence Force; or
- (c) having been made a prisoner of war he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorised by international usage,

but, except as aforesaid, nothing in subsection (1) (a) shall apply to absence by reason of having been made a prisoner of war.

(3) Regulations may make provisions as to the computation of time for the purposes of this section and in particular as to the counting or disregarding of parts of days.

(4) For the purposes of this section "a day" shall be deemed to be any period over six hours but not more than 24 hours.

Deductions for payment of civil penalties

155. Where a person sentenced or ordered by a civil court (whether within or without Lesotho) to pay a sum by way of a fine, penalty, damages, compensation or costs in consequence of being charged before the court

with an offence is at the time of the sentence or order, or subsequently becomes, an officer or soldier of the Defence Force, then, if the whole or any part of that sum is met by a payment made by or on behalf of any military authority, the amount of the payment may be deducted from his pay.

Compensation for loss occasioned by wrongful act or negligence

156. (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the provisions of this section shall have effect where, after such investigation as may be prescribed by regulations made by the Minister, it appears to the Commander of the Defence Force or an officer authorised by him that any loss of, or damage to public or service property has been occasioned by any wrongful act or negligence of an officer or soldier of the Defence Force (hereinafter referred to as "the person responsible").

(2) The Commander of the Defence Force or authorised officer, as the case may be, may order the person responsible to pay, as or towards compensation for the loss or damage, such sum as may be specified in the order, and any such sum, insofar as not otherwise paid by the person responsible, may be deducted from his pay.

(3) No order shall be made under the provision of subsection (2) if, in proceedings before a military court, the person responsible,

- (a) has been acquitted in circumstances involving a finding that he was not guilty of the wrongful act or negligence in question; or
- (b) has been awarded stoppage in respect of the same loss or damage, but, except as aforesaid, the fact that any such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order or deductions under subsection (2).

Deduction for barrack damage

157. (1) Where damage occurs to any premises in which one or more units or parts of such units of the Defence Force are quartered or billeted or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, then if it appears, on investigation in accordance with regulations made by the Minister, that the damage or loss was occasioned to any of the units or parts of units in occupation of the premises and was so occasioned at a time when they were in occupation thereof, but that the said persons cannot be identified, any person belonging to any of such units or parts of units may be required to contribute towards compensation for the damage or loss such amount as may in accordance with such regulations be determined to be just, and the amount may be deducted from his pay.

(2) Subsection (1) shall extend to vessels, motor vehicles and aircraft in which units or parts of units are being transported, and references to premises, quartering and occupation shall be construed accordingly.

Remission of forfeitures

158. Any forfeiture or deduction imposed under this Part or under regulations may be remitted by the Minister or in such manner and by such authority as may be provided by such regulations.

PART XIII - GENERAL PROVISIONS

Complaints and redress of wrongs

159. Complaints and redresses of the members of the defence force shall be dealt with as prescribed in the regulations.

Exemption from service as assessor

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

Provided that an officer of the rank of captain or above may serve as an assessor in a civil court during any trial for an offence against this Act.

Exemption from execution of property used for military purposes

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

Arrest of deserters and absentees without leave

162. (1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or soldier of the Defence Force who has deserted or is absent without leave.

(2) Any person having authority to issue a warrant for the arrest of a person charged with a crime, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction, an officer or soldier of the Defence Force who has deserted or is absent without leave or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(3) Any person in custody in pursuance of this section shall as soon as practicable be brought before a magistrate's court.

(4) Notwithstanding any other law to the contrary a person arrested and brought before a magistrate's court under this section or section 165 or 166 shall not be admitted to bail.

Proceedings before a civil court where persons suspected of illegal absence

163. (1) Where a person who is brought before a magistrate's court is alleged to be an officer or soldier of the Defence Force who has deserted or is absent without leave, the provisions of this section shall have effect.

(2) If he admits that he is illegally absent from the Defence Force and the court is satisfied of the truth of the admission, then-

- (a) unless he is in custody for some other cause, the court shall; and
- (b) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into military custody in such manner as the court may think fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court may specify or until sooner delivered into such custody.

(3) Any time specified by the court may be extended by the court from time to time if it appears to the court reasonably necessary to do so for the purpose aforesaid.

(4) If he does not admit that he is illegally absent as aforesaid, or the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and if satisfied that he is subject to this Act and if of the opinion that there is sufficient evidence to justify his being tried under this Act for an offence of desertion or absence without leave, then, unless he is in custody for some other cause, the court shall cause him to be delivered into military custody or commit him as aforesaid, but otherwise shall release him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

Deserters and absentees without leave surrendering to police

164. (1) Where a person surrenders himself to a police officer as being illegally absent from the Defence Force, the police officer shall unless he surrenders himself at a police station bring him to a police station.

(2) The police officer in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has so surrendered himself is brought, shall forthwith enquire into the case, and if it appears to that officer that the said person is illegally absent as aforesaid he may cause him to be delivered into military custody without bringing him before a magistrate's court or may bring him before such a court.

Certificates of arrest or surrender of deserters and absentees

165. (1) Where a magistrate's court in pursuance of section 163 deals with a person illegally absent, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by a magistrate, containing the prescribed particulars as to his arrest and surrender and the proceedings before the court.

(2) Where a person is delivered into military custody without being brought before a court, whether under section 164 or under any other lawful power, there shall be handed over with him a certificate in the prescribed form, signed by the police officer who caused him to be delivered into military custody, containing the prescribed particulars relating to his surrender.

(3) In any proceedings for an offence against desertion or absence without leave-

- (a) a document purporting to be a certificate under subsection (1) shall be evidence of the matters stated in the document;
- (b) where the proceedings are against a person who has been taken into military custody on arrest or surrender, a certificate in the prescribed form purporting to be signed by a provost officer or by any officer in charge of the guardroom or other place where that person was confined on being taken

into custody, stating the facts, date, time and place of arrest or surrender, shall be evidence of the matters stated in the certificate.

Duties of officers in charge of prisons and others to receive deserters and absentees

166. (1) It shall be the duty of the officer in charge of a civil prison to receive any person duly committed to that prison by a magistrate's court as illegally absent from the Defence Force and to detain him until in accordance with the directions of the court he is delivered into military custody.

(2) Subsection (1) shall apply to the person having charge of any police station or other place (not being a prison) provided for the confinement of persons in custody, as it applies to the superintendent of a prison.

Punishment for pretending to be a deserter

167. Any person who falsely represents himself to any military or civil authority to be a deserter from the Defence Force commits an offence and shall on conviction be liable to a fine not exceeding M1000 or to imprisonment for a term not exceeding 2 years, or to both.

Punishment for procuring and assisting desertion

168. Any person who-

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

- (c) knowing any person to be a deserter or absentee without leave from the Defence Force, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be liable to a fine not exceeding M500 or to imprisonment for a term not exceeding 12 months, or to both.

Punishment for obstructing officers or soldiers in execution of duty

169. Any person who wilfully obstructs or otherwise interferes with any officer or soldier of the Defence Force acting in the execution of his duty shall be liable to a fine not exceeding M5000 or to imprisonment for a term not exceeding 2 years, or to both.

Punishment for aiding malingering

170. Any person who-

- (a) produces in an officer or soldier of the Defence Force any sickness or disability; or
- (b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service, with a view to enabling him to avoid military service, whether permanently or temporarily, shall be liable to a fine not exceeding M2000 or to imprisonment for a term not exceeding 2 years or to both.

Unlawful purchase of military stores

171. (1) Any person who acquires any military stores or solicits or procures any person to dispose of any military stores, or acts for any person in the disposing of any military stores, shall, unless he proves-

- (a) that he did not know, and could not reasonably be expected to know, that the goods in question were military stores;
- (b) that those goods had (by the transaction with which he is charged or some earlier transaction) been disposed of by order or with the consent of some person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent; or
- (c) that those goods had become the property of an officer of the Defence Force who had retired or ceased to be an officer, or of a soldier of the Defence Force who had been discharged or of the personal representative of a person who had died,

commits an offence and shall, on conviction, be liable to a fine not exceeding M10,000 or to imprisonment for a term not exceeding 10 years, or to both.

(2) A police officer may arrest without warrant any person whom he has reasonable grounds for suspecting of having committed an offence against this section, and may seize any property which he has reasonable grounds for suspecting of having been subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with an offence may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence against this section, grant a warrant to search for such property as in the case of stolen goods, and any property suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant and that officer shall bring the person in whose possession or keeping the property is found before a magistrate's court.

(4) In this section the expression-

"acquire" means buy, take, exchange, take a pledge, or otherwise receive whether apart from this section the receiving is lawful or not;

"dispose" means sell, give in exchange, pledge or otherwise hand over whether apart from this section the handing over is lawful or not;

"military stores" means any goods of any description belonging to the Government which have been issued for use for military purposes or are held in store for the purpose of being so issued when required, and includes any goods which had belonged, and had been issued or held as aforesaid at some past time.

(5) For the purposes of subsection (3) property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

Illegal dealings in documents relating to pay, pensions and mobilisation

172. (1) Any person who-

- (a) as a pledge or a security for a debt; or
- (b) with a view to obtaining payment from the person entitled thereto of a debt due either to himself or to any other person,

receives, detains or has in his possession any official document issued in connection with the payment to any person of any pay, pension, allowance.

gratuity or other payment payable in respect of his or any other person's military service, commits an offence.

(2) Any person who has in his possession without lawful authority or excuse (the proof whereof shall lie on him) any such document as aforesaid, or any official document issued in connection with the mobilisation or demobilisation of the Defence Force or any member thereof, commits an offence.

(3) Any person who commits an offence under this section shall be liable to a fine not exceeding M500 or to imprisonment for a term not exceeding 1 year, or to both.

(4) For the purposes of this section a document shall be deemed to be in the possession of a person if he has it under his control and whether or not he has it for his own use or benefit or for use or benefit of another person.

Unauthorised use of and dealing in decoration

173 (1) Any person who-

- (a) being a person who is not serving in the Defence Force without authority wears in a public place the uniform of the Defence Force or any dress having the appearance or bearing of the regimental or other distinctive marks of any such uniform;
- (b) without authority uses or wears any naval, military or air force decoration, or any badge, wound stripe or any emblem authorised by the Minister;
- (c) uses or wears any decoration, badge, wound stripe or emblem so nearly resembling any decoration, badge, wound stripe or emblem mentioned in paragraph (b). as to be calculated to deceive; or

- (d) falsely represents himself to be a person who is or has been entitled to use or wear any such decoration, badge, wound stripe or emblem as is mentioned in paragraph (b),

commits an offence:

Provided that nothing in this subsection shall prevent any person from wearing any uniform or dress in the course of a stage play or in the course of a musical or circus performance, or in the course of any bona fide military representation.

(2) Any person who purchases, manufactures or takes in pledge any decoration awarded to any member of the Defence Force, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of that Force.

(3) Any person who is guilty of an offence under this section shall be liable to a fine not exceeding M5000 or to imprisonment for a term not exceeding 5 years, or to both.

General provisions as to evidence

174. (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a military or a civil court.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on

his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

- (4) A letter, return or other document stating that any person-
 - (a) was or was not serving at any specified time or during any specified period in any part of the Defence Force or was discharged from any part of that Force at or before any specified time;
 - (b) held or did not hold at any specified time any specified rank or appointment in that Force or had at or before any specified time been attached, posted or transferred to any part of that force, or at any specified time or during any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
 - (c) was or was not at any specified time authorised to use or wear any decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by or on behalf of the Minister, or a person authorised by him, be evidence of the matters stated in the document.

(5) A record made in any prescribed service book or any other prescribed document, being a record made in pursuance of the provisions of this Act, or otherwise in pursuance of military duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein, and a copy of a record including the signature thereto in any such book or other document as aforesaid purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or other document, shall be evidence of the record.

- (6) A document purporting to be issued by order of the

Commander of the Defence Force or the Minister and to contain instructions or orders given or made by the Commander of the Defence Force or the Minister shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be issued by or on behalf of the Commander of the Defence Force, or the Minister, or by a person authorised by him or it, and stating-

- (a) that a decoration of a description specified in or annexed to the certificate is a military decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the Commander of the Defence Force or the Minister, shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or any officer authorised by him to give the certificate, and stating the contents of or any part of, standing orders or other routine orders of a continuing nature made for-

- (a) any formation or unit or body of troops;
- (b) any command or other area, garrison or place; or
- (c) any vessel, train or aircraft,

shall in proceedings against the said person be evidence of the matters stated in the certificate.

Proof of outcome of civil trial

175. (1) Where a person subject to this Act has been tried before a civil court (whether at the time of the trial he was so subject or not) a

certificate signed by the clerk of the court or by a judge or a magistrate and stating all or any of the following matters-

- (a) that the said person has been tried before the court for an offence specified in the certificate;
- (b) the result of the trial;
- (c) what judgement or order was given or made by the court;
- (d) that other offences specified in the certificate were taken into consideration at the trial,

shall, for the purposes of this Act, be evidence of the matters stated in the certificate.

(2) A document purporting to be a certificate under this section and to be signed by the clerk of the court, a judge or a magistrate shall, unless the contrary is shown, be deemed to be such a certificate.

(3) The clerk of the court shall, if required by the commanding officer of the person in question or any other officer authorised by him, furnish a certificate under this section.

(4) References in this section to the clerk of the court include references to his deputy, to the Registrar of the High Court and to any other person having the custody of the records of the court.

Evidence of proceedings of court-martial

176. (1) The original record of the proceedings of a court-martial purporting to be signed by the president of the court and being in the custody of any person having the lawful custody thereof shall be admissible in evidence on production from that custody.

(2) A document purporting to be a copy of the original record of the proceedings of a court-martial and to be certified by the person having the lawful custody of the proceedings to be a true copy shall be evidence of the contents of the proceedings or that part to which the document relates, as the case may be.

(3) This section applies to evidence given in any court, whether civil or criminal.

Temporary reception in civil custody of persons under escort

177. (1) Where a person is in military custody when charged with or with a view to his being charged with, an offence against Part VII, it shall be the duty of the superintendent or other person in charge of a civil prison or of the person having charge of any police station or other place in which prisoners may be lawfully detained, upon delivery to him of a written order purporting to be signed by the commanding officer of the person in custody to receive him into his custody for a period not exceeding seven days.

(2) In subsection (1) "civil prison" has the meaning assigned to it in section 137.

Avoidance of assignment of, or charge on military pay and pensions

178. (1) Every assignment of or charge on, and every agreement to assign or charge, any pay, award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Defence Force shall be void.

(2) Except as expressly provided by this Act, no order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning and to direct payment thereof to another person.

(3) Nothing in this section shall prejudice any law providing for the payment of any sum to an insolvent trustee in insolvency for distribution among creditors.

Power of certain officers to make statutory declarations

179. (1) An officer of the Defence Force not below field rank (hereinafter referred to as an "authorising officer") may, outside Lesotho take statutory declarations from persons subject to this Act.

(2) A document purporting to have subscribed thereto by the signature of an authorising officer in testimony of a statutory declaration being taken before him in pursuance of this section and containing in the jurat or attestation a statement of the date on which and the place at which the declaration was taken and of the full name and rank of the officer shall be admitted in evidence without proof of the signature being the signature of that officer or of the facts so stated.

PART XIV - RESERVE FORCE

Composition

180. The Reserve Force shall consist of such officers and soldiers who shall be appointed therein under sections 19 and 28 respectively.

Discharge from reserve force

181. A soldier of the Reserve Force may be discharged by the Commander of the Defence Force at any time during the currency of any term of service in the Reserve Force upon such grounds as may be prescribed.

Reporting of reserve force

182. Officers and soldiers of the Reserve Force shall be required to report

to such authority and to attend such examinations before a medical board as may be prescribed.

Embodiment

183. (1) Whenever it appears to the Minister necessary or desirable in the public interest, he may, by order published in the Gazette or otherwise-

- (a) order the employment of the whole or any part of the Reserve Force; and
- (b) authorise the Commander of the Defence Force to order the employment of any officer or soldier of the Reserve Force for service within or without Lesotho.

(2) Any officer or soldier of the Reserve Force employed in terms of subsection (1) by reason of an order issued by the Minister shall remain so employed until released by the Minister.

(3) Every officer and soldier of the Reserve Force may, when called out for service under this section, be posted or attached to any unit of the Regular Force.

Postponement of discharge

184. Where the time at which a soldier of the Reserve Force would otherwise be entitled to be discharged occurs at a time when the Reserve Force, or any part thereof, is employed in terms of section 183, he may be required to prolong his service for such further terms as the Minister may order.

Failure to attend on embodiment

185. (1) Any officer or soldier of the Reserve Force who, without

leave lawfully granted or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed on embodiment in accordance with directions given under section 189 commits an offence according to the circumstances of desertion or absence without leave, and, on conviction by a military court, shall be punishable as for an offence under sections 53 and 54, as the case may be.

(2) Any person who, by any means whatsoever-

- (a) procures or persuades any officer or soldier of the Reserve Force to commit an offence of desertion contrary to subsection (1), or attempts to procure or persuade any such soldier to commit such an offence;
- (b) knowing that any such officer or soldier is about to commit such an offence, aids or assists him in so doing; or
- (c) knowing any such officer or soldier to be a deserter contrary to subsection (1), conceals the officer or soldier, or aids or assists him in concealing himself, or employs or continues to employ him, or aids or assists in his rescue,

shall be liable to a fine not exceeding M250 or to imprisonment for a term not exceeding 1 year, or to both.

(3) Any person who knowing any officer or soldier of the Reserve Force to be a deserter within the meaning of this Act, employs or continues to employ the officer or soldier, shall be deemed to aid him in concealing himself within the meaning of section 56.

Power to make Regulations under this Part

186 Subject to the foregoing provisions of this Part, the Minister may

make Regulations for the better carrying out of this Part and generally for the good government and organisation of the Reserve Force and for providing for matters required by this Part to be prescribed and, without prejudice to the generality of the foregoing, such regulations may make, provision with regard to all or any of the following matters-

- (a) the transfer of persons into, and the discharge of persons from the Reserve Force;
- (b) the pay, allowances, pensions and gratuities of officers and soldiers of the Reserve Force and their dependants surviving them and the deductions therefrom and the forfeiture thereof;
- (c) the calling out of officers and soldiers of the Reserve Force for service in accordance with section 182 including prescribing the manner in which notification of the places and times appointed is to be given; and
- (d) requiring officers and soldiers of the Reserve Force to report themselves from time to time.

PART XV - APPLICATION OF THE ACT AND SUPPLEMENTARY PROVISIONS

Persons subject to this Act

- 187 (1) The following persons are subject to this Act-
- (a) officers and soldiers of the Regular Force;
 - (b) officers and soldiers when attached to the Defence Force or any part thereof;

- (c) officers and soldiers of the Reserve Force when employed in terms of section 183.

(2) This Act shall apply to the persons subject thereto whether outside or within Lesotho, notwithstanding their attachment under section 7.

Application of this Act to civilians

188. (1) Subject to the modifications hereinafter specified where any part of the Defence Force is on active service, Part VII shall apply to any person who is employed in the service of that part of the Defence Force or a member thereof, or accompanies the said part of the Defence Force, and is not subject to this Act, as the said Part VII applies to soldiers subject to this Act.

(2) The said modifications are as follows-

- (a) the punishments which may be awarded by a court-martial shall include a fine, but shall not include any other punishment less than imprisonment;
- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding M100 but no other punishment;
- (c) the following provisions shall have effect in substitution for section 86 (3) and (4), that is to say, that a person may be arrested by a provost officer, or by any officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf or by order of any officer under the Act;
- (d) where a charge is being dealt with summarily and it has been determined that the accused is guilty, a

finding shall not be recorded until after the accused has been afforded an opportunity of electing to be tried by court-martial, and if the accused so elects, a finding shall not be recorded but such steps shall be taken with a view to the charge being tried by court-martial, as may be prescribed by Rules of Procedure;

- (e) the provisions of this Act relating to the investigation of, and summary dealing with, offences, shall, except as otherwise expressly provided, apply as they apply to soldiers;
- (f) for the purposes of the provisions of this Act relating to the investigation of offences, the commanding officer of a civilian to whom this section applies shall be the officer for the time being commanding the unit or detachment in which that person is employed or which he accompanies;
- (g) for references in sections 121 and 122 to being, continuing or ceasing to be subject to this Act, there shall be substituted to be in such circumstances which Part VII applies and section 126 (3) shall not apply.

(3) Any fine awarded under this Act, whether by a court-martial or the commanding officer, shall be recoverable summarily on complaint by any officer of the Defence Force before a magistrate's court as a debt to the Government.

Application of the Act to reserve force

189. The provisions of Part VII relating to the award of fines and stoppages, and Part XII, shall not apply to officers and soldiers of the Reserve Force except when employed in terms of section 183.

Use of Defence Force in aid of civil power

190. (1) The Commander of the Defence Force may, at the request of the Commissioner of Police, authorise the use of any member or unit of the Defence Force in support of, or to give assistance to, the Police Force in the discharge of their functions under the Police Order 1971 or any law amending or replacing the same.

(2) A member of the Defence Force acting in pursuance to an authorisation under subsection (1) shall have and may exercise all the powers of a police officer of equivalent rank.

Rewards and Fines Fund

191. (1) All fines imposed under this Act for any offence against discipline and any fees paid or donations made in respect of any special services provided by the Defence Force shall be placed to the credit of a fund called the Defence Force Rewards and Fines Fund (hereinafter referred to as "the Fund").

(2) No payment shall be made from the Fund except upon the authority of the Commander of the Defence Force.

(3) The Commander of the Defence Force may, in his discretion, sanction payment from the Fund for any of the following purposes-

- (a) to assist the wives and families of deceased soldiers, or to assist any soldier discharged from the Defence Force as medically unfit for further service;
- (b) as rewards for soldiers for meritorious acts or service in the execution of duty:

Provided that no payment shall be made to any soldier who has received any other reward from Government revenue;

- (c) the procuring of any comforts, conveniences or advantages for persons subject to this Act which are not chargeable to general revenue;
- (d) the granting of loans in special circumstances to soldiers, repayable by instalments; or
- (e) to provide prizes for competitions limited to persons subject to this Act.

Power to make Regulations

192. Subject to the foregoing provisions of this Act, the Minister may make Regulations for the better carrying out of this Act and generally for the good governance and organisation of the Defence Force and for providing for matters required by this Act to be prescribed and, without prejudice to the generality of the foregoing, such Regulations may make provision with regard to all or any of the following matters-

- (a) the enlistment of persons into, and the discharge of persons from, the Regular Force and generally for the carrying into effect of Part VI, including the prescribing of the necessary forms and the administration of oaths and affirmations;
- (b) the pay, allowances, pensions and gratuities of soldiers and their dependants surviving them, and the deductions therefrom and the forfeiture thereof;
- (c) the establishment of a Promotion Advisory Board to advise the Commander of the Defence Force on the promotion of soldiers;
- (d) the description, supply, use, disposal of and accounting for arms, accoutrements, clothing and other stores;

- (e) prohibiting, restricting and regulating the holding of meetings, within the limits of any camp or other military establishment, and the admission or attending any such meeting;
- (f) in regard to matters for which regulations may be made under the foregoing provisions of this Act, other than under Parts X and XIV;
- (g) prescribe anything which is to be prescribed under this Act.

Execution of orders and instruments

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

Repeal and savings

194. (1) The Lesotho Defence Force Order 1993¹ is repealed.
- (2) Notwithstanding subsection (1) -
- (a) any officer commissioned, and any soldier enlisted, under that Order who was a member of the Force in existence immediately before the coming into operation of this Act shall, on and after that date, continue to serve in the Force established under this

Act as such officer or soldier, as if that person had been granted his commission or enlisted, as the case may be, under this Act;

- (b) the appointment of an officer and the enlistment of a soldier referred to in paragraph (a) is deemed to have been valid and effectual notwithstanding any defect or irregularity in appointment or enlistment, as the case may be, or any failure to comply with the provisions of the repealed enactment in relation to such appointment or enlistment; and
- (c) anything lawfully done or purported to have been done under any provisions of the enactment repealed by subsection (1) shall be of full force and effect as if done under a corresponding provision of this Act.

NOTE

1. Order No. 17 of 1993

Section 18(2)

FIRST SCHEDULE

Commission

Form of Commission

I, Minister of Defence,
 acting under command of His Majesty Kingdo
 give to greetings and reposing a special
 trust in your loyalty, courage and good conduct to your beloved Lesotho, do
 by these presents constitute and appoint you to be an officer in the
* of the Lesotho Defence Force (for years*)
 from the day of You are therefore carefully and
 diligently to discharge your duty as such an officer in the rank of
 or such other rank as you may from time to time
 hereafter be promoted or appointed and you are in such manner and on such
 occasion to exercise and well discipline in their duties, such officers and
 soldiers as may be placed under your orders from time to time and use your
 best endeavours to keep them in good order and discipline. I do hereby
 command, all such officers and soldiers to obey you as their superior officer,
 and you to observe and follow such orders and directions as from time to
 time you shall receive from me or any of your superior officers in pursuance
 of the trust hereby reposed in you.

MINISTER OF DEFENCE

* Insert "regular force",
 "reserve force
 /volunteer element".

SECOND SCHEDULE**Questions to be put to a person offering to enlist**

1. The following questions should be asked of a person offering to enlist in the regular force:
 1. What is your surname and forenames?
 2. What is your date of birth?
 3. What is your place of birth?
 4. What is your nationality?
 5. Are you single, married, divorced, widowed or a widower?
 6. Do you have any children dependant upon you?
 7. What is your religious denomination?
 8. Have you ever served in any armed force regular or irregular in any country? (If the answer is Yes state the force to which you belonged).
 9. Have you ever appeared or are you due to appear before any court having criminal jurisdiction? (If the answer is Yes give the dates of each appearance including future appearance the name of the court and the particulars of the charge and the decision of the court and any sentence imposed by the court).
 10. Have you ever been rejected for service in the Lesotho Defence Force?
 11. Have you received a notice paper setting out the questions?

be answered on attestation and the general conditions of enlistment to be entered into?

12. Have you answered all the questions satisfactorily?
13. Do you understand the contents of the notice paper and do you wish to be enlisted?
14. Are you willing to serve in the Lesotho Defence Force provided your services are required?
15. Do you understand,
 - (a) that you can within 2 years before completing your term of regular service apply to re-engage for a further period or periods of regular service and in the reserve?
 - (b) that after you have completed 20 years' service in the regular force you can apply to continue to serve if your term of service in the regular force was unexpired but that you can in these circumstances claim discharge at any time after giving 3 months' notice?
 - (c) that if there is a state of war, insurrection or hostilities or public emergency you may be retained in the regular force and your services extended?
 - (d) that you will be on probation for a period of 2 years before being accepted into the Defence Force?

- (e) that you will not be accepted as a member of the regular force unless you are found to be physically and mentally fit by a qualified medical officer?

16. Do you understand that under sections 72 and 73 of the Act if you have knowingly given a false answer to any questions contained in the enlistment paper you are yourself liable to prosecution?

2. The person offering to enlist shall make a solemn declaration in the following terms in the presence of a witness, preferably the recruiting officer, both of whom shall sign:

“I, do solemnly declare that the above answers made by me to the above questions are true and that I am willing to fulfill the engagement made.”

WITNESS

DATE

3. The person offering to enlist having signed the declaration set out above shall take the oath of allegiance or make a solemn affirmation of allegiance in the following terms:

“I, (do sincerely promise and swear/do solemnly and sincerely affirm and declare) that I will be faithful and bear true allegiance to **OUR SOVEREIGN KING, GOVERNMENT and THE CONSTITUTION** and that I will

faithfully serve in the Lesotho Defence Force until lawfully discharged, dismissed or removed and that I will resist the enemies of Lesotho and defend all her people and cause peace to be kept and maintained and that I will in all matters appertaining to my service faithfully discharge my duties according to law.”

THIRD SCHEDULE

Alternative offences of which accused may be convicted by Court-martial

COLUMN I

COLUMN II

Offence Charged

Alternative Offence

1. Communicating with or giving
intelligence to the enemy
[section 42(1)]

Disclosing
information without
authority
[section 42(2)]

2. Striking a superior officer
[section 50(1)(a)]

(a) offering
violence to a
superior
officer
[section 50
(1)(a)];

(b) u s i n g
violence to a
superior
otherwise
than striking;
[s e c t i o n
50(1)(b)]

3. Desertion
[section 54(1)]

Absence without
leave [section 55]

4. Stealing any property
[section 64]

Fraudulently
misapplying the
property [section 63]

-
- | | | |
|-----|--|--|
| 5.. | Any offence against section
[section 68(1)] | Any offence against
[section 68(2)] |
| 6. | Any offence against
[section 69(1)] involving
violence | The corresponding
offences [section
69(2)] involving:

(a) the offering
of violence
other than
striking;

(b) the offering
of violence |
| 7. | An offence against
section 78 (b)
involving striking | The corresponding
offence involving ill-
treatment [section 76] |