

- 14 -

~~SECRET~~

PART IV  
THE OFFENDER  
CHAPTER I  
RECIDIVISM

Art. 49

DISCRETION OF THE JUDGE IN  
CASES OF RECIDIVISM.

For purposes of recidivism, except in cases of convictions for offences of the same kind, the judge shall have the discretion not to take into account a previous conviction for offences foreseen by the common penal law or exclusively military offences.

Art. 50

CHAPTER II  
MORE PERSONS PARTICIPATING IN  
AN OFFENCE  
AGGRAVATING CIRCUMSTANCES

1. In the case that many persons participate in the military offence, besides that in the cases in which are concurring the circumstance of the articles 72, and 73 and those of the second paragraph of the article 74 of the penal Code, even for the superior officer who has participated with an inferior in the offence, the punishment to be imposed for the offence committed shall be increased;

2. The detentive punishments, apart from the cases in which cashiering is caused, shall entail, for the military man who has participated in the offence with an inferior, the removal.

Art. 51

MITIGATORY CIRCUMSTANCES

The punishment to be imposed for the military offence shall be reduced:

- a) for the inferior, who has been caused by the superior to commit the offence.
- b) for the military man who, in the preparation or execution of the offence, has played a part of minor importance, case referred to in the preceding article excepted.

Art. 85

OFFENCES AGAINST ALLIED STATES

The punishment prescribed in articles 190 and the articles following it shall also apply where the offence is committed to the detriment of a state allied or associated with the Somali state for purposes of war.

Art; 86

MILITARY CIRCUMSTANCES

The punishments prescribed for the offence in this Chapter and in the preceding Chapters shall be reduced where, by reason of the nature, type, means, characteristics or circumstances of the act, or by reason of the particular slowness of the injury or danger, the act appears to be of slight importance.

PART-II

OFFENCES AGAINST THE MILITARY SERVICE

CHAPTER-1

OFFENCES IN SERVICE

SECTION:1: VIOLATION OF GENERAL DUTIES CONCERNING  
COMMAND.

Art.87

HOSTILE ACTS OF THE COMMANDANT AGAINST A FOREIGN  
STATE.

1. The military man who, without the approval of the Government, or apart from the cases of necessity, carries out hostile acts against a foreign state, shall be punished with military imprisonment upto three years;
2. Should the hostile acts be such as to expose the Somali State or its citizens wherever residing or whoever enjoys the protection of the laws of the state to the danger of reprisals or retaliations, the punishment shall be military imprisonment from two to eight years. Where a breach of diplomatic relations results, or where the retaliations or reprisals occur, the punishment shall be military imprisonment from five to ten years;
3. Where the acts are such to expose the Somali state to the danger of war, the military imprisonment for not less than ten years shall be applied;
4. Where, for the purposes of the hostile acts, the war occurs, or fire breaks out, or where devastation, or death of one or more persons resulted, the punishment shall be death by shooting at the chest;
5. The conviction shall entail removal.

PART V  
APPLICATION AND EXECUTION OF PUNISHMENT

Art. 52

CONFINEMENT ORDERED FOR DISCIPLINARY PURPOSES  
Equalization to preventive imprisonment

The confinement for disciplinary purposes awarded by the military authorities awaiting criminal proceeding shall be compared, for the purposes of the expiry of the punishment, with the imprisonment served before the sentence is irrevocable.

Art. 53

THE  
SUPERVISION OVER THE EXECUTION OF MILITARY PUNISHMENT.  
Organization of the places in which military punishment is served.

1. The execution of the punishment of military imprisonment shall be supervised by the military Attorney's Office;
2. The military regulations passed with decree of the President of the Republic shall establish the organization of the places in which military imprisonment is served, and shall provide relatively for the ways of execution of the military imprisonment to the relative supervision.

Art. 54

EXECUTION OF COMMON PUNISHMENTS  
INFLECTED AGAINST MILITARY MEN  
IN SERVICE TO ARMS

For the offences referred to in the ordinary criminal law, the following provisions shall, in the execution of punishments imposed upon military men in service to arms, be observed:

- a) the punishment of death shall be executed by shooting at the back with <sup>previous</sup> cashierring;
- b) the punishment of life imprisonment and that of imprisonment, where the conviction does not cause perpetual interdiction from public offices, shall be executed in the ordinary ways with the convicted to be cashiered according to the provisions laid down by the law and by the military regulations;
- c) the punishment of imprisonment, where the conviction does not cause perpetual interdiction from public offices, shall be substituted for by the military imprisonment for equal duration, though the imprisonment is less than one month;
- d) the punishment of arrest shall be substituted for by military imprisonment computing one day of military imprisonment for two days of arrest;

- e) the fine, not executed for insolvency of the convicted, shall be substituted by military imprisonment for not more than one year, computing one day of military imprisonment for each of So. Shs. 25/- or fraction of SO.SHS. 25/- of fine.

Art. 55

EXECUTION OF MILITARY PUNISHMENTS  
IMPOSED UPON PERSONS WHO HAVE NOT,  
OR HAVE LOST, THE MILITARY QUALITY  
OR WHO PERFORM ACTIVE COMBAT SERVICE

1. In the cases referred to in the article 13, for the execution of military punishment, the following provisions shall be observed:

- a) the punishment of death shall be executed according to the provisions of article 19  
b) the punishment of military imprisonment shall be substituted by the punishment of imprisonment for equal duration.

2. The provisions of this article shall be applied even when for a military offence, punishment is imposed upon those who do not belong to the armed forces of the state, upon the assimilated to the military men upon the members of militarily organized civil bodies and upon the other persons not belonging to the said forces.

PART-VI  
EXTINCTION OF MILITARY OFFENCE AND  
MILITARY PUNISHMENT

Art. 56  
GENERAL PROVISIONS

1. The provisions of criminal law on the extinction of the offence and punishment, since they are applicable in the matter of military criminal offence, shall be observed even for the offence and for the military punishments, with the modifications laid down by the following articles.

2. For the purposes referred to in the preceding paragraph, the punishment of death prescribed in the military penal law and the punishment of military imprisonment are considered equal respectively to the punishment of death and to the punishment of imprisonment prescribed in the ordinary criminal law.

Art. 57  
CONDITIONAL SUSPENSION OF SENTENCE

The conditional suspension of sentence shall extend to the accessory military penalties of the suspension from employment and of the suspension from rank.

eeq ✓

Art. 58

CONDITIONAL RELEASE

1. The person sentenced to a military imprisonment for a period exceeding three years, who has served half of the punishment, or at least three-fourths, if he is recidivist, and in every case not less than three years, may be granted conditional release, where the remaining punishment does not exceed three years, provided he has given continuous proof of good conduct.
2. The grant, the consequences and the revocation of the conditional release shall be governed by the common penal law.

Art. 59

MILITARY REHABILITATION

1. The rehabilitation provided by the common penal law does not extinguish the military accessory penalties and every other military consequence.
2. Against the person rehabilitated according to the ways prescribed in the military penal law, the military accessory penalties and every other military penal consequence shall be extinguished with rehabilitation granted according to the ways laid down by the military penal law.
3. The sentence of rehabilitation awarded according to the provisions contained in the preceding paragraph shall be revoked by right in the case prescribed in article 154 of the common penal law.

Art. 60

EFFECTS OF AMNESTY, INDULT, PARDON  
AND MILITARY REHABILITATION CONCERNING  
THE LOSE OF RANK RESULTING FROM CONVICTION ✓

1. Except otherwise is provided by the decree, the amnesty, indult or pardon do not give back the rank lost in consequence of the conviction;
2. Except otherwise is provided by law, military rehabilitation does not give back the rank lost in consequence of the conviction.

PART VII  
SECURITY MEASURES

19/12/74

Art. 61

General Provisions

The provisions of the common penal law concerning the security measures shall be observed even in the military penal matters, except the provisions of the following articles.

For the purposes of the provisions of the preceding paragraph, the punishment of death prescribed in the military penal law shall be compared respectively with the punishment of death and the punishment of imprisonment prescribed in the penal code.

Art. 62

PROHIBITION OF STAY

When the offender is guilty of any of the offences against the fidelity and the armed defence, there can be imposed upon him the prohibition of stay in one or more districts or in one or more regions, appointed by the judge, being observed the provisions of the common penal law.

Art. 63

SUSPENSION OF THE EXECUTION OF SECURITY MEASURES

During the service to arms there shall be suspended the execution of the security measures ordered in application of the common penal law or of the military penal law, except where the matter concerns treatment in nursing home or custody, in lunatic sylum, in reformatory, or if it concerns confiscation.

BOOK-2

Chapter 1  
Treason

MILITARY OFFENCES IN PARTICULAR

Art. 64

PART-1

OFFENCES COMMITTED AGAINST THE FIDELITY AND THE ARMED DEFENCE

High treason

1. The military men, who committed any of the crimes against the personality of the state prescribed by the articles 184, 217, 218, 222, and 225 of the penal law shall be punished in conformity with the corresponding provisions of the same code, substituting the punishment of death or imprisonment for life by the punishment of death with cashiering, and increasing by one-third the punishment of imprisonment.
2. The military <sup>man</sup> who commits any of the crimes prescribed in the articles 185, and 221 of the penal law, for the only fact that he rose in arms, or has borne the arms against the state, or has participated in an armed insurrection, shall be sentenced to death with cashiering.

Art. 65

INSTIGATION OF HIGH TREASON, CONSPIRACY; ARMED BAND

It is punished in conformity with the corresponding provisions of the penal code increasing the punishment of imprisonment from one third to half:

- a) the military man who is responsible for act of instigation or conspiracy aimed at committing any of the offences referred to in the preceding articles;
- b) the military man who, in order to commit any of the offences referred to in the preceding article, promotes, constitutes or organizes an armed band or participates in it.

Art.66

OFFENCES AGAINST THE HONOUR  
OR PRESTIGE OF THE HEAD OF  
STATE

The military man, who offends the honour or prestige of the President of the Republic shall be punished with military imprisonment from five to fifteen years.

Art. 67

BRINGING THE NATION AND THE STATE INTO CONTEMPT

The military man, who publicly brings into contempt the Nation, the state, the national flag or emblem, the constitutional organs or the armed forces of the state, shall be punished with imprisonment from two to seven years.

Art. 68

INTELLIGENCE WITH FOREIGNERS  
AND OFFER OF SERVICE

The military man, who holds intelligence with foreigners directed to favour, for the case of war with the Somali state, the military operations of a foreign state, shall be punished with imprisonment for not less than fifteen years;

If the case is offer of service not still accepted, the punishment shall be imprisonment for not less than ten years.

Art. 69

SUPPRESSION, DESTRUCTION  
FALSIFICATION OR PURLOINING  
OF PAPERS, DOCUMENTS OR THINGS  
CONCERNING THE FORCE, THE PRE-  
PARATION AND THE MILITARY DE-  
FENCE OF THE STATE.

The military man, who, wholly or in part, suppresses, destroys, falsifies, seizes, purloins or diverts, even temporarily, papers, documents or things concerning the force, the preparation or the armed defence of the state, which ought to remain secret, shall be punished with imprisonment for not less than ten years;

The punishment of death shall be imposed where the act has seriously affected the preparation or the armed defence of the state.

CHAPTER-II  
MILITARY ESPIONAGE AND DISCLOSURE  
OF MILITARY SECRETS

Art. 70

DISCLOSURE OF MILITARY SECRETS FOR THE PURPOSE  
OF MILITARY ESPIONAGE

cc C.P.S.

The military man, who discloses, in the interest of a foreign state, news concerning the force, the preparation or the armed defence of the state, which ought to remain secret, shall be cashiered and punished with death.

Art. 71

AGREEMENT OF MILITARY MEN TO COMMIT THE  
ACT OF DISCLOSING THE MILITARY SECRETS  
FOR THE PURPOSES OF ESPIONAGE.

1. Where two or more military men agree in order to commit the offence referred to in the preceding article, each of them shall be punished, if the offence is not committed, with imprisonment from five to ten years;
2. For the heads, promoters and organizers, the punishment shall be imprisonment for not less than fifteen years.

Art. 72

PROCURING SECRET INFORMATIONS FOR THE  
PURPOSES OF ESPIONAGE

1. The military man, who, in order to make known to another foreign state, procures information concerning the force, the preparation or the armed defence of the state, which ought to remain secret, shall be punished with imprisonment for not less than twenty years;
2. The punishment of death shall be imposed where the act has seriously affected the preparation of the armed defence of the state.

Art. 73

PROCURING SECRET INFORMATIONS NOT FOR  
THE PURPOSES OF ESPIONAGE

1. The military man, who, apart from the cases referred to in the preceding article, procures, without the authorization of the competent military authorities, the informations referred to therein, or performs acts directed to procure for himself, shall be punished with military imprisonment from three to ten years;
2. Where the act has affected the preparation, or the armed defence of the state, the punishment of military imprisonment for not less than ten years shall be imposed.

Art. 74

UNDUE EXECUTION OF PLAN; CALANDESTIN .  
PENETRATION INTO AREAS OF MILITARY  
INTEREST; UNJUSTIFIABLE POSSESSION OF  
MEANS OF ESPIONAGE.



The military man:

- a) Military man, who, without the necessary authorization, executes plans, models, sketches, or photographs of things concerning the force, preparation or armed defence of the state, or ascertains the above mentioned things;
  - b) Military man who, in order to commit any of the offences referred to in the letter a) or in order to procure informations, in respect of the same acts, penetrates, clandestinely or by deception, into places or areas, whether on land, water or air, access to which is prohibited in the military interest of the state;
  - c) Military man, who, in the aforesaid places, areas or in the proximity of them is surprised in the unjustified possession of means suitable for committing any of the acts referred to in the letter a);
  - d) Military man who, is surprised in the unjustified possession of papers, writings, drawings, models, sketches, photographs or any other means suitable for furnishing informations concerning the force, preparation or the armed defence of the state, shall be punished with imprisonment from five to ten years.
2. For the only reasons of penetrating clandestinely or by deception in the aforesaid places or areas, the military imprisonment from two years to five years shall be imposed.
3. Apart from the above mentioned cases, the military man shall be punished with military imprisonment upto one year for the only reason of penetrating, without the necessary authorization, into places, access to which is prohibited in the military interest of the state.

Art. 75

DISCLOSURE OF SECRET INFORMATIONS  
NOT FOR THE PURPOSE OF ESPIONAGE

1. Apart from the case referred to in the article 70, the military man who discloses informations concerning the force, preparation or the armed defence of the state, which ought to remain secret, shall be punished with military imprisonment for not less than five years;
2. Where the act has seriously affected the preparation or the defence of the state, the punishment shall be imprisonment for not less than twenty years;
3. Where the act is committed with Culpa, the punishment shall be military imprisonment from six months to two years, in the case referred to in the first paragraph, and from three to fifteen years, in the case referred to in the second paragraph.

Art.76

AGGRAVATING CIRCUMSTANCE

1. Where the guilty of the offence referred to in the preceding article, for reason of office or service, was knowing the informations referred to therein, or where the act is committed with whatever means of publicity, the punishment shall be increased.

Art.77

PROCURING OR DISCLOSURE OF  
RESERVED INFORMATIONS.

For the acts referred to in the preceding articles, where the informations referred to in the same articles are not the ones which ought to remain secret, but character of which is reserved, because the competent authorities have prohibited their divulgations, the punishment of death shall be substituted by imprisonment for not less than twenty years and the other punishments shall be reduced from one-third to half.

Art.78

COMMUNICATION TO FOREIGNERS  
ABOUT INFORMATIONS WHICH ARE  
NEITHER SECRET NOR RESERVED

The military man, who acquaints a foreign state with informations concerning the force, the preparation or the armed defence of the state, different from the informations ought to remain secret, or reserved, shall be punished, where the act can cause harm to the force, to the preparation or to the armed defence of the state, with military imprisonment upto five years. X

Art. 79.

MILITARY MEN WHO OBTAIN THE  
INFORMATIONS REFERRED TO IN  
THE PRECEDING ARTICLES.

The punishment prescribed in the preceding articles shall apply even to the military man, who obtains the informations referred to therein.

Art.80

PURPOSE TO FAVOUR THE SOMALI STATE

For the offences referred to in the preceding articles, the guilty shall be punished even if he has acted with the purpose to favour the Somali State. However, the punishment can be reduced.

26/12/74

CHAPTER III

GENERAL PROVISIONS RELATING TO THE PRECEDING CHAPTERS

Art. 81

Facilitation with Culpa

1. The military man who, for reasons of office or service, had the custody, or was in possession, of the things or, for the same reason, was knowing the informations or was supervising over the places of military interest, has rendered possible or has only facilitated, with Culpa, the execution of any of the offences referred to in the articles 69, 70, 72, 73, first paragraph 75, and 77, shall be punished with military imprisonment upto five years;

2. Where the act has seriously affected the preparation or the armed defence of the state, the punishment shall be military imprisonment from three to fifteen years.

Art; 82

INSTIGATION OR OFFER

The military man who, instigates others to commit any of the offences referred to in the articles 68 and 75, or offers for committing it, shall be punished, where the instigation or the offer is not accepted, or where the instigation or the offer is accepted but the offence is not committed;

- a) with imprisonment from five to ten years, where the punishment prescribed for the offence is death with cashiering;
- b) in the other cases, with the punishment prescribed for the offence, being reduced from half to two-third.

Art. 83

CORRESPONDANCE WITH FOREIGN STATE  
DIRECT TO COMMIT ACTS OF TREASON OR  
MILITARY ESPIONAGE

The military man who holds correspondance with foreign state directed to commit any of the acts referred to in the articles 69, 70, 71, and 72 or who, however, carries out acts directed to commit any of the same acts, shall be punished with imprisonment for not less than ten years.

Art. 84

FAILURE TO REPORT

1. The military man, who, having information about any of the offences referred to in this Chapter and in the preceding Chapters, for which the law prescribes the punishment of imprisonment or of military imprisonment, not less than, in the maximum, five years, or a punishment more serious, does not inform the superiors about it shall be punished with military imprisonment from three months to two years;

2. Where the Offender is an officer, the punishment shall be military imprisonment from one to three years.

Art. 85

OFFENCES AGAINST ALLIED STATES

The punishment prescribed in articles 190 and the articles following it shall also apply where the offence is committed to the detriment of a state allied or associated with the Somali state for purposes of war.

Art; 86

MILITARY CIRCUMSTANCES

The punishments prescribed for the offence in this Chapter and in the preceding Chapters shall be reduced where, by reason of the nature, type, means, characteristics or circumstances of the act, or by reason of the particular slowness of the injury or danger, the act appears to be of slight importance.

PART-II

OFFENCES AGAINST THE MILITARY SERVICE

CHAPTER-1

OFFENCES IN SERVICE

SECTION:1: VIOLATION OF GENERAL DUTIES CONCERNING  
COMMAND.

Art.87

HOSTILE ACTS OF THE COMMANDANT AGAINST A FOREIGN  
STATE.

1. The military man who, without the approval of the Government, or apart from the cases of necessity, carries out hostile acts against a foreign state, shall be punished with military imprisonment upto three years;
2. Should the hostile acts be such as to expose the Somali State or its citizens wherever residing or whoever enjoys the protection of the laws of the state to the danger of reprisals or retaliations, the punishment shall be military imprisonment from two to eight years. Where a breach of diplomatic relations results, or where the retaliations or reprisals occur, the punishment shall be military imprisonment from five to ten years;
3. Where the acts are such to expose the Somali state to the danger of war, the military imprisonment for not less than ten years shall be applied;
4. Where, for the purposes of the hostile acts, the war occurs, or fire breaks out, or where devastation, or death of one or more persons resulted, the punishment shall be death by shooting at the chest;
5. The conviction shall entail removal.