

Court Martial Rules, 2064 (2008)

Date of Publication in Nepal Gazette

2064-12-20 (02-APR-2008)

In exercise of the power conferred by the section 143 of the Army Act, 2063 (2006), the Government of Nepal has framed the following Rules.

Chapter - 1

Preliminary

1. **Short Title & Commencement** : (1) These Rules may be called "Army Court Rules, 2064 (2007)".
(2) These Rules come in to force immediately.
2. **Definitions** : Unless the subject or context otherwise requires in these Rules :
 - (a) "Act" means Army Act, 2063 (2006).
 - (b) "Court of Equity" means Court of Enquiry established pursuant to Rule 4.
 - (c) "Office of *Prad Viwak* " means the office of military headquarters where the Chief of the *Prad Viwak* has been based, and the term shall also indicate the battalion *Prad Viwak* branch and Brigade *Prad Viwak* branch.
 - (d) "Committee" means a committee pursuant to sub section (2) of section 62 of the Act.
 - (e) "Registrar" means the *Prad* officer assigned to work in a Special Court Martial under Rule 37.

Chapter - 2

Formation of a court of enquiry, investigations and enquiry, and filing of a case

3. **Information of an offence to be provided** : (1) Any person who has known that an offence has taken place, has been taking place or has been going to take place, shall provide proper and specific evidence as known by him/her and the following matters if possible, in the form of written or oral information to the nearest Nepal Army Unit or concerned unit.

- (a) The date, time and place where an offence has taken place, has been taking place or has going to take place;
- (b) Name, address, unit, computer no. and distinguishing features of an offender;
- (c) Evidence related to the offence;
- (d) Other descriptions related to the offence.

(2) If information of the offence has given orally, the notified unit shall keep the record of all information including matters prescribed under the sub rule (1), in written form, and a statement signed by the informant after being read out aloud to make listen by him/her.

(3) The application received pursuant to sub rule (1) or the information received pursuant to sub rule (2) shall be registered in the register book and an acknowledgement receipt shall be provided to the informant.

(4) The concerned unit shall give the information of an offence received pursuant to the sub rule (3), to the nearest, *Prad Viwak* office.

(5) If by the content of the information of the offence received by the unit deemed that the person involved, appears to fall under another

unit's area, the unit which received the information shall immediately send that information to the concerned unit as soon as possible.

(6) Upon receipt of information under this Rule, the head of the concerned unit shall conduct the initial investigation and enquiry of the offence. If such investigation and enquiry has to be conducted about the head of the unit then such investigation and inquiry shall be made by one level higher in rank.

(7) Notwithstanding anything contained in sub rule (5) and (6), if the content of information received in any unit has seen that the offence has been related to section 62 of the Act, the unit that received the information shall immediately send the information to the *Prad Viwak* office.

4. Formation of a court of enquiry : (1) If the information related to offence pursuant to rule 3 has been received in *Prad Viwak* Office or by any other means- it has come under notice that an offence has been committed by someone who falls under its jurisdiction, the *Prad Viwak* shall recommend the chief of the Army Staff to establish a Court of Enquiry.

(2) Upon receipt of recommendation pursuant to sub rule (1), the Chief of the Army Staff may establish or delegate power to the Battalion Commander or Brigade Commander or to the unit in-charge, to establish a Court of Enquiry.

(3) In establishing a Court of Enquiry pursuant to the sub-rule (2) It shall not be established in such a way that the chairperson or members shall never be lower in the rank than the accused.

5. Procedures of a Court of Enquiry: (1) Upon establishment of a Court of Enquiry, information available for an offence pursuant to sub rule (4) of Rule 3 to the *Prad Viwak* , or the report of an investigation

and enquiry conducted pursuant to the sub rule (6) of the same rule by the head of an unit shall be produced before a Court of Enquiry.

(2) Upon receipt of an information for an offence under sub rule (1), the Court of Enquiry shall manage that an offence has to be prevented from taking place, or the relevant evidence has to be protected from being lost, and that no accused person has to be abscond or escaped.

(3) After receiving information of an offence that has taken place or has been taking place and the Court of Enquiry which has been undergoing the process of an investigation and enquiry, if witnessed that an offence has just been committed in its very presence then the accused person must be arrested immediately. An arrest letter in the format of schedule-1 shall be given to the accused person arrested as such.

(4) The Court of Enquiry shall record a statement of the arrested accused person pursuant to sub rule (3). While recording/taking a statement the statement shall be taken by taking an oath stating that the statement made by the accused shall be made by remembering the faith, religion and truth.

(5) If any person to whom the Court of Enquiry suspects or has reasonable ground to believe that this person might have crucial information in relation to the offence based upon inferences drawn, it may make an enquiry or if necessary take written statements.

(6) If an information has been received about an offence that has taken place or has been taking place or has been going to take place, the Court of Enquiry shall as a matter of urgency conduct an investigation and enquiry, so to obtain evidence. In the course of an investigation and enquiry, the Court of Enquiry shall seize documents as well as other evidence relevant to the offence.

(7) While undergoing an investigation and enquiry relating to an offence, the Court of Enquiry shall exercise the same power as equivalent to the power that has been exercised by a police officer who has to conduct an investigation and enquiry in relation to the cases annexed in schedule-1 of the State Case Act, 2049 (1992).

(8) The Court of Enquiry shall keep the upto date record of a witness statement, collected evidence, material evidence and file received during an investigation and enquiry process in accordance with this rule.

6. Procedures for keeping in detention: (1) In the course of an investigation and enquiry, if a person has required to be kept in detention for more than 24 hours, then on sending the report pursuant to sub section (3) of section 75 of the Act, the commanding officer, shall clearly include the accusations, grounds behind it and reasons for why the person has required to be kept in detention for conducting an investigation and enquiry, and also the content of a statement if such statement of him/her has been recorded.

(2) Upon receipt of a report pursuant to sub rule (1), the Chief of the Army Staff, after checking the relevant documents in order to ascertain whether an investigation and enquiry is being processed satisfactorily or not and whether the situation for custody prevails or not and justifying it if convinced that the investigation and inquiry has been taking place satisfactorily and the situation for custody prevails, may give permission to keep in the custody.

7. Report to be submitted : (1) Upon completion of an investigation and enquiry by a Court of Enquiry, a report with opinion clearly containing the following matters shall be submitted to the *Prad Viwak* office.

- (a) Full name, home address, computer no. rank and unit of the accused;
- (b) Details of the offence;
- (c) Contents of a statement made by accused person;
- (d) Contents of a statement made by the informant or victim;
- (e) Accusations and charges being brought against the accused and relevant evidence;
- (f) Relevant laws;
- (g) Reasons to keep in detaintion or not to keep in detention while proceeding;
- (h) Amount of compensation assessment of the damage caused due to the offence if that has to be paid;
- (i) Opinions on whether to file the case or not;
- (j) If the accused has already punished in any offence before and more punishment has to be made due to the reason then the date of punishment made before and the name of the body which made the punishment;
- (k) Other relevant matters regarding the case.

(2) After receiving a report with an opinion from the Court of Enquiry pursuant to sub rule (1), the *Prad Viwak* office shall review the report, and transfer the file with an opinion to the Chief of the Army Staff, for making a decision in relation to whether or not an action shall be brought against the accused. After receiving the file as such, the Chief of the Army Staff shall make a final decision on the subject whether or not an action shall be brought against the accused.

(3) Notwithstanding anything contained in the sub rule (2), if a Summery Court Martial has the power of trial and to adjudicate a case pursuant to the clause (c) of section 68 of the Act then the *Prad Viwak* office shall make a final decision in relation to whether the case has been filed or not.

(4) The *Prad Viwak* shall delegate the power conferred to it pursuant to sub rule (3), to the Court of Enquiry as per the need.

8. Instruction may be issued to collect additional evidence: (1)

The *Prad Viwak* , in the course of an examination of a file, while making a decision on whether or not to take an action, may deem if necessary to collect additional evidence or to enquire of any person, may give an instruction to the Court of Enquiry to collect additional evidence or make such an enquiry, in order to assist the case process.

(2) If an instruction pursuant to sub rule (1) is rendered, it shall be the duty of the Court of Enquiry to fulfill it.

9. Notice to be given to informant : An informant shall be notified by the office of *Prad Viwak* , after a decision has been made, on whether a case in relation to an offence has to be filed or not.

10. Recommendation for the formation of a court martial : (1) If a decision to file a case against the accused has been made pursuant to these rules the office of *Prad Viwak* shall make a recommendation to make formation of a court martial, before the Chief of the Army Staff, within seven days of such decision has been taken place.

(2) While making a recommendation under sub rule (1), the charge sheet filed against the accused shall also be attached.

11. A case to be filed: If the decision has been made for filing a case against any accused pursuant to sub rule (2) or (3) of rule 7, the investigation and prosecutor branch or the *Prad* officer assigned by this branch shall prepare a charge sheet mentioning the following matters in

the format provided in schedule-2 along with material evidence and crime related matters or objects, and if available the detainee, shall be produced in front of the relevant Court Martial:–

- (a) Full name, home address, computer no., rank, unit of the accused;
- (b) Details of the offense;
- (c) Contents of a statement made by accused person;
- (d) Contents of the statement made by the informant or victim;
- (e) Accusations and charge has been brought against the accused and relevant evidence;
- (f) Relevant laws;
- (g) The punishment to be given to the accused;
- (h) If the compensation has to be paid for the damage made by the offence then the amount of such compensation.
- (i) If the accused has already punished in any offence before and more punishment has to be made due to the reason then the date of punishment made before and the name of the body which made the punishment and
- (j) Other relevant matters regarding the case.

12. Found material evidence to be submitted : (1) If any army personnel or any person finds any material object, document, or any other evidence relating to the case being in a process of a court martial, he/she should present it to the *Prad Viwak* office.

(2) Any object, manuscript and other material evidence presented under sub rule (1), shall immediately produce by the *Prad Viwak* office before a court martial.

13. No obstruction for filling an additional charge sheet : (1) Notwithstanding anything contained anywhere in these rules, if a case

has been filed against the accused for an offence in accordance with these rules the case has been being adjudicated in a court martial, and any additional material evidence has received thereafter, that requires an additional claim against such accused or to take action against other persons then there shall be no obstruction to make an additional claim against accused, or to file a case against the new defendants submitting supplementary charge sheets, by taking the permission from court martial.

(2) If a supplementary charge sheet has been filed pursuant to sub rule (1) such additional charge sheet shall be regarded as an integral part of the original charge sheet.

(3) If an additional claim has been made against the accused pursuant to sub rule (1), the accused, if discontented, may file an appeal to the court to quash the additional accusation in the court having authority to listen the appeal.

(4) If an additional charge made under this Rule has deemed to be brought with negligence and malafide intention a court martial shall take departmental action against the person who had made such additional charge with negligence and in bad faith.

14. **Accused to be handed over:** If an army personnel commit an offence that falls under the jurisdiction of other courts pursuant to the section 66 of the Act, such army person shall be handed over to the relevant body for the action (accusation).

Chapter - 3

Procedure for Court Martial

15. **Assignment of a chief & members of court martial and Prad officer :** (1) The Chief of the Army staff or the officer authorized by him shall submit a request to assign an officer under the sub section (1) of section 67 to work as chief or member of the court martial or to

assign the *Prad Viwak* or *Prad* officer under sub section (1) of section 81 of the Act, to Department of the Army Secretary.

(2) If a request has been received pursuant to sub rule (1), the Department of the Army Secretary shall, on that date, time and duty station, assign the *Prad Viwak* or *Prad* officer.

(3) A court martial has been supposed to be formed if the chairperson, members of the court, and the *Prad Viwak* or *Prad* officer has been attended and took an oath.

16. Functions, duties and powers of the *Prad Viwak* or *Prad*

Officer : (1) The *Prad Viwak* or *Prad* officer assigned pursuant to rule 15, in respect of law and justice, impart their knowledge to the chairperson and the members of the court martial.

(2) The *Prad Viwak* or *Prad* officer assigned pursuant to rule 15 shall, also shall be assigned as administrative officer of the court.

17. Enquiry has to be made whether an objection exists or not :

(1) After the presence of the chairperson, members of the court martial, the *Prad Viwak* or *Prad* officer at the place where the court martial has been situated, the *Prad Viwak* or the *Prad* officer shall ask whether the accused has any objection to be chairperson and members or not and if no objection is noted, the case file shall be kept in accordance with the format provided for in schedule-3 & signed by the accused.

(2) If the accused has an objection over the chairperson or any member of the court martial then the function of the court shall be continued by adopting the procedures of section 82 of the Act.

18. Taking of an oath : (1) The chairperson and members of the court martial shall take an oath in accordance with the format provided for in schedule - 4, in the presence of the accused.

(2) In a court martial, the *Prad Viwak* and *Prad* officer shall take an oath in accordance with the format provided for in schedule - 5, in the presence of the accused.

(3) In a court martial, all persons who attend in the capacity of a witness shall, be asked to take an oath in accordance with the format provided for in schedule - 6, before recording their testimony.

19. **Provision on dress code** : The chairperson and members of a court martial and the *Prad Viwak* and *Prad* officer shall present at a court martial in a tunic, farez cap, officer boots with a black belts, as well as decorative medals if any, and their sword.
20. **Bench for Court Martial** : The bench of a court martial shall sit on the date, time and place designated by the chairperson of the concerned Court Martial.
21. **Provisions on Defense** : (1) Any accused person under trail for an offence pursuant to sub section (2) of section 81 of the Act, may request for his defense to be performed by a *Prad* officer, by submitting a request to the Defense section of the *Prad Viwak* . If such application has been received, then the *Prav Viwak* shall make arrangement for a *Prad* Officer to defend the accused.

(2) The *Prad* Officer assigned pursuant to sub rule (1) shall present before a court martial for pleading and defending on behalf of the accused.

(3) The *Prad* Officer who defends the accused may not be allowed to produce any matters evidence also with against or in adverse to him/her, before a court martial. No one shall be compelled to raise a question or express matters in front of a court martial, concerning conversations between the accused and the *Prad* Officer who defends him.

(4) The chairperson and members of a court martial shall not

influence in any way making the negative effect on the *Prad* Officer who defends the accused person and no negative comments shall be made on the matters raised by him/her in the course of a defense.

22. Statement of the accused : After reading out the charge sheet and the documents in the file to the accused and the *Prad* Officer representing him, shall take a signed written statement in the bench from the accused. The chairperson and members of the court martial shall append their signature at the top and bottom of the pages of the statement.

23. Provisions related to initial hearing: (1) After a statement of the accused has been recorded upon the registration of a charge sheet, the court martial shall conduct an initial hearing and in the course of initial hearing it may, issue any of the following order in the format prescribed in schedule-7, by considering due account to the intensity of the offence and the situation in which the offence has been committed :

- (a) Conduct a trial by keeping the accused in regular presence (*Tarekh*);
- (b) Conduct a trial making a summon to the accused when needed or making to present in specified time without keeping the accused in regular presence (*Tarekh*);
- (c) Asking the bail from the accused.
- (d) If the prevailing situation indicates the possibility of escaping of the accused or the evidences may be destroyed by the accused or Accused has being habitual offender, then the trail will continue keeping the accused under detention.

(2) The details of the order issued by the court martial pursuant to sub rule (1) shall be read out to be listened by the accused, and the document of acknowledgement of such listening shall be retained.

24. **Statement of the victim:** The court martial shall take a signed statement of the victim in the presence of the accused. The signatures of the chairperson and members of the court martial shall be appended at the top and bottom of the victim's statement.
25. **Records to be maintained:** The *Prad Viwak* office shall safely maintain the records of the decisions rendered by a court martial.
26. **Provisions on closed bench :** (1) When a hearing is conducted in closed session, in situations to protect national security, public order and the rights of victims pursuant to sub section (2) of section 79 of the Act, no person except then the *Prad Viwak* officer present in defending the accused, the accused the victim and his guardian, and others authorized persons by the court martial, may able to attend the hearing.

(2) The subject matter of the trial made pursuant to sub rule (1) by a closed bench shall by no means be publicized before the decision shall take place.

Chapter – 4

Special provisions relating to the registration of the cases of corruption, theft, torture and disappearance

27. **Providing information:** (1) After receiving information of an offence pursuant to sub rule (6) of rule 3, the *Prad Viwak* shall write to the Ministry of Defense for an investigation and inquiry of such offence and information of such matter shall be given to the chief of Army staff.

(2) After receiving a request for an investigation and query into an offence pursuant to sub rule (3) the Ministry of Defense shall present the matter to the Committee.

(3) The Committee, after receiving written notification pursuant to sub rule (2), shall start an investigation and inquiry by establishing a duty station at a site deemed suitable.

28. Case to be filed: (1) After the completion of the investigation and inquiry by the Committed if the evidence available appears to be sufficient enough to file a case, a charge sheet shall be prepared in the format prescribed in schedule - 2 and containing the matters as set forth in rule 11.

(2) The charge sheet prepared under sub rule (1), the original file, as well as the accused (if available), shall be produced before a Special Court Martial by the *Prad Viwak* .

Chapter – 5

Provisions related to the procedure of Special Court Martial

29. Procedure for the formation of a Special Court Martial :

(1) The Ministry of Defense pursuant to the provision of section 19 of the Act shall take necessary action for the designation of a chief of a Special Court Martial.

(2) The notice of designation of a chief of the Special Court Martial shall be published in the Nepal Gazette.

30. Authority for Jurisdiction to be exercised collectively : (1) All the three members shall collectively exercise the jurisdiction of a Special Court Martial and majority opinion shall be deemed as the decision of the court.

(2) Notwithstanding anything contained in the sub rule (1), the proceedings of the case may be continued and settled if the chairperson and another one member has been present. In the presence of two members excluding the chairperson, other proceedings may be continued except making a decision and final order for the case.

(3) In continuing the proceedings and the settling of a case in the presence of two members pursuant to sub rule (2). If no consensus has been reached between the two present members then in the case of proceedings, according to the opinion of the chairperson, and in the case of a decision and final order, the opinion shall be supported by the member who did not attend before, on producing the differences to him, shall be deemed as the decision of a Special Court Martial.

(4) In producing the case before the member who has been absent before pursuant to sub rule (3), if a majority has not been maintained, the submission for a decision shall be referred to the Supreme Court of Nepal.

- 31. File may be demanded :** A Special Court Martial may ask for a file and documents of any case adjudicated under any court martial.
- 32. Appointment of a legal professional for defense :** Notwithstanding anything contained in these Rules, the defendant in a court martial case has been allowed to appoint a separate legal professional for his/her defense if he/she desires.
- 33. Authority and procedure of a special court martial :** (1) A special court martial shall have the following authority –
- (a) To acknowledge any person or evidence related and necessary to a case other than the witnesses provided by the plaintiff and defendant;
 - (b) To record a statement, after the arrest of a defendant who has not appeared on the summand date, or to take a testimony from a witness;
 - (c) To adjudicate a case by assigning a date to present in the court or asking to present when needed or giving a date to present in a specific time to any party of a case.

- (d) If the immediate evidence shows that the accused has not required to be kept in detention while conducting a trial to ask for a bond or bail by taking into account the amount of the damage caused or unlawfully collected amount by the accused and the prison term or penalty likely to be imposed upon him/her;
- (e) If the immediate evidence shows that there has been sufficient and reasonable grounds that the accused has required to be detained during the trial, to make trial by keeping the accused in detention during the trial;
- (f) Taking into consideration the gravity of the alleged accusation, the situation of the accused, the degree and nature of the offence, may issue an order to the relevant authority to stop the transaction of property, not to issue passport to such accused, or if already has been issued, to give an order to cancel the validity of a passport, to the concerned authority.

(2) In conducting the initial proceeding and trial, the matters laid down in this chapter shall prevail for as accordingly, and for other matters, the court martial shall exercise the same authority and procedures as exercised by the District Court under the prevailing law.

(3) The proceedings and adjudication of an appeal brought against a decision or final order rendered by a General Court Martial and a Summary General Court Martial, under the clause (a) of the section 68 of the Act, a Special Court Martial shall exercise the following powers and procedures :-

- (a) To confirm, quash or partly reject the decision of a General Court Martial and or a Summary General Court martial;
- (b) To render a similar level decision or final order which a General Court Martial and a Summary General Court Martial have the authority to render;
- (c) If a General Court Martial and a Summary General Court Martial has left to collect & test the evidence relevant to the fact by which the judgments should be given, acknowledge the evidence by itself or send the files to those courts for the collection of the same evidence by still retaining the case on the list (*lagat*).
- (d) If a General Court Martial and a Summary General Court Martial have rendered a decision only partially deciding the few questions then providing for a reasonable timeframe, a case file can be transferred to the same court again for further decision by providing reasonable time.
- (e) To exercise the same authority as exercised by courts under prevailing laws, in order to summon a party and witness, to record a statement and testimony, to acknowledge evidence and to ask over for documents, as well as imposing punishment and penalty.

(4) The Special Court Martial, in processing and deciding the cases filed and the appeals tendered, shall self determine the required procedures, except those provided for in the Act and in these rules.

34. Procedures to be followed by an Appellate Committee: (1) In processing and adjudicating an appeal brought against a decision or final order rendered, exercising the jurisdiction laid down in the clause (b) and (c) of section 68 of the Act by a court martial the Appellate Committee established pursuant to the sub section (7) of section 119 of the Act shall exercise the authority and procedure laid down in the sub rule (3) of rule 33.

(2) The Appellate Committee established pursuant to sub section (7) of section 119 of the Act shall determine the other procedures by itself.

35. Contents to be mentioned in an appeal: (1) The following contents shall be mentioned while making an appeal pursuant to the sub section (2) or (6) of the Act :-

- (a) The name of the court martial that rendered the decision to which the accused has been dissatisfied;
- (b) The matter whether he/she has been plaintiff or defendant during the initial trial;
- (c) Name of the case;
- (d) Date of decision;
- (e) The punishment, damages and penalty claimed at first instance, and the actual punishment, damages and penalty imposed;
- (f) Ratio-decidenti;
- (g) The disputed matters of the decision, its legal grounds, and reasons and claims demanded on the appeal;
- (h) The date of imprisonment or detention if an appellant has been under imprisonment or detention;

- (i) The evidence relating to any payments for damages or penalty then information when and where such payment has been made.
- (j) Matters relating to limitation/summon.

(2) If the appeal submitted pursuant to sub rule (1), appears to be as follows, it shall be registered and a receipt of acknowledgment shall be provided;

- (a) The penalty and indemnity has to be paid up as required;
- (b) If a bond has been provided then it has been in accordance with law;
- (c) Limitation period has been valid, and;
- (d) A clear and duly copied decision of the first instance trial has been produced.

(3) An appeal against the decision of the first instance trial made by a General Court Martial and a Summary General Court Martial established outside the Army Headquarters, shall be submitted through the relevant Divisional *Prad Viwak* or Brigade *Prad Viwak* , to a Special Court Martial.

(4) If an appeal has been submitted before the Divisional *Prad Viwak* section or Brigade *Prad Viwak* section pursuant to sub rule (3), the section shall upon acknowledgement of the appeal, transfer the appeal to a Special Court Martial as soon as practicable.

(5) If an appeal has been submitted before the Divisional *Prad Viwak* section or Brigade *Prad Viwak* section pursuant to sub rule (4) the date of such submission shall be regarded as the date of appeal.

(6) The format for an appeal shall be as prescribed in schedule-8.

36. **Appellate fee** : In submitting an appeal pursuant to the sub rule (1) of Rule 35, One Hundred Rupees shall be paid as an appellate fee.
37. **Provision related to the registrar** : The Chief of the Army Staff shall designate a first class officer of the *Prad Viwak* to take responsibility as registrar in a special court martial.
38. **Functions, duties, and powers of a registrar** : The functions, duties and powers of a registrar shall be as follows :
- (a) To register the documents that has to be registered pursuant to law the charge sheet, appeal and application related to a case after examining and if deemed unsuitable for registration then endorse the documents with reasons for rejection;
 - (b) To determine the date for hearing of a case;
 - (c) To examine the written elements of evidence produced in a case;
 - (d) To issue summons, due dates or notifications to the parties and witnesses, and to check whether summons, due dates or notices so executed are accomplished under due process, and if not executed under due process, then to re-execute with due process rejecting the undue one;
 - (e) To order to fix a hearing date by taking into account the work load of the Special Court Martial;
 - (f) To establish a written register and ask to mention the required matters on it.;
 - (g) To check whether documents which were acknowledged as evidence in the court martial has been attached in a case file, and if not attached then request evidence from the relevant court martial to compile a file accordingly;
 - (h) To take or ask to take the bail, bond, collateral or other due charges which has to be taken in accordance with law;

- (i) To send the related case files and evidential documents to the Supreme Court in the case which has been appealed in the Supreme Court.
- (j) To observe any file or document which has retaining by official branches;
- (k) To provide copies of the documents;
- (l) To execute orders rendered by the Special Court Martial and make to be executed as soon as possible.
- (m) To assign a *Prad* officer to take responsibility as bench officer if required;
- (n) To update all the records in a Special Court Martial; and
- (o) If appeal has not been transferred to the Supreme Court or the limitation period has expired then to communicate in writing to the relevant institution for the execution of an order rendered by the Special Court Martial.

Chapter – 6

Provisions related to a judgment

39. Procedure for decision making: (1) After acknowledging the evidence in a case the Court Martial or Special Court Martial shall make discussion on the case in the presence of the parties who has attended on the day prescribed for discussion and shall make decision on the issues to be decided then shall record their verdict in an "opinion book", on the same day and the chairperson and members shall append their signatures on it.

(2) A judgment rendered pursuant to these rules shall contain the following matters;

- (a) Contents of the case in brief;

- (b) The questions of contention and questions of fact to be decided;
- (c) Contention from a defendant and details of defenses;
- (d) Evidence produced by the parties;
- (e) Question on the jurisdiction of the court'
- (f) Reasons and basis for judgment;
- (g) The punishment to be imposed if the claims to be proved;
- (h) Matters that provide whether an leave to appeal can be lodged, and if so, to which court; and
- (i) Other relevant matters.

(3) The format of a judgment shall be as prescribed in schedule-9.

- 40. Judgments to be read out :** After a judgment has been rendered pursuant to the Rule 39 the judgment shall be read out to make listen by the defendant and a statement of such shall be made to confirm the event.
- 41. Judgment to be dispatched :** The case file with a judgment rendered by a court martial or special court martial shall be transferred in its original form to the *Prad Viwak* office.
- 42. Execution of the judgment :** After the confirmation of a case pursuant to Chapter 12 of the Act, if an appeal on the case has been brought then after its conclusion, and if an appeal has not been brought then within the fifteen days after the expiration of the date for the appeal, the *Prad Viwak* office shall take necessary action for the execution of a judgment.

Chapter – 7

Miscellaneous

43. **Provisions related to facilities:** The facilities for the chairperson, member, chairperson of the Committee, member and any other staff shall be as designated by the Government of Nepal.
44. **Copies to be requested:** Among the documents relating to the court martial, the defendant or his beneficiaries may obtain a copy of the document of the cases that have been tried in a closed bench & all other documents (from open courts) may be obtained by the defendant or any other concerned person of the case.
45. **Application to be submitted for a copy:** (1) If any concerned person wishes to take a copy of any document compiled in the case file, subject to the provision laid down in rule 44, he may submit an application in accordance with the format provided for in schedule-10 to the *Prad Viwak* office.
- (2) The *Prad Viwak* office on examining an application received pursuant to sub rule (1), will decide whether it meets the requirements, and that the person who wishes to obtain such a copy has concern, shall provide a copy by making attestation.
46. **Charge for a copy:** The charge for a copy of each page shall be Five Rupees.

Schedule – 1

(Related to sub rule (3) or rule 5)

Format of Arrest Warrant

Arrest Warrant

Mr. Unit

Computer No. Designation

Name, Surname :

In relation to the investigation on the offence. It is required to take you in military custody for the investigation and inquiry, so this warrant letter has been given.

.....

Signature

Date :

NEPAL LAW COMMISSION

Schedule – 2

(Related to rule 11 and Sub Rule (1) of Rule 28)

Format for charge sheet

Charge Sheet

Case :

1. **Name, surname and address of the accused** :-

Residing on District, Municipality/VDC,
Ward no. the grand children of, son/daughter of
..... working in the unit years old, No
Designation with physical features
Mr./Mrs.

2. If transferred from anywhere before then the Name of the unit and duration :

- (a)
- (b)
- (c)

3. Duration of the employment :-

4. Brief description of the incident :-

5. Accusation :-

6. Material Evidence :-

Material evidence and goods related to the offence

Witness :

Eye witness :

(a)

(b)

Hear say :

(a)

(b)

Evidential goods or other goods to be produced as evidence for offence :

(a)

(b)

Documents submitted :

(a)

(b)

7. Details of any offence if involved before :

It is requested to the Court Martial to initiate the action from this charge sheet.

Seal of the Office

Officer submitting charge sheet

Signature :

Designation :

Name, surname :

Unit :

Computer No.

Date :

Schedule – 3

(Related to sub rule (1) of rule 17)

Format of the Document Made by the Accused Before the Court

Martial

I declare hereafter that ; It has been asked to me by the court martial whether I make pleading by myself on the offence charged against me or I make request to provide *Prad* officer for the defense, I appoint Mr./Mrs.(mention name of *Prad* officer) *Prad* officer to defense on my behalf in relation to the charge made against me/I make pleading by myself. I also declare that I have no Enmity, hostility and relationship with the chairperson and members of the Court Martial formed to proceed against me. I have signed this document and submitted it to court martial. Done on the date 20..... year month date day.

NEPAL LAW COMMISSION

Schedule – 4

(Related to Sub Rule (1) of Rule 18)

Format of the Oath to be Taken by chairperson and members of the court martial

I take this oath in witness of God / with truth and conscience that I shall make the decision on this case by making a proceeding of the case without bias and listening the evidences as such. I shall administer the justice without any bias against any one and on the basis of nature of offence, situation and circumstances and according to the prevailing law. I shall not disclose the opinion or vote made by the chairperson and any other member of this court martial in relation to the decision except in the condition of providing the evidence for this case.

Oath taking Persons;

Signature :

Name surname :

Designation :

Date :

Schedule – 5

(Related to Sub Rule (2) of Rule 18)

Format of an oath to be taken by Prad Viwak or Prad Officer

I take this oath in witness of God / with truth and conscience that I shall perform the job and duties of *Prad Viwak* without any bias in relation to this case. I shall not disclose the opinion or vote made by the chairperson or any other member of this court martial in relation to the decision except in the condition when the evidence of this case has to be provided.

Oath taking persons ;

Signature :

Designation :

Name, surname :

Date :

NEPAL LAW COMMISSION

Schedule – 6

(Related to sub rule (3) of rule 18)

Format of the oath to be taken by a witness

I take this oath in witness of god / with truth and conscience that I shall make testimony about this case by mentioning the matters which I have known without any bias against anyone and in the right and trustworthy way. If it is proved that I made false testimony with any biasness, I shall be liable for the consequence according to the law.

Oath taking persons;

Signature:

Designation:

Name, surname:

Date:

NEPAL LAW COMMISSION

Schedule – 7

(Related to sub rule (1) of rule 23)

Format of the Order

..... Court Martial

Bench

Chairperson :

Member :

Member :

Order Sheet

Year of the year criminal case No. :-

..... – Plaintiff / Appealant

Vs.

..... – Defendant / Respondent

Case : -

Date	Details of Order	Remarks

Schedule – 8

(Related to sub rule (6) of rule 35)

Format of the Appeal

submitted to

Appeal

..... of the year Appeal No. :

Case :

..... – Plaintiff / Defendant
Appealant

Vs.

..... – Plaintiff / Defendant
Respondent

..... Court has made a decision on case of the year
..... on the date In the decision I/we have been
punished for, So I/we have dissatisfied in the decision and
submitting this appeal along with the receipt of paying of the fine on the
case/staying in the detention for the punishment of a term of a prison. I/we
request to provide the justice by evaluating my/our argument and the evidence
pursuant to the prevailing law.

In this case I/we appealant has the following arguments:-

1.
2.

Appealant;

Done on Year Month Date day.

Schedule – 9

(Related to sub rule (3) of rule 39)

Format of the Decision

..... Court

Bench

Chairperson :

Member :

Member :

Member :

Member :

Prad Viwak :

Decision

of the year case No.

Case

Government of Nepal (Nepalese Army) Plaintiff

Vs.

Of Address (Unit) Computer No.

Designation Name surname Defendant

The facts of this case which fall under the jurisdiction of this court martial pursuant to the section of Army Act, 2063 (2006) and have been as follows :

.....
.....

Courts Verdict (Thahar)

.....

.....

Particulars (Tapsil)

1.

2.

.....

<i>Prad</i> Representative member	Member	Member
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.....

Member	Chairperson
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Done on Year Month Date day.

NEPAL LAW COMMISSION

Schedule – 10

(Related to Sub Rule (1) of Rule 45)

Format of the application for Duplicate

Submitted to the Court

Application for copy

Of the year case No.

Case :

..... – Applicant
Plaintiff . Defendant

Vs.

..... – Plaintiff / Defendant

I/we applicant submit this application for taking the copy of the following documents from the court martial / by ownself along with the fees pursuant to the rules.

Documents for which the copy has been requested.

.....
.....

This details mentioned here are true, if proved false I/we shall be liable for the consequences.

Signature :

Applicant :

Dated year Month Day

Application Registration No.: Application fee (Normal/Urgent) Rs.

Date of Registration : Copy fee at the rate per page for the

Receipt No. : Page Total Amount Rs.

Total Fees

.....

Signature of Section Employee

Signature

I have received the copy as per demand :

Name of attesting officer

NEPAL LAW COMMISSION