



14 MAY -5 P5 :07

SENATE

Senate Bill No. 2201

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

AN ACT

PROVIDING FOR THE ARTICLES OF MILITARY JUSTICE IN THE ARMED FORCES OF THE PHILIPPINES REPEALING FOR THAT PURPOSE COMMONWEALTH ACT NUMBERED FOUR HUNDRED EIGHT, OTHERWISE KNOWN AS THE ARTICLES OF WAR, AS AMENDED, OTHER SPECIAL LAWS, AND APPROPRIATING FUNDS THEREFOR

EXPLANATORY NOTE

In September 1938, Commonwealth Act No. 408, as amended, was the first military law enacted by the National Assembly of the Philippines. Executive Order No. 178 which was promulgated in December 17, 1938, prescribes the rules of procedure, including modes of proof in cases before court-martials, courts of inquiry, military commissions and other military tribunals in the Armed Forces of the Philippines.

Republic Act No. 6975, otherwise known as the Department of Interior and Local Government Act of 1990, removed from the courts-martial the exclusive jurisdiction over cases involving the Philippine National Police. Similarly, Republic Act No. 7055, approved on June 20, 1991, commonly known as the Civilian Supremacy Law, removed from the courts martial and transferred to the civil courts the jurisdiction of case involving members of the Citizens Armed Forces Geographical Units, except when said crime or offense, as determined before arraignment by the civil court, is service connected, in which case the offense shall be tried by a court-martial.

The Constitution, specifically Article III, Section 19, paragraph (1) thereof *"Excessive fines shall not be imposed nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death already imposed shall be reduced to reclusion perpetua."*

A military justice system administered, applied and interpreted by a Civilian Appellate Collegiate Court will enhance and strengthen stability in the administration of military justice and promote faith, trust and confidence of military personnel and the civilian populace in the overall fairness of the military justice system. Furthermore, Congress, cognizant of its grave and growing concern of duty to legislate on matters of military justice and discipline of the armed forces, and in order to set an effective means of enforcing the highest form of discipline to ensure the highest provides: degree of military efficiency in the Armed Forces of the Philippines, finds cogent reasons to enact these Articles of Military Justice.

In view of the foregoing, passage of this bill is urgently requested.



JINGGOY EJERCITO ESTRADA
Senator

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COMMONWEALTH ACT NUMBERED FOUR HUNDRED EIGHT, OTHERWISE
KNOWN AS THE ARTICLES OF WAR, AS AMENDED, OTHER SPECIAL
LAWS, AND APPROPRIATING FUNDS THEREFOR.

*Be it enacted upon by the Senate and the House of Representatives in Congress
assembled:*

TITLE I. GENERAL PROVISIONS

ARTICLE 1. *Applicability.* These articles shall at all times and in all
places govern the administration of military justice in the Armed Forces of the
Philippines and shall apply to all persons subject to military law,

ARTICLE 2. *Definition of Terms.* The following words when used in
these articles shall be construed in the sense indicated in this article, unless the
context shows that a different meaning is intended:

a. "Active service" means active service rendered by a military person as a
commissioned officer, enlisted man, cadet, probationary officer, trainee or draftee
in the Armed Forces of the Philippines and service rendered by him as a civilian
official or employee in the Philippine Government prior to the date of his
separation or retirement from the Armed Forces of the Philippines, for which
military and/or civilian service he shall have received pay from the Philippine
Government and/or such others as may hereafter be prescribed by law as active
service.

b. "Accuser" means an officer who signs and swears to the charges, or
directs that charges nominally be signed and sworn to by another, or has an
interest other than an official interest in the prosecution of the accused

c. "Battalion" includes a squadron or equivalent unit of the ground, air or
naval forces.

d. "Cadet" includes cadets of the Philippine Military Academy, aviation
cadets of the Philippine Air Force Flying School, and students of an Officer's
Candidate Training School of the Armed Forces of the Philippines who are not
commissioned officers or soldiers on active duty, or sent by Philippine
Government to foreign service academics.

e. "Commanding Officer" refers to commissioned officers only.

f. "Company" includes a troop, battery, commissioned vessel, or equivalent unit of the ground, air or naval forces.

g. "Judge Advocate" means any officer commissioned in and of the Judge Advocate General's Service.

h. "Legal Officer" means any lawyer-officer designated to perform legal duties in a command relating to the administration of military justice.

i. "Member of the Armed Forces of the Philippines" includes an officer, cadet, soldier, trainee, draftee or candidate soldier and all persons who retired from and in the inactive service of the Armed Forces of the Philippines j. "Officer" means a commissioned officer in the Armed Forces of the Philippines.

k. "Soldier" means a person in enlisted grade, trainees, draftees or candidate soldiers.

l. "Superior Officer" means a commissioned officer superior in rank or command.

m. "Suspendee" is convicted military personnel whose execution of sentence is suspended or held in abeyance.

n. "Enemy" shall be construed to include also lawless elements or any person or group of persons against whom any pacification campaign is directed by the government.

o. "Safeguard" signifies a special privilege of protection for persons, household, or property - all or either --- against military marauders or other disorderly parties, granted by a military commander to certain private individuals, to corporations, or to hospitals or other public institutions, or places.

p. "Manifest Impediment" refers to such conditions as being held a prisoner of war in the hands of the enemy, or being imprisoned under the sentence of a civil court upon conviction of crime --- during the whole or a portion of the period of limitation.

ARTICLE 3. *Persons Subject to Military Law.* The following persons shall be understood as included in the term "any person subject to military law", whenever used in these articles:

a. All officers and soldiers in the active service of the Armed Forces of the Philippines, and soldiers awaiting issuance of reenlistment orders after expiration of their terms of enlistment; all members of the reserve force from the dates of their call to active duty or mobilization training and while on such active duty or training; all trainees, draftees or candidate soldiers undergoing military training or service; all volunteers from the time of their muster or acceptance into the Armed Forces of the Philippines; and all other persons lawfully called, drafted or ordered into or for training in, in the Armed Forces of the Philippines, from the dates they are required by the terms of the call, draft, or order to obey the same.

b. Cadets and probationary second lieutenants or its equivalent in the navy.

c. Prisoners of war in the custody of the Armed Forces of the Philippines.

d. All retainers to the camp and all persons accompanying or serving the Armed Forces of the Philippines in the field in time of war or when martial law is declared though not otherwise subject to these articles.

e. Persons serving sentences imposed by courts-martial, except those transferred to a penitentiary to serve their sentences thereat, unless said persons had already been arraigned before a court-martial for offenses other than those for which they are serving sentences.

ARTICLE 4. Jurisdiction to Try Certain Personnel. -

a. Subject to the provisions of Article 32, a person discharged from the service who is later charged with having fraudulently obtained his discharge is may be tried by court-martial on that charge. Upon conviction of that charge, he is subject to trial by court-martial for all offenses under these articles committed before the fraudulent discharge.

b. No person who has deserted from the Armed Forces of the Philippines shall be relieved from amenability to the jurisdiction of these articles by virtue of separation from any later period of service.

c. Any person who committed any offense punishable under Article 136 while in the service of the Armed Forces of the Philippines and who is released from active duty, discharged, separated, dismissed from the service, or dropped from the rolls pursuant to Article 143, shall continue to be liable to be apprehended and held for trial and sentence by a court-martial for said offense in the same manner and to the same extent as if he had not been released from active duty, discharged, separated, or dismissed from the service, or dropped from the rolls.

d. Any person who, while in the service of the Armed Forces of the Philippines, commits embezzlement of ration savings, post exchange, company, trust, or other like funds, or of embezzlement of money or other property entrusted to his charge by any military person or persons and who is released from active duty, or discharged, or dismissed from the service, or dropped from the rolls pursuant to Article 143, shall continue to be liable to be apprehended and held for trial and sentence by a court-martial for said offense in the manner and to the same extent as if he had not been released from active duty, discharged, separated, or dismissed from the service or dropped from the rolls.

ARTICLE 5. Judge Advocates and Legal Officers.

a. Convening authorities shall at all times communicate directly with their Staff Judge Advocates or Legal Officers in all matters relating to the administration of military justice, or vice versa. Intermediate or coordinating staffs concerned shall be informed accordingly for monitoring purposes.

b. No person who has acted as a member, military judge, trial judge advocate, assistant trial judge advocate, defense counsel, assistant defense counsel of a court martial, investigating officer or witness in any case, may later

act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

TITLE II - APPREHENSION, ARREST AND CONFINEMENT

ARTICLE 6. Apprehension.

a. Apprehension is the taking of a person into custody.

b. Any person authorized under regulations governing the Armed Forces of the Philippines may apprehend persons subject to these articles or to trial thereunder upon personal knowledge that an offense has been committed and that the person apprehended committed it.

c. Any person making an apprehension shall make an immediate report to the Commanding Officer to whom the apprehending person is responsible. He shall also, within six (6) hours from the time of the apprehension, make a report to the immediate commander of the person apprehended, or superior commissioned officer if it is impractical to inform the immediate commander, without prejudice to the completion of the investigation if the same has not been completed. Within twelve (12) hours from the time of apprehension, the Commanding Officer of the apprehending unit shall turnover the apprehended person together with the record of the investigation to the immediate commander of the person apprehended or superior commissioned officer.

d. Nothing in this article shall limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority is notified.

ARTICLE 7. *Apprehension of Deserters by Civil Authorities.* - Any civil officer having authority under the laws of the Philippines to arrest offenders may summarily apprehend a deserter from the Armed Forces of the Philippines and deliver him into the custody of the authorities concerned.

ARTICLE 8. *Arrest and Confinement.* - The Commanding Officer or any responsible officer may take an accused charged before a court-martial into custody during the pendency of the case, subject to the approval of the court. When the presence of the accused is specifically required by a court-martial, his custodian, after due notice, shall immediately produce the accused before the court on the date and time specified in the notice. If the accused fails to appear in person as required, the custodian shall be given fifteen (15) days within which to produce his principal. Within the said period of fifteen (15) days, the custodian must (a) produce the body of the principal or give the reason for his non-production and (b) must explain satisfactorily why the accused did not appear before the court when first required to do so. Failing in these two requisites, the custodian shall be punished as a court-martial may direct. The court-martial will then issue an order for the arrest of the accused, which shall be enforceable anywhere in the Philippines.

ARTICLE 9. *Arrest or Confinement of Persons Charged with Offenses.* - Any person subject to military law and charged with an offense punishable under these articles shall be ordered into arrest or confinement, as circumstances may require; but when charged only with a minor offense

punishable by not more than thirty (30) days confinement, he shall not ordinarily be placed in physical restraint, unless there exist reasonable grounds to believe that:

(1) the person will not appear at the investigation or pre-trial investigation or trial;

(2) he will engage in serious criminal misconduct; or

(3) he has committed other offenses under these articles covered by court martial.

When a person is placed under arrest or confinement prior to trial, he shall immediately be informed of the nature of the offense or offenses for which he is being held in arrest or confinement;

b. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters or tent, unless such limits shall be enlarged or modified by proper authority.

c. Not later than eight (8) days after ordering a person into arrest or confinement, or after receipt of a report that a member of the commander's unit has been apprehended, the immediate commander shall decide whether the order of arrest or confinement of the apprehended person will continue. The release of the person ordered arrested or confined shall be directed by the immediate commander, unless he believes there exists reasonable grounds that:

(1) the person will not appear at the investigation, or pre-trial investigation or trial;

(2) he will engage in serious criminal misconduct; or

(3) unless severe forms of restraint are inadequate:

Provided, however, that whenever an accused has undergone pre-trial restraint for a period equal to or more than the imposable minimum imprisonment for the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial hereof or the proceeding on appeal if the same is under review: Provided, finally, that the pre-trial restraint shall in no case exceed ninety (90) days without formal charges being referred to the Trial Judge Advocate for trial.

ARTICLE 10. *Confinement with Enemy Prisoner Prohibited.* - No member of the Armed Forces of the Philippines shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals.

TITLE III - NON-JUDICIAL PUNISHMENT

ARTICLE 11. *Disciplinary Powers of Commanding Officers.* -

a. The commanding officer of any detachment, company, battalion, squadron, commissioned vessel, or higher command, or such other officers as may be authorized by the President, may, for minor offenses, impose disciplinary punishments upon persons of his command without the intervention of a court-

martial. A commanding officer exercising court-martial jurisdiction or an officer of general or flag rank in command may delegate his power under this article to a principal assistant.

b. Any commanding officer may, in addition to or in lieu of admonition, reprimand, impose one or more of the following disciplinary punishments;

(1) Upon Officers of his Command -

(a) Withholding of privileges for not more than thirty consecutive days;

(b) Restriction to certain specified limits, with or without suspension from duty, but for not more than thirty consecutive days;

(c) Arrest in quarters for not more than fifteen consecutive days;

(d) Forfeiture of not more than one-half of one month's base

(e) Detention or withholding of not more than one-half of one month's base pay per month for three months

(f) Deprivation of liberty on shore not exceeding thirty days for those attached or embarked in a commissioned vessel of the Philippine Navy;

(g) If imposed by an officer exercising court-martial jurisdiction or by an officer of general or flag rank in command:

(i) Withholding of privilege for not more than sixty consecutive days;

(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty consecutive days;

(iii) Arrest in quarters for not more than thirty consecutive days;

(iv) Forfeiture of not more than one-half of one-month's base pay per month for three months;

(v) Detention or withholding of not more than one-half of one-month's base pay per month for six months;

(vi) Deprivation of liberty on shore not exceeding sixty consecutive days, for those attached to or embarked in a commissioned vessel of the Philippine Navy.

(2) Upon other personnel of his command:

(a) Withholding of privilege for not more than thirty consecutive days;

(b) Restriction to certain specified limits, with or without suspension from duty, for not more than thirty consecutive days;

(c) Arrest in quarters for not more than fifteen consecutive days

(d) Forfeiture of not more than one-half of one month's base pay;

(e) With respect to those attached to or embarked in a commissioned per month for three months;

(f) Detention or withholding of not more than one month's base pay per month for six months;

(i) Deprivation of liberty on shore not exceeding thirty consecutive days;

(ii) Confinement on diminished rations for not more than three consecutive days;

(g) Confinement not under guard for not more than fifteen consecutive days;

(h) Hard labor without confinement for not more than fifteen consecutive days;

(i) Extra duties, including fatigue or other duties, for not more than fifteen consecutive days;

(j) Correctional custody for not more than fifteen consecutive days;

(k) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer

(l) If imposed by an officer in the grade of Lieutenant Colonel or Commander:

(i) Withholding of privileges for not more than sixty consecutive days;

(ii) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty consecutive days;

(iii) Arrest in quarters for not more than thirty consecutive days;

(iv) Forfeiture of not more one half of one month's base pay per month for two months;

(v) Detention or withholding of not more than one month's base pay per month for six months;

(vi) With respect to those attached to or embarked in a commissioned vessel of the Philippine Navy, deprivation of liberty on shore not exceeding sixty consecutive days, or confinement on diminished rations for not more than three consecutive days;

(vii) Confinement not under guard for not more than thirty consecutive days;

(viii) Hard labor without confinement for not more than thirty consecutive days;

(xi) Extra duties, including fatigue or other duties, for not more than fifteen consecutive days;

(x) Correctional custody for not more than thirty consecutive days;

(xi) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades.

c. The officer or his successor in command who imposed the punishment may, at any time, suspend provisionally any part or amount of the unexecuted punishment imposed and may suspend provisionally a reduction in grade or forfeiture, whether or not executed. He may also at any time remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside, in whole or in part, the punishment whether or not executed, and restore all rights, privileges and property affected. He may also mitigate a reduction in grade to forfeiture or detention of pay.

d. A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the superior authority, but may in the meantime be required to serve the punishment imposed. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under the preceding subsection by the officer who imposed the punishment.

e. The imposition and enforcement of disciplinary punishment under this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown, it shall be considered in determining the measure of punishment to be adjudged in case of a finding of guilty.

f. Under such regulations as the President may prescribe, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized and the categories of commanding officers authorized to exercise these powers. Rules may also be prescribed with respect to the suspension, apportionment, remission, mitigation, setting aside of the punishments imposed, or the restoration of rights and privileges properly affected by the punishment imposed, and the form of records to be kept of proceedings under this article, and what categories of these proceedings shall be in writing.

g. Any officer meted punishment under this article by an officer exercising court-martial jurisdiction shall automatically be considered on non-promotable status for a period of one year from the date of the imposition of the punishment. The imposition of three or more disciplinary punishments during the three years next preceding the consideration for promotion of an officer shall constitute a ground for deferment from promotion of the officer. Any enlisted person meted punishment under this article by an officer in the grade of lieutenant colonel or commander shall automatically be considered on non-promotable status for a period of one year from the date of the imposition of the punishment.

TITLE IV - COURTS-MARTIAL

ARTICLE 12. Court-Martial. - A court-martial shall be composed of a military judge and two members; or only a military judge, if before the arraignment, the accused, after consultation with his defense counsel, requests orally on the record or in writing that he be tried by a court composed only of a

military judge and said request is approved by the convening authority: Provided, however, that whenever there are more than one accused and they could not agree as to which court-martial would try them, they shall be tried by a military judge and two members.

ARTICLE 13. *Jurisdiction of Court-Martial.* - The court-martial shall have the power to try persons subject to these articles and any other person who by the law of war is subject to trial by court-martial. Under such limitations as the President may prescribe, it may adjudge any punishment authorized by law or the customs of the service. In the Philippine Navy, a court-martial may impose deprivation of liberty on shore as a punishment, or solitary confinement not exceeding thirty days, or solitary confinement on diminished rations not exceeding thirty days.

ARTICLE 14. *Who may Convene Court-Martial.* - The President of the Philippines, the Chief of Staff of the Armed Forces of the Philippines, the Commanders of the Major Services of the Armed Forces of the Philippines, the commanding officer of Area Commands; commanders of task forces, divisions, separate brigades or body of troops and their respective equivalents in the Navy or Air Force, provided they have Staff Judge Advocate; and the Superintendent of the Philippine Military Academy and commanders of a contingent of the Armed Forces of the Philippines serving in a foreign country, may convene a court-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be convened by competent higher authority.

ARTICLE 15. *Who may Serve in A Court-Martial.* - The following may serve in a court-martial:

a. Any officer on active duty in the Armed Forces of the Philippines shall be competent to serve in a court-martial for the trial of any person who may lawfully be brought before such court for trial.

b. Any enlisted person in the active military service of the Armed Forces of the Philippines who is not a member of the same company as the accused shall be competent to serve in a court-martial for the trial of any enlisted member, draftee, trainee, or candidate soldier who may lawfully be brought before such court for trial.

c. When convening a court-martial, the convening authority shall detail as members thereof those officers of the command and, when eligible and available, those enlisted members of the command who, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service and judicial temperament.

d. When it can be avoided, no member of the Armed Forces of the Philippines shall be tried by court-martial any member of which is junior to the former in rank or grade.

e. No person shall be eligible to sit as member of a court-martial when he is the accuser or a witness for the prosecution or defense, or has acted as investigator or as counsel in the same case.

f. An accused enlisted person may request orally or in writing prior to the arraignment that an enlisted person serve in the court which is to try him: Provided, that in no case shall the number of enlisted persons detailed exceed one-third of the total membership of the court: Provided, further, That failure of the convening authority to designate an enlisted person as a member of the court because eligible enlisted members cannot be designated on account of physical conditions or military exigencies shall not preclude the court from proceeding with the trial nor shall it affect the validity of the proceedings taken thereon, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be designated; Provided, finally, That no enlisted person shall act as member of a court-martial when one of the accused is an officer.

ARTICLE 16. *Military Judge of Court-Martial.* - The convening authority shall detail to the court-martial a member of the bar, hereafter called military judge, who shall be an officer of the Judge Advocate General's Service or an officer who is a member of the Philippine Bar of some other branch of service and who is certified to be qualified for duty as a military judge by the Judge Advocate General. No court-martial shall convene or receive evidence in the absence of the military judge regularly detailed.

The military judge, in addition to his duties as such, shall perform such other duties as the President may, by regulations prescribe. No person is eligible to act as a military judge in any case if he is the complainant or a witness for the prosecution or has acted as investigating officer or counsel in the same case.

ARTICLE. 17. *Detail of Trial Judge Advocate and Defense Counsel.* -

a. For each court-martial, the authority convening the court shall detail a Trial Judge Advocate and a defense counsel certified as competent to perform such duties by the Judge Advocate General; and for each court-martial, one or more assistant Trial Judge Advocates and one or more assistant defense counsels when necessary.

b. No person who has acted as investigating officer, military judge or court member in any case may act later as Trial Judge Advocate, Assistant Trial Judge Advocate, or unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the defense may act later in the same case for the prosecution.

ARTICLE. 18. *Detail or Employment of Reporters, Interpreters and Bailiffs.*

a. Under such regulations as the President may from time to time prescribe, the convening authority of a court-martial shall detail or employ qualified court reporters, who shall record the proceedings and testimony taken before such court and may take down the same, in the first instance, in shorthand. Under like regulations, the convening authority of a court-martial shall detail or employ an interpreter or interpreters, who shall interpret for the court.

b. The convening authority of a court-martial shall detail at least two bailiffs who shall attend at the proceedings of the court to maintain order, to serve warrants, summons and any other process issued by the court, and to execute orders of the court.

It shall also be the duty of the bailiff to protect the officers of the court and secure the prisoner/accused during the trial. The order appointing a military court shall include the detail of at least two bailiffs who shall be selected from the enlisted personnel of the Provost Marshal. In the performance of its duties, the Provost Marshal shall extend its maximum support particularly in the service of warrants, summons and any other process and orders issued by the court. The bailiffs shall be under the direct supervision and control of the court during the trial.

ARTICLE. 19. *Absent and Additional Member.* - No member of a court martial shall be relieved or excused after the accused has been arraigned, except for physical disability as a result of a challenge for cause duly proved, or by order of the convening authority for a good cause.

TITLE V - PRE-TRIAL PROCEDURE

ARTICLE. 20. *Challenges.* - Except for the military judge, members of a court-martial may be challenged by the accused or trial judge advocate for cause stated to the court. However, for good cause shown, the accused or the trial judge advocate may request in writing the convening authority for the relief of the military judge.

ARTICLE. 21. *Compulsory Self-Incrimination Prohibited.* -

a. No person shall be compelled to incriminate himself, or to answer any question the answer to which may tend to incriminate him.

b. No person shall be compelled to make a statement or produce evidence before or for use before a court-martial, board, or officer conducting an investigation or designated to take a deposition if the statement or evidence is not material to the issue and may tend to degrade him.

c. No person may interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is an accused or suspected of committing and that any statement made by him may be used as evidence against him.

d. No statement obtained from any person in violation of this article or in violation of the Constitution or existing laws or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him.

ARTICLE.22. *Forwarding of Charges.* -When a person had committed an act within the jurisdiction of a court-martial, the commanding officer shall, within eight (8) days after the accused is ordered into arrest or confinement, forward the charges, together with the investigation report and allied papers, to the Staff Judge Advocate or legal officer who shall forthwith prepare the appropriate charge sheet, if warranted, and designate a Pre-Trial Investigation Officer.

ARTICLE 23. Pre-Trial Investigation. --

a. No charge or specification may be referred to a court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

b. At such investigation, the accused shall be informed of the charges against him and advised of his constitutional rights. He shall within ten days from receipt of the charge sheet and all the evidence against him be given full opportunity to present his own evidence or anything that he may present in his own behalf, either in defense or mitigation. The investigation officer may examine available witnesses requested by the accused, If the charges are forwarded after such investigation they shall be accompanied by a pretrial investigation report containing a statement of the substance of the testimony taken on or submitted by both sides.

c. The investigation shall, as far as practicable, be completed within a period of twenty days, otherwise, the pre-trial investigation officer shall report to the convening authority the reasons for delay and request extension of the period to complete the pretrial investigation: Provided, however, that the total period of extension that may be granted shall not exceed ten (10) days.

ARTICLE 24. *Advice of Staff, Judge Advocate and Reference for Trial*

- Before directing the trial of any charge by a court-martial, the convening authority shall refer the same to his staff judge advocate or legal officer for consideration and advise. The convening authority may not refer a specification under a charge to a court-martial for trial unless he has found that the specification alleges an offense under these articles and is warranted by the evidence indicated in the report of investigation.

b. If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

ARTICLE 25. *Service of Charges* - The trial judge advocate to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had, and a failure to serve such charges will be ground for a continuance unless the trial be had on the charges as have been served previously upon the accused. In time of peace, no person may against his objection, be brought to trial before a court-martial within a period of five days subsequent to the service of charges upon him.

TITLE VI. - TRIAL PROCEDURE

ARTICLE 26. *President May Prescribe Rules.* - The President may by regulation which he may modify from time to time, prescribe pre-trial, trial and post-trial procedures, including modes of proof, for cases arising under these articles within the jurisdiction of a court-martial, and which regulations shall, as

far as he considers practicable, apply the principles of law and the rules of evidence in the courts of justice of the Philippines, but which shall not be contrary to or inconsistent with these articles.

ARTICLE 27. Duties of Trial Judge Advocate and Defense Counsel. -

a. The trial judge advocate of a court-martial shall prosecute in the name of the People of the Philippines, and shall, under the direction of the court, prepare the record of the proceedings.

b. The accused has the right to be represented in his defense before a court martial or at an investigation under Article 23 by civilian counsel, or by military counsel of his own selection if reasonably available, or by the defense counsel duly detailed under Article 17. If the accused is represented by civilian or military counsel of his own selection, the detailed military defense counsel and assistant military defense counsel shall act as associate defense counsel and shall take over the defense of the accused whenever the counsel of choice is not available for any reason.

c. In every court-martial proceeding, the defense counsel may, in the event of conviction, submit in writing for attachment to the record of proceedings a brief of such matters as to clemency and as he determines should be considered in behalf of the accused by the members of court or the reviewing authority, including any objection to the contents of the record which he considers appropriate.

d. An assistant trial judge advocate and assistant defense counsel may, under the direction of the trial judge advocate and military defense counsel, respectively, and subject to the requirement of Article 17, perform any duty imposed by law, regulations, or customs of the service upon the trial judge advocate and defense counsel for the accused, respectively.

ARTICLE 28. Closed Sessions. - Whenever a court-martial shall sit in closed session, the trial judge advocate and/or the assistant trial judge advocate, shall withdraw; and when their assistance in referring to the recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel.

ARTICLE 29. Continuances. - A court-martial may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just and proper.

ARTICLE 30. Challenges. - The military judge and/or members of a court martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The courts shall determine the relevance and validity of challenges for cause.

It may not receive a challenge to more than one person at a time. Challenges by trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. No peremptory challenge shall be allowed.

ARTICLE 31. Oaths. - Before performing their respective duties, military judges, members of courts-martial, trial judge advocate, assistant trial judge advocate, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath or affirmation to perform their duties faithfully. The form of the oath or affirmation, the time and place of the taking thereof, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations by the President.

ARTICLE 32. As To Time. - Except for desertion, mutiny or for war offenses punishable under these articles for murder or rape committed in times of war, no person subject to military law shall be tried or punished by a court martial for any crime or offense committed more than three (3) years before the charge sheet is referred to the trial judge advocate for trial. Provided, that for desertion in time of peace or for any crime or offense punishable under Article 135 and 136, the period of limitation upon trial and punishment by court-martial shall be five years from the time the offense was discovered by the authorities. Provided further, that the period of any absence of the accused from the jurisdiction of the Philippines or any period during which by reason of some manifest impediment the accused is not amenable to military jurisdiction, shall be excluded in computing the aforesaid periods of limitations. Provided also, that for any crime or offense the trial of which in time of war is certified to the President by the Secretary of National Defense to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this Article for the trial of said crimes and offenses shall be extended to the duration of the war and one year after the termination of hostilities as proclaimed by the President or by a joint resolution of the Congress. Provided finally, that this Article shall not have the effect of authorizing the trial and punishment for any crime or offenses barred by the provisions of existing law".

ARTICLE 33. Former Jeopardy. -

a. No person shall be tried a second time for the same offense, but no proceeding in which an accused has been found guilty by a court-martial upon a charge or specification shall be considered a trial in the sense of this article until the reviewing and, if there be one, the confirming authority shall have taken final action upon the case. A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused, is a trial in the sense of this article.

ARTICLE 34. Pleas of the Accused. - If an accused after arraignment makes an irregular or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty through negligence or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

ARTICLE 35. Process to Obtain Witnesses and Other Evidence. - Every trial judge advocate, defense counsel and every court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Processes issued in court-martial cases to compel witnesses to appear and testify and to compel witnesses

to appear and testify and to compel the production of other evidence shall be similar to that which courts of the Philippines having criminal jurisdiction may lawfully issue and shall be enforceable in any part of the Philippines.

ARTICLE 36. *Refusal to Appear or Testify.* -Any person subject to military law shall be guilty of contempt if he has been duly subpoenaed to appear as a witness before any court-martial, board, or officer appointed to conduct investigation under the provisions of Article 23 or before any military or civil officer designated to take a deposition to be read in evidence before such court, board, or officer and he willfully neglects or refuses to appear, or refuses to qualify as a witness, or testify, or produce documentary evidence which such person may have been legally subpoenaed to produce: Provided, however, That the witness shall be entitled to such fees and traveling expenses as the Chief of Staff, Armed Forces of the Philippines may prescribe, which shall be duly paid or tendered to the witness. Such amount shall be paid out of the appropriations of the Armed Forces of the Philippines.

ARTICLE 37. *Indirect Contempt* -Any person not subject to military law shall be guilty of contempt if after he has been duly subpoenaed to appear as a witness before any court-martial, board or officer appointed to conduct investigation under the provisions of Article 23 or before any military or civil officer appointed to take a deposition to be read before such court, board or officer, willfully neglects or refuses to appear, or refuses to qualify as a witness or testify, or produce documentary evidence which such person may have been legally subpoenaed to produce. Any person who, upon proof or service and receipt thereof, fails, without justifiable cause, to obey a subpoena served upon him shall be deemed in indirect contempt and the court, board or officer issuing the subpoena may issue a warrant to the provost marshal to arrest the witness and bring him before the court, board or officers where his attendance is required; Provided, that the testimony of the witness is vital to the resolution of the case and it could not be obtained in any other manner; Provided further, that a civilian witness is not bound to obey a subpoena if his residence is more than fifty (50) kilometers away from the place of trial, hearing or investigation by the usual course of travel and; Provided finally, that the civilian witness shall be entitled to such expenses as the Chief of Staff, Armed Forces of the Philippines may prescribe which shall be given to the witness within a reasonable period of time prior to the hearing and that such amount shall be paid out of the appropriations of the Armed Forces of the Philippines.

ARTICLE 38. *Depositions.* -

a. At any time after charges have been signed as provided in Article 20, any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

b. Depositions to be read in evidence before military boards, or for other use in military administration, may be taken before and authenticated by any military or civil officer authorized by the laws of the Philippines or by the laws of the place, where the deposition is taken to administer oaths.

c. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

d. A duly authenticated deposition taken upon reasonable notice to the parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court, or in any proceeding before a military board, if such deposition be taken where the witness resides, is found, or is about to go outside of the Philippines, or beyond the distance of one hundred and fifty kilometers from the place of trial or hearing, and will probably continue to be absent when the testimony is required; or when it appears to the satisfaction of the court, board, or convening authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing or the present whereabouts of the witness is unknown.

ARTICLE 39. *Voting and Rulings.* -

a. Voting by members of a court-martial, where the accused has not opted to be tried by a military judge alone upon questions of challenge, on the findings and on the sentence, shall be by secret ballot. The most junior member of the court shall in each case count the votes. The votes shall be checked by the most senior member who shall forthwith announce the result of the voting to the members of the court.

b. The military judge of a court-martial shall rule in open court upon interlocutory questions. Any ruling made by the military judge upon any interlocutory question other than on a motion for a finding of not guilty, challenge for cause, or on the question of the sanity of the accused, shall be final and shall constitute the ruling of the court; but the military judge in any case may consult other members of the court, in closed session, before making a ruling and may change any ruling made at any time during the trial. If any member objects to a ruling of the military judge of a court-martial upon a motion for a finding of not guilty, challenge for cause, or on the question decided by a majority vote by viva voce, beginning with the junior in rank. Any such ruling shall be final and shall not be subject to appeal or review by the civil courts.

c. Before a vote is taken on the findings, the military judge shall, in the presence of the parties, advise the members of the court that:

1) The accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

2) In the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

3) If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree than when there is no such doubt; and

4) The burden of proof to establish the guilt of the accused beyond unreasonable doubt is upon the prosecution except in cases where the burden is shifted on the defense.

ARTICLE 40. Number of Votes Required. -

a. No person shall be convicted:

1) Of an offense for which the death penalty is made mandatory by law, except by the unanimous vote of all the members of the court-martial;

2) Of any other offense, except by the concurrence of the military judge and another member; *Provided, however,* That the voting required under this subsection shall not apply in cases where the accused is tried by a military judge alone.

b. No person may be sentenced to:

1) death in offenses expressly made punishable by such in these articles or in any other applicable provision of law, except by the unanimous vote of all the members of the court-martial;

2) life imprisonment or confinement for more than six (6) years of any other applicable provision of law, except by the concurrence of the military judge and another member; *Provided, however,* that the voting required under this subsection shall not apply in cases where the accused is tried by a military judge alone.

c. All other questions except interlocutory ones shall be determined by a majority vote, or by the military judge where the accused is tried by a military judge alone.

ARTICLE 41. Court to Announce Action. - A court-martial once it closes to deliberate on its findings and sentence shall not adjourn until its verdict is announced in open court unless, in the court's opinion, good reason exists for not making the finding of guilty and the sentence public at that time. In this latter event, the president may state in open court that the findings and the sentence are not to be announced.

ARTICLE 42. Records of Trial. -

a. Each court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the military judge and the trial judge advocate. If the record cannot be authenticated by the military judge and the trial judge advocate by reason of the death, disability, or absence of either or both of them, it shall be signed by a member in lieu of the military judge and by an assistant trial judge advocate if there be one, in lieu of the trial judge advocate, otherwise, by another member of the court. If the trial is by a military judge alone, the records shall be authenticated by the trial judge advocate or by the assistant trial judge advocate and by the military judge.

b. Every person tried by a court-martial shall, on demand made by himself or by any person in his behalf, be entitled to a copy of the record of trial.

TITLE VII -SENTENCE

ARTICLE 43. Excessive Fines. Cruel and Unusual Punishment Prohibited.

- a. Excessive fines shall not be imposed by any court-martial.
- b. Cruel and unusual punishment of every kind is prohibited.
- c. The use of irons, single or double, except for the purpose of safe custody, is prohibited.
- d. Any fine imposed shall be receipted in the manner as prescribed in Article 37.

ARTICLE 44. *Maximum Limits.* -

a. Whenever the punishment for a crime or offense made punishable by these articles is left to the discretion of the court-martial, the punishment shall not exceed such limit or limits as the President may from time to time prescribe for that crime or offense.

b. In time of peace, the period of confinement in a penitentiary shall in no case exceed the maximum period prescribed by law which, under Article 46, permits confinement in penitentiary, unless in addition to the crime or offense so punishable under such law the accused shall have been convicted at the same time of one or more other crimes or offenses.

c. A person subject to military law convicted by a court-martial but whose sentence does not provide for dishonorable discharge shall in no case be promoted for a period of one year from the time the sentence becomes final and executory.

d. No reduction in any grade shall be allowed for enlisted personnel convicted by a court-martial, unless specifically provided for in the sentence.

e. A court-martial may impose a punishment of reduction in rank in mitigation of a mandatory sentence of dismissal from the service.

ARTICLE 45. *Effective Dates of Sentence.* -

a. Whenever a sentence of a court-martial lawfully adjudged includes a forfeiture of pay and allowances in addition to confinement not suspended, the forfeiture shall apply to all pay and allowances due and to become due on the date such sentence is approved by the convening authority.

b. Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial and the accused shall commence to serve the sentence. For good behavior, the accused who has undergone confinement shall be credited in the service of his sentence consisting of deprivation of liberty with the full time during which he has undergone preventive confinement.

c. All other sentences of court-martial are effective on the date they are ordered executed.

ARTICLE 46. *Execution of Confinement.* -

a. Except for desertion in time of war, repeated desertion in time of peace,

and mutiny, no person under the sentence of court-martial shall be punished by confinement in a penitentiary unless an act or omission of which he is convicted is recognized as an offense of a civil nature and so punishable by penitentiary confinement for more than three (3) years by a law of the Philippines, or by way of commutation of death sentence, and unless, also the period of confinement authorized and adjudged by such court-martial is more than three (3) years.

b. When a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions, any one of which is punishable under these articles by confinement, may be executed in a penitentiary.

c. The penitentiary confinement herein authorized may be served in any penitentiary under the jurisdiction of the Philippines.

d. Persons sentenced to dishonorable discharge and to confinement not in a penitentiary shall be confined in the Armed Forces of the Philippines Custodial Center or elsewhere as the President or the reviewing authority may direct, but not in a penitentiary.

e. The omission of the words "hard labor" from any sentence of a court martial adjudging imprisonment or confinement does not deprive the authority executing such sentence of the power to require hard labor as part of the punishment in any case where it is authorized by regulations prescribing maximum punishments.

f. When the accused who is placed in custody is acquitted, the court shall order his immediate release from confinement, unless he is being held for some other charge.

TITLE VIII - REVIEW OF COURT-MARTIAL PROCEEDING

ARTICLE 47. Effect of Irregularities. The proceedings of a court martial shall not be held invalid nor the findings or sentence disapproved in any case on the grounds of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure, unless in the opinion of the convening or reviewing authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of the accused.

ARTICLE 48. *Disposition of Records.* -

a. After trial by a court-martial the trial judge advocate shall, with dispatch as circumstances may permit, forward the original records of the proceedings of each case to the staff judge advocate or legal officer who shall review and submit his written opinion thereon to the convening authority or to his successor in command or to the officer commanding for the time being.

b. All records of a court-martial proceeding shall, after having been finally acted upon, be transferred to the Judge Advocate General of the Armed Forces of the Philippines for safekeeping.

ARTICLE 49. *Action by the Convening Authority.* -

a. After the judge advocate or legal officer shall have reviewed the record of trial, he shall forward the same to the convening authority. Action thereon may be taken by the officer who convened the court, an officer commanding for the time being, a successor in command, or any officer exercising court-martial jurisdiction.

b. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer convening the court, or by the officer commanding for the time being, or by a successor in command. Unless the convening authority indicates otherwise, his approval of the sentence is approval of the findings and sentence.

ARTICLE 50. Powers Incident to Power to Approve. - The power to approve the sentence of a court-martial includes:

a. The power to approve or disapprove a finding of guilty and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to approve, the evidence on record requires a finding of only the lesser degree of guilt;

b. The power to approve or disapprove the whole or part of the sentence;

c. The power to remand a case for rehearing under Article 52.

ARTICLE 51. Reconsideration and Revision. -

a. If a specification before a court-martial has been dismissed on motion and the finding does not amount to an acquittal, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

b. Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified, without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case however may the record be returned for reconsideration of:

1) An acquittal;

2) A finding of not guilty of any specification, or a ruling thereon which amounts to a finding of not guilty;

3) A finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some other offenses punishable under these articles; or

4) The sentence originally imposed, with a view to increasing it unless such sentence is less than the sentence fixed by law for the offenses upon which the conviction has been had.

c. No court-martial in any proceeding on revision shall reconsider its findings or sentence in any particular case in which return of the record of trial for such reconsideration is herein before prohibited.

ARTICLE 52. Rehearing. -

a. A rehearing shall be had in all cases where errors of law have been committed injuriously affecting the substantial rights of the accused unless in accord with such action, the finding or sentence are approved in part only, or the record is returned for revision, or unless the case is dismissed by the reviewing authority.

b. A rehearing shall take place before a court-martial composed of officers, or officers and enlisted persons, not a military judge or members of the court-martial which first heard the case. Upon such a rehearing, the accused shall not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence shall be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

c. If the reviewing authority disapproves or vacates a sentence the execution of which has not heretofore been duly ordered, he may authorize or direct a rehearing except where there is lack of sufficient evidence in the record to support the findings, or when a rehearing is impractical. If the reviewing authority disapproves the sentence and orders a rehearing, he shall state the reasons for disapproval. If he disapproves the sentence and does not order a rehearing, he shall dismiss the charges

d. If the sentence after the first court-martial is approved, but the accused at the rehearing changes his plea with respect to the charges or specification with which he was found guilty and sentenced as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

ARTICLE 53. Review by the Judge Advocate or Legal Officer. -

a. Each case in which there has been a finding of guilty shall be reviewed by a judge advocate or legal officer, provided he has not acted in the same as an accuser, witness, investigating officer, member of the court, military judge, or otherwise acted on behalf of the prosecution or defense. In such case the review shall be conducted by a judge advocate or legal officer to be designated by the convening authority. The review shall be in writing and shall contain:

1) conclusion as to whether:

a) the court had jurisdiction over the person of the accused and each offense;

b) each charge and specification stated an offense; and

c) the sentence was within the limits prescribed by law;

2) A response to each allegation of error made in writing by Article 27c or directly with the judge advocate or legal officer who reviewed the case

b. The record of trial and related documents in each case reviewed under subsection a hereof shall be sent for action to the convening authority or to the successor in command or whenever impractical to any person exercising court-martial jurisdiction within the command.

c. The reviewing authority may:

- 1) approve or disapprove the findings and/or sentence, in whole or in part;
- 2) remit, commute, or suspend the sentence in whole or in part;
- 3) order a rehearing on the findings or sentence, or on both except where the evidence was insufficient at the trial to support the findings or
- 4) dismiss the charges.

ARTICLE 54. *Suspension of Sentence.* -

a. The convening authority of a court-martial may, at the time of the approval of such sentence or at any time thereafter, while the sentence is being served, suspend whichever is the later. Only one such application for a new trial shall be entertained with respect to any one case.

ARTICLE 55. *Mitigation or Remission of Sentence.* -

a. The power to order the execution of the sentence adjudged by a court martial includes, inter alia, the power to mitigate or remit the whole or any part of the sentence.

b. Any unexecuted portion of a sentence adjudged by a court-martial, including all uncollected forfeitures, may be mitigated or remitted by the convening authority exclusive of penitentiaries and disciplinary barracks of the Armed Forces of the Philippines in which the person under sentence is held.

c. When a sentence of dishonorable discharge has been suspended until the soldier's release from confinement, the execution or remission of any part of his sentence shall, if the soldier be confined in the penitentiary or any barracks thereof, be directed by Chief of Staff, Armed Forces of the Philippines.

d. A sentence, or any part thereof which has been suspended may be remitted or mitigated, in whole or in part, by the officer who suspended the same, except in cases of persons confined in penitentiaries, or by his successor in command, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time.

e. The death or honorable discharge of a person under suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence.

f. The Secretary of National Defense may, for good cause, substitute an administrative form of discharge or dismissal executed in accordance with the sentence of a court-martial.

ARTICLE 56. *Restoration.* -

a. Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or

discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing.

b. If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the Chief of Staff, Armed Forces of the Philippines shall substitute therefore a form of discharge authorized for administrative issuance, unless the accused is to serve out the remainder of his enlistment or reenlistment.

c. If a previously executed sentence of dismissal is not imposed on a new trial, the President shall substitute therefore a form of dismissal authorized for administrative issuance, and the officer dismissed by such sentence may be reappointed by the President to such commission grade and with the rank, as in the opinion of the President such a former officer would have attained had he not been dismissed. The reappointment of such former officer shall be without regard to existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

ARTICLE 57. Finality of Proceedings. Findings and Sentence. – The appellate review of records of trial provided by these Articles, the proceedings, findings and sentence of court-martial as approved, reviewed, or affirmed as required by these Articles, and all dismissals and discharges carried into execution under sentences by court-martial following approval, review, or affirmation as required by these Articles, are final and conclusive. Order publishing the proceedings of court-martial and all actions taken pursuant to those proceedings are binding upon all departments, courts, agencies and officers of the Philippine Government, subject only to action upon petition for new trial and action by the Secretary of National Defense as provided in Article 57 and the authority of the President.

ARTICLE 58. Execution of Sentence. -

a. If the sentence of a court-martial includes death, that part of the sentence providing for death shall not be executed until the same is transmitted to the President who may commute, remit, or suspend the sentence or any part thereof as he sees fit. Otherwise, the sentence shall be executed.

b. If in case of an officer, cadet, or probationary second lieutenant, the sentence of court-martial includes dismissal, that part of the sentence providing for dismissal shall not be executed until approved by the Secretary of National Defense who may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit.

c. If the sentence extends to death, dismissal, or a dishonorable discharge, that part of the sentence extending to death, shall not be executed until there is a final judgment as to the legality of the proceedings, and with respect to death or dismissal, under subsection (a) or (b), as appropriate. A judgment as to the legality of the proceedings is final in such cases when review is completed in accordance with the judgment of the court of Military Appeals and (1) a petition for a writ of certiorari is not filed with the Supreme Court within the time limits; or (2) such petition is rejected by the Supreme Court; or (3) review is otherwise completed in accordance with the judgment of the Supreme Court.

d. Any other part of a court-martial sentence may be ordered executed by the convening authority when approved by the latter.

ARTICLE 59. Review by the Judge Advocate General. -

a. The record of trial in each court martial shall be examined in the Office of the Judge Advocate General, Armed Forces of the Philippines, if the finding of guilty and the sentence, as approved by the convening authority, is:

1) death:

2) confinement for one year or more;

3) confinement for less than one year and the accused appealed to the Office of the Judge Advocate General within fifteen (15) days from receipt of notice of approval of the sentence by the convening authority;

4) dishonorable discharge of an enlisted person; or

5) involves the dismissal of an officer, cadet, or probationary second lieutenant. If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, The Judge Advocate General may vacate, modify, set aside the findings or sentence or both, as the case may be.

b. If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the Judge Advocate General sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If he orders a rehearing, but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

TITLE IX - COURT OF MILITARY APPEALS

ARTICLE 60. *Creation, Appointment and Qualifications of Justices.* -

There is hereby created a Court of Military Appeals which shall consist of a Presiding Justice and five Associate Justices who shall be appointed by the President of the Philippines from civilians who are not less than forty (40) years of age at the time of appointment and engaged in the practice of law in the Philippines for not less than ten (10) years, or held for a like period an office in the Philippine Government service requiring admission to the practice of law in the Philippines as an indispensable requisite or have been for a like period on active military service with the Judge Advocate General's Service of the Armed Forces of the Philippines.

ARTICLE 61. *Precedence in Appointments of Justices* - The Presiding Justice of the Court of Military Appeals shall be so designated in his appointment and the other Justices of the court shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments have been issued by the President of the Philippines.

ARTICLE 62. *Tenure of Office and Removal.* - The Presiding Justice and Associate Justices of the Court of Military Appeals shall hold office during good behavior until they reach the age of seventy (70) years or become incapacitated to discharge their duties. They may be removed by the President of the Philippines, upon notice and hearing, for neglect of duty or malfeasance in Office or for mental or physical disability, but for no other cause.

ARTICLE 63. *Sitting of Court.* - The Court of Military Appeals, shall as a body, sit en banc, but it may sit in two divisions of three Justices each. The two- (2) divisions may sit at the same time. If the Presiding Justice is present in any sessions of the court, whether en banc or in division, he shall preside. In his absence, the Associate Justice attending who is first in precedence in accordance with Article 63 shall preside.

ARTICLE 64. *Filling of Vacancy in Office of Presiding Justice.* - In case of a vacancy in the Office of the Presiding Justice of the Court of Military Appeals, or in the event of his inability to perform the duties and functions of his office, they shall devolve upon the Associate Justice who is first in precedence, until such disability is removed, or another Presiding Justice is appointed and has qualified. This provision and the provision of Article 63 shall apply to every Associate Justice who succeeds to the Office of the Presiding Justice.

ARTICLE 65. *Filling of Vacancy in Office of Associate Justices* - In case of vacancy in the Office of any one of the Associate Justices of the Court of Military Appeals, or in the event that any one of said Associate Justices is absent, or disabled, or incapacitated for any reason, to perform the duties and powers of his office, the President of the Philippines, upon request of the Presiding Justice of the Court of Military Appeals and upon recommendation of the Chief Justice of the Supreme Court may an Executive Judge of the Regional Trial Court to sit temporarily in the Court of Military Appeals, until such disability is removed or the vacancy is permanently filled.

ARTICLE 66. *Rank. Salary and Benefits of Justices.* - The Presiding Justice and Associate Justices of the Court of Military Appeals shall have the same rank and receive the salary, emoluments, retirement and benefits corresponding to those of the Presiding Justice and Associate Justices of the Court of Appeals of the Philippines, respectively.

ARTICLE 67. *Jurisdiction.* - The Court of Military Appeals shall have jurisdiction to review the record in all cases:

a. In which the sentence, as affirmed by the Judge Advocate General, extends to death, confinement for one year or more, dishonorable discharge of an enlisted person;

b. In which the sentence involves the dismissal of an officer, cadet, probationary second lieutenant;

c. In which the Judge Advocate General has elevated the same to the Court of Military Appeals for review;

d. In which after review by the Judge Advocate General a petition is filed by the accused with the Court of Military Appeals within sixty (60) days from receipt of notice of the review of the Judge Advocate General and upon good cause shown, the Court of Military Appeals has granted a review on the case.

ARTICLE 68. *Review of Decision of Judge Advocate General.* – The accused may petition the Court of Military Appeals for a review of the decision of the Judge Advocate General within sixty (60) days from (a) the date on which the accused is notified of such decision or (b) the date on which a copy of the decision of the Judge Advocate General, after a copy thereof is served on the appellate counsel of record, if any is deposited in the Philippine mails for delivery by first class certified mail to the accused or counsel at an address provided by the accused *or* counsel, or if no such address has been provided by the accused or counsel, at the latest address listed for the accused in his official service record or that of counsel as appearing in the record. The court of Military Appeals shall act upon such petition promptly in accordance with the rules of said court.

ARTICLE 69. *Findings and Sentence or Issues to be reviewed.* - In any case reviewed by it, the Court of Military Appeals may act only with respect to the findings and sentence as approved by the convening authority, and as affirmed or set aside as inappropriate by the Judge Advocate General. In cases sent by The Judge Advocate General to the Court of Military Appeals, the review shall be limited to the issues raised by him. In the review cases granted upon petition of the accused, action need be taken only with respect to issues specified in the grant or review. The Court of Military Appeals shall review both questions of fact and law, irrespective of the penalty involved, especially in cases where the appeal is initiated by the accused: Provided, that where the sentence imposed is death or life imprisonment, the petition shall be immediately sent to the Supreme Court for review in accordance with Article 74.

ARTICLE 70. *Setting Aside of Findings and Sentence and Ruling.* - If the Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

ARTICLE 71. *Return of Record.* - After it has acted on a case, the Court of Military Appeals shall return the records of the case to The Judge Advocate General for any implementation of the decision of the Court, and unless there is further action to be taken by the President or the Secretary of National Defense, The Judge Advocate General shall advise the convening authority to take action in accordance with that decision. If the Court ordered a rehearing, but the convening authority finds a rehearing impracticable the latter may dismiss the charges.

ARTICLE 72. *Petition for Review on Certiorari.* - The accused may file with the Supreme Court a petition for review on certiorari of a decision of the Court of Military Appeals. Such review shall be limited to questions of law which shall be directly set forth in the petition and shall be governed by the provisions of the Revised Rules of Court prescribing the procedure for appeals from the Court of Appeals to the Supreme Court: Provided, that where the sentence

imposed is death or life imprisonment, the review may be on questions of fact and of law.

ARTICLE 73. *Place of Session.* - The Court of Military Appeals shall hold its session in Metropolitan Manila. Whenever the public interest so requires, and upon approval of the Presiding Justice, any division may hold its sessions in any other place within the Philippines.

b. The Court of Military Appeals may appoint three Deputy Clerks of Court who shall have the same qualifications and annual compensations as that of the first deputy and second deputy and third deputy clerks of the Court of Appeals. The Court of Military Appeals may appoint other officers and employees in such number and with such compensations as may be hereafter authorized.

ARTICLE 74. *Department Head Functions of Presiding Justice.* The functions of Department Head for the Court of Military Appeals and its subordinates shall be exercised by the Presiding Justice, or in case of his death, absence, or disability, by the Associate Justice on duty who holds the senior appointment.

ARTICLE 75. *Administrative Control and Removal of Employees.* The Court of Military Appeals shall have exclusive administrative control of all matters affecting the internal operations of the Court. Except as regards the appointment and compensation of the private secretaries and assistants to the individual Justices as the Court may authorize, all subordinates and employees of the Court of Military Appeals shall be governed by the provisions of the Civil Service Law.

ARTICLE 76. *Attendance of Sheriff in Session and Authority.* - The Sheriff of the City or of the province where the Court of Military Appeals may be in session shall, in person or by deputy, attend the sessions of the Court of Military Appeals, enforce proper decorum in the court room, and preserve good order. To this end, he shall carry into effect the rules or order of the Courts made in his behalf, of any Justice thereof and shall arrest any person there disturbing the court or violating the peace.

ARTICLE 77. *Service of Processes by Sheriff.* Writs, processes, and orders of the Court of Military Appeals, or of any Justice thereof shall be served or executed by the sheriff of the City or of the province where the Court of Military Appeals may be in session, or by any officer having authority to execute the writs, processes, or orders of a Regional Trial Court.

ARTICLE 78. *Opinion Book.* -When a decision is rendered by the Court of Military Appeals, a written opinion or memorandum containing the ground and scope of receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment is an accessory after the fact and shall be punished as a court martial may direct.

ARTICLE 79. *Conviction of a Lesser Included Offense.* - An accused may be found guilty of an offense necessarily included in the offense charged or

of any attempt to commit either the offense charged or an offense necessarily included therein.

ARTICLE 80. Attempts. -

a. Any person subject to military law who conspires with any person to commit an offense punishable by these articles shall be punished as a court-martial may direct, unless a penalty is otherwise specifically prescribed therefor.

b. An act done with specific intent to commit an offense under these articles, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit the offense.

ARTICLE 81. Conspiracy. - Any person subject to military law who conspires with any person to commit an offense punishable under these articles shall, if one or more of the conspirators does an act to effect the object of the conspiracy, shall be punished as a court-martial may direct.

ARTICLE 82. Solicitation. -

a. Any person subject to military law who solicits or advises another or others to desert in violation of Article 96 or to commit mutiny in violation of Article 105 shall, if the offense solicited or advised is committed, be punished for the offenses so committed, but if the offense solicited or advised is not committed or is merely attempted, he shall be punished as a court-martial may direct.

b. Any person subject to military law who solicit or advises another or others to commit an act of misbehavior before the enemy in violation of Article III, or sedition in violation of Article 105 shall, if the offense solicited or advised is committed be punished for the offense committed, but if the solicited is not committed, he shall be punished as a court-martial may direct.

ARTICLE 83. Fraudulent Enlistment, Appointment, Separation or Retirement. - Any person who produces his own enlistment or appointment in the military service of the Philippines by willfully making false representation or deliberate concealment as to his qualification for enlistment or appointment and receives pay or allowances thereunder; or procures his own separation or retirement therefrom by knowingly making false representation or deliberate concealment as to his eligibility for that separation or retirement, shall be punished as a court-martial may direct.

ARTICLE 84. Unlawful Enlistment, Appointment. Separation or Retirement. - Any person subject to military law who, effect an enlistment or appointment in or a separation or retirement from the military service of any person known to him to be ineligible for that enlistment, appointment, separation or retirement because it is not authorized by law, regulation, or order shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

ARTICLE 85. Making False Returns or Omitting to Render Returns. -

a. Every officer whose duty is to render to the headquarters of his command or unit, to higher headquarters, or to other superior authority a return of the state of the troops under his command, or of the arms, ammunition, clothing, funds or other property thereunto belonging, who knowingly makes a false return thereof, shall be dismissed from the service or suffered such other punishment as a court-martial may direct.

b. Any officer who, through neglect or design, omits to render such return, shall be punished as a court-martial may direct.

ARTICLE 86. *Desertion.* -

a. Any member of the Armed Forces of the Philippines on active duty who:

(1) without authority, goes or remain absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; or

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or shirk important services, or

(3) without being regularly separated from the Armed Forces of the Philippines enlists or accepts an appointment in the Armed forces of another country without fully disclosing the fact that he has not been regularly separated therefrom except when authorized by the Republic of the Philippines, is guilty of desertion.

b. Any officer who, after tendering of his resignation or request for his reversion from active duty, and before due notice of its acceptance or approval, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

c. Any person found guilty of desertion or attempt to desert shall be punished, if the offense were committed in time of war, by death or such other punishment as a court-martial.

ARTICLE 87. *Advising, Persuading or Assisting Another to Dessert.* -

Any person subject to military law who advises or persuades, or knowingly assists another to desert the services of the Armed Forces of the Philippines shall be punished, if the offense is committed in time of war, by life imprisonment. If the offense is committed at any other time, the offender shall be punished as a court-martial may direct.

ARTICLE 88. *Entertaining a Deserter.* - Any officer who, after having discovered that a military person in his command is a deserter from the military service, retains such deserter in his command without informing superior authority or the commanding officer of the organizer shall be punished as a court-martial may direct.

ARTICLE 89. *Absence Without Leave.* - Any member of the Armed Forces of the Philippines on active duty who, without authority fails to go to his appointed place of duty at the time prescribe; goes out of place; absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed; through neglect or design misses the

movement of a ship, aircraft, or unit with which he is required in the course of duty to move, shall be punished a court-martial may direct.

ARTICLE 90. Contempt Towards Superior Officer. - Any officer who uses contemptuous or disrespectful words against and in the presence of the President, the Vice-president, Members of Congress or the Secretary of National Defense shall be guilty of direct contempt and may be dismissed from the service or suffer such other punishment as a court-martial may direct. However, when the contemptuous or disrespectful words against the said government officials mentioned herein are uttered in their absence the same shall be considered as indirect contempt and shall be punished as a court-martial may direct.

ARTICLE 91. Disrespect Towards Superior Officer. - Any person subject to military law who behaves with disrespect to any superior officer shall be punished as a court-martial may direct.

ARTICLE 92. Assaulting or Willfully Disobeying a Superior Officer. - Any person subject to military law who, on any pretense whatsoever:

a. strikes his superior officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

b. willfully disobeys any lawful command of his superior officer, shall be punished, if the offense is committed in time of war, by life imprisonment and if the offense is committed at any other time, by such other punishment, as a court-martial may direct.

ARTICLE 93. Insubordinate Conduct Towards Non-Commissioned Officer. - Any soldier who strikes or assaults, or who attempts or threatens to strike or assaults, a non-commissioned officer while the latter is in the execution of his office, or treats with contempt or is disrespectful in language or deportment toward a non-commissioned officer while the latter is in the execution of his office shall be punished as a court martial may direct.

ARTICLE 94. Failure to Obey Order or Regulation. - Any person subject to military law who violates or fails to obey any lawful general order or regulation; having knowledge of any other lawful general order issued by a member of the Armed Forces of the Philippines, which is his duty to obey, fails to obey the order; or is derelict in the performance of his duties, shall be punished as a court-martial may direct.

ARTICLE 95. Giving Illegal Order. - Any person subject to military law who shall knowingly give illegal order or one in violation of law or regulations to persons under his command shall be punished as a court-martial may direct.

ARTICLE 96. Mutiny or Sedition. -

a. Any person subject to military law who, with intent to usurp or override military authority, refuses, in concert with any other persons, to obey order or

otherwise do his duty or creates any violence or disturbance shall be liable for mutiny and punished by life imprisonment:

b. Any person subject to military law who, intent to cause the overthrow or destruction of lawful civil authority creates, in concert with any other person, revolt, violence, or other disturbance against that authority shall be liable for sedition and shall be punished by life imprisonment;

c. Any person subject to military law, who fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place shall be liable for such failure to suppress or report a mutiny or sedition and shall be punished by life imprisonment or such other penalty as a court-military may direct:

d. Any person who is found guilty of attempt mutiny, sedition or failure to suppress or report a mutiny or sedition shall be punished by life imprisonment or such other penalty as a court-martial may direct.

ARTICLE 97. *Resistance, Breach of Arrest and Escape.* - Any person subject to military law who breaks his arrest or escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, or resists lawful apprehension, shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

ARTICLE 98. *Releasing Prisoner Without Proper Authority.* - Any person subject to military law who, without proper authority, release any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct whether or not the prisoner was committed in strict compliance with law.

ARTICLE 99. *Unlawful Detention.* - Any person subject to military law who, unlawfully apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

ARTICLE 100. *Dereliction of Duty in the Apprehension, Delivery or Custody of Military Offenders. Answerable to the Civil Authorities.* - Any commanding officer who refuses or willfully neglects, except in time of war, to discharge the duties prescribed in Article 9 shall be dismissed from the service or suffer such other punishment as a court -martial may direct.

ARTICLE 101. *Misbehavior Before the Enemy.* - Any person subject to military law who, before or in the presence of the enemy, commits any of the following, shall be punished by life imprisonment or such other punishment as a court martial may direct.

a. runs away;

b. shamefully abandons, surrenders, or delivers up any command, unit, place or military property which it is his duty to defend;

c. through disobedience, neglect, or intentional misconduct, endangers the safety of any such command, unit, place or military property;

d. casts away his arms or ammunition;

e. quits his place of duty to plunder or pillage;

f. causes false alarm in any command, unit or place under control of the Armed Forces of the Philippines;

g. willfully fails to do his utmost to encounter, engage, capture, or destroy any troops, combatants, vessels, aircraft, or any other thing, which it is his duty to encounter, engage, capture, or destroy;

h. does not afford all practical relief and assistance to any troops, combatants, vessels, or aircraft of the Armed Forces of the Philippines and/or friendly forces when engaged in battle: and

i. solicits or advises another or others to commit an act of misbehavior before the enemy in violation of these Articles.

ARTICLE 102. Subordinate Compelling Commander to Surrender. –

Any person subject to military law who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of the Armed Forces of the Philippines and/or friendly forces to give it up to an enemy or to abandon it, or who delivers or surrenders the colors or flag to an enemy without proper authority, shall be punished by life imprisonment or such other punishment as a court-martial may direct.

ARTICLE 103. *Improper Use of Countersign.* - Any person subject to military law who, in time of war or serious disturbance of the peace, discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign, a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by life imprisonment or such other punishment as a court-martial may direct.

ARTICLE 104. *Violating a Safeguard.* - Any person subject to military law who in time of war or serious disturbance of the peace, violates a safeguard shall suffer life imprisonment or such other punishment as a court-martial may direct.

ARTICLE 105. *Captured or Abandoned Property.* -

a. All persons subject to military law shall secure all public property taken from the enemy for the service of the Republic of the Philippines, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control;

b. Any person subject to military law, who fails to carry out the duties prescribed in subsection a; Buys, sells, trades, or in any way deals in or disposes captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself; or engages in looting or pillaging, shall be

punished by fine or imprisonment, or both, or by such other punishment as a court-martial may direct.

ARTICLE 106. *Aiding the Enemy.* - Any person subject to military law who aids, or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds or holds any intercourse with the enemy, either directly or indirectly, shall suffer life imprisonment or such punishment as a court-martial may direct.

ARTICLE 107. *Misconduct as Prisoner.* - Any person subject to military law who, while in the hands of the enemy for the purpose of securing favorable treatment from his captors, acts without proper authority in a manner contrary to law, customs, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or while in a position of authority over such persons maltreats them without justifiable cause, shall be punished as a court-martial may direct.

ARTICLE 108. *Spy.* - Any person who, in time of war, is found lurking as a spy in or about any place, vessel or aircraft within the control or jurisdiction of the Armed Forces of the Philippines; or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the republic of the Philippines, or elsewhere, shall be tried by a court-martial and upon conviction shall be punished by life imprisonment.

ARTICLE 109. *False Official Statement.* -

a. Any officer who, with intent to deceive, signs any false record, return, regulations, orders, or other official document knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

b. Any other person subject to military law who commits any of the acts enumerated in the preceding subsection shall be punished as a court-martial may direct.

ARTICLE 110. *Military Property - Loss, Damage, Destruction, Wrongful Disposition or Sale to the Enemy.* Any person subject to military law who without proper authority, sells or otherwise disposes of, or willfully or through neglect, destroys, or loses or causes damage to, or willfully or through neglect suffers to be lost, spoiled, damaged, destroyed, sold or wrongfully disposed of, any military property of the Republic of the Philippines, shall make good the loss or damage and suffer or such punishment as a court-martial may direct. If the military property in the above paragraph is a firearm, ammunition, explosive or other military ordnance, and is sold, or caused to be sold, to the enemy, the penalty shall be life imprisonment.

ARTICLE 111. *Property other than Military Property of the Philippines*
- Waste, or Destruction. - Any person subject to military law who willfully or

recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the Republic of the Philippines shall be punished as a court-martial may direct.

ARTICLE 112. *Improper Hazarding of Military Vehicle, Aircraft or Vessel.* -

a. Any person subject to military law who willfully and wrongfully hazards or suffers to be hazarded any vessel, vehicle or aircraft of the Armed Forces of the Philippines shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

b. Any person subject to military law who negligently hazards or suffer to be hazarded any vehicle, aircraft or vessel of the Armed forces of the Philippines shall be punished as a court-martial may direct.

ARTICLE 113. *Drunken or Reckless Driving.* - Any person subject to military law who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as court-martial may direct.

ARTICLE 114. *Drunk on Duty.* - Any person subject to military law who is found drunk on duty shall, if the offense is committed in time of war, shall be dismissed from the service or suffer such other punishment as a court-martial may direct. If the offense be committed at any other time, he shall be punished as a court-martial may direct. The execution, in whole or in part, of any such sentence, including all uncollected forfeitures, except that a death sentence shall not be suspended.

b. The power to suspend a sentence includes the power to restore the person affected to duty during such suspension.

c. No sentence approved or confirmed by the President shall be suspended by any other authority.

ARTICLE 115. *Lifting of Suspension* -

a. Before lifting the suspension of a sentence as approved the officer having court-martial jurisdiction over the suspendee shall order a summary hearing on the reported violation of the terms of the suspension of sentence. The suspendee shall be allowed to submit evidence in support of his request for the continuation of the suspension of his sentence.

b. If the officer exercising court-martial jurisdiction lifts the suspension, any unexecuted part of the sentence, except dismissal, shall be executed, subject to applicable restrictions in Article 57 (c). The lifting of the suspension of dismissal is not effective until approved by the President.

c. The suspension of any other sentence may be lifted by any authority competent to convene a court-martial for the command in which the accused is serving or assigned.

ARTICLE 116. *Petition for a New Trial.* - At any time within two (2) years

after approval by the convening authority of a court-martial sentence but before its execution the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the case of the accused is pending before the Court of Military Appeals, the Judge Advocate General shall refer the petition to said court. Otherwise the Judge Advocate General shall act upon the petition. With regard to cases involving offenses committed during time of war, the application for new trial may be made within one (1) year after the termination of the war as proclaimed by the President or by a joint resolution of Congress, or within two (2) years after approval by the convening authority of the sentence, as herein provided, the judgment of the court shall be filed with the Clerk of the Court and shall be by him recorded in an Opinion Book.

ARTICLE 117. Appellate Counsel. -

a. The Judge Advocate General shall detail one or more commissioned officers as appellate government counsel and one or more commissioned officers as appellate defense counsels who are qualified under Article 17.

b. The Appellate Government Counsel shall represent the Republic of the Philippines before the Court of Military Appeals when directed to do so by The Judge Advocate General. He shall also represent the Republic of the Philippines before the Supreme Court of the Philippines when requested to do so by the Solicitor General.

c. The Appellate Defense Counsel shall represent the accused before the Court of Military Appeals or the Supreme Court of the Philippines when the accused is a party in the case before such court and (1) the accused requests to be represented by the Appellate Defense Counsel; and 2) The Judge Advocate General has sent the case to the Court of Military Appeals. The accused is a party in the case when named as a party in the pleadings before the Court or, even not so named, when the military judge or any member of the court-martial is named as respondent in a petition by the Government for any extra ordinary relief.

TITLE X - PUNITIVE ARTICLES

ARTICLE 118. Principal. -Any person subject to military law who:

a. commits an offense punishable by these Articles or aids, abets, counsels, commands, or procures its commission; or

b. Causes an act to be done, which if directly performed by him would be punished under this article as a principal.

ARTICLE 119. Accomplice. - Any person subject to military law who, not being included in Article 85, in the execution of the offense by previous or simultaneous acts would be punished under these articles as an accomplice.

ARTICLE 120. Accessory After the Fact. - Any person subject to military law who, knowing that an offense punishable by these articles has been committed,

ARTICLE 121. Quorum and Vote for Pronouncement of Judgment. –

Five Justices of the Court of Military Appeals shall constitute a quorum for its sessions en banc, and three (3) Justices shall constitute a quorum for the sessions of a division. In the absence of a quorum, the Court or the division shall stand ipso facto adjourned until such time as the requisite number shall be present, and a memorandum showing this fact shall be entered by the clerk in the minutes of the Court. The affirmative vote of five Justices is necessary to pass a resolution of the Court en banc. The unanimous vote of the three Justices of a division shall be necessary for the pronouncement of a judgment. In the event that the three (3) Justices do not reach a unanimous vote, the Presiding Justice shall designate two (2) Justices from among the other Justices of the court to sit temporarily with them, forming a division of five (5) Justices and the concurrence of a majority of such division shall be necessary for tie pronouncement of a judgment.

ARTICLE 122. Power to Promulgate Rules. - The Court of Military Appeals, sitting en banc, shall promulgate its own rules to govern the procedure in the court and the allotment of cases between the divisions, the regular rotation of Justices between them, and other matters relating to the business of the Court; and these rules shall continue in force until repealed or altered by it.

ARTICLE 123. Appointment, Qualifications and Compensation of Clerks of Court, and Compensation of other Officers and Employees. -

a. The Court of Military Appeals shall appoint a clerk of court, who shall exercise the same powers and perform the same duties in regard to all matters within its jurisdiction, as are exercised and performed by the clerk of the Supreme Court of the Philippines, insofar as the same may be applicable; and in the exercise of those powers and in the performance of those duties, the clerk shall be under the direction of the Court. No person may be appointed clerk of the Court of Military Appeals unless he has been engaged for five (5) years or more in the practice of law, or has been clerk or deputy clerk of a court of record for the same period of time. The clerk of Court shall receive the same annual compensation as of that of the Court of Appeals.

ARTICLE 124. Misbehavior of Sentinel. - Any sentinel or lookout who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by life imprisonment or such other punishment, as a court-martial may direct. If the offense is committed at any other time, the offender shall be punished as a court-martial may direct.

ARTICLE 125. Personal Interest in Sale of Provision. - Any officer commanding any garrison, fort, barracks, camp or other place where troops of the Republic of the Philippines may be serving who, for his private advantage, levies any duty or imposition upon or is interested, directly or indirectly, in the sale of any victuals or other necessaries of life brought into such garrison, fort, barracks, camp or place for the use of troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

ARTICLE 126. Intimidation of Person Bringing Provisions. - Any person subject to military law who abuses, intimidates, does violence to, or

wrongfully interferes with any person bringing provisions, supplies or other necessaries to the garrison, fort, barracks, camp or other place where troops of the Republic of the Philippines may be serving, shall suffer such punishment as a court-martial may direct.

ARTICLE 127. *Dueling.* - Any person subject to military law who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct.

ARTICLE 128. *Malingering.* - Any person subject to military law who, for the purpose of avoiding work, duty or service, feigns illness, physical disablement, mental lapse or derangement; or intentionally inflicts self-injury, shall be punished as a court-martial may direct.

ARTICLE 129. *Good Order to be Maintained and Wrongs Redressed.* - All persons subject to military law are to behave themselves orderly in quarters, garrison, camp and on the march; and any person subject to military law who commits any waste or spoiling, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot, or breach of the peace, shall be punished as a court-martial may direct. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation as provided for in Article 142, shall be dismissed from the service, or otherwise punished as a court martial may direct.

ARTICLE 130. *Provoking Speeches or Gestures.* - Any person subject to military law who uses any provoking or reproachful words or gestures toward any other person subject to military law shall be punished as a court-martial may direct.

ARTICLE 131. *Command Responsibility.* - Any commanding officer who refuses to act or delays action on a valid complaint against a person under his command, or refuses or delays to impose a disciplinary punishment when warranted by the evidence, or otherwise aids or abets the wrongdoing of a subordinate, shall be subject to action under Article II or punished as a court-martial may direct.

ARTICLE 132. *Unlawfully Influencing Action of Court.* -

a. Any authority convening a court-martial or any other commanding officer who shall censure, reprimand, or admonish the court or any member thereof, with respect to the findings or sentence adjudged by the court-martial or with respect to any other exercise of its or his functions in the conduct of the proceeding, shall be punished as a court-martial may direct.

b. Any person subject to military law who shall attempt to coerce, harass or, by any means, unlawfully influence the action of a court-martial or any other member thereof, in reaching the findings or sentence or conclusions in any case,

or the action of any convening, approving, reviewing, authority with respect to its or his judicial acts, shall be punished as a court-martial may direct.

ARTICLE 133. *Murder or Rape in Time of War.* - Any person subject to military law who commits murder or rape as defined in the Revised Penal Code in time of war shall suffer life imprisonment as a court-martial may direct.

ARTICLE 134. *Various Crimes.* - Members of the Armed Forces of the Philippines and other persons subject to military law who commit crimes or offenses penalized under the Revised Penal Code, other penal laws or local government ordinances, regardless of whether or not civilians are co-accused or offended parties, which may be natural or juridical persons, shall be tried by the proper civil court, except when the offense, as determined before arraignment by the Judge Advocate General, is service connected, in which case, the offense shall be tried by a court-martial. Violations of Articles 91 to 134 and Articles 136 to 138, commonly known as purely military offenses, shall be exclusively tried by court-martial.

ARTICLE 135. *Frauds Against the Government.* - Any person subject to military law who commits any of the following acts shall, upon conviction, be punished by fine or imprisonment, or by such other punishment as a court-martial may direct, or by any or all of said penalties.

a. Makes or causes to be presented to any person in the civil or military service thereof, for approval or payment any claim against the Government, or any officer thereof, knowing such claim to be false or fraudulent;

b. Enters into any agreement or conspiracy to defraud the Government by obtaining, or aiding others to obtain the allowance or payment of any false or fraudulent claim;

c. For the purpose of obtaining, or aiding others to obtain the approval, allowance, or payment of any claim, against the Government or any officer thereof, knowing such claim to be false or fraudulent;

d. For the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the Government or any officer thereof, makes or procures, or advises the making of, any fact or to any writing or other paper knowing such oath to be false;

e. For the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the Government or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures or advises the use of any such signature, knowing the same to be forged or counterfeited;

f. Having charge, possession, or control of any money or other property of the Government furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than for which he receives a certificate or receipt;

g. Being authorized to make or deliver any paper certifying the receipt of any property of the government furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full

knowledge of the truth of the statements therein contained and with intent to defraud the Government;

h. Steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit or wrongfully or knowingly sells or disposes of any ordinance, arms, equipment, ammunition, clothing, subsistence stores, money, or other property of the Government furnished or intended for the military service thereof;

i. Knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is part of or employed in the Armed Forces of the Philippines, any ordinance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the government, such soldier, officer, or other person not having lawful right to sell or pledge the same; and

k. Enters into any agreement or conspires to commit any of the offenses aforesaid.

ARTICLE 136. *Conduct Unbecoming of an Officer and a Gentlemen.* – Any officer, cadet, or probationary second lieutenant who is convicted of conduct unbecoming of an officer and a gentleman shall be dismissed from the service.

ARTICLE 137. *General Article.* - Though not specifically mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline and all conduct of a nature to bring discredit upon the Armed Forces of the Philippines and crimes and offenses not capital which persons subject to military law may commit, shall be punished as a court-martial may direct taking into consideration the nature and degree of the offense.

TITLE XI - MISCELLANEOUS PROVISIONS

ARTICLE 138. *Article to Administer Oaths.* - The following officers on active duty in the Armed Forces of the Philippines shall have authority to administer oaths for the purposes of military justice and for other purposes of military administrations:

- a. All judge advocates and legal officers;
- b. The president, members, military judge, trial judge advocate, and assistant trial judge advocate of court-martial;
- c. The president or chairman of a military board;
- d. All officers designated to take a deposition;
- e. All officers detailed to conduct an investigation;
- f. All adjutants and assistant adjutants; and
- g. All administrative officers; and

h. All officers designated by regulations of the Armed Forces of the Philippines and by statute.

ARTICLE 139. *Articles to be Explained.* - Articles 3, 4, 6, 11, 15, 17, 21, 27, 44, 85 to 138 and 140 to 142 shall be carefully read and explained to soldiers at the time of his enlistment, reenlistment or entrance on active duty, or within six (6) days thereafter, and shall be read and explained once every six (6) months to soldiers of every garrison, regiment, or company in the service of the Philippines.

ARTICLE 140. *Complaints of Wrongs.* - Any member of the Armed Forces of the Philippines on active duty who believes himself wronged by his commanding officer, and who upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising court-martial jurisdiction shall examine the complaint and take proper measures for redressing the wrong complained of, and he shall, as soon as possible, send to the Chief of Staff of the Armed Forces of the Philippines a true statement of that complaint, with the proceedings had thereon.

ARTICLE 141. *Redress of Damage to Property.* -

a. Whenever complaint is made to any commanding officer that a damage has been done to the property of any person or that of his property has been wrongfully taken by persons subject to military law, he may, subject to such regulations as the President may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three officers and, for the purpose of that investigation it shall have the power to summon witnesses and examine them upon oath and affirmation, to receive deposition or other documentary evidence, and to assess damages sustained against the responsible parties. The assessment of damages made by such board is subject to the approval of the commanding officer in the amount approved by him and shall be charged against the pay of the offenders. The order of the commanding officer directing the charges herein authorize is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

b. If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be deemed just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted as determined by the approved findings of the board.

ARTICLE 142. *Officers, Separation from the Service.* - No officer shall be dismissed from the service except by order of the President or by sentence of a court martial; and in time of peace, no officers shall be dismissed except in pursuance of the sentence of a court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Armed Forces of the Philippines, any officer who had been absent from duty without leave for at least three months or who had been absent in confinement in a prison or penitentiary for at least three months after conviction by a court of competent jurisdiction.

ARTICLE 143. *Soldiers - Separation from the Service.* - No enlisted personnel in the military service of the Armed Forces of the Philippines shall be discharged from said service before his term of service has expired, except by order of the president, the Chief of Staff, and the commanders of the Major Services or by sentence of a court-martial. The authority of the President, the Chief of Staff and Commanders of the Major Services to order the discharge of an enlisted personnel may be delegated by administrative regulation.

ARTICLE 144. *Constitutionality.* - If for any reasons or reason, any part of this Act shall be held to be unconstitutional or invalid, other parts hereof which are not affected thereby shall continue to be in full force and effect.

ARTICLE 145. *Transitory Provisions.* - All offenses committed and all penalties, forfeitures, fines or liabilities incurred prior to the effective date of this Act under any law embraced in or modified, changed or repealed by this Act shall be prosecuted, punished, and enforced, and action thereon completed, in the same manner and with the same effect as if this Act had not been passed. However, if the penal provisions for an offense under this Act are more favorable or less severe to the offender than those in force at the time the offense was committed, and such offense is pending prosecution at the time the corresponding provisions of this Act take effect, or is prosecuted after such provisions take effect, the more favorable or less severe provisions of this Act shall apply in the prosecution and punishment of that offense.

ARTICLE 146. *Applicability.* - Provisions of this Act which attach a penalty or deprivation of rights to acts or omissions which were not so penalized by the former laws, are not applicable to those who, when said laws were in force, may have executed the act or incurred the omission forbidden or condemned by this Act.

However, if a continuing repeated act or omission shall have commenced before the date this Act comes into effect and the same subsists, is maintained or repeated after the applicable provisions of this Act have become operative, the sanction or penalty prescribed in this Act shall be applied, even though the previous laws may not have provided any sanction or penalty therefor.

ARTICLE 147. *Repealing Clause.* - All laws, presidential decrees, issuances, executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly. Subject to the provisions of Article 147, any substantive rights or liabilities existing under such laws or parts thereof prior to the effective date of this Act shall not be affected by this repeal and this Act shall not be effective to authorize the trial or punishment for any crime or offense barred by the provisions of existing law.

ARTICLE 148. *Appropriation of Funds.* - For the purpose of this Act, an initial amount of fifty million pesos or so much thereof as may be necessary is hereby appropriated out of any funds in the National Treasury not otherwise appropriated to cover the salaries of the Presiding Justice and five Associate Justices, the clerk of court and deputy clerks of court, other officers and employees, and other expenses of the Court of Military Appeals, and thereafter,

the aforesaid amount or so much thereof as may be necessary will be included in the Annual General Appropriations Act.

ARTICLE 149. Effectivity. - This Act shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation. The publication shall not be later than seven (7) days after the approval thereof.

Approved,