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THE DEFENCE (AMENDMENT) ACT, 2012

No. 20 of 2012

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16. Insertion of the Fourth Schedule and the Fifth Schedule.

The principal Act is amended by inserting, after the Third Schedule, the following Schedules—

‘FOURTH SCHEDULE

RULES OF PROCEDURE

ARRANGEMENT OF RULES

Rule

1. Citation

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2. Definitions

ARREST AND AVOIDANCE OF DELAY

3. Avoidance of delay by commanding officers in investigation charges.
4. Eight day delay reports.
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9. Amendment of section 163 — Forfeiture and deduction.

The principal Act is amended in subsection 163(2) by—

- (a) repealing the words “The Defence Board may not authorise by regulations the making of deduction” and substituting the word “Deductions”; and
- (b) inserting after the words “of any negligence” the words “may not be made by regulations”.

10. Amendment of section 164 — Forfeiture of pay.

The principal Act is amended in subsection 164(4) by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

11. Amendment of section 175 — Regulations respecting command.

The principal Act is amended in section 175 by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

12. Amendment of section 193 — Unauthorised use of, and dealing in, decorations, etc.

The principal Act is amended in sub-paragraph 193(1)(c)(ii) by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

13. Amendment of section 223 — Regulations for Cadet Corps.

The principal Act is amended in section 223 by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

14. Amendment of section 229 — Regulations for the government etc. of the Antigua and Barbuda Defence force.

The principal Act is amended in subsection 229(1) by—

- (a) repealing after the words “relating to the making of regulations” the words “by the Defence Board,”; and
- (b) inserting the words “Minister, on the advice of” before the words “the Defence Board”.

15. Amendment of section 232 — Civilian staff.

The principal Act is amended in subsection 232(2) by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

THE DEFENCE (AMENDMENT) ACT, 2012

ARRANGEMENT

Sections

1. Short title.
2. Interpretation.
3. Amendment of section 17 - Power to make regulations for this Part.
4. Amendment of section 141 – Rules of procedure.
5. Amendment of section 142 – Imprisonment and detention regulations.
6. Amendment of section 143 – Board of inquiry rules and regimental inquiries
7. Amendment of section 144 – Regulations.
8. Amendment of section 155 – Removal of prisoners for registration.
9. Amendment of section 163 – Forfeiture and deduction.
10. Amendment of section 164 – Forfeiture of pay.
11. Amendment of section 175 – Regulations respecting command.
12. Amendment of section 193 – Unauthorised use of, and dealing in, decorations, etc.
13. Amendment of section 223 – Regulations for Cadet Corps.
14. Amendment of section 229 – Regulations for the government etc. of the Antigua and Barbuda Defence force.
15. Amendment of section 232 – Civilian staff.
16. Insertion of the Fourth Schedule and the Fifth Schedule.

[L.S.]



I Assent,

Rodney Williams,
Governor-General.

27th October, 2015.

ANTIGUA AND BARBUDA

THE DEFENCE (AMENDMENT) ACT, 2012

No. 20 of 2012

AN ACT to amend the Defence Act 2006, No. 10 of 2006 and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:—

1. Short title

This Act may be cited as the Defence (Amendment) Act, 2012.

2. Interpretation

In this Act the principal Act means the Defence Act 2006, No. 10 of 2006.

3. Amendment of section 17 - Power to make regulations for this Part.

The principal Act is amended in subsection 17(1) by repealing the words “Governor General” and substituting the word “Minister”.

4. Amendment of section 141 – Rules of procedure

The principal Act is amended in section 141 by repealing the words “Subject to this section, the Defence Board may make rules respecting” and substituting the words “the Fourth Schedule shall have effect in relation to”.

5. Amendment of section 142 – Imprisonment and detention regulations

The principal Act is amended in section 142 by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

6. Amendment of section 143 – Board of inquiry rules and regimental inquiries

The principal Act is amended in section 143 by—

- (a) inserting in the heading the words “and regimental inquiries” after the words “inquiry rules”;
- (b) repealing the words “The Defence Board may make rules respecting” and substituting the words “The Fifth Schedule shall have effect in respect of”;
- (c) inserting after the words “boards of inquiry” the words “and regimental inquiries”; and
- (d) inserting after subsection (2) the following subsection—

“(3) The Minister, on the advice of the Defence Board, may make regulations respecting—

 - (a) regimental inquiries; and
 - (b) instructions for Board of inquiry and regimental inquiries.”.

7. Amendment of section 144 –Regulations

The principal Act is amended in section 144 by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

8. Amendment of section 155 - Removal of prisoners for registration.

The principal Act is amended in section 155 by inserting the words “Minister, on the advice of” before the words “the Defence Board”.

7. Hearing of evidence by commanding officer

Where a commanding officer investigates a charge by hearing the evidence himself, each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness; but a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally; if this happens then—

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

8. Summary of evidence.

A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in Part A—

- (a) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer; and
- (b) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness but if a person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the service or on other grounds, including the expense and loss of time involved, the attendance of any defence witness cannot, in the opinion of the officer taking the summary which shall be certified by him in writing, be readily procured, a written statement of his evidence, purporting to be signed by him, may be read to the accused and included in the summary of evidence; but, if such witness can be compelled to attend, the accused may insist that he shall attend;
- (c) neither the accused nor the witnesses for the defence shall be subject to cross-examination;

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(b) cause the evidence to be reduced to writing, in accordance with paragraph (2) and read and consider it;

but—

- (a) notwithstanding that he has heard all or part of the himself, he may cause the evidence to be reduced to writing;
- (b) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 7; and
- (c) before he submits to higher authority a charge against an officer or warrant officer, soldier or civilian to whom part V is applied by section 232 or remands a non-commissioned officer or private soldier for trial by court-martial he shall cause the evidence to be reduced to writing.

(2) Evidence may be reduced to writing in the form of a summary of evidence taken in accordance with rule 8 or an abstract of evidence made in accordance with rule 9 but a summary of evidence must be taken if—

- (a) the maximum punishment for the offence with which the accused is charged is death;
- (b) the accused, at any time before the charge against him is referred to higher authority in accordance with rule 12, requires in writing that a summary of evidence be taken; or
- (c) the commanding officer is of the opinion that the interests of justice require that a summary of evidence be taken.

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

(4) Where a civilian, to whom Part V of the Act is Applied by section 232 is charged with an offence with which an appropriate superior authority can deal summarily, it shall not be necessary for his commanding officer to read the charge to the accused; but it shall be a sufficient compliance with the provisions of this Rule if his commanding officer causes to be delivered to the accused a copy of the charge and of the abstract of evidence and consider them together with any statement made by the accused under rule 10.

- (c) Rule 65(3), a finding that the accused is guilty of the Charge subject to the exception of variation specified in the finding.

ARREST AND AVOIDANCE OF DELAY

3. Avoidance of delay by commanding officer investigating charges.

(1) When a person is detained by military authority in arrest, his commanding officer shall, unless it is impracticable, within forty-eight hours of becoming aware that he is so detained have that person brought before him, inform him of the charge against him and begin to investigate it.

(2) Every case of such a person being detained in arrest beyond the period of forty-eight hours referred to in this rule without such investigation having begun and the reason therefor shall be reported by his commanding officer to the higher authority.

4. Eight day delay reports.

(1) The report required by subsection (2) of section 87 with regard to the necessity for further delay in bringing an accused to trial shall be in the form set out in Part A and shall be signed by his commanding officer.

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

5. Arrest not to exceed 72-days without permission from higher authority.

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

(2) When giving a direction under subparagraph (1) the officer shall state his reasons for giving the direction.

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

6. Methods of investigating charges.

(1) Subject to paragraph (3), when a commanding officer investigates a charge he shall first read and, if necessary, explain the charge to the accused and shall then—

- (a) hear the evidence himself in accordance with rule 7; or

86. View by court.
87. Absence of president, members or judge advocate.

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88. Insanity.

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RULES

1. Citation.

These Rules may be cited as the Defence Rules of Procedure 2012

DEFINITIONS AND INTERPRETATIONS

2. Definitions.

In these Rules—

“convening a fresh court” includes dissolving the existing court;

“member” when used in relation to a court-martial does not include the president;

“section” means a section of the Act;

“special finding” means, when used in relation to—

(a) section 108, any finding which a court-martial may make in accordance with that section;

(b) section 122, a finding in accordance with subsection (2) of that section that the accused is guilty but insane;

23. Officers under instruction

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

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

24. Preparation of defence.

(1) Subject to paragraph (2) of this rule—

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

- (d) the evidence of each witness other than the accused, who gives evidence orally shall be recorded in writing and, immediately thereafter, the record of this evidence shall be read over to him, corrected where necessary and signed by him;
- (e) the record of the evidence may be in narrative form, save that any question put to a witness in cross-examination by the accused and the answer thereto, shall be recorded verbatim if the accused so requires;
- (f) the oath shall be administered in accordance with rule 33 by the officer taking the summary of evidence to each witness, before he gives his evidence, and to any interpreter but where any child of tender years, called as a witness, does not, in the opinion of the officer taking the summary understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the officer taking the summary, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth; and
- (g) at the conclusion of taking of the summary of evidence, the officer taking it shall certify thereon that he has complied with the provisions of this rule.

9. Abstract of evidence.

(1) An abstract of evidence shall be made in the following way and shall be in accordance with the form set out in Part A—

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

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

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

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

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

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

(5) A certificate by the person who recorded the statement made by the accused in accordance with paragraph (2) stating that the accused was duly cautioned in accordance with this Rule, shall be attached to the abstract of evidence, shall thereafter form part of it and shall be in the form set out in Part A.

10. Investigation before summary dealing by commanding.

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

- (a) any prosecution witness who has given his evidence orally shall do so if the accused requires it; and
- (b) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

11. Dismissal of charge by commanding officer.

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

(2) After a commanding officer has referred a charge to higher authority in accordance with rule 12, he shall not dismiss it unless it has been referred back to him with a direction that it shall be dismissed in accordance with the provisions of section 92.

12. Reference of charges to higher authority.

When a commanding officer submits to higher authority a charge against an officer or warrant officer or a civilian to whom Part V is applied by section 232 or has remanded a non-commissioned officer or private soldier for trial by court-martial, he shall send to higher authority—

- (i) send to the president the charge-sheet, the convening order and a copy of the summary or abstract of evidence from which any evidence which in his opinion would be inadmissible under the Act at the court-martial has been expurgated;
- (j) send to each member of the court and to each waiting member a copy of the charge-sheet;
- (k) send to the prosecutor copies of the charge-sheet and convening order and the original summary or abstract of evidence together with an unexpurgated copy thereof showing the passages, if any, which have been expurgated in the copy sent to the president;
- (l) send to the judge advocate, if any, copies of the charge-sheet and convening order and an unexpurgated copy of the summary or abstract of evidence showing the passages, if any, which have been expurgated in the copy sent to the president;
- (m) ensure that the accused is given proper opportunity to prepare his defence in accordance with rule 24; and
- (n) take steps in accordance with rule 89 to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24;

but the convening officer may require the accused to defray or undertake to defray, as the convening officer thinks fit, the cost of the attendance if a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be such cost, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

(2) When an officer convenes a field court-martial he shall not be obliged to comply with subparagraph (g), (i) in so far as it relates to the copy of the summary or abstract of evidence sent to the president being expurgated, (j), (k) and (l) of paragraph (1) if, in his opinion, it is impracticable to do so.

22. Appointment of president members.

The convening officer shall—

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

20. Alternative courses open to an appropriate superior authority.

An appropriate superior authority shall, if an accused elects to be tried by court-martial or the appropriate superior authority in the course of investigating a charge determines that it is desirable that the charge should be tried by court-martial, either himself convene the court-martial or refer the charge to higher authority in accordance with rule 17.

Convening of Courts-Martial**21. Duties of convening officer when convening court-martial.**

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

- (a) issue a convening order in the appropriate form set out in Part D;
- (b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them;
- (c) if he is of the opinion that charges should be put in separate charge-sheets, so direct and direct the order in which they are to be tried;
- (d) direct, if there is more than one accused, whether the accused are to be tried jointly or separately;
- (e) appoint the president and members of the court and any waiting member in accordance with rule 22;
- (f) if convening—
 - (i) an ordinary court-martial where the maximum or only punishment for the offence is death; or
 - (ii) any other court-martial at which he considers there should be a judge advocate, appoint a suitable person to act as judge advocate unless such appointment has been made or is to be made by the Defence Board;
- (g) appoint an officer subject to service law or counsel assisted by an officer to prosecute or detail a commanding officer to appoint an officer subject to service law to prosecute but the convening officer may appoint two officers to prosecute if he thinks fit;
- (h) appoint the date, time and place for the trial;

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

13. Charge sheet

(1) A charge-sheet shall contain the whole of the issue or issues to be tried at one time and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character but charges under section 51 (1) (a), section 52 (a), section 59 (a) (where the charge is connected with a charge under either of the before mentioned sections) or section 68 may be included in any charge-sheet, notwithstanding that other charges in that charge-sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

(2) Every charge-sheet shall be in its layout follow the appropriate illustration given in Part B.

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

14. Charges.

(1) Each charge shall state one offence only.

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

(3) Each charge shall consist of two parts namely—

- (a) the statement of the offence; and
- (b) the particulars of the act, neglect or omission constituting the offence.

(4) The statement of an offence, if it is not a civil offence, shall be in the appropriate form set out in Part B if it is a civil offence in such words as sufficiently described that offence.

(5) The particulars shall state—

- (a) such circumstances respecting the alleged offences as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;
- (b) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a lesser degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted; and
- (c) any additional facts which it is intended to prove as rendering the accused liable to the punishment of stoppages if convicted.

15. Joint charges.

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

- (2) (a) Any number of accused may be charged jointly in one charge for an offence alleged to have been committed by them jointly.
- (b) Where so charged any one or more of such accused may at the same time be charged in the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly, provided that such charges could, if the accused to whom they relate had been tried separately, have been included under Rule 13(1) in the same charge-sheet as the other charges against him.

16. Construction of charge

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

17. Action by higher authority on receipt of a charge

When a higher authority receives a charge against an accused, he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or himself convene a court-martial to try the

accused, refer the charge either to an appropriate superior authority in order that, that authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send to the appropriate superior authority or other officer concerned the documents mentioned in rule 12 together with his own recommendation as to how the case should be proceeded with.

Investigation of and summary dealing with Charge by an appropriate Superior Authority.

18. Documents to be given to officers, warrant officers and Civilians dealt with summarily.

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

19. Investigation of and summary dealing with charges against officers, warrant officers and civilians.

When an appropriate superior authority investigates and deals summarily with a charge—

- (a) he shall first read the charge to the accused;
- (b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them and if the witnesses against the accused do not give their evidence orally the appropriate superior authority shall read the summary or abstract of evidence to the accused if he so requires;
- (c) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;
- (d) the accused himself may give evidence on oath make a statement without being sworn or hand in a written statement;
- (e) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 33;
- (f) a record shall be made of the proceedings in accordance with the form set out in Part C to these Rules.

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

39. Application by an accused at a trial to have a charge tried separately.

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

(2) If the accused makes an application under sub-rule (1) the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

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

40. Pleas to the charge.

(1) After any pleas under rules 35 and 37, any objection under rule 36 and any application under rules 38 and 39 have been dealt with, the accused shall be required, subject to paragraph (2), to plea either guilty or not guilty to each charge on which he is arraigned.

(2) Where the court is empowered by section 108 to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a lesser degree of punishment or where they could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 65, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a lesser degree of punishment or to the offence charged subject to such exceptions or variations.

41. Acceptance of pleas of guilty.

(1) If an accused pleads guilty to a charge under either paragraph (1) or paragraph (2) of rule 40, the president or judge advocate shall, before the court decide to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty, under either paragraph (1) or paragraph (2) of rule 40 if—

- (a) the court is not satisfied that the accused understands nature of the charge or the effect of his plea;
- (b) the president having regard to all the circumstances, considers that the accused should plead not guilty; or

- (i) if necessary, have charge explained to him; and
- (ii) be informed that, upon his making a written request to his commanding officer not less than twenty-four hours before his trial requiring the attendance at his trial of any witness, other than a witness for the prosecution, whom he desires to call in his defence, such witness to be named by him, reasonable steps will be taken in accordance with these Rule to procure the attendance of any such witness at his trial;

(f) when an accused is served with a copy of a statutory declaration which the prosecutor proposes to hand to the court in accordance with section 104(20) and rule 56 he shall be informed of his right under the said section to require that oral evidence shall be given in lieu of such statutory declaration;

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

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

(2) In the case of a field court-martial the provisions of paragraph (1) need only be complied with so far as it is practicable to do so.

ASSEMBLY AND SWEARING OF COURT

25. Preliminary matters to be considered by court at beginning of trial.

(1) Upon a court-martial assembling, the court shall, before beginning the trial, satisfy itself in closed court—

- (a) that the court has been convened in accordance with the Act and these Rules;
- (b) that the court consists of not less than the legal minimum of officers;
- (c) that the president and members are of the required rank;

- (d) that the president and members have been duly appointed and are not disqualified under the Act;
 - (e) if there is a judge advocate, that he has been duly appointed;
 - (f) that the accused appears from the charge-sheet to be subject to military law under the Act or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and
 - (g) that each charge is on its face correct in law and framed in accordance with these Rules.
- (2)(a) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles, the president may appoint a duly qualified waiting member to fill that vacancy.
- (b) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

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

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

26. Objections to the court.

(1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused who shall be given an opportunity to object to any of those officers in accordance with section 102.

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

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

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

37. Plea in bar of trial.

(1) An accused before pleading to a charge may offer a plea in bar of trial in reliance upon section 131 or section 133 and if he does so—

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

(2) If the court allows the plea they shall adjourn and report to the convening officer but if there is another charge or another charge-sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall—

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

38. Application by an accused at a joint trial separately.

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

(2) If the accused makes an application under sub-rule (1) the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) When a court report to the convening officer under this rule, the convening officer shall—

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

36. Objection to charge.

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

(2) If the court upholds the objection, they shall either amend the charge, if permissible under rule 82, or adjourn and report to the convening officer but if there is another charge or another charge-sheet before the court the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this rule, the convening officer shall—

- (a) if he approves the decision of the court to allow the objection—
 - (i) dissolve the court; or
 - (ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
 - (iii) amend the charge to which the objection relates if permissible under rule 83, and direct the court to try it as amended;
- (b) if he disapproves the decision of the court to allow the objection—
 - (i) direct the court to try the charge;
 - (ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
 - (iii) convene a fresh court to try the accused.

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

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

(7) An objection to an officers on the court including any officer who has been appointed by the president on accordance with paragraph (9) in place of and officer who has retired.

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

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

(10) The court shall satisfy itself that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and deal with any such objection in accordance with this rule.

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

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

27. Swearing of court.

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

(2) If there is a judge advocate, the oath shall be administered by him to the president first and after to each member of the court but if there is no judge advocate, the oath shall be first administered by the president to the members of the court and then to the president by any member of the court already sworn.

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

(4) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if they thin fit, proceed to determine that

objection in accordance with rule 26 or postpone the trial of that accused and swear the court for the trial of the other accused only.

28. Swearing of judge advocate.

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

29. Swearing of officers under instruction

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

30. Appointment and swearing of, and objections to, interpreters and shorthand writers.

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

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

31. No right of objection to judge advocate, prosecutor and officer under instruction

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

32. Order of trials.

(1) When a court has been convened to try two or more accused separately and has been sworn in accordance with rule 27 (3), the court shall try them in the order indicated by the convening officer or, where he has given no such indication, then in such order as the court thinks fit.

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

33. Oaths and solemn Affirmation.

(1) An oath which is required to be administered under these rules shall be administered in the appropriate form and in the manner set out in Part F but the opening words of the oath may be varied

to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 27 (2) every oath shall be administered at a court-martial by the president, a member of the court or the judge advocate.

(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath, the affirmation shall be in the appropriate form set out in Part F.

(4) The provisions of section 112 shall apply to proceed before a commanding officer, the taking of summaries of evidence and proceedings before and appropriate superior authority as they apply to proceedings before a court-martial.

ARRAIGNMENT OF ACCUSED

34. Arraignment of accused.

(1) When the court and judge advocate, if any, have been sworn the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there is more than one charge-sheet against the accused before the court, the court shall arraign and try the accused upon the charge in the first of such charge-sheets and shall announce their finding thereon and if the accused has pleaded guilty the court may either proceed to comply with paragraphs (1) and (2) of rule 44 before they arraign him upon the charge in any subsequent charge-sheet or they may defer compliance with those paragraphs until after the accused has been re-arraigned and tried upon such charge.

35. Plea to the jurisdiction of the court.

(1) The accused, before pleading to the charge, may challenge the jurisdiction of the court and if he does so—

(a) the accused may adduce evidence in support of plea and the prosecutor may adduce evidence in answer thereto; and

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

(2) If the court allows the plea they shall adjourn and report to the convening officer.

(2) While the court are deliberating on their finding on the charge on person shall be present except the president and members of the court and any officer under instruction.

(3) If there is a judge advocate and the court, while deliberating on their finding on the charge require further advice from him, the court shall suspend their deliberation and ask and be given such advice in open court.

65. Expression of opinion on, and form of, finding.

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

(2) Save as is otherwise provide in paragraph (4) the court shall record on every charge on which a plea of not guilty has been recorded—

- (a) a finding of guilty or a special finding in accordance with section 108 or section 122(2) or paragraph (3) of this rule; or
- (b) a finding of not guilty or of not guilty and honourably acquitted of the charge.

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

(4) Where the court has recorded a finding of guilty on a charge which is laid in the alternative they shall find the accused not guilty of any charge alternative thereto which is place before it in the charge-sheet and record no finding on any charge alternative thereto which is placed after it in the charge-sheet.

66. Announcement of finding.

- (1) The finding on each charge shall be announced in open court forthwith.
- (2) Every finding which requires confirmation shall be announced as being subject to confirmation.
- (3) The finding shall be in the appropriate form set out in Part D.

PROCEDURE ON PLEAS OF NOT GUILTY

46. Application for adjournment or trial.

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

- (a) the court shall ask the accused whether he wishes apply for an adjournment on the ground that any of these Rules relating to procedure before trial have been prejudiced thereby or on the ground that has not had sufficient opportunity for preparing defence—
- (b) if the accused applies for an adjournment—
 - (i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and
 - (ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;
- (c) the court may grant an adjournment if they think the interests of justice so require.

47. Case for the prosecution

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

(2) The witnesses for the prosecution shall then be called to give their evidence.

48. Calling of witness's evidence if not contained in summary or abstract of evidence.

(1) If the prosecutor intends to adduce evidence which is not contained in any summary or abstract of evidence given to the accused, notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused in a reasonable time before the evidence is adduced.

(2) If the evidence under sub-rule (1) is adduced without the notice or particulars having been given, the court may, if the accused so desires, either adjourn the matter after receiving the evidence or allow any cross-examination arising out of his right to apply for an adjournment or postponement.

49. Notice to an accused that a witness will not be called by the prosecutor.

The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the summary or abstract of evidence or a witness whom he has notified the accused that

not comply with rule 44 until after they have dealt with such other charge or tried such other accused and have announced and recorded their in respect thereof.

44. Procedure on finding after plea of guilty.

(1) After the court has recorded a finding of guilty in respect of a charge to which an accused pleaded guilty, the prosecutor shall, subject to rule 43, read the summary or abstract of evidence to the court or inform the court of the facts contained therein but if an expurgated copy of the summary or abstract was sent to the president, the prosecutor shall not read to the court those parts of the summary or abstract which have been expurgated or inform the court of the facts contained in those parts, and shall not hand the original summary or abstract to the court until the trial is concluded.

(2) If there is no summary or abstract of evidence or the summary or abstract is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

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

- (a) adduce evidence of character and in mitigation of punishment; and
- (b) address the court in mitigation of punishment.

(4) After paragraph (3) has been complied with, the court shall proceed as directed in paragraphs (1), (2), (3) and (4) or rule 70.

CHANGES OF PLEA

45. Change of Plea.

(1) An accused who has pleaded not guilty may at any time, before the court closes to deliberate on their finding, withdraw his plea of not guilty and substitute plea of guilty, including a plea of guilty under rule 40 (2) and in such case the court shall, if they are satisfied that they can accept the accused's changed plea under these Rules, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 44.

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

(3) When a court enter a plea of not guilty in respect of any charge under paragraph (2), they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 42, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdraw.

60. Evidence in rebuttal.

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

61. Closing addresses.

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

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor unless the accused has called witness to fact other than himself, in which case the prosecutor shall be entitled, subject to paragraphs (3) and (4), to make his closing address after the closing address by the accused.

(3) Where two or more accused are tried jointly, any one of them who has called a witness to fact other than himself shall make his closing address before the closing address by the prosecutor, and any one of them who has called no such witness shall be entitled to make his closing address after the closing address by the prosecutor.

(4) Where two or more accused are represented by the same defending officer or counsel he may make one closing address only and if any one of the accused for whom he appears has called no witness to fact other than himself such defending officer or counsel shall be entitled to make his closing address after the closing address by the prosecutor.

62. Handing in of a statutory declaration by accused

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

SUMMING UP BY JUDGE ADVOCATE

63. Summing up by judge advocate.

After the closing address, if there is a judge advocate, he shall sum up the evidence and advise the court on the law relating to the case in open court.

DELIBERATION ON, AND ANNOUNCEMENT OF FINDING ON THE CHARGE

64. Deliberation on finding on the charge.

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

(3) If the court allow the submission they shall find the accused not guilty of the charge to which relates and announce this finding in open court forthwith; if the court disallow the submission they shall proceed with the trial of the offence as charged.

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

CASE FOR THE DEFENCE

58. Explanation his rights to when making his defence.

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

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

(2) After the president or judge advocate has complied with paragraph (1), he shall ask the accused if he intends to give evidence on oath or to make a statement without being sworn and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

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

59. Evidence for the defence

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

(2) Rules 50, 51, 52, 53, 54, 55 and 56 shall apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

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

(3) In the case of a plea of guilty under paragraph (2) of rule 40, a court shall also not accept the plea unless the convening officer concurs and they are satisfied of the justice of such course the concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty either paragraph (1) or paragraph (2) of rule 40, is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When the court are satisfied that they can properly accept a plea of guilty under either paragraph (1) or paragraph (2) of rule 40 they shall record a finding of guilty in respect thereof.

42. Pleas on Alternative Charges.

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

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

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

PROCEDURE AFTER RECORDING A FINDING OF GUILTY

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

(1) After the court has recorded a finding of guilty, if there is no other charge in the same charge-sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge-sheet, they shall proceed with the trial as directed by rule 44.

(2) If there is another charge in the charge-sheet to which the accused has pleaded not guilty or there is another accused who has pleaded not guilty to a charge in that charge-sheet, the court shall

he intends to call; he shall either tender the witness for cross-examination or give the accused reasonable notice so that the accused is allowed to communicate with the witness and to call him as a witness for the defence if the accused so desires and if that witness is available.

CALLING AND EXAMINATION OF WITNESSES

50. Swearing of witnesses.

Save as is otherwise provided by the Act an oath shall be administered to each witness in accordance with rule 33 before he gives evidence and in the presence of the accused.

51. Exclusion of witnesses from court

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

52. Examination of witnesses

(1) A witness may be examined by the person calling him and may be cross-examined by the opposite party to the proceedings and on the conclusion of the cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and unless an objection is made by the witness, court judge advocate, prosecutor or by the accused, the witness shall reply forthwith but if an objection is made, the witness shall not reply until the objection has been disposed of.

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

53. Examination of witnesses by court.

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

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

54. Reading back of evidence to witnesses.

(1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may ask for the record to be corrected or explain

the evidence which he has given and if any correction is made or explanation given, the prosecutor and the accused may put such questions to the witness respecting the correction or explanations as seem proper to the court.

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

55. Calling of witnesses by court and recalling of witnesses.

(1) The court may, at any time before they close to deliberate on their finding or if there is a judge advocate, before he begins to sum up, call a witness or recall a witness, if in the opinion of the court it is in the interests of justice to do so and if the court calls a witness or recalls a witness under this rule, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the court close to deliberate on their finding if there is a judge advocate before he begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

56. Statutory declaration.

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

SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASES

57. Submissions of no case to answer and power of court to stop a case.

(1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a prima facie case for him to answer and that he should not be called upon to make his defence to that charge and if the accused makes such a submission, the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless they are satisfied that—

- (a) the prosecution has not established a prima facie case on the charge as laid; and
- (b) it is not open to them on the evidence adduced to make a special finding under either section 108 or rule 65(3).

(b) a mistake which is attributable to a clerical error or omission;

the court may amend the charge-sheet so as to correct the mistake.

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

(3) If at any time during a trial at which there is a judge advocate it appears to the court, before they close to deliberate on their finding, that it is desirable in the interests of justice to make any addition to, omission from or alteration in, a charge which cannot be made under paragraph (1) they may adjourn report their opinion to the convening officer, who may—

- (a) amend the charge if permissible under rule 83 and direct the court to try it as amended after due notice of the amendment has been given to the accused;
- (b) direct the court to proceed with the trial of the charges without amending it; or
- (c) convene a fresh court to try the accused.

83. Amendment of charges by convening officer.

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

Sittings and Adjournment of the Court

84. Sittings of the court.

Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day and the court shall sit for such time each day as may be reasonable in the circumstances but the court shall not sit on any day which is a public holiday the with in meaning of the Public Holidays Act, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

85. Adjournment

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

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

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

After the court has announced their finding on any charge on which the court has entered a plea of not guilty, if there is another charge in the same-sheet on which the court has accepted a plea of guilty, the court shall comply with paragraphs (1) and (2) of rule 44 in respect of that charge before proceeding further with the trial.

68. Trial of charges in other charge sheets before deliberation

Where there is another charge-sheet against the accused before the court, the court shall not comply with rules 69 and 70 until they have arraigned and tried the accused and have complied with rule 66 and, if necessary, with rule 67, in respect of each charge in such other charge-sheet unless the charge-sheet is withdrawn under rule 80.

69. Release of accused.

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

70. Accused's record and plea in mitigation.

(1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 108 or paragraph (3) of rule 65, the court before deliberating on their sentence shall whenever possible take evidence of his age, rank and service record and the service record shall include—

- (a) any recognised acts of gallantry or distinguished conduct on the part of the accused and any decorations to which he is entitled and
- (b) particulars of any offence of which the accused has been found guilty during his service and of the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matter referred to in paragraph (1) may be given by a witness producing to the court a written statement containing a summary of the entries in the service books relating to the accused, after the witness has in court verified such statement and identified the accused as the person to whom it relates and the statement shall be in the form set out in Part D.

(3) In addition to the evidence contained in the statement referred to in paragraph (2), it shall be the duty of the prosecutor whenever possible to call as a witness an officer to give the court any information in the possession of the military authorities regarding—

- (a) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;
- (b) his general conduct in the service; and
- (c) particulars of offences which do not appear in the statement above referred to of which the accused has been found guilty by a civil court not being offences of which he was found guilty while under the age of fourteen years;

but the court shall not be informed of any such civil offence unless the finding is proved in accordance with section 191 or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

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

(5) After paragraphs (1), (2), (3) and (4) have been compiled with the accused may—

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

71. Request by accused for other offences to be taken

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

(2) A list of the offences which the court agrees to take into consideration shall be read to the accused by the president or judge advocate, who shall ask the accused if he admits having committed them—

- (a) the accused shall sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration; and

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

(2) The judge advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with paragraph (1), hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary and after the judge advocate has given his ruling, the president and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this rule the proceedings before him shall form part of the proceedings of the court, and subsection (1) of section 69, section 70 and 103, subsections (1) and (2) of section 104, and sections 105, 104, 110, 111 and 112 and rules 33, 50, 51, 52, 53, 54, 55, 56, 77, 78, 84, 85, 86, 90, 91, 92, 93, 96, 97, and 106 shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorised by those sections and those rules to be done by the court or by the president may be done by the judge advocate when sitting alone.

(4) When a judge advocate is sitting alone in accordance with this rule and a person subject to military law under the Act commits an offence against section 69 (1) the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

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

WITHDRAWAL AND AMENDMENT OF CHARGE-SHEETS AND CHARGES

81. Withdrawal of charge- sheets and charges.

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

82. Amendment of charge- sheets and the court.

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

- (a) a mistake in the name or description of the accused; or

matters unless they have weighty reasons for not doing so, and if the court does not accept it, their reasons for not doing so shall be recorded in the proceedings.

(3) After the closing addresses, the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court closes to deliberate on their finding and if in the course of deliberation on their finding the court requires advice from the judge advocate, they shall suspend their deliberation and ask for and be given the advice in open court.

(4) If when the court announces a finding of guilty or a special finding under either section 108 or rule 65(3) the judge advocate is of the opinion that the finding or special finding is contrary to the law relating to the case, he shall once more, but not more than once more, advise the court what findings are, in his opinion, open to them and the court shall then reconsider their finding in closed court and the record of the proceedings relating to the reconsideration shall be in the form set out in Part D.

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

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

(7) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 91 and responsible for the safe custody of the record of the proceeding under rule 93.

80. Judge advocate sitting alone.

(1) Where there is a judge advocate and—

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

(b) the list shall be signed by the president or judge advocate and be attached to the record of the proceedings as an exhibit.

DELIBERATION ON SENTENCE

72. Persons entitled to be present deliberation on sentence.

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

73. Sentence and Recommendation to mercy.

(1) The court shall award one sentence in respect of all the offences of which the accused is found guilty and the sentence shall be in the appropriate form set out in Part E.

(2) The opinion of the president and each member as to the sentence shall be given orally and in closed court and their opinions shall be given in order of seniority commencing with the junior in rank.

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

(4) The court may make a recommendation to mercy and, if they do so, shall record in the proceedings their reasons for making it.

74. Postponement of deliberation on sentence

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

ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

75. Announcement of Sentence and Conclusion of Trial.

(1) The sentence, and any recommendation to mercy together with the reasons for making it, shall be announced in open court and it shall be announced as being subject to confirmation.

(2) When sub-rule (1) has been complied with the president and shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the president and judge advocate, if any, shall date and sign the record of the proceedings and the president or the judge advocate shall then forward it as directed in the convening order.

General Duties of the President, Prosecutor and the Defending Officer or Counsel

76. General duties of the president

It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice and in particular—

- (a) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with the Rules;
- (b) to ensure that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;
- (c) to ensure that an officer under instruction does not express an opinion to the court on any matter relating to the trial before the court has come to their finding, nor on sentence before the court has decided upon the sentence; and
- (d) when there is no judge advocate present, to ensure that a proper record of the proceedings is made in accordance with rule 91 and that the record of the proceedings and exhibits are properly safeguarded in accordance with rule 93.

77. General duties of prosecutor and defending officer or counsel.

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

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

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

78. Counsel.

(1) Subject to these Rules the following persons shall be allowed to appear as counsel at a court-martial—

- (a) every barrister-at-law who has a right of audience before, and every solicitor who is entitled to practice in, the Supreme Court of Antigua;
- (b) with the consent of the convening officer, any person who is recognised by him as having in any Commonwealth country or territory outside Antigua rights, and duties similar to those of a barrister-at-law or solicitor in Antigua, and as being subject to punishment or disability for a breach of professional rules.

(2) Any right granted by these Rules to the accused at a Court-martial to call or examine witnesses or to address the court, any right of The accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by rules 24(1) (e), (g) and (h), 26, 30, 35, 36, 37, 38, 39 46, 57,71, 79(20, 91 and 93(2) may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than twenty-four hours before his trial.

POWERS AND DUTIES OF THE JUDGE ADVOCATE

79. General duties of judge advocate.

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

(2) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge-sheet and during the trial he shall advise the court upon all questions of law or procedure which may arise and the court shall accept his advice on all such

service render compliance with all or any of the provisions of the Rules mentioned in paragraph (4) impracticable, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot as the case may be, make a declaration to that effect in the appropriate Form set out in Part D.

(2) Any declaration made under paragraph (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under paragraph (1) it shall not be necessary to comply with any provision of these Rules which is mentioned in such declaration and these Rules shall be construed accordingly.

(4) The provisions of these Rules in respect of which a declaration may be made under paragraph (1) are—

- (a) rule 6(2);
- (b) rule 8(b) insofar as it relates to the accused's right to insist that a witness shall be compelled to attend the taking of a summary of evidence for cross-examination;
- (c) rule 18 insofar as it provides that the documents specified therein must be given to the accused not less than twenty-four hours before the appropriate superior authority investigates and deals summarily with the charge;
- (d) rule 24(1) paragraphs (b) and (c), and paragraph (d) insofar as it provides that the documents specified therein shall be given to the accused not less than twenty-four hours before his trial.

(5) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under paragraph (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority, as the case may be.

103. Exceptions from Rules in the interests of security.

(1) When in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or, if he is not available, of the senior officer on the spot, a charge-sheet, summary or abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to an enemy, the officer who is or would be responsible for convening a court-martial to try the accused, or the senior officer on the spot, as the case may be, may make a declaration to that effect in the appropriate form set out in Part D specifying the document concerned.

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

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

(4) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

86. View by court.

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

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

87. Absence of president, members or judge advocate.

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

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

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

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

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

INSANITY

88. Insanity.

(1) If at any time during a trial it appears to the court that the accused may be unfit to stand his trial by reason of insanity, they shall take evidence as to his mental condition and if the court after

considering the evidence are of the opinion that the accused is unfit to stand his trial by reason of insanity they shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of their deliberation on their finding on a charge find pursuant to section 122 (2) that the accused was guilty of the offence but was insane at the time of the act or omission which constituted it, their finding shall be announced in open court forthwith and as being subjected to confirmation.

(3) Immediately after a finding has been announced under either paragraph (1) or paragraph (2) the president shall announce in open court that the proceedings are terminated and thereupon the president and the judge advocate, if any, shall date and sign the record of the proceedings and then forward it as directed in the convening order.

INTERVIEWING AND ATTENDANCE OF WITNESSES

89. Interviewing of witnesses.

(1) The prosecution shall not without the consent of the convening officer, or after the trial has begun, without the consent of the president, interview any witness who was called for the defence at the taking of the summary of evidence or whose statement of evidence was included in the summary of evidence or attached to the abstract of evidence or whose attendance at the trial the accused has requested in accordance with rule 24(1) (e), or who has made a statutory declaration, a copy of which the accused has served on the prosecution in accordance with section 104.

(2) Except as provided in rule 49, neither the accused nor any person on his behalf shall without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness who was called for the prosecution at the taking of the summary of evidence or whose evidence is included in the abstract of evidence or in respect of whom the prosecution has given the accused notice under rule 48 that they intend to call him as a witness at trial or who has made a statutory declaration a copy of which the prosecution has served on the accused in accordance with section 104.

90. Procuring attendance of witness.

(1) A witness who is subject to military law under the Act may be ordered by the proper military authority to attend at the taking of a summary of evidence or a trial by court-martial.

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

- (a) the taking of a summary of evidence by an order under the hand of the commanding officer of the accused; or

CUSTODY OF THE RECORD AFTER CONFIRMATION AND COST OF COPIES THEREOF

98. Custody and preservation of record of proceedings after confirmation.

For the purposes of section 139 (1) of the Act the prescribed period during which the record of the proceedings of a court-martial shall be kept in the custody of the Force Records Office shall be six years from the conclusion of the trial.

99. Cost of copies of record of proceedings.

The rate at which copies of the record of the proceedings of a court-martial shall be supplied in accordance with subsection (2) and (3) of section 139 shall be the estimated cost of the copy required not exceeding twenty-five cents for every folio of 72 words.

PETITIONS

100. Petitions.

(1) If an accused who has been sentenced by a court-martial wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming authority in the appropriate form set out in Part G.

(2) If an accused who has been sentenced by court-martial wishes to petition after promulgation against the finding he shall present a petition to a reviewing authority at any time within six months of promulgation in the appropriate form set out in Part G.

(3) If an accused who has been sentenced by a court-martial wishes to petition after promulgation against the sentence, he shall present a petition to a reviewing authority or an officer authorised to reconsider a sentence of a court-martial under section 120 of the Act at any time within six months of promulgation on the appropriate form set out in Part G.

MISCELLANEOUS PROVISIONS

101. Notice requiring oral evidence in lieu of statutory declaration

A notice under proviso (c) of subsection (2) of section 109 requiring that oral evidence shall be given in lieu of a statutory declaration shall be in the appropriate form set out in Part D.

102. Exceptions from Rules on account of the exigencies of the service.

(1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the

accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be and the fact of promulgation shall be record on the record of the proceedings in the form set out in Part D but if confirmation has been withheld because the confirming authority disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

LOSS OF PROCEEDINGS

96. Loss of original record of proceeding before confirmation.

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

(2) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and no copy thereof exists but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming authority to follow the course of proceedings and judge of the merits of the case, the record as so reconstituted may, with the consent of the accused, be accepted and used in lieu of the original but where part only of the original record of the proceedings of a court-martial has been lost, and the part which remains is sufficient to enable the confirming authority to follow the course of the proceedings and judge of the merits of the case, the remaining part may, with the consent of the accused, be accepted and used as if it were the completed record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and such loss cannot be made good under either paragraph (1) or paragraph (2), the confirming authority shall withhold confirmation and shall record his decision in the appropriate form set out in Part D.

97. Loss of original record of proceeding after confirmation.

If after confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the president or the judge advocate to be correct, or a sufficient record of the charge finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

(b) a trial by court-martial by an order under the hand of an officer authorised to convene a court-martial assembly of the court, of the president.

(3) The summons referred to in paragraph (2) shall, when it relates to the taking of a summary of evidence be in the appropriate form set out in Part A, and when it relates to a trial by court-martial be in the appropriate form set out in Part D, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode, and at the necessary to enable such witness to attend the taking of the summary of evidence or the trial, as the case may be, and to return.

(4) The provisions of section 106 shall apply in relation to proceedings at the taking of a summary of evidence as they apply in relation to proceedings at a court-martial, and when so applied they shall be construed as though the words "officer taking the summary of evidence" were substituted for the words "president of the court-martial".

91. Record of proceedings.

(1) The proceedings of general and district courts-martial shall be recorded in accordance with the following provisions—

- (a) the proceedings of a court-martial shall be recorded in writing in accordance with the appropriate form set out in Part D and in sufficient detail to enable the confirming officer to follow the course of the proceeding and to judge of the merits of the case;
- (b) when there is no shorthand writer present the evidence should be taken down in narrative form as nearly as possible in the words used but if the court, judge advocate, prosecutor or accused considers it necessary, any particular question and answer shall be taken down verbatim;
- (c) when an objection, submission or a application is made during a trial at which there is no shorthand writer, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or judge advocate thinks fit but if the prosecutor or accused so requests a note shall be made of the objection, submission or application, the grounds therefore, the advice of the judge advocate, if any, thereon and the decision of the court;
- (d) when an address by the prosecutor or the accused or summing up of the judge advocate is not in writing and there is no shorthand writer present it, shall only be necessary to record so much of such address or summing up as the court or judge advocate thinks proper but if the prosecutor or accused so requests a note shall be made of any particular point in such address or summing up; and

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

(2) The proceedings of a filed court-martial shall so far as is practicable be recorded in accordance with the provisions of paragraph (1) and the record must in any event contain the names of the president and members constituting the court and the judge advocate, if any, the name and description of the accused, the charge-sheet, all pleas, a brief summary of the evidence and the finding and sentence.

92. Exhibits.

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

(2) When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after they have satisfied themselves that such copy or extract is correct and the president or the judge advocate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as exhibit.

(3) Every exhibit shall—

- (a) be marked with a number or letter and be signed by the president or have a label bearing a number or letter and the signature of the president affixed to it; and
- (b) be attached to or kept with the record of the proceedings unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with the record.

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

93. Custody and inspection of record of proceeding during trial.

(1) During a trial at which there is no judge advocate, the record of the proceedings and the exhibits shall be deemed to be in the custody of the president but during a trial at which there is a judge advocate the record and the exhibits shall be deemed to be in the custody of the judge advocate, save when he is not present in closed court when they shall be deemed to be in the custody of the president.

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

CONFIRMATION, REVISION AND PROMULGATION

94. Confirmation and promulgation.

(1) When a confirming authority receives the record of the proceedings of a court-martial and the finding of the court requires confirmation, he shall record his decision thereon and on any sentence and any order which the court may have made under section 136 on the record of the proceedings in the appropriate form set out in Part D, and such record of his decision shall form part of the record of the proceedings.

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

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

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

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

(6) Wherever it appears that there is sufficient evidence or a plea of guilty under either paragraph (1) or paragraph (2) of rule 40 to justify the finding of the court, such finding and any lawful sentence consequent thereon may be confirmed and if confirmed shall be valid, notwithstanding any deviation from these rules, if the accused has not been prejudiced by such deviation.

(7) When a confirming authority has confirmed a finding and sentence of a court or has withheld confirmation thereof, he shall send the record of the proceedings to the commanding officer of the

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

To.....¹

WHEREAS a charge has been preferred against²

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

..... day of20.....

YOU ARE PURSUANT TO SECTION 137 OF THE DEFENCE ACT AND RULE 90 OF THE DE-
FENCE RULES OF PROCEFURE, 1977, MADE THEREUNDER HEREBY SUMMONED and required
to attend as a witness

the taking of the said summary of evidence at.....³

on the day of20..... at.....

o' clock in the Noon and to bring with you the documents

hereinafter mentioned, viz :⁴.....

Whereof you shall fail at your peril.

Given under my hand at on the

day of20.....

.....
(Signature, rank and unit)
commanding officer of the accused.

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

(2) Any declaration made under paragraph (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

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

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority, any declaration which has been made in his case under paragraph (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority as the case may be.

104. Order to inspect banker's books.

The provisions of the Evidence Act shall mutatis mutandis apply to proceedings by a court martial save that the references in those provisions to an order of a court or judge shall be construed and have effect as reference to an order of the convening officer.

105. Deviations from the forms in the schedule.

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

106. Cases not covered by Rules.

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

PART A

FORMS FOR COMMANDING OFFICERS

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

(1) DELAYREPORT

Unit Address:

.....
.....

Tel.

To:

(Convening officer)

EIGHT DAY DELAY REPORT

pursuant to Defence Act, section 81 (2)

Number, rank, name of accused

.....
.....

Abstract of evidence in the case of **(number, rank, name, unit or other description)** consisting of the **(insert the number of statements)** attached statements and **(insert the number of précis)** précis of evidence¹ of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [.....² on the direction of the commanding officer of the accused].

Date20.....

.....
Signature and rank

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

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

Certified that I¹ today handed to the accused²
the abstract of evidence relating to him dated the day of20..... And duly cautioned him in accordance with Rule of Procedure 9(2) and that he [elected to make and sign the statement dated theday of20..... which is markedand attached to this certificate] [did not make a statement].

Dated20.....

.....
(Signature of certifying officer)

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

The accused(number, rank, name, unit or other description) having been duly sworn¹ states:—

.....witness for the defence.

.....
(Signature and rank, if any, of accused if he signs)

.....(number, rank, name, unit, or other description) having been duly sworn¹ states:—

.....witness for the defence

.....
(Signature and rank, if any, of witness)

Certified that Rule of Procedure 8 has been complied with.

This summary of evidence was taken by me at in the presence and hearing of the accused on theday(s) of20.....

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

1. When a witness or the accused affirms the words “duly affirmed” should be substituted for the words “been duly sworn” and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words “without being sworn” should be substituted for the words “having been duly sworn.”
2. See however rule *(g).
3. Omit the words “and to call a witness(es)” if they are not applicable.

(3) ABSTRACT OF EVIDENCE

Date placed in arrest20.....

Alleged Offence(s)	Date of Alleged Offence(s)
.....
.....
.....
.....
.....

²The accused is in _____close_____arrest.
open

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

² The _____abstract summary_____of evidence	{	was taken on20.....
		has not yet been
		made because.....

² Application for trial	{	was made on20.....
		has not yet been
		made because.....

² Legal advice	{	was received on20.....
		has not yet been received.

FLYING OFFENCES

SECTION 62

Doing an act } in { flying the use of aircraft } causing { loss of life } to a person }
 Neglect } relation to { aircraft } likely to cause loss of } bodily injury } contrary to }
 } } { aircraft } life or bodily injury } the Defence }
 } } { material } } Act.

SECTION 63

Signing a certificate relating to { aircraft } without ensuring its accuracy contrary to section }
 } { aircraft material } 63 of the Defence Act.

SECTION 64

Unlawful low flying contrary to section 64 of the Defence Act.

SECTION 64

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

Offences relating to and by persons in custody

SECTION 65

(1) (a) Delaying } An investigation } contrary to section 65(1) (a) of the Defence Act.
 } a trial }
 (1) (b) Failing to release a person in arrest contrary to section 65(1) (b) of the Defence Act.

**SECOND SCHEDULE
CHARGE SHEETS**

- (1) COMMENCEMENT OF CHARGE-SHEETS.
- (2) STATEMENTS OF OFFENCES.
- (3) ILLUSTRATIONS OF CHARGE-SHEETS.

(1) COMMENCEMENT OF CHARGE-SHEETS.

DEFENCE ACT

SECTION 209

(1) (a) } The accused (number, rank, name and unit }
 } being subject to military law under section 209 (1) }
 (1) (b) } { (a) }
 (1) (c) } { (b) } of the
 } { (c) }

Defence act is charged with —

SECTION 210

The accused (name and brief description) being liable to trial by court-martial under section 210 (1) of the Defence Act is charged with —

SECTION 125

(1) The accused(name formerly
(former military description including the manner in which
 (2) the accused was formerly subject to military law set out in accordance with the appropriate form in this Part) and now liable to trial by court-martial under the provisions of

section 125 { (1) } of the Defence Act is charged with —
 { (2) }

(2) STATEMENTS OF OFFENCES

DEFENCE ACT

Treachery, cowardice and offences arising out of military service.

Section 37

(1) $\left. \begin{matrix} (a) \\ (b) \\ (c) \\ (d) \\ (e) \end{matrix} \right\}$ Aiding the enemy with intent contrary to section 37 (1) $\left. \begin{matrix} (a) \\ (b) \\ (c) \\ (d) \\ (e) \end{matrix} \right\}$ of the Defence Act.

(2) knowingly and without lawful excuse doing an act specified in para- (e) graph. $\left. \begin{matrix} (a) \\ (b) \\ (c) \\ (d) \end{matrix} \right\}$ of section 33 (1) of the Defence Act contrary to section 33 (2) of the said Act.

SECTION 38

(1) Communicating with the enemy contrary to $\left. \begin{matrix} (1) \\ (2) \end{matrix} \right\}$ of the Defence Act.
 (2) Giving intelligence to section 34

SECTION 39

(1) Cowardice before the enemy contrary to section 35(1) of the Defence Act.
 (2) inducing cowardice before the enemy contrary to section 35(2) of the Defence Act.

SECTION 40

(a) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 36 (a) of the Defence Act.
 (b) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 36 (b) of the Defence Act.

(c) $\left. \begin{matrix} \text{Willfully damaging} \\ \text{Being concerned in the willful} \\ \text{damage of} \end{matrix} \right\}$ $\left. \begin{matrix} \text{public} \\ \text{service} \end{matrix} \right\}$ property contrary to section 58(c) of the Defence Act.

SECTION 59

(a) $\left. \begin{matrix} \text{Stealing} \\ \text{Fraudulently misapplying} \\ \text{Being concerned in} \\ \text{Conniving at} \end{matrix} \right\}$ the $\left. \begin{matrix} \text{stealing of} \\ \text{fraudulent} \\ \text{misapplication} \\ \text{of} \end{matrix} \right\}$ property contrary to section 59(a) of the Defence Act.

(b) Receiving property contrary to section 59(b) of the Defence Act.

(c) $\left. \begin{matrix} \text{Willfully damaging} \\ \text{Being concerned in the willful} \\ \text{damage of} \end{matrix} \right\}$ property contrary to section 59(c) of the Defence Act.

SECTION 60

(a) Losing $\left. \begin{matrix} \text{Public} \\ \text{service} \end{matrix} \right\}$ property contrary to section 60 (a) of the Defence Act.

(b) Negligently damaging $\left. \begin{matrix} \text{public} \\ \text{service} \end{matrix} \right\}$ property contrary to section 60 (b) of the Defence Act.

(c) Negligently damaging by fire $\left. \begin{matrix} \text{public} \\ \text{service} \end{matrix} \right\}$ $\left. \begin{matrix} \text{Property contrary to} \\ \text{section 60(c) of the} \\ \text{Defence Act.} \end{matrix} \right\}$

(d) Neglect of $\left. \begin{matrix} \text{an animal} \\ \text{a bird} \end{matrix} \right\}$ contrary to section 60(d) of the Defence Act.

(e) Making away with $\left. \begin{matrix} \text{a decoration granted to him} \\ \text{his equipment} \end{matrix} \right\}$ contrary to section 60(e) of the Defence Act.

(f) By willful neglect damaging $\left. \begin{matrix} \text{public} \\ \text{service} \end{matrix} \right\}$ property by fire contrary to section 60(d) of the Defence Act

SECTION 53

(a) Assisting a person to desert or absent himself contrary to section 53(a) of the Defence Act.

(b) Failing to	$\left\{ \begin{array}{l} \text{report without delay} \\ \text{take steps to cause the} \\ \text{apprehension of} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{a deserter or absentee} \\ \text{A person attempting to} \\ \text{desert or absent himself} \end{array} \right\}$	The Defence
			contrary to section 53 (b) of Act.

SECTION 54

Failing to attend for military duty	$\left\{ \begin{array}{l} \text{contrary to section} \\ \text{54 of the Defence} \\ \text{Act.} \end{array} \right\}$
Leaving a military duty without permission	

Malingering and drunkenness

SECTION 55

(1)	(a)	Malingering contrary to section 55(1)	(a)	of the Defence Act	
	(b)				(b)
	(c)				(c)
	(d)				(d)

SECTION 56

(1) Drunkenness contrary to section 56(1) of the Defence Act.

Offences relating to property

SECTION 58

(a)	$\left\{ \begin{array}{l} \text{Stealing} \\ \text{Fraudulently} \\ \text{misapplying} \\ \text{Being concerned} \\ \text{in Conniving at} \end{array} \right\}$	the	$\left\{ \begin{array}{l} \text{stealing} \\ \text{fraudulent} \\ \text{misapplica-} \\ \text{tion of} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$	property contrary to section 58 (a) of the Defence Act.
(b)	Receiving	$\left\{ \begin{array}{l} \text{public} \\ \text{service} \end{array} \right\}$			property contrary to section 58(b) of the Defence Act.

SECTION 41

(1) Being captured through disobedience or willful neglect contrary to section 41(1) of the Defence Act.

(2)	$\left\{ \begin{array}{l} \text{Failing to take} \\ \\ \text{Preventing} \\ \text{Discouraging} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{a person} \\ \text{from taking} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{reasonable steps after capture to} \\ \text{rejoin the Force contrary to section} \\ \text{41(2) of the Defence Act.} \end{array} \right\}$

SECTION 42

(1)	$\left\{ \begin{array}{l} \text{Sleeping at his} \\ \text{post when on} \\ \\ \text{Sleeping when on} \\ \\ \text{Drunkenness} \\ \text{when on} \\ \\ \text{Leaving his} \\ \text{post absent-} \\ \text{himself} \\ \\ \text{Striking} \\ \text{Using force} \\ \text{against} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{when} \\ \text{on} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{guard duty} \\ \text{duty controlling} \\ \text{movement} \\ \\ \text{guard duty} \\ \text{duty controlling} \\ \text{movement} \\ \\ \text{guard duty} \\ \text{duty controlling} \\ \text{movement.} \\ \\ \text{guard duty} \\ \text{duty controlling} \\ \text{Movement} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{contrary to} \\ \text{(1) (a)} \\ \\ \text{contrary to} \\ \text{section 38} \\ \text{(1) (b)} \\ \\ \text{contrary to} \\ \text{section 42} \\ \text{(1) (c)} \\ \\ \text{contrary to} \\ \text{section 42} \\ \text{(1) (d)} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{of the} \\ \text{Defence Act.} \end{array} \right\}$	
(3)	Compelling on	$\left\{ \begin{array}{l} \text{guard} \\ \text{duty} \\ \text{controlling} \\ \text{movement} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{to let a persons} \\ \text{pass.} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{Contrary to section} \\ \text{42 (3) of the} \\ \text{Defence Act.} \end{array} \right\}$		

SECTION 43

(a) } Looting
 (b) } contrary
 (c) } to section
 43. } of the
 (a) } Defence Act.
 (b) }
 (c) }

MUTINY AND INSUBORDINATION
SECTION 45

- (1) (a) (Mutiny) with violence } relating to the enemy } contrary to section 45 (1) (b) of the Defence Act.
- (1) (b) Incitement to mutiny (with violence relating to the enemy) } contrary to section 45 (1) (b) of the Defence Act.
- (2) Mutiny }
 Incitement }
 to mutiny. } contrary to section 45 (2) of the Defence Act.

SECTION 46

- (a) Failing to suppress or prevent mutiny contrary to section 46, (a) of the Defence Act.
- (b) Failing to report mutiny contrary to section 46 (7) (b) of the Defence Act.

SECTION 47

- (1) (a) { Striking } violence to { his superior officer }
 { Using } } to { to section 43 (1) (a) of the }
 { Offering } } } Defence Act
- (1) (b) Using { threatening } language to his superior officer
 { insubordinate } } } contrary to section 47 (1) (b) of
 the Defence Act.

SECTION 48

- (1) Disobeying a lawful command with willful defiance of authority contrary to section 44 (1) of the Defence Act.
- (2) Disobeying a lawful command contrary to section 48 (2) of the Defence Act.

SECTION 49

- (a) Obstruction a { provost officer } contrary to
 { person exercising authority } section 49 (a)
 { under or on behalf of a } of the Defence
 { provost officer } Act.
- (b) Refusing to assist a { provost officer } contrary to
 { person exercising authority } section 49 (b)
 { under or on behalf of a } of the Defence
 { provost officer } Act.

SECTION 50

- (1) Disobedience to standing orders contrary to section 50 (1) of the Defence Act.

Desertion, absence without leave, etc.

SECTION 51

- (1) (a) Desertion contrary to section 51 (1) (a) of the Defence Act.
- (1) (b) { Persuading } a person to desert contrary to section 51
 { Procuring } (1) (b) of the Defence Act.

SECTION 52

- (a) absence without leave contrary to section 48(a) of the Defence Act.
- (b) Persuading } a person to absent himself without leave contrary to section 52 (b) of the
 Procuring } Defence Act.

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

(1) CONVENING ORDERS

CONVENING ORDERS FOR AN ORDINARY COURT-MARTIAL¹

ORDERS BY.....

*[Chief of Defence Staff Antigua Barbuda
Defence Force *[Commanding.....]

(Place and date).....

The detail of officers as mentioned below will assemble at.....

at.....hours on theday of.....Name, etc.....²

of accused.

20.....for the purpose of trying by an ordinary court-.....

martial the accused person(s) named in the margin.

PRESIDENT

.....

.....

.....

- (2) Failing to report the offence for which a person has been placed in custody contrary to section 65(2) of the Defence Act.
- (3) (a) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 65(3) (a) of the Defence Act.
- (3) (b) Failing to hand in a report relating to a person in custody received by him as guard commander contrary to section 65(3) (b) of the Defence Act.

SECTION 66

- (1) Willfully allowing a person to escape contrary to section 66(1) of the Defence Act.
- (2) (a) Releasing a person without authority contrary to section 66(2) (a) of the Defence Act.
- (2) (b) Allowing a person to escape contrary to section 66(2) (b) of the Defence Act.

SECTION 67

- (1) { Refusing to obey
Striking
Using
Offering } an officer who orders him into arrest contrary to section 67(1) of the Defence Act. violence to
- (2) { Striking
using
offering } a person { whose duty it is to apprehend him
in whose custody he is } } contrary to section 67(2) of the Defence Act. violence to

SECTION 68

Escaping from custody contrary to section 68 of the Defence Act.

Offences in relation to Courts-Martial and Civil Authorities

SECTION 69

(a)	(a)	(a)
(b)	(b)	(b)
(c)	(c)	(c)
(d)	(d)	(d)
(e)	(e)	(e)
(f)	(f)	(f)

(1) Contempt of a court-martial contrary to section 69(1) of the Defence Act.

SECTION 70

(1) Making a false statement contrary to section 70(1) of the Defence Act.

SECTION 71

(a)	(a)
(a)	(b)

(1) Obstructing preventing an arrest by a constable contrary to section 71 of the Defence Act.

Miscellaneous Offences

SECTION 72

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

SECTION 73

Making a false answer on enlistment contrary to section 73 of the Defence Act.

5. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then:

- (i) consider all the evidence and determine whether the accused is guilty of the offence or not; and
- (ii) if he determines that the accused is guilty examine and consider the accused's record of service

6. FINDING.....

AWARD.....

Date.....20.....

.....

(Signature, rank and appointment of appropriate superior authority)

FOURTH SCHEDULE

Court-Martial Forms

- (1) CONVENING ORDERS.
- (2) DECLARATIONS UNDER RULES 102 AND 103.
- (3) SUMMONS TO A WITNESS TO ATTEND A COURT-MARTIAL.
- (4) NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION.
- (5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL.
- (6) FINDINGS.
- (7) RECORD OF RECONSIDERATION OF FINDING UNDER RULE 79(4).

THIRD SCHEDULE

RECORD OR PROCEEDINGS BEFORE AN APPROPRIATE SUPERIOR AUTHORITY

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

UNIT.....

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

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

A.

Q. Have you had sufficient time to prepare your defence?

A.

2. The officer dealing with the case shall then read the charge(s) to the accused and ask him for the following question:—

Q. have you agreed in writing that the witnesses against you need not give their evidence in person?

A.

3. If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the summary or abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

4. after the summary or abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused:-

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.

A.

Q. Do you wish to adduce any other evidence in your defence?

A.

The accused No. 54321 Private John Smith, 1st Battalion, The Antigua Barbuda Defence Force being subject to military law under section 46 (1) (a) of the Defence Act, is charged with—

1st charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 58(a) OF THE DEFENCE ACT

in that he

at St. John's on 22nd May, 2007 stole a pair of binoculars public property.

2nd charge

RECVING PUBLIC PROPERTY CONTRARY TO SECTION 58(b) OF THE DEFENCE ACT

in that he

at St. John's on 22nd May, 2007 did receive a pair binoculars, public property, knowing them to have been stolen or fraudulently misapplied.

Major

Commanding 1st Battalion, The Antigua Barbuda Defence Force,
Commanding officer of the accused.

Camp Blizard

May, 2007.

To be tried by ordinary¹ court-martial.

Lieutenant-Colonel²

Commander of the, Antigua Barbuda Defence Force

Camp Blizard

May, 2007.

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

2. The order for trial may be signed by a staff officer "authorised to sign for" the convening officer as in the second illustration charge-sheet.

CHARGE-SHEET

The accused No. 12345, Corporal Peter Brown, and No. 10000, Private Thomas Jones, both of the 1st Battalion, the Antigua Barbuda Defence Force (The Reserve,) being subject to military law under section 2209 (1) (c) of the Defence act, are charge with —

1st charge

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

in that they

at Crabbs Training Area on 22 May, 1977 assaulted Jack Spart.
Corporal Brown only.

2nd charge

**STRIKING HIS SUPERIOR OFFICER CONTRARY TO
SECTION 81 (1) (a) OF THE DEFENCE ACT.**

in that he

when on active service at Crabbs on 22nd May, 2007, struck No. 98765 Sergeant V. Blue, 1st Battalion, The Antigua Barbuda Defence (The Reserve).

3rd charge

**USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR
OFFICER CONTRARY TO SECTION 47 (1) (b)
OF THE DEFENCE ACT**

in that he

when on active service at Crabbs on 22nd May, 2007 said to No. 98765 sergeant V. Blue, 1st Battalion, the Antigua Barbuda Defence Force (The Reserve) when asked by him for his (the accused's) particulars "Don't be nosey" or words to that effect.

Major,
Commanding 1st Battalion, The Antigua Barbuda Defence Force
(The Reserve)
Commanding officer of the accused.

Crabbs Training Area

May, 2007.

To be tried by ordinary¹ court-martial

Captain.

Staff Captain "A", authorised to sign for Chief of Defence Staff,
Antigua Barbuda Defence Force

St. John's

May, 2007.

1. the type of court will be an ordinary or a field court-martial according to the circumstances.

of

⁴[Chief of Defence Staff of the Antigua Barbuda Defence Force] ^{*}[Commanding.....

dated theday of20.....

PRESIDENT

MEMBERS

Judge Advocate

Trial of²

The court comply with Rule of Procedure 25.

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

The accused is brought before the court.

Prosecutor.....

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

At.....hours the trial begins.

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

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

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

A.

The proceedings relating to the objection(s) are recorded on.....³

MEMBERS²

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

WAITING MEMBERS³

.....
.....

JUDGE ADVOCATE*

The judge advocate has been appointed by the Defence Board

or

.....⁴ is hereby appointed judge advocate.

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

{ A field officer having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.

The record of the proceedings will be forwarded to

Signed thisday of20.....

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

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

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

***Strike out if not applicable**

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

CONVENING ORDER FOR A FIELD COURT-MARTIAL

ORDERS BY.....

Commanding.....

(Place and date).....

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

²The detail of officers as mentioned below will assemble at.....at..... Name, etc.
hours on theday.....of.....20.....for the purpose accused.
of tryingby a field general court-martial the accused person(s)
named.....in the margin.

notice that I require that.....⁴ shall give oral evidence in lieu
of [his] [her] statutory declaration datedat your forthcoming trial by
court-martial.

Date.....20.....

.....
(Signature and rank)
Commanding officer of the accused.

Notice by an Accused

To.....²commanding.....³

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

Date.....20.....
(Signature)

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

(5) RECORD OF PROCEEDINGS OF A COURT-MARTIAL

A

RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Proceedings of a¹ court-martial held at
.....on the.....day of.....20.....by order

the.....day of20.....at o'clock in thenoon and to bring with you the documents hereinafter mentioned, viz³

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

Give under my hand aton theday of20.....

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

An officer authorised to convene a court-martial*
President of the court*
.....⁴ Authorised to sign for.....⁵
An officer authorised to convene a court-martial*

*Strike out if not applicable.

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

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

Notice by a Commanding Officer

To.....¹

I² commanding.....³ hereby give

.....
PRESIDENT

.....
MEMBERS³

.....
WAITING MEMBERS(S)³

.....
JUDGE ADVOCATE*

The judge advocate is hereby appointed

by the Defence Board

or

.....⁴ is hereby appointed judge advocate. In the opinion of the convening officer the necessary number of military officers having suitable qualifications is not available to form the court and cannot be made available with due regard to the public service.

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

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

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

Signed this day of 20.....

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

or

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

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

*Strike out if not applicable.

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

**(2) DECLARATIONS UNDER RULES 102 AND 103
Declaration under Rule of Procedure 102**

In the case of¹

I² [the officer who [is] [would be] responsible for concerning

a court-martial to try the accused] [the senior officer on the spot] hereby declare that in my opinion the following exigencies of the service, namely.....

.....render compliance with the following provisions of the Rules or Procedure.....

impracticable.

Signed at.....this.....day of20.....

.....
(Signature)

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

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

To.....¹

To.....¹

WHEREAS a court-martial [has assembled at.....] [has assembled at.....on theday of.....20.....for the trial of.....²

YOU ARE PURSUANT TO SECTION 137 OF THE DEFENCE ACT AND RULE 90 OF THE DEFENCE RULES OF PROCEDURE, 2008, MADE THEREUNDER HEREBY SUMMONED and required to attend as a witness at the sitting of the said court at.....on

.....
Judge Advocate

.....
President

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

E

Page.....

PROCEEDINGS ON PLEA(S) OF GUILTY¹

The accused²
.....
is found guilty of²

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

The [summary] [abstract] of evidence is read to the court by the prosecutor, marked.....signed by the president and attached to the record⁴.

or

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

1. Strike out this page if not applicable.
2. Insert number, rank and name, unit or other description of the accused as given on the charge-sheet.
3. Record the finding on each charge of which the accused is found guilty in the appropriate form set out in the Fourth schedule to Rules of Procedure.
4. Strike out if not applicable. If this paragraph is struck out, Rule op Procedure 44(2) must be

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

B

PAGE 2

SWEARING

The president, members of the court and judge advocate are duly sworn. The [following] officers under instruction[listed on page.....] are duly sworn.

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

A¹

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

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

A.¹

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

SPECIAL PLEAS AND OBJECTIONS

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

The accused objects to thecharge(s) under Rule of Procedure 36. The proceedings relating to his objection(s) are recorded on page.....²

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

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

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

1. If there is an objection the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.

2. Strike out if not applicable.

CI

Page.....

ARRAIGNMENT

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

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

Q. Are you guilty or not guilty of the first¹ charge against you which you have heard read?

A.

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

A.

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

A.

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

D5

Page.....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY (continued)¹

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

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

The note of the summing-up of the judge advocate is recorded on page.....²

FINDING(S)

The court close to deliberate on their findings(s).

The court find that the accused³.....is:⁴

ANNOUNCEMENT OF FINDING(S)

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

The Finding(s) [is] [are] read and (with the exception of the findings(s) of “not guilty”)² [is] [are] announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES²

The accused is released.

Signed atthis.....day of.....20.....

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

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

Page.....

D4

(Where the accused makes a statement without being sworn)

The accused (Makes a statement, which is read, marked..... (hands in a written statement which is read, marked.....signed by the president, and attached to the record).

(Where evidence on oath is given for the defence)

The witnesses for the defence (including the accused if sworn0 are called.

First witness being duly sworn2 says:—
for the defence.

Continued on page.....

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

A.

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

A.

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

A.

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

The accused’s pleas to the remaining charges are recorded overleaf2.

- 1. Strike out ‘first’ if there is only one charge.
- 2. Strike out if not applicable.

C 2

Page.....

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

A.

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

A.

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

A.

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

A.

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

A.

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

A.

1 Strike out if not applicable.

D 1

Page.....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY¹

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

A².....

The prosecutor [makes an opening address shortly outlining the facts] [makes an opening address which is summarised below] [hands in a address which is read, signed by the president, marked.....and attached to the record.]

1. Remove this page if there are no pleas of guilty.

2. If the accused asks for an adjournment, the proceedings relating to his application should, if necessary, be recorded on a separate page and a record made here that this has been done.

D 2

Page.....

The witnesses for the prosecution are called.

First

..... witness for
being duly sworn¹ says: the prosecution

Continued on Page.....

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

D 3

Page.....

Proceeding on Plea(s) of Not Guilty (continued)¹

The prosecution is closed

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

Defence

Rule of Procedure 58 is complied with.

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

A

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

A.

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

A

Q. Do you wish to make an opening address?

A.

3 The accused (makes an opening address which is summarised below) (hands in a written address

1. ¹He was enlisted on20.....and commissioned on20.....

2. He is serving on a².....

3. His age is.....years.

4. He is single/married/divorced/widowed and has.....children under the age of 16 years.

5. His gross rate of pay is.....per day, but he is

6. ³His reckonable service towards discharge or transfer to the reserve is.....years

7. ³His reckonable service towards pension, gratuity, etc is.....years

8. (I) He is entitled to the following decorations and awards:

(II) The following acts of gallantry or distinguished conduct are recorded in his conduct sheet:-

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

9. He holds the substantive rank of.....with seniority from.....20.....and has held the acting rank of.....continuously since.....20.....

10. ¹ He has been awaiting trial for.....days since he was first, in connection with the matters for which he is before the court, charged or placed in arrest, of which.....days were spent in civil custody.....days were spent in close arrest and.....days were spent in open arrest.

11. ¹ (he is not now under sentence) (he is now under sentence of.....beginning on

complied with.

F1

Page.....

PROCEEDINGS ON CONVICTION

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

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

A.

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

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

The.....[marks an address in mitigation of punishment, which is summarised [below] [on page.....] [hands in an address in mitigation of punishment, which read, marked.....signed by the president and attached to the record]¹

Final question addressed to the accused personally.

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

A.

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

The court close to deliberate on sentence.

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

1. Strike out this paragraph if not applicable.

2. Strike out this paragraph if the accused has not requested other offences to be taken into consideration:

F 2

Page.....

PROCEEDINGS ON CONVICTION

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

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

.....is duly sworn.

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

A. I produce.....

Q. Have you compared it with the service books?

A.

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

A.

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

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

The prosecutor adduces evidence under Rule of Procedure 70(3) which is recorded on pages.....¹

Final question addressed to the accused personally.

(7) RECORD OF RECONSIDERATION OF FINDING UNDER RULE 76(4)

The judge advocate advises the court that the findings(s) on the.....¹ charge(s) (is) (are) contrary to the law relating to the case, and that in his opinion the following finding(s) (is) (are) open to them:—

.....
.....

The court is closed for reconsideration of finding.

The court on reconsideration find that the accused is³

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

The findings(s) on reconsideration (is) (are) read in open court and (with the exception of the finding(s) of “not guilty” (is) (are) announced as being subject to confirmation.

1. Insert number of charge as numbered in the charge-sheet.
2. Insert the advice given by the judge advocate.
3. Set out the finding(s) of the court in the appropriate form(s).
4. Strike out the words relating to findings of “not guilty” if there is no such finding.

(8) SERVICE RECORD OF ACCUSED

Service Record of Accused

Number	Rank	Name	Regiment or Corps
.....

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

ACQUITTAL ON SOME BUT NOT ALL CHARGES

not guilty of the¹ charges(s) but is guilty of the¹ charges(s).

not guilty of the¹ charge(s) and honourably acquit him thereof but is guilty of the¹ charges(s)

Conviction on all charges

guilty of [the charge] [all the charges].

Special findings

guilty of the¹ charge [with the exception of the words²[[with the exception that²]

not guilty of the offence charged but is guilty of³

Where the accused is unfit to stand his trial by reason of insanity.
By reason of insanity unfit to stand his trial.

Accused guilty but insane at the time when the offence was committed guilty but insane.

1. Insert the number of the charge or charges as numbered in the charge-sheet
2. Specify the exception in detail. This form is appropriate when a special finding is made under Rule of Procedure 65(3).
3. State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 103(2), (5) or (6) of the Defence Act.

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

A.....

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

The court close to deliberates on sentence.

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

1. Strike out this paragraph if not applicable.
2. Strike out this paragraph if the accused has not requested other offences to be taken into consideration:

F 2

Page.....

PROCEEDINGS ON CONVICTION

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

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

.....
is duly sworn.

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

A. I produce.....

Q. Have you compared it with the service books?

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

A

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

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

The prosecutor adduces evidence under Rule of Procedure 70(3) which is recorded on pages.....¹

Final question addressed to the accused personally.

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

Q.

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

The court close to deliberate on sentence.

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

1. Strike out this paragraph if the prosecutor does not adduce evidence under the Rule of Produce 70(3).

G

SENTENCE¹

The court sentence the accused.....

to³

ANNOUNCEMENT OF SENTENCE

The court being re-opened, the accused is again brought before it. The sentence (and recommendation to mercy⁴) (is) (are) announced in open court; the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at.....this.....day of20.....

.....
Judge advocate

.....
President

1. Remove this page if not applicable.
2. Insert the number, rank, name, unit or other description of the accused as given on the charge sheet.
3. Record the sentence in the appropriate form of words set out in the fifth Schedule to the Rules of Procedure. Any recommendation to mercy (see Rule of Procedure 73(4), recommendation under section 123(3) of the Defence Act restitution order (see section 131 of the Defence Act).
4. Strike out if not applicable.

H

Page.....

CONFIRMATION¹

1. For minutes of confirmation see the Fourth Schedule to the Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with Rule of Procedure 94(7).

**(6) FINDINGS
ACQUITTAL ON ALL CHARGES**

not guilty of (the charge) 9all the charges).

- 3. Insert description of article or amount of money, as the case may be.
- 4. Insert name of person to whom restitution is being made.

(13) PROMULGATION

Promulgated and extracts taken at.....(place) this.....
 day of20.....

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

FIFTH SCHEDULE

Sentences

- (1) Sentences.
- (2) Recommendation under section 123(3) of the Act.
- (3) Restitution Order.

(1) Sentences

Note: The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.

OFFICERS

Death. To suffer death.

.....20.....)

12. According to his conduct sheets, he has been found guilty by his commanding officer or by the commandant of a military establishment of the following offences:—⁴

	In the last	During his
	12 months	service
For.....	times	times

13. The details, according to his conduct sheets, of offences of which he has been convicted by court-martial or of which he has been found guilty during his service by a civil court, offences of which he has been found guilty by an appropriate superior authority are set out⁴ in the schedule hereto.

- 1. Delete inapplicable wording.
- 2. Insert the type and length of the commission or nature and length of the engagement.
- 3. To be deleted in the case of an officer.
- 4. If there are no entries in his conduct sheets, enter “nil”.

martial which tried.....at.....on the.....day of.....20..... having been lost I do not confirm the finding(s) of the court.

Signed at.....this.....day of.....20.....

(Signature, rank and appointment of confirming authority)

- 1. State what part of the sentence is remitted.
2. State what the sentence is commuted to.
3. This form of words may be used when it is impracticable to use either "remit" or "commute".
4. This form of words is appropriate when the courts have expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.
5. Insert the date or event to which the carrying out of the sentence is postponed.
6. This form of words is appropriate when the courts have passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.
7. Where a confirming officer withholds confirmation because he disapproves of the decision of the court on a plea to the jurisdiction in bar of trial or on an objection to a charge, he should specifically state that he is withholding confirmation for this reason. In other cases the confirming officer is not bound to give his reasons for withholding confirmation.
8. Insert the appointment of the higher authority to whom the matter is to be referred.
9. The rank and appointment of the confirming officer should be clearly stated after or under his signature.

(11) DIRECTION UNDER SECTION 123(3) OF THE ACT¹

I.....[confirming authority] [reviewing authority] hereby direct that the accused.....(number, rank, name or other description) shall not

(9) RECORD OF PROCEEDINGS ON REVISION UNDER SECTION 110 OF THE ACT

At.....¹ on the.....day of.....at..... hours the court re-assembled by order of.....² the confirming authority for the purpose of re-considering their finding(s) on the.....³ charge(s)

Present⁴..... The order directing the re-assembly of the court and giving the reasons therefor is read, marked..... Signed by the president and attached to the record.

The court having considered the observations of the confirming authority and the whole of the record of the proceedings do now revoke their finding(s) on the.....³ charge(s) and find that the accused⁵..... is⁶..... and (adhere to their sentence) (sentence the accused) to⁷..... in the substitution for the original sentence.)

or

The court having considered the observations of the confirming authority respectfully adhere to their finding(s) on the.....³ charge(s) (and to their sentence) (but sentence the accused.....⁵ to⁷..... in substitution for the original sentence).

or

The court having considered the observations of the confirming authority and the whole of the record of the proceedings do now revoke their finding(s) on the³ charge(s) and find the accused⁵.....not guilty of (that) (those) charges(s).

Signed at¹ thisday of20.....

..... Judge Advocate President

- 1. Insert the name of the place.
2. Insert the rank, name, appointment, etc. of the confirming authority.
3. Specify the number(s) of the charge(s) concerned, e.g., the 5th charge.
4. Give the name of the president and members of the court who are present. If the president is absent the senior member must report to the confirming authority. If the member is absent and the court is there by reduced below the legal minimum the president must report to the confirming authority.
5. Insert accused's number, rank, name, unit, or other description as given in the charge-sheet.
6. Set out the finding in the appropriate form of words given in this Schedule.
7. Set out the new sentence in accordance with the appropriate form set out in the Fifth Schedule.

(10) Confirmation

Notice: These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.

I confirmed the court's finding(s), sentence and order under section 131 of the Defence Act but [remit.....¹][commute.....²]

I confirmed the court's finding(s) sentence and order under section 131 o the Defence Act but mitigate the sentence so that it shall be as follows:—

I vary the sentence so that it shall be as so varied⁴.

I confirm the finding(s) but substitute the sentence of.....for the sentence of the court⁶

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

I substitute a finding offor the finding of the court on thecharge and confirm the finding(s) of the court on thecharge(s) and the sentence.

Not confirmed (on the grounds that⁷).

I confirm the finding(s) of the court on thecharges(s) but do not confirm their finding(s) on thecharges(s) (on the grounds that⁷). I confirm the sentence but [remit.....¹] [commute.....²]

I refer the finding(s) and sentence to.....⁸ for confirmation.

I confirm the finding(s) of the court on thecharge(s) and refer the finding(s) on thecharge(s) and the sentence to.....³ for confirmation.

[The Record] [Part of the record] of the proceedings of the.....court-

FIFTH SCHEDULE

THE BOARD OF INQUIRY RULES

Arrangement of Rules

Rule

- 1. Citation
- 2. Interpretation
- 3. Duties of Boards
- 4. Matters for reference to boards
- 5. Deferring and staying of proceedings
- 6. Convening
- 7. Constitution
- 8. Assembly and procedure
- 9. Adjournment and re-assembly
- 10. Witnesses
- 11. Persons who may be affected by the findings
- 12. Evidence
- 13. Oaths and affirmations
- 14. Exhibits
- 15. Record of proceedings
- 16. Entries of reports in service books

1. Citation and commencement.

These Rules may be cited as the Board of Inquiry Rules 2012.

2. Interpretation.

In these Rules, except where the context otherwise requires—

“the Act” means the Defence Act 2006;

“the authority”, in relation to a board, means the Defence Board or an officer empowered by or under these Rules to convene a board;

“board” means board of inquiry;

“civil authority” includes a coroner and the civil police;

Imprisonment and cashiering. To be imprisoned for.....and to be cashiered.

cashiering. To be cashiered.

Dismissal. To be dismissed from the Antigua Barbuda Defence Force.

To be fined..... Fine.

To be [severely reprimanded] [reprimanded]. [Severe reprimand] [reprimand]

To be put under stoppage of pay until he has made good the sum of Stop-pages.....¹ in respect of.....²

WARRANT OFFICERS AND NON-COMMISSIONED OFFICERS

Death.

To suffer death.

To be imprisoned for.....and to be reduced to the ranks. Imprisonment and reduction to the ranks.

To be discharged with ignominy from the Antigua Barbuda Defence Force. Discharge

with
ignominy.

To be dismissed from the Antigua Barbuda Defence Force.

Dismissal

To undergo detention for.....and to be reduced to the ranks.

Detention
and reduc-
tion to the
ranks.

To undergo field punishment for.....days and
to be Reduced to the ranks.

Field
punish-
ment and
reduction
to the rank

[Reduc-
tion to
the ranks]
reduction
to.....]

To be reduced [to the ranks] [to the rank of.....]

For-
feiture.

To forfeit.....service.

[Severe
reprimand.]
[reprimand]

To be [severely reprimanded] [reprimanded].

Fine.

To be fined.....

Stppp-
ages

To be put under stoppages of pay until he has made good the sum of.....¹
in respect of.....

Petition to reviewing authority (after promulgation)

To.....

I¹ having been convicted by court-martial
on.....² at³ and having been
sentenced to.....and having had the finding(s) and sentence
promulgated to me on.....⁷ hereby petition against the finding(s) on the
.....charge(s)⁴ and sentence⁵ on the following grounds:—

Signed.....

Date.....

1. Insert the accused's number, rank, name unit or other description
2. Insert the date when accused was convicted.
3. Insert the place where the trial was held.
4. The words "the finding(s) on thecharge(s)" should be omitted if the accused is only petitioning against sentence.
5. The word 'and the sentence' should be omitted if the accused is not petitioning against sentence.
6. Petitions should be signed by the accused personally but may if necessary, be signed on his behalf by his representative.
7. Insert the date when the findings and sentence were promulgated.
8. Here state the reviewing authority whom it is desired to petition.

(3) MANNER OF ADMINISTERING OATHS

Christians taking the oath shall, unless female, remove their head-dress and, holding the Bible or New Testament in their right hand, say to or repeat after the person administering the oath the words of the oath.

(4) SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words "I (name in full) do solemnly, affirm" and for the word "swear" wherever it occurs the words "solemnly affirm".

SEVENTH SCHEDULE
Petitions

Petition to confirming authority (before confirmation) To the confirming authority.

I ... having been convicted by court-martial on ... at ... and having been sentenced to ... hereby petition against the finding(s) on the ... charge(s) and sentence on other following grounds:-

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

Signed.....

Dated.....

SOLDIERS

Table with 3 columns: Punishment type, Description, and Additional notes. Rows include: Death (To suffer death), Imprisonment (To be imprisoned for...), Discharge with ignominy (To be discharged with ignominy from the Antigua Barbuda Defence Force), Detention (To undergo detention for...), Field punishment (To undergo field punishment for... days), To be fined (To be fined...), To be put under stoppages of pay (To be put under stoppages of pay until he has made good the sum of... in respect of...)

- 1. Insert the amount which has to be made good by stoppages in respect of the charge or article specified.
2. Specify the charge or article in respect of which the stoppage is to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

(2) RECOMMENDATION UNDER SECTION 123(3) OF THE ACT'

The court recommends that the accused.....(number, rank, name or other description) shall not be required to be returned to Antigua until he has served[.....moths] [.....years] of his sentence.

1. This form of words should be inserted in the record of the proceedings of the court-martial in the sentence passed by the court.
2. Insert the description of the article or the amount of money, as the case may be.
3. Insert name o person to whom restitution is to be made.

SIXTH SCHEDULE

Oaths and Affirmations

- (1) Oaths at Investigations by Commanding Officers and appropriate Superior Authorities.
- (2) Oaths at Court-Martial.
- (3) Manner of Administering Oaths.
- (4) Solemn affirmations.

Interpreter

I swear by Almighty god that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

Witness

I swear by almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

(2) OATHS AT COURTS-MARTIAL

President and Members

I swear by Almighty God that I will well and truly try the [accused] [accused persons] before the court according to the evidence, and that I will duly administer justice according to the Defence Act without partiality, favour or affection and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto require in due course of law.

Judge Advocate

I swear by Almighty God that I will to the best of my ability carry out the duties of judge advocate in accordance with the Defence Act and the Rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the president or any member of this court-martial unless thereunto required in due course of law.

Officer under Instruction

I swear by Almighty God that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the president or any member of this court-martial unless thereunto required in due course of law.

Shorthand Writer

I swear by almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required and will when required deliver to the court a true transcript of the same.

Interpreter

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

Witness

I swear by Almighty God that the evidence which I shall give before the court-martial shall be the truth, the whole truth, and nothing but the truth.

- (a) be marked with a number or letter and be signed by the president or have a label affixed to it bearing a number or letter and the signature of the president; and
- (b) be attached to or kept with the record of the proceedings unless in the opinion of the board it is not expedient to attach it to or keep it with the record.

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

15. Record of proceedings.

(1) The president shall record, or cause to be recorded, the proceedings of the board in writing and in sufficient detail to enable the authority to follow the course of the proceedings.

(2) Where there is no shorthand writer present the evidence shall be taken down in narrative form recording as nearly as possible the words used but if the board consider it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2) of this Rule, shall be read over to him and shall be signed by him.

(4) A record of the proceedings shall be signed by the president and other members of the board and forwarded to the authority.

16. Entries of reports in service books.

Where a board reports that a person subject to military law has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is a deficiency in any clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use, a record of the report of such deficiency shall, in addition to a record of the report of such absence required under subsection (1) of section of the Act, be entered in accordance with in the service books.

Passed by the House of Representatives on the 5th day of March, 2012.

Passed by the Senate on the 21st day of March, 2012.

Gerald Watt, Q.C.,
Speaker.

Alicia Williams Grant,
President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.

“civilian witness” means a person who gives evidence before a board and is either a person to a person who is not subject to military law;

“president” means president of a board;

“record of the proceedings” in relation to a board, includes the report of the board and any opinion expressed by the board in accordance with any directions given by the authority;

“represented” means represented by an officer or by counsel, which means an attorney-at-law and outside the state of Antigua and Barbuda a person recognised by the authority as having qualifications similar to those of an attorney-at-law and includes, in the case of a civilian employed in the service of the government, representation by a person’s trade union or staff association representative; and the term “representative” shall be construed accordingly.

3. Duties of boards.

It shall be the duty of a board to investigate and report on the facts relating to any matter referred to the board under these Rules and, if directed so to do, to express their opinion on any question arising out of any matter.

4. Matters for reference to boards.

(1) Subject to the provisions of these Rules a board shall be convened with reference to —

- (a) the absence of any person subject to military law who has been continuously absent without leave for a period of not less than twenty-one days and a deficiency in clothing, arms, ammunition or other equipment or any other public or service property issued to him for his use;
- (b) the capture of any person subject to military law by the enemy and his conduct in captivity if, on his return from captivity, the authority considers that there are reasonable grounds for suspecting—
 - (i) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty;
 - (ii) that having been made a prisoner of war he failed to take any reasonable steps available to him to rejoin Her Majesty’s service; or
 - (iii) that 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; and

- (c) the death of any person in a military establishment, being an establishment in any country or territory outside the United Kingdom where an inquiry into the death is not required to be held by any civil authority.

(2) A board may be convened with reference to any matter which the authority decides to refer to a board.

5. Deferring and staying of proceedings.

(1) Subject to paragraph (2) where any matter is the subject of investigation by the military or by a civil authority—

- (a) a board has not been convened with reference thereto, the authority may defer the convening of a board until the completion of such investigation or proceedings as aforesaid and upon completion thereof shall not be required to convene a board, if satisfied that a board is not necessary; or
- (b) a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such investigation or proceedings as aforesaid have been completed and shall then dissolve the board, if satisfied that a board is not necessary.

(2) The provisions of paragraph (1) shall not apply to the convening of a board with reference to such absence and such deficiency as are mentioned Rule 4 sub-paragraph (1)(a), but where the authority is satisfied that the absence has terminated and the authority is satisfied that an inquiry into the absence is being held or will be held by the proper authority and—

- (a) a board has not been convened with reference to the absence and deficiency, the authority shall not be required to convene a board; or
- (b) a board has already been convened with reference thereto, the authority may forthwith dissolve the board.

6. Convening.

(1) A board of inquiry may be convened by order of—

- (a) the Defence Board;
- (b) any officer not below the rank of Major, or corresponding rank, commanding any command or other area, garrison or place, or any formation or body of troops in the Defence Force;

- (b) persons who, though not so subject, are in the service of the Crown and may be so affected in character or professional reputation.

12. Evidence.

A board may receive any evidence which they consider relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in a civil court.

13. Oaths and affirmations.

(1) Subject to paragraph (3) of this Rule, every witness before a board shall be examined on oath but where any child of tender years called as a witness does not in the opinion of the board understand the nature of an oath, his evidence may be received, though not given on oath, if in the opinion of the board he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) Subject to paragraph (3) of this Rule, an oath shall be administered to any person in attendance on a board as interpreter.

(3) A person shall be permitted to make a solemn affirmation instead of taking an oath if—

- (a) he objects to taking an oath; or
- (b) it is not reasonably practicable without inconvenience or without delaying the proceedings to administer an oath to him in the manner appropriate to his religious belief.

(4) An oath shall be administered, or an affirmation made, before a board in the form and manner prescribed by Rules of Procedure

14. Exhibits.

(1) Subject to paragraph (2) of this Rule, any document or thing produced to a board by a witness when giving his evidence shall be made an exhibit.

(2) When an original document or book is produced to a board by a witness, the board may at the request of the witness compare a copy of it or an extract therefrom of the relevant parts with the original and, after they have satisfied themselves that such copy or extract is correct and the president has certified thereon that the board has compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall—

(2) The president shall lay the terms of reference before the board and the board shall proceed to hear and record evidence in accordance with the provisions of these Rules.

9. Adjournment and re-assembly.

(1) The president may from time to time adjourn the board which shall sit on such occasions and in such places as he may from time to time direct.

(2) Without prejudice to paragraph (1) of this Rule, the authority may at any time, if it appears necessary or desirable, direct that the board shall re-assemble for such purpose or purposes as may be specified by the authority.

10. Witnesses.

(1) A board shall hear the evidence of the witnesses who have been made available by the authority and may hear the evidence of such other persons as they think fit.

(2) When a civilian witness is giving evidence before a board he may be represented but, subject to the provisions of Rule 11, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

11. Persons who may be affected by the findings.

(1) Where it appears to the authority or, if a board has been convened, either to the authority or to the president that any witness or other person to whom this Rule applies may be affected by the findings of the board, the authority or, as the case may be, the president shall take such steps as are in his view reasonable and necessary to secure that such witness or other person has notice of the proceedings and, if he so desires, has an opportunity of being present, and represented, at the sittings of the board, or at such part thereof as the authority or, as the case may be, the president may specify.

(2) Any such witness or other person as is referred to in paragraph (1) of this Rule may give evidence, question witnesses or produce any witness to give evidence on the matters which may affect him and, if he is represented, his representative may question witnesses, but a representative shall not address the board except with the permission of the president.

(3) This Rule, so far as it applies to persons other than witnesses who may be affected by the findings, applies to persons of the following descriptions only, that is to say—

- (a) persons who are subject to military law; and

(c) any officer who is acting for the time being in place of such an officer; or

(d) any officer commanding a unit or detachment of the Defence Force—

(i) with reference to such absence and such deficiency (if any) as are mentioned in sub-paragraph (a) of paragraph (1) of Rule 4;

(ii) if authorised by the defence Board or any such officer as is mentioned in subparagraph (b) or (c) of this paragraph, with reference to any particular matter or to matters of any specified class or description.

(2) The following provisions shall apply in relation to the order convening a board—

(a) The order shall specify the composition of the board⁵ and the place and time at which the board shall assemble;

(b) the order may, and where the matter referred to the board is that mentioned in subparagraph (a) of paragraph (1) of Rule 4 shall, specify the terms of reference⁷ of the board and be published in military orders;

(c) the order may direct the board to express their opinion on any question arising out of any matter referred to the board; and

(d) the authority may at any time revoke, vary or suspend the order.

7. Constitution.

(1) Subject to paragraph (2) of this Rule a board shall consist of—

(a) a president who shall be an officer not below the rank of captain or corresponding rank and be subject to military law; and

(b) not less than two other members each of whom shall be either an officer or a warrant officer so subject or a person not so subject who is in the service of the Crown.

(2) The authority shall appoint the president by name and each remaining member of the board either by name or in the case of a person subject to military law, by detailing a commanding officer to appoint from persons under his command an officer, or a warrant officer.

8. Assembly and procedure.

(1) A board shall assemble at the time and place specified in the order convening the board.