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# MILITARY LAW

**CAPTAIN TO MAJOR WRITTEN PROMOTION EXAMINATION**  
**DIRECT REGULAR COMMISSION OFFICERS**

Prepared under the direction of

**Chief of Army Staff**

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**MILITARY LAW**  
**THE NIGERIAN CONSTITUTION**

**INTRODUCTION**

1. Every military officer and soldier should be familiar with the Nigerian Constitution. This is so because first, he should be more enlightened than the average citizens with whom he would have to interact in the performance of his job. Second, as a law enforcement agent he should know the extent and limits of his powers so that he can avoid becoming a victim of the law and perform his duties effectively. The essence of military law in the NA is to promote good order, high morale and discipline through the administration of military justice.

2. This topic will generally lead to the source of military law and their relation to the Constitution. Only the essential aspects of this subject are brought out. The candidate is expected to read the subject in detail in other manuals, including the references referred to in this chapter.

**OBJECTIVES**

3. The candidate is expected to understand the following at the end of this chapter:

- a. The meaning and nature of Constitution.
- b. The status of the 1999 Constitution.
- c. The sources of military law.
- d. The legal status of a soldier.

**THE MEANING AND NATURE OF CONSTITUTION**

4. A Constitution is a document having a special legal sanctity which sets up the framework of the principles or main organs of a state and declares the principles governing the operation of these organs. It can also be defined as a codified legal document, spelling out the organs and departments of government, the status, rights and obligation of citizens as well as the machinery and procedure of general administration of government. It is a documentary will of a people to

which it relates.

5. A country may either have a written or unwritten constitution. A constitution is said to be unwritten when the constitution of that country cannot be found in one single document. This is a feature of the British Constitution. In Britain, it is extremely difficult to point to a single document as the Constitution. Although, Britain operates an unwritten constitution, a large part of her constitution is based on statutes. A Constitution is said to be written where there is a particular or single document one can refer to as the Constitution. This is a characteristic of American and Nigerian Constitutions. In a country with a written constitution, such document is the most authoritative legal document on which the legality of other laws is based. The Constitution is often referred to as "The Grand Norm". The common features of a written and an unwritten Constitution are rigidity and flexibility respectively.

### **THE STATUS OF THE 1999 CONSTITUTION**

6. The basic features of a written Constitution is its supremacy over every other law in a state. It is instructive to note that Nigeria operates a written Constitution with all its accompanied characteristics. The status of the 1999 Constitution is its supremacy over other laws in the country. The preamble to the 1999 Constitution provides that "We the people of the Federal Republic of Nigeria...". This weighty statement can be interpreted to mean that the Constitution was not ordained by the National Assembly and House of Assembly of the states, but by the people of the Federal Republic of Nigeria. Thus, in Section 1 (1), the supremacy clause reads "this Constitution is supreme and its provisions shall have a binding force on all authorities and persons throughout the Federal Republic of Nigeria".

7. This supremacy clause of the Constitution could therefore be interpreted further as the legal backing from which the Constitution derives its powers to supersede all laws in the country, thus the grand norm of all laws. The Constitution is the law that expresses the general will of the citizen as to how the affairs of their nation should be

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conducted. It is a product of the representative of every cultural, economic, religious and other group interest. It is a compromise document that cannot be contravened or altered without adversely affecting the cherished values of the citizens. The Constitution is therefore the supreme law of the land.

### **DEFINITION OF MILITARY LAW**

8. There are several definitions of military law by various writers. These fall into 2 groups; the restricted sense and the comprehensive sense.

a. Those who define military law in a narrow sense see it mainly as follows:

(1) "A system of law which governs the Army of a state enabling discipline to be maintained through trials and punishments by military tribunals".

(2) "A special code for enforcing discipline on soldiers".

(3) A book of rules and orders for the discipline of officers and soldiers along with defined penalties.

b. In the comprehensive sense however, military law is an embodiment of customs and military traditions observed, as well as rules enacted for the maintenance of discipline and control of service personnel. Military law includes regulations regarding the overall administration of the armed forces; including such matters as enlistment, conditions of service and welfare. The law governing all services of the Nigerian Military is the Armed Forces Act Cap A20 LFN 2004 which repealed and replaced hitherto the Nigerian Army Act, the Navy Act, the Air Force Act and the Military Court (special powers) Act. Thus, it became a complete enactment providing for offences and their corresponding penalties, arrests, investigations, summary trial procedure, court-martial trials and other matters.

## **SOURCES OF MILITARY LAW**

9. Sources of Military Law denote where laws guiding the daily administration and judicial prodigies in upholding the administration of justice in the military are derived. There are several sources from which Military Law draws its legitimacy, some of the sources are the 1999 Constitution of Nigeria, legislative enactments, rules, regulations, orders and institutions. Others are civil enactments, accepted military customs, manuals of military law, treaties and conventions, bilateral/multilateral agreements, records of courts proceedings as it affects the military etc. Some of these sources listed are discussed in subsequent paragraphs.

10. **The Nigerian Constitution.** The Constitution is the most authoritative source of our military law. The Constitution has expressly directed the establishment of the various branches of the Armed Forces and has assigned them specific tasks (Sect 217). The Constitution has also provided for a framework for command and operational use of the Armed Forces (Sect 218), as well as their structure. The Constitution is therefore the bed-rock of military law.

11. **Legislative Enactments.** To put its provisions into effect, the Constitution directs that several actions be taken through legislative enactments. The establishment of the various branches of the Armed Forces by the National Assembly (Sect 217), the making of regulatory laws by the National Assembly and the application of the provision of Federal character on the enrolment and enlistment in to the Armed Forces (Sect 219) are some examples of legislative enactments. The AFA CAP A20 LFN 2004 is the best example of legislative enactment.

12. **Rules, Regulations, Orders and Institutions.** The Constitution has provided in several areas that the President or the National Assembly should respectively make regulations or pass laws relating to specific areas, including matters relating to the Armed Forces (Sects 217 - 219). In the acts or laws passed by the National Legislative authorities, also provisions have been made for more details in specific

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areas by way of orders, regulations, and rules of other legal instruments. (Sects 22,26,180 of the AFA CAP A20 LFN 2004). In the military Chain-of-Command, delegation of authority is a necessary factor. This factor carries with it the power to give orders and pass instructions. (Sects 283 and 284 of the AFA CAP A20 LFN 2004).

13. **Other Civil Legislation.** All laws enacted for the good governance and maintenance of law and order having bearing with the Armed Forces form part of military law. Examples include the application of financial Regulations, Customs Regulation etc.

14. **Other Sources.** Other sources of military law include the following:

- a. Military customs accepted and practiced by the Armed Forces of Nigeria.
- b. Case laws or judicial precedents, judgment of courts, cases decided by Supreme Courts of record affecting military action which are binding on all courts of subordinate jurisdiction including Courts Martial.
- c. Received English Law as applicable in Nigeria Civil Courts, relating to the Armed Forces.
- d. Treaties and conventions, and bilateral or multilateral agreements to which Nigeria is a signatory which have bearing with military service or operations.

15. **Note.** It is clear to see the direct connection between the Constitution, the Acts of the National Legislature, the rules and regulations of the military, as well as the orders and instructions of individuals in the Chain of Command. Once the actions by a member of the Armed Forces is not at variance with the Constitution and other legal statutes, the rules, regulations, orders or institutions passed or other legal instrument passed by such personnel has the power of the law.

### **THE LEGAL STATUS OF A SOLDIER**

16. A soldier is first a citizen and as such he enjoys all the rights of citizenship, but he is also bound by his duties and obligations. However,

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a soldier's position on enlistment or commission is quite unique. An ancient authority stresses that the status of a soldier should be based on the doctrine of "Compact". This implies that "a soldier ... does agree and consent that he shall be subject to military discipline and he cannot appeal to civil courts to rescue him from his own compact".

17. A soldier's status as a citizen is therefore modified to the extent required by rules, regulations and orders of the military. Additionally, a soldier is not only bound by civil and military laws but also by all applicable international laws and conventions of which Nigeria is signatory to. On attestation, a person eligible to serve in the NA voluntarily elects to be subject to military law and he cannot plea that it is not his compact. This entails that he is subject to both military and other relevant laws of the land.

18. **The Soldier and the Law.**

a. The Constitution provides for the establishment of the Armed Forces and the assignment to them of the statutory duty of defending the nation. The soldier is therefore a creation of the law, with a lawful duty (Sect 217 of the Constitution). A soldier must therefore uphold the law at all times, whether in routine or internal Security duties or general warfare.

b. Obedience of legitimate or lawful orders is the cardinal requirement of military discipline and a vehicle by which the military duty is carried out. As long as he carries out his legal duties in a lawful performance of his duty a soldier is not even to be obstructed (Sect 248 of the AFA CAP A20 LFN 2004).

c. A soldier has no duty to obey unlawful orders or commands which are contrary to the laws of the military, state or other statutory authority. However, regard must be given to the requirement of the military duty. As long as a soldier does not carry out orders which are manifestly illegal he cannot be subjected to criminal or civil action. But if he acts outside the law he will be held accountable for his illegal action, even unto the penalty of death.



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d. A soldier who is given a lawful order should not be afraid of carrying out the order so far he carries out his order within the instruction given to him. Sect 239 of the AFA CAP A20 LFN 2004 provides for an indemnity for actions in aid to civil authority and military duties.

### **CONCLUSION**

19. In summary, it should be stressed that the compact of a soldier on enlistment is to subject himself to military law and not military illegality. A soldier's burden from the time of enlistment becomes onerous as he becomes subject to not only civil law but also all international rules, customs and conventions of warfare. The soldier therefore must function or act whether in peace or war time within the ambit of the law. Consequently, a soldier has been accorded special privileges and protections under the law which will enable him to carry out his lawful duties effectively. He should therefore uphold the law so as not to render himself liable to criminal or civil action in the performance of his official assignments.

### **REFERENCES**

20. The notes in this chapter are meant to provide guidance to candidates. For further reading candidates are advised to consult the following:

- a. 1999 Constitution of the FRN.
- b. AFA CAP A20 LFN 2004.
- c. The Regulations for the Application of the 1949 Geneva Convention and for Treatment of Prisoners of War.
- d. Achike Groundwork of Military Laws and Military Rule in Nigeria Chapters 2 – 4.
- e. Manual of Military Law (Ninth Edition) Part 1 Chapter 6.
- f. Manual of Military Law (Ninth Edition) Part 2 Section 5.
- g. Land Operations Vol III Part 182.
- h. Decree No 4 Public Officers (Protection against False Accusation) Decree 1984.
- I. The Lawyer Chronicle.

## **THE ARMY COUNCIL**

### **INTRODUCTION**

21. The Constitution of the Federal Republic of Nigeria empowers the National Assembly to make further laws for carrying into effect the provisions of the Constitution relating to the Armed Forces of Nigeria. This provided the basis for the enactment of the Nigerian Army Act 1960. In 1993 the Provisional Ruling Council, taking the position of the National Assembly, issued the Armed Forces Decree 105 (as amended) which replaced the NA Act 1960. As part of its provisions for the administration, command, and discipline of the NA, the Armed Decree No 105 of 1993(as amended) established an Army Council. Until recently the Armed Forces Decree No 105 of 1993 (as amended) was reviewed and passed or at best became known as the AFA CAP A20 LFN 2004.

22. The AFA CAP A20 LFN 2004 constitutes the main legal instrument for administration and employment of the Armed Forces by virtue of Sect 315 of the 1999 Constitution (as amended). The composition, responsibilities and powers of the Army Council as provided in Sect 9 of the AFACAP A20 LFN 2004 are highlighted in this chapter.

### **OBJECTIVES**

23. The candidate is expected to understand the following at the end of this chapter:

- a. The composition of the Army Council.
- b. The functions of the Army Council.
- c. The powers of the Army Council.

### **COMPOSITION**

24. The Army Council shall consist of:

- a. The Minister of Defence who shall be the Chairman.
- b. The Chief of Defence Staff who shall be the Vice Chairman.

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- c. The Chief of Army Staff.
- d. The Permanent Secretary of the Ministry of Defence shall be the Secretary of the Council. Sect 9 (3) of AFA CAP A20 LFN 2004.

25. The Chairman may from time to time appoint any member of the Army Council to perform the duties of the Chairman at any meeting of the Army Council at which the Chairman is absent. The appointment may be general or in respect of a particular meeting. A member may be represented by a nominee at a particular meeting after due approval by the Chairman.

26. The Army Council may whenever it deems necessary, co-opt any officer, public officer or any other person as a member of the Army Council. He shall not be entitled to vote or count towards a quorum. Furthermore, such membership shall cease at the end of that particular meeting unless the Army Council decides otherwise.

### **FUNCTIONS OF THE ARMY COUNCIL**

27. The functions of the Army Council are contained in Sect 10 of the AFA CAP A20 LFN 2004. It provides that the Army Council shall be responsible under the general authority of the Chief of Defence Staff, for the command, discipline and administration of and for all other matters relating to the Army. The responsibility of the Army Council shall not extend to the operational use of the Army.

### **POWERS OF THE ARMY COUNCIL**

28. The powers of the Army Council are contained in Sect 11 of the AFA CAP A20 LFN 2004. The Act provides that the Army Council shall have the powers to:

- a. Organize the work of the Army Council and the manner in which it shall perform its functions and determine the duties and responsibilities of the members.
- b. Delegate powers of the Army Council to any member. For example, the powers of the Army Council as a Reviewing Authority in Courts Martial may be delegated to the COAS (Sect

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154 (3) of AFA CAP A20 LFN 2004.

- c. Authorize the COAS to delegate his powers.
- d. Consult with persons who are not members of the Army Council.
- e. Determine the procedure for conducting business of the Army Council.
- f. Do such other things which the Army Council may consider necessary or desirable to secure the better performance of its functions under the AFA CAP A20 LFN 2004.

### **CONCLUSION**

29. The Army Council is a legally constituted body which derives its powers from the Nigerian Constitution and the AFA CAP A20 LFN 2004. It is responsible for the command, discipline, and administration of the NA. It has powers to organize its work, determine its procedures and delegates its powers.

### **REFERENCES**

30 The notes in this chapter are meant to provide guidance to candidates. For further reading candidates are advised to consult the following:

- a. The Constitution of the Federal Republic of Nigeria 1999.
- b. AFA CAP A20 LFN 2004.

## **OFFENCES ARREST AND DELAYS**

### **INTRODUCTION**

31. An offence is a wrong doing or a breach of a set of written regulations, often Dos and Don'ts that have been highlighted or decreed. Emphasis is laid on the written aspects by the 1999 Constitution of the Federal Republic of Nigeria especially in Sect 36 (12). This section provides that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty prescribed in written law. In the military, offences are categorized into 2 types namely:

- a. Military Offences.
- b. Civil Offences.

32. The term military and civil offences are used to describe offences in the Armed forces, however all acts and omission committed are punishable act in the military since there are no civil wrong, and our courts are not civil but criminal in nature.

33. In the course of investigating an offence committed or preventing the commission of an offence, it might become imperative to apprehend and detain the alleged offender. Where arrest becomes necessary, it must be effected by a person duly authorized and acting on legal powers to do so (Sect 121 of the AFA CAP A20 LFN 2004). Effort should be made to ensure speedy investigation and trial of the offender to avoid undue delays (Sect 122 of the AFA CAP A20 LFN 2004).

### **OBJECTIVES**

34. The candidate is expected to know and understand the following at the end of this chapter:

- a. Identify what constitutes an offence in the Armed Forces.
- b. Distinguish between military and civil offences.
- c. Identify who has the powers to arrest and how arrest may be effected.

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- d. Identify measures for avoiding delays when arrest has been effected.
- e. Identify circumstances in which arrest becomes necessary.

### **MILITARY OFFENCES**

35 Military offences are contraventions of laid down rules for the enforcement of military discipline. These regulations are contained in the AFA CAP A20 LFN 2004 which is an enactment by the legislature of the Federal Republic of Nigeria. Persons to be tried under the AFA must be subject to services law. Sects 168 and 169 of the AFA CAP A20 LFN 2004 provide grounds for bringing offenders who ceases to be subject to military authority for trial under the Act. However, these offences are peculiar to Service personnel and civilians who come under Sect 272 of the Act. Part XII (covering from Sects 45-114) which deals with offences further buttresses Sect 272.

36. It will be noted that a few civil offences are reflected in what constitutes military offences. Offences relating to property which are of civil nature such as those in Sects 66 - 68 of AFA often bring in civil litigation thus should be treated as military offences.

37. Military offences are grouped as follows:

- a. Misconduct inaction.
- b. Mutiny.
- c. Insubordination.
- d. Absence from duty etc.
- e. Malingering and drunkenness.
- f. Offences relating to property.
- g. Navigation and flying offences.
- h. Other offences in respect of ship and aircraft etc.
- i. Prize offences.
- j. Sexual offences.
- k. Offences relating to billeting and requisitioning of vehicles.

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- l. Offences relating to and by person in custody.
- m. Miscellaneous offences.
- n. Offences in relation to courts martial.
- o. Conduct to prejudice of service discipline.

### **CIVIL OFFENCES**

38. In legal parlance, if an offence is one for which the punishment is either a fine or term of imprisonment or both, it is referred to as a crime. If the offence is one for which the offender makes good the wrong, he has caused the victim or his estate in form of damages then it is a civil and not a criminal offence. Some offences such as killing by dangerous driving or rape fall under both types of offences.

39. As used in military law, a crime provided for by the civil authorities as contained in a Penal Code or such other subsidiary legislation as the Police Act and Customs and Excise Regulations to mention a few is civil offence. Military personnel are subject to both military and civil law. Courts Martial have jurisdiction over both military and civil offences.

40. The AFA CAP A20 LFN 2004 provides for Civil Offences in Sects 104 - 114. In Court Martial or in a military trial the appropriate section for the civil offences as provided in the Act has to be entered on the charge sheets. It also has to be explained by quoting the section or the civil enactment contravened and the act constituting the contravention.

### **ARREST**

41. An arrest is an act of restricting the movement of a suspected offender. This constitutes the first step in the process of justice. A suspected offender may be placed under arrest for the following reasons. To:

- a. Prevent him from damaging evidence.
- b. Prevent him from escaping.
- c. Prevent further illegal acts.

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- d. Ensure the personal safety of the offender.

### **POWERS TO ARREST**

42. The power to arrest offenders is provided for in Sect 121 of the AFA CAP A20 LFN 2004. It provides that a person subject to Service law under the Act may be arrested if found committing an offence, alleged to have committed an offence or reasonably suspected of having committed the offence.

43. An officer may be arrested by an officer of superior rank, but if engaged in quarrel or disorder, such officer could be arrested by an officer of any rank. A soldier may be arrested by an officer, warrant or petty officer or a non-commissioned officer subject to Service law. However, in this case, the person effecting the arrest must be of superior rank to the offender. A provost or any officer, warrant or petty officer, non-commissioned officer or soldier, rating or air craftsman lawfully exercising authority under a Provost Officer or on his behalf may arrest any person subject to Service law. However, an officer shall not be arrested by virtue of this provision except on the orders of another officer.

44. A person authorized to effect arrest may use force reasonably necessary. Power of arrest may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest. Generally, arrest consists of actual seizure or touching a person's body with a view to detaining that person. It is imperative that before a person is arrested, he must be told by the person effecting the arrest that he is being arrested and the circumstances or reason for such arrest be clearly stated. The reason must of course be a true reason and it must be one which legally justifies the arrest of that person.

### **PROVISION FOR AVOIDING DELAY AFTER ARREST**

45. Allegation against any person subject to military law who has been arrested for committing an offence must be investigated without delay. Steps must be taken to ensure that he is either punished for the



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offence or released from custody.

46. If by any chance some Service personnel under arrest must remain in custody for a longer period than 8 days without release due to the nature and gravity of the offence committed, a special report should be made on the necessity for his continued detention. This report will be made to prescribe ASA every 8 days until a Court Martial is assembled or the offence is dealt with summarily or the person is released from arrest. The total period of such further detention must not exceed 90 days.

47. Circumstances or factors that will help determine the need for retaining an offender in custody will include the following:

- a. The seriousness of the allegation or accusation, for example murder or treason.
- b. The need to establish the identity of the person under arrest.
- c. The need to secure or preserve evidence relating to the allegation or accusation.
- d. The need to prevent the continuation or repetition of the offence or any other offence.
- e. The necessity to secure the safety of the person, other persons or property.
- f. The need to forestall the actual or likelihood of interference with investigation, for example threatening, intimidating, incriminating or suborning of witnesses.
- g. The need to prevent escape of the accused.
- h. The fact that the accused has not surrendered but has been apprehended as an illegal absentee or has habitually absented himself.

## **CONCLUSION**

48. This chapter considered offences and what constitutes an offence. It further defined offence and gave the 2 broad categories of offences contained in Military Law; which are military and civil offences. Subsequently, the AFA CAP A20 LFN 2004 grouped military offences for

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ease of understanding. Civil offences were enumerated and the categories of civilians that could be liable to prosecution under AFA.

49 Arrest was highlighted with the category and powers of who can carry out an arrest to ensure the maintenance of military discipline and good order. Officers and other Service personnel effecting arrest must ensure they have legal backing to do so. The use of force in making an arrest must be reasonable and justifiable as power of arrest may be exercised personally or be delegated. Allegation against any person under arrest must be investigated speedily and measures taken to avoid undue delays.

### **REFERENCES**

50. The notes in this chapter are meant to provide guidance to candidates. For further reading candidates are advised to consult the following:

- a. The AFA CAP A20 LFN 2004.
- b. Rules of Procedure (Army) 1972 (Rules 4-6).

## **CHARGES CHARGE SHEETS AND FRAMING OF CHARGES**

### **INTRODUCTION**

51. Charges or accusations of wrong doing are important steps in the enforcement of discipline in the military. As an initial action the framing of a charge should be carried out with caution and care so that the accused does not suffer injustice. G1 Staff and all officers whose duty it is to initiate disciplinary actions should be familiar with the intricacies of charges, charge sheets and how to frame charges properly.

### **OBJECTIVE**

52. The candidate is expected to do the following at the end of this chapter:
- a. Know the meanings of a charge and an offence.
  - b. Identify the essential parts of a charge.
  - c. Identify essential sections of a charge sheet.
  - d. Bring out the facts of the accusation or allegation in the language that meets the requirement of the law with regards to charges.
  - e. Be familiar with the rules for drafting charges.

### **DEFINITION OF A CHARGE**

53. Under the provision of Sect 123 of AFA CAP A20 LFN 2004, a charge is an allegation against an accused who has committed an offence under the provisions of the Act; that is to say he has committed a military or civil offence. A charge is further defined as a formal complaint or indictment in a concise description in writing of the offence that the accused is alleged to have committed. It is an allegation in writing in the prescribed form that a person subject to Service law has committed an offence.

54. It is necessary to define an offence since the allegation warranting a charge must disclose an offence. An offence is simply an

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act or omission punishable by law. It is instructive to note that Section 36 (12) of the Constitution requires that for an act to amount to a criminal offence, both that act and the punishment prescribed for it must be contained in a written law. An offence must therefore be contained in a Charge Sheet (NA Form AB 252) so that this requirement among other legal requirements must be met.

55. A charge sheet is divided into several parts. These include the following:

- a. Superscription.
  - (1) Heading - Charge Sheet.
  - (2) Legal Title - NA Form AB 252.
  - (3) Enabling Law - Made Under AFA CAP A20 LFN 2004.
- b. Identification of the Accused.
  - (1) Army No.
  - (2) Rank.
  - (3) Name.
  - (4) Unit.
  - (5) Proof of subjection to Military Law.
- c. Statement of offence - the article of the law violated.
- d. Particulars of offence - an articulate description of the offence.
- e. Trial Information.
- f. Subscription.

### **FORM OF A CHARGE**

56. Every charge shall state the offence which the accused is alleged to have committed, and if the written law creating the offence gives it any specific name the offence should be described in the charge by that name. For instance, if the offence of carrying another person's property without his knowledge or permission is contained in a written law as "Theft" it should be stated as such in the charge.

57. If the written law which creates the offence does not give it any specific name, details of the definition of the offence must be stated to

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give the accused enough notice of the matter with which he is charged. For instance, Sects 66 - 68 are offences in relation to public and service property as well as miscellaneous offences in this regard. They are not the names the specific written law has given. An accused can then be charged under Sect 66 as follows:

- a. Stealing of public property.
- b. Stealing a Service property.
- c. Fraudulently misapplying public property.
- d. Fraudulently misapplying Service property.
- e. Receiving Service property knowing it to be stolen etc.
- f. Receiving public property knowing it to be stolen etc.
- g. Retaining public property etc.
- h. Willfully damaging etc.
- i. Willful neglect causing damage to etc.

58. Occasionally, the marginal headings may be a perfect statement of an offence; however, in some instances the use of marginal heading as statement may even violate the rules of framing charges. A statement of offence as "miscellaneous offences relating to property" violates the rule against multiplicity. The written law and the section of that law against which the offence is said to have been committed shall be stated in the charge.

### **GENERAL GUIDELINES IN FRAMING A CHARGE**

59. The NA Form 252 is a guideline, it can be expanded to include as such information or numbers of accused persons as are involved in a particular case. Para b of the form that requires identification of the accused should be filled with correct information to avoid delay at the trial, whether summary or by court martial.

60. **Statement of Offence.** The statement of the offence points out the article of the law violated. Every charge should contain only one offence, if several acts of the accused form different offences, they should be charged separately. For instance, Cpl Quick Finger breaks into the orderly room and steals a typewriter; he will be charged with 2 separate offences as the act of breaking into a building in that

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manner is burglary, which is one offence and stealing is another offence. If he is charged in one charge sheet with breaking and stealing, the charge will be bad because it contains multiple charges.

61. **Particulars of Offence.** The particular of offence is an articulate description of the offence committed. A charge should contain such particulars as to time, place of the offence and the person or thing, in respect of which the offence was committed as are reasonably sufficient in the actual conduct of the offence. The accused must be given minimum of 24 hours' notice of which he is charged before trial. In offences such as conduct to prejudice of service discipline, the charge shall contain such particulars of the conduct of the accused as will be sufficient for that purpose. Ordinary language (not technical) should be used.

62. Charges should not be framed from memory; a copy of AFA CAP A20 LFN 2004 must be kept opened at the relevant section so that the facts alleged to constitute an offence meet the requirements of the section of the law under which the accused is charge. If the same facts constitute one or other offence, only one of the offences should be charged; as charging for the two offences will amount to duplicating the offence. For instance, a sexual offence may amount to rape or carnal knowledge, not both even though the statement of offence contained in the Act states otherwise as captured in Sect 77. No section or particular item should be left blank when the form is completed, as all sections of NA Form 252 are important.

### **RULES FOR DRAFTING CHARGES**

63. The significance of a properly drafted charge cannot be over emphasized as the test for such well drafted charge is its conformity with the rules of drafting charges. Indeed, there are basic rules that must be upheld and observed during the drafting of any charge, as their violation is capable of rendering a well-intended charge either bad in Law or Rules of Procedure. Any omission of a single seemingly harmless and insignificant word or the addition of a seemingly innocent word may result in a charge being dismissed. The drafter of a charge should also

observe the rules against ambiguity, duplicity, misjoinder of offenders and misjoinder of offences. Accordingly, Commanders proffering charges against fellow personnel should be familiar with the following rules of drafting charges:

- a. **The Charge Must Disclose an Offence Known to Law.** It is important for commanders to have an appreciable knowledge of the various offences provided for under the AFA CAP A 20 LFN 2004 before deciding on what offence to charge some service personnel. Such knowledge is very instrumental as no one, including service personnel, can be charged for a non-existing offence. This rule is given credence to by Sect 36 (8) and (12) of the 1999 Constitution of Nigeria. This means that every charge must not only disclose an offence, but such alleged offence must be one that is contained and acknowledged in any of our statute books as an offence.
- b. **Rule Against Ambiguity.** All the particulars required to be stated in a charge sheet must be stated methodically, clearly and accurately so as to give the accused adequate notice of the offence with which he is charged. Trivial errors, which do not prejudice the accused will not essentially invalidate the charge or lead the court to set aside any conviction based on it. However, the court will invalidate the charge if the errors are fundamental such as failure to state the section of the enactment contravened by the accused.
- c. **Rule Against Duplicity.** The general rule is that each offence for which the accused is charged must be reflected in a single count charge and tried separately. A charge is treated as defective if it contains more than one offence. Exceptions to this rule include identical offences committed in a single transaction or separate transactions. For instance, monies misappropriated over a period of time can be summed up in one charge. Also, demanding money with threat from 5 persons constitutes 5 separate offences but since the offences are identical and committed in a single transaction, they can be lumped together in a single count charge.

d. **Rule against Misjoinder of Offenders.** The general rule is that the accused must be charged and tried separately using separate charge sheets. However, persons accused of jointly committing the same offence in the course of the same transaction can be charged together in the same charge sheet.

e. **Rule against Misjoinder of Offences.** Every distinct offence with which a person is accused must be charged and tried separately in separate charge sheet. However, offences committed in the course of the same transaction such as to aid and abet may be contained in the same charge sheet.

f. **Elements of Offence and Alternative Charges.** When framing a charge, it should be borne in mind that the facts of the case should be in line with the elements of the offence charged, which the prosecutor would be required to prove later. Otherwise, he must look for an alternative charge whose elements can be supported by the facts available. In a murder case for instance, if the facts of the case do not match the element of murder, the prosecution may consider manslaughter as an alternative charge.

g. **Charges Must be Framed in Accordance with Law and Rules of Procedure.** The drafting of a charge is not just a formal exercise but a technical one for which due diligence is required in the framing of its wordings. This rule requires that in drafting charges, as much as possible, the drafter uses or adopts the wordings of the law creating the offence as well as the procedural forms provided in the rules of procedure of the respective services.

## **CONCLUSION**

64. A person cannot be convicted of an offence unless that offence satisfies the constitutional requirement and its prescribed punishment contained in a written law. The accusation against a person that he has committed an offence under AFA CAP A20 LFN 2004 must be officially reported in a form of a charge written on a Charge Sheet NA Form 252.



65. All the sections of a charge sheet are important and must be filled when a charge sheet is completed. However, particular attention should be paid to statement and particulars of offence which form the crux of the accusation. Every distinct offence should be charged as a separate offence; and not lumped together in one charge. This is to avoid duplicity of offences.

## **REFERENCES**

66. The notes in this chapter are meant to provide guidance to candidates.

For further reading candidates are advised to consult the following:

- a. AFA CAP A20 LFN 2004.
- b. 1999 Constitution of the Federal Republic of Nigeria.
- c. BRETT and MCLEANS, Second Ed 1974, SS 151- 156.
- e. MML (Rules of Procedure Army 1972) Rules 14-17.
- f. Summary Trial at Your Finger Tip (NASMP Publication 2013).

# **DISCIPLINARY POWERS OF COMMANDERS**

## **INTRODUCTION**

67. As revealed elsewhere, in this revision notes, the object of Military Law is firstly to provide for the maintenance of discipline and good order among the troops, and secondly to provide for administrative matters. Consequently, commanders at various levels, as facilitators and executors of military discipline are given graduated powers to investigate charges and deal with offenders summarily or through the avenue of Courts Martial. They have wide ranging powers to maintain discipline over the body of men under their command.

68. Exercise of these powers especially in the disposal of charges against accused persons vary according to the instruments of powers they possess. There are instances where a Commanding Officer may be appointed mainly for disciplinary purpose only. The provisions of the AFA CAP A20 LFN 2004 on the disciplinary powers of Commanders are mainly to be found in Sects 115 - 117. It is essential that all officers are familiar with these provisions not only to ensure that appropriate measures are applied to arrest cases of indiscipline but also to ensure that justice is done at all times.

69. This Chapter will highlight powers of commanders to investigate charges and various punishments they at all levels can award to Service personnel of various ranks in summary trials. The powers of these commanders to convene Courts Martial will also be highlighted. Detailed Court Martial procedures are not covered as they are dealt with in the proceeding chapter.

## **OBJECTIVE**

70. The candidate is expected to know the following at the end of this chapter:

- a. Legal status of commanders in enforcing discipline.
- b. Disciplinary powers of commanders at various levels.
- c. The powers of commanders to convene Courts Martial.

### **POWERS OF INVESTIGATION BY COMMANDERS**

71. When an offence has been committed against the provision of the AFA CAP A20 LFN 2004, the allegation shall be reported to the commander of the accused in the form of a charge. The commander shall investigate the charge in the prescribed manner (Rule of Procedure No 8). The accused may be attached to another unit for the purpose of the investigation as a response to natural justice because the commander cannot investigate and judge his own case. This however applies in a case where the commander is the only material witness.

72. After investigating an offence, its nature and the rank of the accused determines the action to be taken in order to dispose of it. Subject to the provisions of the AFA CAP A20 LFN 2004 the commander shall summarily deal with the charge. Where the commander is convinced that the charge cannot be summarily dealt with, he has the powers to refer the case to the ASA or take steps to have the charge tried by a Courts Martial. ASA may deal with a charge referred to him summarily, remand for trial by Courts Martial or refer it back to the commander advising a retrial or dismissal of the charge.

73. Summary dealing with a charge according to the AFA CAP A20 LFN 2004 refers to the commander or ASA taking the following actions:

- a. Dismissing the charge.
- b. Determining whether the accused is guilty.
- c. Where the accused is guilty recording a finding of guilty and awarding punishment.
- d. Condoning the offence.

### **POWERS OF COMMANDERS AT VARIOUS LEVELS**

74. Subject to the provision of the AFA, personnel charged with offences which may be summarily tried under Part XIV of AFA may be summarily tried and punished to the extent permitted in accordance with the provision of the Act. The extent and limit of such powers are expressly spelt out in Sects 115-118. The following are applicable to commanders at various levels:

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a. **Powers of Coy Comd and Equivalent.** The Coy Comd can award the following:

(1) **Accused of or Below the Rank of Capt.** The Coy Comd or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments:

- (a) Confinement not exceeding 7 days.
- (b) Extra duties not exceeding 7 days.
- (c) Admonition.

(2) **Accused Below the Rank of Sgt.** The Coy Comd may deal with the case summarily and dismiss the charge or award any of the following:

- (a) IHL not exceeding 7 days in the unit guardroom.
- (b) Extra duties not exceeding 7 days.
- (c) Confinement not exceeding 7 days.
- (d) Where offence has occasioned any expense, loss or damage, or stoppages not exceeding N200.00.
- (e) Reprimand.
- (f) Admonition.

b. **Note.** The senior officer of a detached unit or company may be authorized by the ASA to order a Special Courts Martial in some circumstances.

c. **Powers of Bn Comds and Equivalent.** The Bn Comd can award the following:

(1) **Accused of or Below the Rank of Major or Corresponding Rank.** The Bn Comd or equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments:

- (a) Fine not exceeding N500.00.
- (b) Where the offence has occasioned expenses, loss or damage, stoppages not exceeding N2,500.00.

(2) **Accused Below the Rank of WO or Equivalent.** The Bn Comd or equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following:

- (a) Dismissed regiment to the rank of Cpl or below.
- (b) IHL up to 28 working days in the unit guardroom for Cpl and below.
- (c) Reduction in rank not below one step for Sgts and below.
- (d) Forfeiture of pay not exceeding 7 days.
- (e) Where offence has occasioned expenses, loss or damage, stoppage not exceeding N500.00.
- (f) Confinement to barracks not exceeding 28 days.
- (g) Extra duties not exceeding 7 days.
- (h) Reprimand or severe reprimand
- (i) Admonition.

d. **Note.** The Bn Comd of a corresponding unit may convene a Special Courts Martial (Sect 131 (3) of AFA CAP A20 LFN 2004). Furthermore the Bn Comd has the power to confirm the findings or sentences of a Courts Martial he convenes or that convened by his subordinate as delegated by ASA. Sect 152 (1) (c) AFA CAP A20 LFN 2004.

e. **Bde Comd and Equivalent.** The Bde Comd can award the following:

(1) **Accused of or Below the Rank of Lt Col.** The Brigade Comd or his equivalent may summarily deal with the charge by either dismissing the case or awarding any of the following punishments:

- (a) Fine not exceeding N1,000.00.
- (b) Forfeiture of pay not exceeding 30 days.
- (c) Where the offence has occasioned any expenses loss or damages, stoppages not

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exceeding ₦3,000.00.

(2) **Accused Below the Rank of WO.** The Brigade Comd or his equivalent may summarily deal with the charge either by dismissing the case or awarding any of the following punishments.

- (a) Dismissed regiment to SSgt or below.
- (b) IHL up to 28 days in the unit guardroom.
- (c) Reduction of rank, SSgt and below not more than 2 steps.
- (d) Fine not exceeding ₦200.00.
- (e) Where the offence has occasioned any expenses, loss or damages, stoppages not exceeding ₦2,500.00.
- (d) Forfeiture of pay not exceeding 30 days.
- (h) Reprimand or severe reprimand
- (i) Admonition.

f. **Note.** A Bde Comd or his equivalent has the power to convene both General and Special Courts Martial. He may also confirm the finding or sentence of a Courts Martial he convenes or that convened by the subordinate commanders.

g. **Powers of GOC and Equivalent.** The GOC can award the following:

(1) **Accused of the Rank of Colonel or Above.** The GOC or his equivalent may summarily deal with the charge by dismissing the case or awarding any of the following:

- (a) Fine not exceeding ₦2,000.00
- (b) Forfeiture of pay not exceeding 60 days.
- (c) Where the offence has occasioned expenses, loss or damages, stoppages not exceeding ₦5,000.00.
- (d) Reprimand or Severe Reprimand.
- (e) Admonition.

(2) **Accused of the Rank of MWO and Above.** The GOC or his equivalent may summarily deal with the

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charge by dismissing the case or awarding any of the following punishments:

- (a) Dismissed regiment to the rank of WO or below.
- (b) IHL up to 28 days in the unit guardroom.
- (c) Reduction in rank for WO and below but not more than 2 steps.
- (d) Fine not exceeding ₦250.00.
- (e) Where the offence occasioned expenses, loss or damages, stoppages not exceeding ₦3,500.00.
- (f) Forfeiture of pay not exceeding 28 days.
- (g) Reprimand or severe reprimand.
- (h) Admonition.

h. **Note.** The GOC or his equivalent has the power to convene Special and General Courts Martial. Confirmation of sentences of the Courts Martial is by the Army Council in the case of an officer and the COAS in the case of a soldier. The GOC could exercise such powers when delegated by ASA in accordance with Sect 152 (1) (c) AFA CAP A20 LFN 2004.

75. There is apparent contradiction between the power of the GOC or equivalent to try soldiers. While he has jurisdiction to try MWO and above, the punishment sections empowers him to punish a WO whom he has no jurisdiction to try. It is not lawful for any court to punish a person he has powers to try. The obvious implication of this contradiction calls for amendment of the section. In the interim, legal officers in Div's or Formations where the GOC's equivalents command must live up to the expectations of the law and advise the GOC's as to the limits of their summary jurisdictions and not extend same.

76. The implication of Sect 115 (d) of AFA is that the GOC or the equivalent can only try officers of the rank of Col and above, meaning that he has no jurisdiction to try Lt Col and below. Similarly, by virtue of Sect 116 (d) of AFA the GOC and its equivalent cannot try a WO or below

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but can only try MWO and above. The implication is that he cannot punish a WO and below irrespective of the provisions in Sect 116 (d) (i-viii).

### **POWERS OF THE CHIEF OF ARMY STAFF**

77. AFA CAP A20 LFN 2004 has not made any express provision for summary dealing with charges by the COAS. However, the COAS has the power to listen to appeals and petitions arising from summary trials by subordinate Comds. The COAS has the power to convene both General and Special Courts Martial. He also has the power to review and confirm the finding or sentence of Courts Martial as it affects soldiers. For officers, he can only review and make recommendations to the Army Council of the findings of a Courts Martial convened by subordinate Comds. The COAS also attends to petitions and appeals arising from Courts Martial or summary trials.

### **RIGHT OF ELECTION TO BE TRIED BY COURTS MARTIAL**

78. A CO shall not proceed summarily with the trial of an officer notwithstanding the offence he is charged for. Commissioned officers, warrant officers and equivalent appearing before their CO for summary trial, have the right to elect to be tried by Courts Martial (Sect 117 of AFA CAP A20 LFN 2004).

### **CHARGES THAT SHALL NOT BE DEALT WITH SUMMARILY**

79. It is important to note that Sect 124 (6) (a) of AFA CAP A20 LFN 2004 provides that a CO shall not deal summarily with a charge under the following Sects of the Act:

- a. Sects 45, 46, 47, 48, 51, 52, 53, 65, 66, 67, 69, 70, 71, 72, 73, 75, 76, 83, 88, 91 and 93.
- b. He shall not deal summarily with Sects 95 and 98 as they are applicable to an offence under the any of the Sects mentioned in sub-paragraph 'a' above.

### **POWER TO CONDONE**

80. By virtue of Sect 171 (1) (c), a CO has the disciplinary powers to



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condone an offence and in this case the accused shall not be liable in respect of that offence to be tried by a Courts Martial or to have the case dealt with summarily. In this case, an offence shall be deemed to have been pardoned by the CO if he or any officer authorized by him to act in relation to the alleged offence, with knowledge of all circumstances that led to the offence. The CO should further inform the accused that he will not be charged with the offence committed.

### **REVIEW OF SUMMARY FINDINGS AND AWARD**

81. Sect 147 (1) of AFA CAP A20 LFN 2004 provides that where a charge has been dealt with summarily and the charge is not dismissed, ASA may review the finding or award upon a petition by the person convicted and sentenced not later than one month after the finding and award was made. Where on review, merit of the petition is established; the ASA may quash the award or vary the award as deemed appropriate. This is obviously one of the disciplinary powers of Comds.

### **CONCLUSION**

82. Comds at various levels have powers to enforce discipline by investigating charges and disposing them summarily or through Courts Martial. The disciplinary powers of Comds are restricted and vary according to the instrument AFA CAP A20 LFN 2004. After due investigation of charges, Comds may dispose the charges summarily and dismiss the case or find the accused guilty and award appropriate punishment (See details of Powers of Command at Sects 115 – 117 of AFA CAP A20 LFN 2004). When convinced that a case cannot be dealt with summarily, a Comd may refer the charge to ASA or arrange for the case to be tried by a Courts Martial. Besides the powers to investigate and try charges, other disciplinary powers exercised by Comds include condoning, review of findings and awards from summarily trial and confirmation of awards by Courts Martial.

**REFERENCES**

83. The notes in this chapter are meant to provide guidance to candidates. For further reading candidates are advised to consult the following:

- a. AFA CAP A20 LFN 2004.
- b. Rules of Procedure (Army) 1972, Rules 7-13.

## **COURTS MARTIAL**

### **TYPES OF COURTS MARTIAL**

84. There are 2 types of Courts Martial recognised by the AFA CAP A20 LFN 2004. Sect 129 provides for the establishment of 2 types of Courts Martial; a General and Special Courts Martial. There are certain attributes that makes the identified Courts Martial different. However, the main differences between the 2 types of Courts Martial are:

- a. The level at which they are convened including ranks of the membership.
- b. The rank of the accused.
- c. The nature of offence including the nature of punishment prescribed for the offence.
- d. Their composition especially the size and rank of the membership.

85. **General Courts Martial.** A General Courts Martial (GCM) may be convened in accordance to Sect 131 of the AFA CAP A20 LFN 2004 by the following:

- a. The President and Commander in Chief.
- b. The Chief of Defence Staff.
- c. The COAS.
- d. GOCs or corresponding commanders.
- e. Brigade or corresponding commanders.

86. **Composition of a General Courts Martial.** A GCM consist of at least not less than 8 members. The composition of a GCM is as follows:

- a. A President of the Courts Martial.
- b. Four members (not less, may be more).
- c. A waiting member.
- d. A Liaison Officer.
- e. A Judge Advocate who must be a lawyer.

87. **Powers of a General Courts Martial.** The jurisdiction of a fully composed GCM extends to a death penalty, except where the members are less than 7, then the GCM cannot impose a death sentence (Sects 118, 119 and 130 AFA CAP A20 LFN 2004).

88. **Special Court Martial.** A Special Courts Martial (SCM) may be convened in accordance to Sect 131 of the AFA CAP A20 LFN 2004 by the following:

- a. All the persons who may convene a GCM.
- b. A CO or corresponding commander.
- c. Commander of detached sub-unit authorized by ASA in special circumstances.

89. **Composition of a Special Courts Martial.** A SCM consist of at least not less than 6 members. The composition of a SCM is as follows:

- a. A President of the Courts Martial.
- b. Two members (not less, may be more).
- c. A waiting member.
- d. Liaison Officer.
- e. Judge Advocate who must be a lawyer.

90. **Powers of a Special Courts Martial.** A SCM shall have the powers of a GCM except that where the SCM consist of only 2 members, it shall not impose a sentence that exceeds imprisonment for a term of one year and it cannot impose death sentence (Sect 130 of the AFA CAP A20 LFN 2004).

## **OFFICERS NOT QUALIFIED AS MEMBERS OF A COURT MARTIAL**

91. Sect 133 of the AFA CAP A20 LFN 2004 expressly provides for the constitution of a Courts Martial. In accordance with Sects 128 and 129 of the AFA CAP A20 LFN 2004, a Court Martial shall be duly constituted if it consists of the President of the Courts Martial, and not less than 2 other officers and a waiting member. However, there are certain persons who

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cannot constitute members of Court Martial in line with Sect 134 (1) (2) of the AFA CAP A20 LFN 2004. These persons are:

- a. The officer who convenes a Courts Martial cannot be a member or President of the court.
- b. An officer who at any time between the dates on which the accused was charged with the offence and date of the trial has been the commanding officer of the accused.
- c. Any officer who has investigated the charge against the accused or who under Service law has held or has acted as one of the persons holding an inquiry into matters relating to the subject matter of the charge against the accused (MML Chapter 3 Para 19).
- d. An officer under sub-para-c above cannot be a Judge Advocate in the trial.

### **DUTIES OF A CONVENING OFFICER**

92. Officers having powers to convene Courts Martial has certain duties to observe. These include:

- a. Ensuring that the charge discloses an offence under the AFA CAP A20 LFN 2004 and that it is framed in accordance with the Rules of Procedure and the charge must be signed by the Convening Officer,
- b. Ensuring that the evidence in the Summary or Abstract of Evidence is sufficient to justify trial. (Note: By the foregoing, it is meant that, an accused should not be sent for trial by court martial unless there is reasonable probability that the offence is committed).
- c. In deciding the type of Courts Martial to be convened, the convening officer must bear in mind the following. The:
  - (1) Nature of the offence.
  - (2) Prevalence of the particular offence charged.
  - (3) General state of discipline in his command.
  - (4) Character of the accused.
  - (5) Maximum sentence which can be imposed having regard to any sentence which the accused is

already serving (if any).

**INFORMATION TO BE GIVEN TO AN ACCUSED**

93. As soon as an accused is remanded for trial by Court Martial and with a minimum of 24 hours before the trial, he must be furnished with the following information:

- a. A copy of the charge sheet and the Summary or Abstract of Evidence.
- b. The name of the President, the ranks, names and units of the members as well as the waiting member of the court.
- c. Explanation of the charges and his right to call witnesses.
- d. Proper opportunity to prepare his defence including free communication with his defending officer or counsel.
- e. If the prosecution is to be conducted by an officer with legal qualifications or counsel, notice must be given to the accused to enable him employ a counsel, if he so desires (MML 1972 Chapter3Para 25).

94. **Representation of an Accused**. An accused may personally defend himself or allow a defending officer or counsel to represent him. Where he refuses to have a defending office or counsel to represent him, he should be asked to sign a certificate to that effect. It is important to note that where an accused is represented by a counsel, he may still have a defending officer to assist the counsel, but here, the defending officer will have no right of audience (MML Chapter3 Para 26 and Rules of Procedure (Army); Rule 25(b) 1972).

95. **Commencement of Court Proceeding**. The appearance of the accused marks the opening of the court session. Prior to his appearance, the President will ensure that the court is legally constituted, the accused is amenable to its jurisdiction and that the charges are in order: after which he orders the court to be opened. The accused will then be brought before the court with his escort. Both the prosecutor and the defending officer or counsels will take their places in

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the court and then the court session begins (MML Chapter 3 Para 38).

### **OBJECTION BY THE ACCUSED TO MEMBERSHIP OF THE COURT**

95. At the commencement of the court when all members are present, the Convening Order will be read by the President or the Judge Advocate as applicable. The names of all members would be called out, with all members answering to their names. The accused will be asked whether or not he objects to be tried by any of the member's mention. There are instances where the accused could object to one or more members sitting in the court. His objection should however be hinged on reasonable grounds. Where an accused has objected to being tried by the court as a whole on the grounds that he is not amenable to trial by that court, the objection should only be taken into consideration after the accused has been arraigned.

96. Where an objection to the President is pronounced by the accused and the objection upheld the court must adjourn and report to the convening officer. If the objection to a member is upheld, a qualified waiting member may be appointed by the President to take the place of the one so objected to. But if there are no waiting members and the court has fallen below the legal minimum number of members it must adjourn and report to the convening officer. Consequently, where more than one accused is ordered in one convening order to be tried by the same court but on separate sheets, such accused should be brought to the court for the reading of the convening order. However, an objection by an accused other than that initially arraigned before the court shall be dealt with separately (MML Chapter 3 Para 40-41 and Sect 137 AFA CAP A20 LFN 2004).

### **ARRAIGNMENT OF THE ACCUSED**

97. Arraignment in a Courts Martial is conducted by the President and the Judge Advocate. When a Courts Martial is sworn, an accused is arraigned on the charge contained in the charge sheet. Where two or more accused persons are being tried jointly, one accused may apply to be tried separately on the grounds that unless so tried he will be

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prejudiced in his defence. Where beyond reasonable doubt his objection is upheld, the accused will be arraigned separately. Arraignment consists of:

- a. The reading of the commencement of the charge and the person named, "the accused".
- b. The reading of each charge separately to the accused called upon.

97. Where there are several charges in a charge sheet the accused may, before pleading to the charge, apply for separate trial on any charge on the ground that unless so tried he will be prejudiced in his defence. After the arraignment, the trial in the court martial commences in a precise manner with a plea of guilty or otherwise. This module does not contain detail of the courts' procedures; however, it could be enumerated as follows:

- a. Plea of guilty and/or not guilty (MML Chapter 3 Para 52 - 73).
- b. Deliberation on finding (MML Chapter 3 Para 74-82).
- c. Proceedings on Conviction (MML Chapter 3 Para 83-85).
- d. Deliberation on the award of sentence (MML Chapter 3 Para 86 -92 and Sect 140 – 141 of the AFA CAP A20 LFN 2004).

### **DELIBERATION AND ANNOUNCEMENT OF FINDINGS**

98. At the end of all the processes of the trial, the court comes to a finding; the President then causes the court to be opened in order for the findings to be announced by the President in the open court. A finding of guilty or special finding will be announced as 'being subject to confirmation'.

99. Where an accused is acquitted on all charges and there are no charge sheets, the accused shall be released. In such a case, the record of the proceedings will be dated and authenticated by the signature of the President and Judge Advocate as applicable and forwarded as directed in the convening order (MML Chapter 3 Para 80).



**OFFENCES BY CIVILIANS IN RELATION TO COURTS MARTIAL**

100. Just like the civil courts of competent jurisdiction, civilians are allowed to make appearances in a Courts Martial even though they are not subject to Military Law. Such civilians may willfully abuse the judicial process of the court; as in contempt to court in other civil courts, such a person could be arraigned before a High Court of Nigeria.

101. Sect 146 of the AFA CAP A20 LFN 2004 clearly spells out the following with regards to offences by civilians in relation to Courts Martial. That where in Nigeria a person other than a person subject to service law under AFA:

- a. Having been duly summoned to attend as a witness before a Courts Martial, fails to comply with the summons; or
- b. Refuses to swear on oath when duly required by a court-martial to do so; or
- c. Refuses to produce a document in his custody or under his control which a court-martial has lawfully required him to produce; or
- d. When a witness, refuses to answer a question which a court-martial has lawfully required him to answer; or
- e. Willfully insults a person, being a member of a court-martial or a witness or any other person whose duty it is to attend on or before a court-martial, while that person is acting as a member of the court-martial or is so attending, or willfully insults that person while that person is going to or returning from the proceedings of a court-martial; or
- f. Willfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court-martial; or
- g. Does any other thing which would, if the court-martial had been a court of law having power to commit for contempt, have been contempt of that court.

102. The President of the Courts Martial may certify the offence of that person under his hand to the High Court having jurisdiction in that part of Nigeria where the offence is alleged to have been committed or

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in the place where the offender is to be found.

103. **Confirmation of Finding and Sentence.** It is important to note that after every trial and where the court finds the accused guilty, the records of the proceedings of the court shall be transmitted within 60 days from the date of the finding to the confirming authority for confirmation of the finding and sentence of the Courts Martial on that charge. Where the record of proceedings of the Courts Martial, other than proceedings resulting in death sentence or life imprisonment is not transmitted to the confirming authority within 60 days, the accused shall be released from custody unconditionally, pending the confirmation or review. A finding of guilty or sentence of a Courts Martial shall not be treated as a finding or sentence until it is confirmed.

### **CONFIRMING AUTHORITY**

104. The confirming authority is vested with several powers as enshrined in Sect 151 of the AFA CAP A20 LFN 2004. Before highlighting on these powers, it is necessary to know the persons that constitute a confirming authority. Sects 152 and 153 of the AFA CAP A20 LFN 2004 provides that the under mentioned persons have powers to confirm the finding or sentence of a Courts Martial. The persons are:

- a. The COAS - where the accused person is a warrant officer or below.
- b. Army Council - where the accused person is a commissioned officer.
- c. In the absence of any of the persons specified in subparagraph 'a - b', an officer appointed by the ASA to act as the confirming authority whether for the particular case or for a specified number of cases.
- d. A death sentence passed by a Courts Martial shall not be carried into effect unless it is approved by the President.

105. In addition to the foregoing, there are persons who are excluded from being a confirming authority. These include:

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- a. An officer who was a member of the Courts Martial.
- b. A person who, as commanding officer of the accused, investigated the allegations against him or who is for the time being the commanding officer of the accused.
- c. A person who as ASA investigated allegations against the accused.

### **POWERS OF CONFIRMING AUTHORITY**

106. A confirming authority is that military officer who is mandated by virtue of Sect 151 of the AFA CAP A20 LFN 2004 to exercise by accepting or otherwise the finding or sentences passed on an accused by a Courts Martial. The powers of a confirming authority in dealing with the finding or sentence of a Courts Martial are as follows:

- a. Withholding confirmation, if of the opinion that the finding of the court is unreasonable or cannot be supported, having regard to the evidence or to the fact that it involves a wrong decision on a question of law or that on any other grounds there was a miscarriage of justice.
- b. Confirming the finding or sentence.
- c. Referring the finding or sentence or both for confirmation to a higher confirming authority.
- d. Where a confirming authority is of opinion that the facts of the case as considered by the court-martial would have justified a finding of guilty by that court-martial on other grounds, the confirming authority may:
  - (1) Instead of withholding confirmation of the finding, substitute a finding of guilty on those other grounds.
  - (2) Direct whether the punishment should be remitted in whole or in part or be commuted in line with sub-paragraph f (2).
- e. Where it appears to a confirming authority that a sentence of a Courts Martial is invalid, the confirming authority may instead of withholding confirmation of the sentence, substitute with a proper sentence of any punishment which

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might have been awarded by the court; not exceeding or, in the opinion of the confirming authority, more severe than that awarded by the Courts Martial.

f. If the confirming authority confirms the sentence of a Courts Martial, the confirming authority may:

(1) Remit in whole or in part a punishment awarded by the court-martial.

(2) Commute a punishment so awarded for such other and lesser punishment or punishments as may be prescribed by this Act.

### **CONCLUSION**

107. This chapter is by no means exhaustive without credence to the AFA and MML. The chapter is divided into 2 parts with one-part procedure for trial and the other on Courts Martial. In the first part, procedure for trial was considered as well as definition of some term, before dwelling on evidence. The important of evidence is key in assisting a CO reach reasonable and acceptable awards during summary trial. This can be achieved either through Summary or Abstract of Evidence.

108. The second part focused on Courts Martial, types of Courts Martial and the jurisdiction of the Courts Martial. The composition of the composition of the Courts Martial was looked at and the powers to convene on. The duties of a convening authority were not left unattended as the part also looked information to be given to the accused for preparation of his defence before the commencement of court proceedings. Deliberation on finding or sentence was considered as well as the powers of the confirming authority. After going through the types of Courts Martial and the procedure for trial, candidates are expected to familiar with the judicial court process applicable in the military in the application of justice.

## **REFERENCES**

109. The notes in this chapter are meant to provide guidance to candidates. For further reading candidates are advised to consult the following:

- a. MML 1974 (Part 1).
- b. MML 1974 (Chap III).
- c. AFA CAP A20 LFN 2004.
- d. Laws of the Federation of Nigeria (Evidence) Chapter 112.
- e. Rules of Procedure (Army) 1972.
- f. Court of Appeal, Kaduna Division ruling on Erisea vs NA.

## **LAW OF WAR**

### **INTRODUCTION**

110. Throughout history, nations have called upon their soldiers to defend their national interest by going to war. As the acts of warfare became more complex and with the introduction of weapons of mass destruction, nations became aware of the need to prevent unnecessary destruction of lives and property in times of war. This need reflected both military interests and the morale values of civilized nations.

111. These morals and values have crystallized into binding customs and formal laws referred to as Laws of War found in The Hague Regulations, the Geneva Conventions and the 3 protocols additional to the Conventions which are; Additional Protocol I – international conflicts, Additional Protocol II – non-international conflicts and Additional Protocol III (the most recent of all the additional protocols) – additional distinctive emblem.

### **OBJECTIVE**

112. This chapter is aimed at providing fair understanding on the laws of war. The candidate is expected to be familiar with the following at the end of the chapter:

- a. Origin, purpose and sources of the law of war.
- b. Important terms in the law of war.
- c. Principles on the protection and treatment of prisoners of war and civilians.
- d. Treatment and protection of refugees.
- e. Legal status of multi-national forces on foreign territory.
- f. Rules of engagement.
- g. Violations of law of war.

### **PURPOSES AND SOURCES OF LAW OF WAR**

113. **Purposes of Law of War.** The purposes of the law of war can be summarized as follows:

- a. Facilitates the restoration of peace.
- b. Reconcile military needs and the requirement of

humanity.

c. Distinguish between what is permitted and what is not permitted.

d. Safeguard certain fundamental human rights of persons who fall into the hands of enemy particularly prisoners of war, the wounded, sick and civilians.

114. **Sources of Law of War.** The law of war is derived from 2 principal sources:

a. **Custom.** The law of war was initially entirely customary, that is based on established practice or custom of nations, e.g. declaration of war, truce, surrender etc.

b. **Treaties and Conventions.** Treaties and Conventions are now the major sources of the law of war. They represent attempts to make customary law certain by codification. They also include any other agreement on issues connected with armed conflict arrived at in international conferences convened for that purpose. Traditionally, there were 2 main groups of law of war treaties; the Hague Conventions and the Geneva Conventions. Below are some of the Conventions pertinent to our purpose:

- (1) Hague Convention No. III of 1907, Relative to the opening of hostilities. (May be cited as H. III)
- (2) Hague Convention No. IV of 1907, Respecting the Laws and Customs of War on Land. (May be cited as H.IV)
- (3) Hague Convention No. V of 1907. Respecting the Rights and Duties of Neutral powers and persons in case of war on land. (May be cited as H.V)
- (4) Geneva Convention Relative to the Treatment of Prisoners of war, 1949. (May be cited as G.III)
- (5) Geneva Convention Relative to the protection of civilian persons in time of war, 1949. (May be cited as G.IV)
- (6) Geneva Convention for the Amelioration of the

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condition of the wounded and sick in the field, 1949.  
(May be cited as G.V)

### **DEFINITIONS OF TERMS USED IN LAW OF WAR**

115. There are some major terms that are important in understanding the Law of War. For a better understanding the candidate need to understand the follows:

- a. **Party to a Treaty.** Each state is bound by the international treaties it accepted either by ratification or accession. Such a state is a party to the said treaty. A state can, when accepting a treaty, make national interpretation and/or reservations.
- b. **Party to a Conflict.** A state formally or actively involved in hostilities against one or more state is a party to the conflict. Such a state and its armed forces is a belligerent.
- c. **Neutral State.** A State formally or in fact not party to a given armed conflict is a neutral State.
- d. **Protecting Power.** A Protecting power is a neutral state which has been designated by a party to the conflict and accepted by the enemy party. A Protecting power also agrees to carry out the functions assigned to a "Protecting Power" under the law of war. Protecting power shall be designated without delay from the beginning of an armed conflict. The Protecting power has the following tasks:
  - (1) To visit and to control prisoners of war and civilian internee camps (e.g. to verify the living, supply and health conditions and to ensure free communication with the exterior by mail).
  - (2) To check and if possible take necessary action in the case of interment of foreign civilian persons.
  - (3) To verify the supply conditions in occupied territory.
  - (4) To make statements and enquiries regarding violations of the protection of cultural objects.
  - (5) To lend their good offices in case of disagreement



with regard to the application of the law of war.

e. **Combatants**. Combatants are members of the armed forces, except medical and religious personnel. While engaged in combat action or in military operation preparatory to it, combatants must distinguish themselves from the civilian population.

f. **Civilian Persons**. Civilian persons are those who do not belong to the Armed Forces and do not take part in a "levee en masse". In case of doubt whether a person is a civilian or not, that person shall be considered a civilian. Journalists engaged in dangerous professional mission in areas of armed conflict are civilian persons.

g. **Levee en masse**. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously and en masse take up arms to resist the invading forces, without having had time to form themselves into organized armed units are referred to as Levee en masse. Participants in a levee en masse are considered as combatants provided they carry arms openly and respect the law of war.

h. **Military Objectives**. Military objective are those military installations, bases or platforms which are possible targets for the belligerent to engage. Civilians within such objective or its immediate surroundings share the danger to which the military objective is exposed. Some examples military objectives are:

(1) The armed forces except medical and religious personnel, medical establishments, religious buildings and objects.

(2) The establishments, buildings and positions where armed forces or their materials are located e.g. positions, barracks, stores etc.

(3) Other objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances prevailing at that

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time, offer a definite military advantage.

i. **Civil Defence.** Civil Defence are volunteer civilian population assigned to specific tasks for the protection and survival of the civilian population during the war or national disaster. The specific civil defence tasks provided for by the law of war include:

- (1) Provision of warning systems.
- (2) Evacuation of the wounded.
- (3) Construction of shelter.
- (4) Blackout measures.
- (5) Rescue operations.
- (6) Medical services, including first aid and religious assistance.
- (7) Firefighting.
- (8) Detection and making of danger areas.
- (9) Decontamination and similar protective measures.
- (10) Provision of emergency accommodation and supplies.
- (11) Emergency assistance in the restoration and maintenance of order in distressed areas.
- (12) Emergency repair of indispensable public utilities.
- (13) Emergency disposal of the dead.
- (14) Assistance in preservation of objects essential for survival.
- (15) Complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to planning and organization.

j. **Military Necessity.** Military necessity means a principle which justifies those measures required to secure the overpowering of the enemy provided that they are not forbidden by law. The law of war provides expressly for specific derogations from protective provisions in case of imperatives or similar military necessity. The derogation means that the

protective status may be reduced, waived or given up when required for the fulfilment of the mission. For example, enemy wounded establishment must be left to continue to care for the enemy wounded met there. However, in case of urgent military necessity you are allowed to use captured fixed medical establishments of the enemy forces.

k. **Prisoner of War.** Prisoner of war is any combatant who has fallen into power of the enemy; such prisoner could be in the custody of the individuals or military units of the fighting nation that captured them.

### **SOME GENERAL PRINCIPLES ON THE PROTECTION AND THE TREATMENT OF PRISONERS OF WAR AND CIVILIANS**

146. The Geneva Convention 1949 is an internationally recognized code of conduct for warfare which provides for the protection and treatment of prisoners of war and binds all the members of the committee of nations. The main object of these regulations is to ensure that the principles of the convention are understood and observed by all ranks, to clarify the right and privileges of which members of the armed forces are entitled if they fall into the hands of the enemy, and to secure correct and uniform treatments for enemy prisoners of war.

116. All commanders are therefore to ensure a complete compliance of these regulations as any contravention will be followed by a sanction if the injured country complains to the Security Council of the United Nations. It is therefore imperative to state some of the important principles of these conventions. The principles are as follows:

- a. The Geneva Convention for the protection of war victims will be observed by all ranks in the event of hostility.
- b. Prisoner of war is any combatant who has fallen into power of the enemy. Prisoners of war are in the hands of the enemy nation and of the individuals or military units that captured them. Military medical and religious personnel are not being combatants and therefore do not become prisoners of war. They should therefore be treated and administered differently.

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c. Each party to a conflict is entitled to a protecting power to ensure the observance of the conventions. The International Committee of the Red Cross (ICRC) could be conferred with such powers. Representatives of the protecting power and the ICRC shall:

- (1) Have access to all places and premises where prisoners of war are located.
- (2) Be allowed to visit prisoners of war on transfer.
- (3) Be allowed to interview prisoners of war without witnesses.
- (4) Have full liberty to select the places they wish to visit.
- (5) Assist prisoners of war in case of judicial prosecution.

d. Prisoners will be treated at all times humanely and with respect. They will be protected against acts of violence or intimidation and against insults. No measure of reprisal will under any circumstances be taken against them, nor will any discrimination be made to the detriment of any prisoner or group of prisoners because of their race, nationality, religion or political opinions. Treatment of prisoners of war shall be based on the following principles:

- (1) **Humanity**. Prisoners of war shall be spared and treated humanely in all circumstances.
- (2) **Protection**. Prisoners of war shall be protected particularly against acts of violence or intimidation and against insults and public curiosity.
- (3) **Respect**. Prisoners of war are entitled to respect for their persons and their honour.
- (4) **Women and Children**. Women and children shall be treated with all the regards due to their sex and age.
- (5) **Equality**. All prisoners of war shall be treated alike subject to:
  - (a) The provisions of the G.III and the

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Additional Protocol to the Geneva Convention of 1977, relating to rank, sex and age.

(b) Any privileged treatment accorded to them by reason of their state of health, age or professional qualification.

(6) **Elimination.** Prisoners of war shall not be eliminated because they are causing impediment to your operation or to prevent them from sharing from your limited ration.

(7) **Protection from Bombardment and Chemical Warfare.** Prisoners of war should be provided with shelter against bombardment and mask against chemical/biological warfare.

e. Possessions of prisoners of war including documents must be safely kept. Interrogation of prisoners of war must be firm but fair.

f. The conventions impose an obligation on all parties to search for any anomaly and bring to trial, personnel who have committed or ordered to be committed, any grave breaches of the conventions.

g. Grave breach of the conventions includes:

(1) Willful killing, torture or inhuman treatment of the wounded and sick prisoner of war or the inhabitants of an occupied territory, or willfully causing them great suffering or serious injuries.

(2) Extensively destroying or appropriating unlawfully and used wantonly, property protected by the conventions, when this is not justified by military necessity.

(3) Compelling prisoners of war or the inhabitants of occupied territory to serve in the armed forces or willfully depriving them their trial.

(4) Unlawful deportation, transferring or confining the inhabitants of occupied territory.

h. When interrogated, a prisoner of war is duty bound to

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give his surname, first name, rank, date of birth and number. His identity card could be asked for but not confiscated. No physical, mental pressure or any other form of coercion may be exerted on prisoners of war in order to induce them to answer questions.

I. Questioning will be in the language understood by the prisoner.

j. All possessions which are for personal use to the prisoner will be retained by him except arms, horses and military equipment.

k. Money will be retained by the prisoner of war until he arrives at a place of documentation. Looting of prisoners' property or the acceptance or exchange of souvenirs is expressly forbidden.

l. The commander of the prisoners of war camp holds the competence for disciplinary punishment. That competence may be exercised by a deputy or other officer to whom it has been delegated. The disciplinary sanctions applicable to prisoners of war are as follows:

(1) A fine which must not exceed 50% of the advance of pay and working pay which the prisoner of war would otherwise receive under Articles 60 and 62 of G. III during a period of not more than 30 days.

(2) Discontinuance of privileges granted over and above the treatment provided for by the convention.

(3) Fatigue duties not exceeding 2 hours daily.

(4) Confinement.

m. The detaining power may utilize the labour force of prisoners of war who are physically fit. A fair working rate shall be paid. The following rules govern the employment of prisoners:

(1) The work performed by prisoners of war may not have a military character or purpose i.e. the work shall not contribute to the war effort.

(2) Their working conditions shall not be inferior to those of the nationals of the detaining power.

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- (3) Non-Commissioned officers can only be required to do supervisory work.
- (4) Officers may not be compelled to work.
- (5) Unless he is a volunteer, no prisoner of war may be employed on work which is of a dangerous nature. For example, the removal of mines or similar devices is considered as dangerous work.
- n. The detaining power shall grant all prisoners of war a monthly advance of pay and an account for each prisoner of war.
- o. Civilians in an occupied territory are entitled in all circumstance or respect for their person, honour, family rights, religious convictions, traditional rights and customs. They will be humanely treated at all times and protected against all acts or threats of violence and when they are for any reason held in custody, against insults and public curiosity. Women will be especially protected against any attack on their honour, in particular against rape, informal prostitution or any form of indecent assault. Grave breaches include:
  - (1) Detention of civilians in a place where enemy is likely to attack.
  - (2) Exertion of mental or physical pressures to obtain information.
  - (3) Any measure that will exert physical suffering on the civil populace.
  - (4) Arbitrary punishment of civilians without a proof of any offence committed.
  - (5) Collective penalties for civilians.
  - (6) All forms of intimidation or terrorism.
  - (7) Pillage or looting.
  - (8) Reprisal against civilians or their property.
  - (9) Taking hostages.
  - (10) Detention of civilians in areas particularly exposed to war.
- p. Civilians in occupied territory may not be compelled to work unless they are over 18 years. They may also not be

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compelled to take part in duties which will expose them to military operations.

### **TREATMENT AND PROTECTION OF REFUGEES**

117. In a theatre of war or peace keeping operations, the control of refugees and the provision of shelters, food, and medical attention is primarily the responsibility of the local civilian authorities. However, where the authorities are incapable of handling refugee problems, the military commander must be prepared to take over all the responsibilities of such refugees. Since refugees are members of the civilian populace who have been displaced in a helpless situation due to the ravages of war, the principles of the Geneva Conventions on the protection and treatment of civilians mentioned above will be applicable to them.

118. It therefore follows as a necessary corollary that troops when tasked with the primary responsibility of refugees should treat them fairly and humanely. They should not be subjected to any physical or mental tortures or maltreatment. Their fundamental rights of movement, religion and above all, their right to life must be preserved. It is important to note that any form of prohibition that applies to civilians in the Geneva Conventions may also apply to refugees. Any contravention of the above principles constitutes a breach of the conventions and will render the culprits amenable to civil jurisdiction either in his home country or in the country of custody.

### **MULTINATIONAL FORCES**

119. Occasions may arise which require the presence of forces from different nations in the territory of a foreign state, for example, the establishment of a United Nations Force in the territory of one or more states such as UNIFIL, UNIMOG, or forces of other regional bodies like ECOMOG. Where the armed forces of one or more nations is located or engaged in the territory of a foreign state with its consent, the territorial laws of the state shall apply. However, additional measures are necessary, such as special agreements and detailed rules for practical



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cooperation e.g. ad-hoc status of forces agreements.

120. In addition to the basic agreement establishing the presence of the armed forces in foreign territory, decisions and measures such as the following shall be taken by the military commands and civilian authorities concerned:

- a. Subordinations and command chain.
- b. Personal and material field of application of the law of war particularly when the states concerned are not all parties to the same treaties.
- c. Applicable administrative provisions.
- d. Applicable penal legislation and disciplinary competencies.
- e. Responsibility with regard to the law in multinational forces.
- f. Competence for coordinating measures between military commands and civilian authorities.

### **RULES OF BEHAVIOUR IN ACTION**

121. In every military operation, troops are expected to act professionally. In line with their duty, they are to be guided by certain codes both in their personal conduct and in operation. The training received during Pre-Deployment Training at the Nigerian Army Peace Keeping Center Jaji is key in the overall conducts of troops in operation. Subsequently, commanders engaged in operation should know certain rules and adhere strictly to such. The compilation contained in this module is devoid of technicalities and without reference to any international treaties and conventions. Some of the rules are:

- a. **Combat Rules.**
  - (1) Fight only combatants.
  - (2) Attack only military targets.
  - (3) Spare civilian persons and objects.
  - (4) Restrict destructions to what your mission requires.

- b. **Enemy Combatants who Surrender.**
  - (1) Spare them
  - (2) Disarm them.
  - (3) Treat them humanely and protect them.
  - (4) May be questioned, but only bound to give information for their personal identification.
  - (5) Hand them over to your superior for evacuation to the rear.
- c. **Wounded Enemy Combatants.**
  - (1) Collect them.
  - (2) Care for them.
  - (3) Hand them over to your superior or send them to the nearest medical personnel.
- d. **Civilian Persons.**
  - (1) Respect them.
  - (2) Treat those in your power humanely.
  - (3) Protect them against ill-treatment.
  - (4) Vengeance and taking of hostages are prohibited.
  - (5) Respect their property; do not damage or steal it.
  - (6) Enemy civilian persons may not be compelled to give information.
- e. **Distinctive Signs.** Medical personnel and facilities, civil defence, cultural objects, places of worship, museums etc are usually marked with distinctive signs, an example is a red cross on a white background for the Red Cross. Details of distinctive signs are discussed in Chapter 8. It is imperative you:
  - (1) Respect persons bearing and objects marked with such signs.
  - (2) Let these persons perform their tasks unless ordered otherwise.
  - (3) Leave these buildings, establishment, and monuments untouched and do not enter them, unless otherwise ordered.
  - (4) Do not fire at medical personnel, air or ground

vehicles, tents or other facilities used for the care of wounded, sick and disabled persons.

f. **Prohibited Deception.** While it is lawful for a commander to use deception to mask his intentions and actions from the enemy, the law of war prohibits certain types of deceptions as follows:

- (1) It is prohibited to make improper use of:
  - (a) The distinctive signs and signals of medical services.
  - (b) The distinctive signs of civil defence.
  - (c) The distinctive signs of works and installations containing dangerous substance.
- (2) It is prohibited to kill, injure or capture an enemy by resort to perfidy. Perfidy consists of committing a hostile act under the cover of a legal protection. The following acts are examples of perfidy:
  - (a) Pretence with intent to negotiate under a flag of truce.
  - (b) Pretence surrender.
  - (c) Pretence to be incapacitated by wounds or sickness.
  - (d) To pretend to be a civilian or non-combatant.
  - (e) To pretend having protected status by the use of flags, emblems or uniforms of the United Nations or of neutral states.
- (3) It is prohibited to move medical establishments, transport civilian persons, prisoners of war, or to use their presence to render certain areas or military objectives immune from combat action.

### **VIOLATION OF LAW OF WAR**

122. The violation of law of war constitutes a crime for which you could be punished under national laws or by an international tribunal as in the Nuremberg and Tokyo trials after the WW II. Every combatant is

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personally responsible for his action even if ordered to commit such act. The law does not recognize the plea of 'I was only obeying orders' or 'superior order'. Other cases in perspective are the trials for war crimes levelled against some commanders and military actors in the recent Yugoslavian crisis, Charles Taylor of Liberia and Uhuru Kenyatta of Kenya.

123. Respect for the laws of war is no excuse for disobeying lawful orders of a superior. Where the order is clearly unlawful, you have a duty to bring this to the notice of the superior and thereafter to disobey the order if he insists. For example, an order to commit a crime such as murder, rape, pillage or torture clearly violates the common sense rules of decency, social conduct and morality. You are therefore obligated to disobey such an order. Common sense and the laws of war will help you recognize what is clearly criminal. You have a duty to report war crime through your normal chain of command.

### **CONCLUSION**

124. This chapter should help you understand your responsibilities and obligation under the law of war. You are legally obliged to limit death, destruction and unnecessary suffering in combat. The law of war helps protect you and your unit thus making the restoration of peace easier. Specifically, you must know and obey the rules regarding forbidden targets, tactics and techniques. Others are enemy captives and detainees, private properties, prevention and reporting of criminal acts or unlawful orders.

125. Although combat is different from everyday life, common sense still applies. Humane treatment, law and order in combat increase discipline and unit's security. It further builds local support for the mission; maintain dignity, honour and conscience which eventually lead to winning the battle and the peace.

## **REFERENCES**

126. The notes contained in this chapter are meant to provide guidance to candidates. For further reading candidates are advised to consult the following:

- a. Treaties Governing Land Warfare, Department of US Army Publication (FM 27-1).
- b. The Law of Land Warfare, Department of US Army Publication (FM 27-10).
- c. Protocols to the Geneva Conventions of 12 August 1949.
- d. Handbook on the Law of Warfare for Armed Forces by Frederick De Mulinen.
- e. International Law Concerning the Conduct of Hostilities, an International Committee of the Red Cross Publication.
- f. Basic Rules of the Geneva Conventions and their Additional Protocols, Publication of the International Committee of the Red Cross.
- g. Manual on the Rights and Duties of the Medical Personnel in Armed Conflicts by Dr. Alm Baccino-Astrada.

# **GENERAL MILITARY LAW PROBLEM SOLVING**

## **INTRODUCTION**

127. Solving military law problems is not an independent topic in the sense of the topics contained in Chapters 1-9. Rather it is the use of the knowledge of military law to solve disciplinary and administrative problems of the Services and members of the Armed Forces.

128. In this regard Military Law is used in its comprehensive sense, as problems commanders and staff may be required to solve in the units and formations are enormous. In reality, candidates as officers may be faced with certain problems ranging from NOK issues between children of polygamous parents, resolving anomalies arising from conditions of Service, or carry out disciplinary actions involving loss of seniority, disengagement from service and even death penalty. A thorough knowledge of every aspect of Military Law is a prerequisite, as simple and straight forward issues not properly handled may become rather complicated.

## **OBJECTIVE**

129. This chapter is aimed at posing some likely problems that may arise in the unit and how such problems could be solved by commanders. Candidate should be able to have clearer view of how to proceed with solving problems as they relate to military law.

## **IDENTIFYING THE PROBLEM**

130. Questions that test the knowledge of a candidate on how he could solve a military law problem should depict a problem, and should be realistic. Questions asking for explanations, definitions or other theoretical answers are inappropriate, as they do not depict a problem. Once the candidate understands this, he should visualize the problem as close to a real life situation as much as possible. When this done, the candidate should proceed as follows:

- a. Consider whether or not the problem is purely

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administrative.

b. Consider whether or not the problem is purely disciplinary.

c. Consider whether the problem is both disciplinary and administrative.

b. Identify whether civil or public interests are involved. In this study, there are several scenarios developed for candidates to consider the military law problem solving applicability.

131. Several scenarios have been developed for candidates to consider. Below are the scenarios for consideration:

(1) Scenario 1 – A soldiers deployed for IS operation in a particular Local Government Area cunningly stripped his weapon without the knowledge of his colleagues, put same inside his travelling bag and left his location without permission. While en- route to his village in another Local Government Area, he was involved in a road traffic accident, where it was discovered that he was in possession of weapon by the locals who came to their rescue. As OC in charge of the location under which the soldier falls, what will you do, assuming the soldier was not severely injured and was held in custody by the police for 4 days?

(2) Scenario 2 – There was a planned operation by the NA in a particular location in the North East to dislodge terrorists reported to be massing up for further offensive. The unit commenced advance for the impending task, but due to poor visibility and for administrative reasons, the advancing force halted the advance for the night. By the next morning when the advance was to continue, it was discovered that the anti-aircraft gunner was nowhere to be found. It was also discovered that the bridge block of the anti-aircraft gun was missing. The operation was eventually called off because the anti-aircraft gun was the only fire power the

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unit had. Two days later, gunner was arrested by the Military Police in a Motor Park while making a phone to his brother alleging that he was the only survivor in the attack. As the OC of the unit, what actions while you take on the soldier?

(3) Scenario 3 – While deployed in the creeks in the Niger Delta to wade-off activities of economic saboteurs. You were thorough in the discharge of your duties and achieved results. During your routine checks on your soldiers, the guard commander reported to you that one of the soldiers (LCpl Quick Money) attached to you is suspected to be communicating with militants. He narrated that while LCpl Quick Money mistakenly left his phone to ease himself, his phone rang and the speaker at the other end requested for information as to time of the impending attack on bunkering site, the number of troops coming for the attack and the number of gun boats to be used for the attack by the soldiers. On hearing this, what action will you take?

(4) Scenario 4 – Four months after passing out from Depot NA, Pte Keep Calm of 919 Bn had not received his salary or any form of payment into his account. He made formal complaint on this to his OC through the appropriate channel of communication, which was in turn forwarded to the battalion headquarters. Two months after, nothing was done by the unit to rectify the soldier's salary issue. The soldier, who had exhausted all options available to him and with the biting economic situation of the country, left the unit without pass for 2 weeks to solve his salary issue. On return, he was detained in the unit's guard room. As OC, how will you handle the situation?

### **IDENTIFYING THE APPLICABLE LAW**

132. When the problem is ascertained, the candidate should proceed to identify the relevant law applicable and the aspect of that law to



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apply. In the above scenarios, the first consideration that could be looked at is that of Service interest before considering if any civil interest is involved. Thereafter, consider if any of the cases are to be handled administratively or they are purely disciplinary cases. Other considerations are:

- a. The relevant law applicable; which are the AFA CAP A20 LFN 2004 and Fire Arms Act.
- b. The specific aspect of law involved;
  - (1) Scenario 1 – Absence without leave and offence by or in relation sentries, watch etc.
  - (2) Scenario 2 – Aiding the enemy, desertion, offence in relation to property of members of the Armed Forces.
  - (3) Scenario 3 – Aiding the enemy, communicating with the enemy and injurious disclosures.
  - (4) Scenario 4 – Absence without leave.

133. In a situation where the candidate is required to charge the soldier, he should open the appropriate section and proceed as discussed. Note that the drafting of the various charges listed above for each scenario are not stereotype and must be drafted in conformity with the rules guiding the framing of charges as discussed under Chapter 4. You must bear in mind that more than one charge could be framed against the soldiers in any of the scenarios.

### **SOLVING THE PROBLEM**

134. Now there is really a problem to solve; a complicated one. However, the problem may not always be so complicated but at times it could be worse. However, in addressing the problems, the following questions could be considered:

- a. Are all the charges correct in law.
- b. Can the facts as alleged support all the offences charged.
- c. Are there legal rule offended by the charges.
- d. Can the offences be tried summarily by the charges?

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- e. Is the punishment in accordance with the disciplinary powers of commanders?
- f. Does the punishment or do the punishments offend any rule of justice (excessive or, double jeopardy).
- g. In the case of the soldier with salary problem, could it be disciplinary, administrative or both.

135. It is expected that by the time the candidate is able to resolve these issues, the problem would be solved. In certain cases, the determination of one answer may render the rest of the action irrelevant even if they are correct in law. However, in answering examination questions in general military law problem solving, each factor should be stated before the overall effect is given as the solution to the problem.

### **CONCLUSION**

136. Candidates are to note that this area is as vast as the problems a unit can encounter in real life. They should therefore consider as many real life problems as possible which require knowledge of military law to solve. All candidates should have thorough knowledge of the following:

- a. 1999 Constitution of Nigeria.
- b. AFA CAP A20 LFN 2004.
- c. NA publications relating to special and general matters.
- d. NA Forms relating to Military Law.
- e. Related forms having general application such as TF 1, Gen 33 and similar documents.

## **SECURITY OF DOCUMENTS**

### **BACKGROUND**

137. Document security is the collective term which describes protective measures designed to ensure that classified information in documentary form is correctly safeguarded always. Documents include; electronic or hard copies of notes, letters, maps, charts, drawings, carbons, typing ribbons, films, photographs, slides, vuoils, recording tapes, printing plates and so on. The advent of information technology has necessitated change in the method of storage. This underscores the formation of Communication Information Cell, G6. Although all documents will be stored electronically in conformity with technology, storage of hard copies could serve as back-up.

### **THE NEED TO KNOW PRINCIPLE**

138. A fundamental principle of document security is that knowledge or possession of classified material of any grade should be limited to those authorized to receive and need to know it in order to carry out their duties. Rank and appointment do not entitle anyone to knowledge or possession of classified information. In particular, material graded made known only to those who are specifically authorized to receive it. Electronically, this has been made easy by access control.

139. The security of documents is often endangered by such practices as:

- a. Including unnecessary items of classified information in papers or files for wide circulation.
- b. Issuing documents in accordance with standard distribution lists, regardless of the 'need to know' principle.
- c. Failing to review standard distribution lists from time to time as circumstances demand.
- d. Giving minutes too wide a distribution in order to keep colleagues 'in the picture'.
- e. Inadequate control of registries and libraries.

### **THE NEED TO HOLD**

140. Classified material should not be retained by an individual staff officer after it has ceased to be necessary for the efficient discharge of scheduled duties. The material should be reviewed at regular intervals. In other words, documents required for record purposes should be filed and the rest destroyed immediately or returned to the originator for disposal.

141. The need to hold classified documents also addresses registry clerks, transfer personnel and document production staff and systems. The regulations and processes governing the continuous participation of these classes of officials form a major block in document security.

### **THE NEED TO TAKE**

142. A person may read to know the contents of a classified document and indeed, may have a need to hold the documents. It is only in circumstances when it is inevitable should any document be removed from the unit/office.

143. It is advisable to allow such practices where the staff concerned has a safe box at home. This is to forestall the possibility of theft, damage, loss or espionage/undue access to the documents.

### **SECURITY DURING PRODUCTION AND REPRODUCTION**

144. **Responsibility.** The originator of a classified document or the authority responsible for its preparation must safeguard it during production or reproduction. In the case of documents graded confidential or above, the originator decides how many copies are needed and only that number is produced. Only vetted and authorized personnel may be employed to produce and reproduce classified documents.

145. **Special Provisions for Top Secret Material.** Whenever the typing or production of top secret material begins, completed works should, if possible, be delivered to the originator before closing hours. If

this is impossible, short hand notes, drafts, and incomplete typescript should be returned to the originator for safe custody (unless approved facilities for the custody of top secret material are available). Completed top secret documents, together with any subsidiary material (eg. spoiled copies, carbons, drafts, and shorthand notes) should be delivered to the originator for distribution or destruction. The originator is personally responsible for burning or destroying, in an approved shredding machine, all subsidiary material. Nevertheless, the best approach is for the originator to produce and reproduce the said document personally. This calls for clerical skills on the part of all officers authorized to produce or originate classified documents.

146. **Security of Typing and Duplicating Offices.** Commanders at all levels should pay particular attention to those offices where typing, duplicating or copying is done, emphasizing the need for:

- a. Regular and frequent inspections by security officers and supervisory staff.
- b. Briefing on staff precautions to prevent extra copies being produced either inadvertently or for unauthorized purposes.
- c. Recording transit when production involves a series of process in different offices.
- d. The use of vetted, trained and experienced staff in the production and movement of highly classified documents.

147. **Security of Equipment and Subsidiary Materials.** The security of equipment and subsidiary materials is paramount so as to ensure that classified documents are safeguarded right from the point of production to those who would require such documents. Some equipment used for recording and producing classified documents are tape recorders, dictating machines, photocopying machines and shorthand books.

- a. **Tape Recorders and Dictating Machines.** Tape recorders and dictating machines are used to record information. This information is then produced before it is

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disseminated to those who require it. The following are guidelines for safeguarding tape recorders and dictating machines:

(1) Tape recorders and dictating machines can easily be modified to operate as radio transmitters. Therefore, the underlisted safeguards are employed:

(a) Unauthorized persons are not allowed access to official speech recording equipment.

(b) When not in use, apparatus is disconnected from the mains. During duty hours, official apparatus is stored under secure conditions.

(c) The use of electronic apparatus in rooms where highly classified conversations regularly take place is restricted as far as possible. Such rooms are to be screened for possible placement of transmitters before use.

(d) When in use, machines are kept as far away from telephones as possible, a minimum distance of one metre.

(e) Machines are not used near communications security equipment (e.g. cipher machines and teleprinters). Where they have to be used and there is a possibility that compromised messages (either electrical or acoustic) have been recorded, the tape is given the same classification as the traffic being passed and is not downgraded until the tape is destroyed.

(f) At any overseas location where there is a considered threat of eavesdropping, machines are not to be used in:

I. Rooms in which classified information is discussed.

ii. Rooms with partition walls, ceilings or floors.

iii. Cut side rooms near other buildings

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which might be used for the installation of intercept equipment.

(2) All classified materials should be erased from tape as soon as possible. Since erasure will seldom be complete, tapes are treated as follows:

(a) Once a classified material has been recorded, the tape thereafter retains the grading of the highest classified information ever put on it until it is disposed off.

(b) The highest grading on the tape is shown on its spool, and the grading of each item is clearly stated at the beginning and end of each recording.

(c) When no longer required, tapes are cut into small pieces and then disposed off as classified waste.

b. **Photocopying Machines**. There are special risks in copying classified material by some modern processes. For example: Thermofax copies can acquire information from other documents by contact and may themselves off set on to plastic materials; the verifax image can be transferred to a paper placed in contact with a damp print. Careful handling is therefore necessary to prevent copies being made accidentally. The issue and custody of photocopying paper should be strictly controlled so that only those persons detailed to carry out official copy orders have access to it. Even then after working hours, the paper should be locked up. Any spoilt reproduction materials should be disposed of as classified waste. Photocopy machines should be used under strict supervision and outside normal duty hours, as well as being immobilized. From another dimension, recent security outputs suggest that photocopiers are prepared transmitters to parent companies and nations. It is therefore, imperative that highly classified documents are NOT photocopied at all.

c. **Shorthand Notebooks**. Shorthand notebooks used for

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classified information are given the classification of their most highly classified item and protected accordingly. Separate books are used for secret materials. Meanwhile, when a transcript is complete the notes are removed from the book and given to the originator for immediate destruction.

d. **Subsidiary Materials.** In general, all materials used in producing classified documents are to be treated as classified matters.

### **CONTROL OF SPARE COPIES OF CLASSIFIED DOCUMENTS** **RESTRICTED**

148. Spare copies of classified documents, letters and minutes require the same protection as the originals and the following procedures should be observed:

- a. Spare copies of all classified documents are kept to the minimum and are reviewed regularly for destruction.
- b. Spares are not held loose but kept in folders or containers each marked with the appropriate security grading and showing the number and types of documents enclosed.
- c. Records are kept of spares issued or destroyed.
- d. Circulated copies of classified materials are destroyed as soon as circulation is complete.
- e. Normally, spare copies of top secret documents are not made. If spare copies are produced, they are copy numbered and kept separate from other spares under the appropriate security safeguard.

### **TRANSMISSION OF CLASSIFIED DOCUMENTS**

149. Instructions on the packaging, dispatch, transmission and receipt of classified documents are given in the appropriate service manuals of security. These procedures are controlled by the appropriate registries and classified mails are transmitted through the same registries. Classified documents may be passed by hand direct to personnel entitled to know their contents (for example, the officer dealing with the documents, or a clerk with the appropriate security



clearance).

150. When documents are being passed, they are carried under cover to prevent unauthorized persons from seeing them. The carriage of classified documents by hand outside a unit or formation is subject to detailed control. Such controls include, paired delivery staff, provision of mobility, restriction on timings and appropriate delivery documentation.

### **EXTRACTS AND COPIES**

151. Extracts and copies from top secret and secret documents are made only on the authority of a responsible officer who is entitled to originate such documents. Extracts and copies are kept to the minimum and copies are copy-numbered in accordance with the rules governing such material.

152. Extracts or copies of documents graded confidential and below may be made for official purpose by an officer entitled to handle them. Copies bearing the security grading of the original are treated as separate documents and graded according to content.

### **NATIONAL CAVEAT MARKINGS**

153. Contingencies might warrant that certain documents or instructions be seen only by Nigerian troops or other specified nationals. Such documents would be appropriately marked for example 'Nigerians only' or 'AU EYES only'. This may be useful in multi-national operations.

154. Unauthorized disclosure of such documents or instructions could be harmful to the interest of the nation. The sole criterion in the selection of the appropriate classification is the estimated harm that unauthorized disclosure would cause to national interests.

### **RE-GRADING OF DOCUMENTS**

155. **Single Service.** Just as the initial grading of a document is the responsibility of the originator, so is the decision to re-grade. The holder of a document may, however, ask its originator for authority to re-grade

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it. If the re-grading cannot be referred to the originator, the following procedures are to be adopted:

- a. A document with a single addressee may be re-graded by an officer of a formation at least as high as that of the originator provided the officer's rank and appointment entitles him to originate a similar document in both the existing and proposed grade.
- b. Where a document has a wide circulation, it may be re-graded with the sanction of the formation above the originator, or of the appropriate service headquarters when necessary.

160. **Documents Originated by Another Service.** Documents originated by a service other than that of the recipient may not be downgraded without the approval of the originator which should be obtained through normal channels.

161. **Intelligence and Communication Security Material.** Intelligence material may be downgraded only with the agreement of the originator. When that cannot be obtained, reference is made to the appropriate Service headquarters. Cryptographic material may not be downgraded without reference to single Service headquarters.

162. **Files.** Authority for re-grading of files is vested in Service headquarters. Also any suggestions for re-grading must be submitted to those headquarters through normal channels.

163. **Annotation of New Grading.** When a document is re-graded, the new grading is marked on the document, and the old grading deleted in ink. The amendment is signed and dated by the officer authorizing the re-grading, and any documentary authority for regarding is noted above the signature.

164. **Notification of Re-grading.** Notification of re-grading is normally done with the consent and approval of the originator. When a document is eventually re-graded either upward or downward, all

recipients and holders are informed immediately.

### **CLASSIFICATION OF REPRODUCTIONS**

165. The method of showing security markings on ordinary service documents has been explained in Section 2. Reproductions are treated as follows:

- a. **Drawings and Tracings.** Classified drawings and tracings bear their grading at the centre, top and bottom so that they can be reproduced on all mechanically produced copies. In addition, the security grading is stamped, preferably in red, on both sides of all reproductions.
- b. **Photographic Negatives and Prints.** Whenever practicable, a classified negative bears its security grading in such a position that it will be produced on all copies. Negatives in roll form bear the classification at the beginning and end of each roll, according to the highest graded negative in the roll. These and any classified negatives whose grading cannot be individually applied, are kept in approved containers bearing their grading.
- c. **Maps.** Classified maps produced within, or to the order of the Service bear the appropriate security grading, normally under the scale and at the top centre. Small maps enclosed with other documents have the grading stamped on their reverse side.
- d. **Photocopies.** Photocopies (ie. Xerox or similar processes) of ordinary documents that have already been correctly graded and stamped need no further safeguards, provided that the classification is shown clearly on the copy. However, the blank reverse sides are to be stamped.

### **DISPOSAL PROCEDURES**

166. When disposing off classified materials, it is imperative that the detailed instructions given in the appropriate manuals and security regulations are followed. Shredding machine, when available, is to be used for this purpose. However, if such machines are not available, other

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methods such as burning should be employed. On no account should classified materials be improperly disposed off in order to avoid same falling into wrong hands.

167. Experience has shown that waste paper basket is a notorious and dangerous source of leakage; a torn document can be pieced together. Arrangement should be made to keep all classified waste paper separate from unclassified. Classified waste paper must not be thrown into the ordinary waste paper basket but must be destroyed under secured conditions.

### **CONCLUSION**

168. The protection of official information is paramount in the interest of a sovereign nation. Ensuring this cannot be divorced from good preparation and effective control. Some points to note are the correct marking, copy numbering, page numbering, the 'need to know, hold and take principles', and care in handling and circulating official documents.