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Ministry of justice**

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Military Crimes Code (MCC)

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Decree # 9 Dated 28/01/1387 (16/04/2008) of the president of IRA regarding promulgating the MCC.

Military Crimes Code page# (1).

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The president of IRA decree regarding promulgating the Military Crimes Code

Number: (9)

Date: 28/01/1387 (29/04/2008)

Article One:

Based on provision of item (16) article 64 and article 100 of the constitution, I order to have the decision # (83) of the IRA lower house and upper house mixed delegation regarding promulgating the MCC in (3) chapter and (48) article.

Article two:

This decree is enforce from the date of promulgation and need to be published with the decision in official Gazette.

Hamid karzai

The president of IRA

IRA
National council
The promulgation of the national council regarding MCC

Number# (83)

Date: / / 1387 (/ / 2008)

Based on article 100 of constitution, the mixed delegation of both houses (composed of three members from each house) approved the MCC on 9th/Hoot (12)/1386 (28/02/08) in (3) chapters and (48) articles.

The head of the mixed delegation Abdul hadi (Safi) and the mixed delegation clerk Monawar (Nizami)

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CHAPTER ONE

GENERAL PROVISIONS

Article 1. Purpose of the Code

This law is enacted for, in accordance with article 27 of the Constitution, use within the Armed Forces in order to implement the goals of good order and discipline, strengthen respect for the law, and establish military crimes and punishments.

Article 2. Concept of Military Crimes

Military crimes in this code include: Crimes against capability and combat readiness of the Armed Forces, and discipline to perform military services.

Article 3. Terms

The following terms mean:

1. The term “Military Member” refers to officers, Non Commissioned Officers, Military Cadets of Military Training Institutions, Para Armed Military Forces, reserve and active soldiers.
2. The term “Time of War” refers to a state of hostilities between Afghan Armed Forces and Enemy Forces.
3. The term “Time of Combat” means direct engagement of the Armed Forces Military Units with the enemy armed groups, or is the state where military units are tasked to defeat the enemy. This state covers the combat mission from start to end.
4. The term “Mobilization” refers to a state where internal stability or security of the country requires mobilizing or moving the military, but the engagement has not occurred yet.
5. The term “Peace” refers to a state where everything is stable and normal.
6. The term “Serious Consequences” means derangement in execution of combat duties; great financial damage; reduction in capability or combat readiness of a unit; destruction of vehicles; bodily injuries; destruction of depots and other military installations.
7. The term “full damage consequences” means great bodily or financial damage; demilitarizing vehicles.
8. The term “remarkable damages” means interruption of determined combat duties; destroying or demilitarizing technology or other military equipment.
9. Property Confiscation is the compulsory and permanent taking of a convict’s real and personal property and handing over it, along with the proving documents, to the government treasury.

Article 4. The Application of this Code over Persons

- (1) The provisions of this code are applicable over the following persons:
- (a) Officers, Non commissioned officers, soldiers and cadets of military training institution.
 - (b) Reserve members of the Armed Forces actively performing military duties.
 - (c) Armed forces serving with the Armed Forces at the time of war, or armed civilians accompanying the Armed Forces in the combat.
 - (d) Prisoners of War and those under the Armed Forces custody serving their confinement period in the Armed Forces.

Article 5. Reduction of Military Rank and Forfeiture of Pay

- (a) If military service members committing crimes which are subject to sentence of confinement less than one year, as a final court decision, the military court can, as an alternative, adjudge a sentence of reduction by one rank.
- (b) If the crime committed by military service members is punishable by up to six months of confinement, the military court can, as an alternative, adjudge forfeiture of pay up to six months. The forfeiture of pay is one -third of convict's pay. It shall be submitted to bank as government income.

Article 6. Discharge

Officers and NCOs who commit crimes punishable by long term imprisonment, life imprisonment, or death penalty; they will be discharged, In addition to original sentence, from military service pursuant to a military court's decision. The decision to discharge the accused includes the following:

1. Deprivation of all privileges and grade, and the right to use military insignias ranks and uniform.
2. Deprivation of the right to be employed by other government agencies.
3. Deprivation of the right to be selected either in parliament and social associations.
4. Deprivation of pension.

Article 7. Dismissal

If Armed Forces service members commit crimes that are subject to a sentence of confinement of more than one year, they will, in addition to a sentence of confinement, be dismissed from military service.

Article 8. Verdict of Confiscation

The court issues an order of property confiscation for those military crimes, for which it has been determined as the penalty or punishment.

Article 9. Participating in Military Crimes and Covering Up Crimes

Organizers, motivators and accessories to military crimes, and also those, who promised to cover up the criminal, tools, instruments and clues of the crimes, will be punished considering their involvement in the commission of the crimes.

Article 10. Restitution

A military service member who has inflicted damage to or caused loss of another's property as a result of committing a crime under this code will be subject to pay restitution for the damage or loss inflicted.

Article 11. Suspension of Confinement

If a crime is committed which is punishable by confinement for up to two years, and the court believes that the accused will not commit a crime again due to his character, background, age or other circumstances resulting in the commission of the crime, it can suspend the sentence.

Other procedures relating to suspension and vacation of suspension are subject to Civil Penal Code.

Chapter Two

Crimes and Punishments

Article 12. Avoiding Military Service

- (a) A service member who attempts to avoid military service by injuring himself, feigning illness, falsifying a document, bribing a public official, or assuming the identity of another person shall be subject to incarceration for a term not less than two years not to exceed four years.
- (b) During time of combat or mobilization the person shall be subject to confinement to a term not less than four years, not to exceed ten years.

Article 13. Absence without Leave

- (a) A service member who is absent without leave from his unit, without an acceptable excuse, for one to six months, shall be subject to confinement of six months to one year, or shall be fined from 3,000 to 10,000 Afghanis.
- (b) A service member who is absent without leave from his unit, without an acceptable excuse, for more than six months, he shall be subject to confinement from one to three years, or shall be fined from 10,000 to 20,000 Afghanis.
- (c) A service member, who is absent without leave from his unit, without an acceptable excuse, for more than three days during mobilization, shall be subject to confinement from one to four years.

Article 14. Absence without Leave during time of Combat or War

Absence without leave from unit or duty place during time of combat or war regardless of its time period is subject to a sentence of confinement from one to five years.

Article 15. Desertion

- (a) A service member who permanently and intentionally deserts his duty, he is subject to confinement from two to five years.
- (b) If the above offense is committed during time of war, combat, or mobilization, it is punishable by confinement of five to fifteen years.

Article 16. Treason

Treason is the intentional act of a soldier against the independence, territorial integrity, national sovereignty, and defensive power of the Afghanistan Islamic Republic Government. Treason includes the following: joining with the enemy, surrendering subordinate units to the enemy, leaving weapons, war plans, engineering and all combat equipment in order to assist the enemy, conspiring to oppose the Islamic Republic Government of Afghanistan, stealing or collecting classified information about friendly combat operation or compromising the defensive capability of the Islamic Republic Government of Afghanistan, supplying unauthorized information about the government to a foreign country or organization.

Acts of treason are punishable by confinement for fifteen to twenty years, and confiscation of property, or death penalty. In the event the accused voluntarily discloses acts of treason by him or others in advance of damage to the government, he will not be punished.

Article 17. Surrendering to the Enemy

Surrendering to enemy because of fear is punishable by confinement from one to five years.

Article 18. Escape from Combat Scene or Avoiding Using Weapons

Escaping from combat scene or avoid using weapons during combat is punishable by confinement from five to ten years.

Article 19. Leaving Battle Equipment to the Enemy

Leaving war plans, weapons, engineering or any equipment for conducting battles against enemy, or such equipment required to engage in combat operation, which are not otherwise treasonable, shall be punished by confinement from two to ten years.

Article 20. Intentional Failure to Comply with an Order

Intentional failure to comply with a lawful order is the intentional refusal to implement the orders of a military supervisor. This crime is punishable by confinement from six months to one year. If committed during time of war, combat, or mobilization, this offense is punishable by confinement from six months to three years.

Article 21. Threatening a Supervisor

Threatening to kill, beat, or injure a supervisor is punishable by confinement from one month to one year. If committed during time of war, combat or mobilization, the offense is punishable by confinement from six months to three years.

Article 22. Humiliation of a Supervisor by Subordinate, or Humiliation of a Subordinate by a Supervisor

(a) Humiliation of a supervisor by a subordinate, or humiliation of a subordinate by a supervisor, using some amount of force, which causes insult to the honor and dignity of the person is punishable by confinement from one to six months.

(b) Humiliation of a supervisor by a subordinate, or humiliation of a subordinate by a supervisor, without using some amount of force, which causes insult to the honor and dignity of the person is punishable by confinement from three months to one year.

Article 23. Humiliation of a Soldier by Another Soldier through Coercive Act

Humiliating of one soldier by another soldier by coercive act, when there is no superior-subordinate relationship between the soldiers, is punishable by confinement from one to six months.

Article 24. Military Mutiny

(a) When more than one military member disobey or resist, by making revolt or turmoil in a public gathering, before their superior officer or supervisor, or actively attack, this act is military mutiny. Each involved person shall be, during time of peace, subject to a sentence of confinement for five years, and during time of mobilization to a sentence of confinement for ten years.

(b) If the act of military mutiny is committed while encountering the enemy by military members, they shall be subject to a sentence of fifteen to twenty years.

Article 25. Violation of Regulations pertaining to the duties of combat guarding

Violation of regulation pertaining to the duties of combat guarding, by a person who is assigned by a commanding officer as a task to prevent counterattack by the enemy, is punishable by confinement from six months to one year. If it causes serious consequences, or it happens during mobilization, then it is punishable by confinement from one to five years.

Article 26. Violation of Regulations concerning Guard Mount

- (a) Violating the regulations concerning the duties of a guard mount as tasked by the commander to prevent counterattack by enemy, protection of weapons, combat technology and other goals, if it does not result in full damage consequences, is punishable by confinement for one to six months.
- (b) If committed during time of war, combat or mobilization, then it is punishable by confinement for a term of six months to one year.
- (c) Violating the regulations concerning the duties of a guard mount as tasked by the commander to prevent counterattack by enemy, protection of weapons, combat technology and other goals if results in full damage consequence, the act is punishable by confinement for three months to one year.
- (d) If committed during war, combat or mobilization, is punishable by confinement for one to five years.

Article 27. Violation of Regulations pertaining to Patrol

If an individual member of a patrol violates the regulations for conducting patrols and the violation was the cause of damage or serious consequences, then the offense is punishable for six months to one year. If committed during time of combat or mobilization, then it is punishable by confinement of one to five years.

Article 28. Violation of Regulations pertaining to Installation Services

If an individual violates regulations pertaining to installation services that the staff on 24 hours a day is responsible for protecting, and the violation results in full damage consequences, then it is punishable by confinement for one month to one year. If committed during time of combat or mobilization, then it is punishable by confinement for a term of one to three years.

Article 29. Violations of Regulations pertaining to Flights

Violation of regulations pertaining flights or flight readiness set out in the manuals and procedure, if it does not result damages, is punishable by confinement for six months to one year. If the offense results in death of persons or destruction of flights, or other serious consequences, then it is punishable by confinement for a term of five to fifteen years.

Article 30. Violation of Regulation Pertaining to Operation of Vehicles

Violation of regulations pertaining to the operation of tactical vehicles, if it results in injury to a person or property damages worth more than 10,000 Afghanis is punishable by confinement for six months to one year. If the same crime results in the destruction of vehicles, interruption of combat, death of a person, or other serious consequences, then it is punishable by confinement of three to ten years.

Article 31. Violation of Regulation Pertaining to Use and Protection of Military Technology

Violation of regulation pertaining to use and protection of military technology which results in bodily injury of a person or property damage is punishable by confinement for one to three years. If the same crime results in bodily injury or death of a person, destruction of property, or damage or destruction of military technology, and also other serious consequences, then it is punishable by confinement for a term of three to fifteen years.

Article 32. Violation of Regulation Pertaining to Use of Ammunition, Explosives, and Other Dangerous Materials

(a) Violation of regulation pertaining to the use of ammunitions, explosives and other dangerous materials, which results in bodily injury, or damage to or destruction of property, is punishable by confinement of one to three years.

(b) If the same crime results in bodily injuries to a group of people or the death of a person, then it is punishable by confinement for a term of three to five years.

(c) If the same crime results in death of a group of people, or other serious consequences, then the offense is punishable by confinement from five to fifteen years.

Article 33. Violation of Regulation (other)

Violation of other military service regulations if does not result in full damage consequences is punishable by confinement of 6 months to three years. Violations of other military service regulations committed during combat or mobilization, or resulting in full damage consequences, are punishable by confinement from five to ten years.

Article 34. Illegal Acquisition of Weapons, Ammunition, Explosives, and Other Combat Equipment

(a) Illegal acquisition of weapons, ammunition, explosives and other combat equipments by military member is punishable by confinement for a term of four to ten years.

(b) If the same crime is committed by a group of people repeatedly, with prior decision, or by an individual who has responsibility for the maintenance of and accountability for the combat equipment, the crime is punishable by confinement for eight to fifteen years.

(c) If the crime referenced above in section (b) of this article is committed during time of combat or mobilization or results in serious consequences, then it is punishable by confinement of ten to twenty years, or death penalty and property confiscation.

Article 35. Selling or buying Weapons, Ammunition, Explosives and Other Combat Equipment

(a) Selling or buying weapons, ammunition, explosives and other combat equipments by a service member, which is given to him for the conduct of military service, is punishable by confinement for a term of eight to fifteen years, provided that it is not intended to help the enemy.

(b) If the same crime is committed during time of war, combat, or mobilization, or results in serious consequences, then it is punishable by confinement of ten to twenty years and property confiscation.

Article 36. Losing or Destruction of Weapons, Ammunition, and Other Combat Equipment

(a) Loss or destruction of weapons, ammunition, explosives and other combat equipments that a soldier is assigned is punishable by confinement from one month to one year.

(b) If the same crime is committed during time of mobilization, or results in serious consequences, then it is punishable by confinement from one to five years.

Article 37. Destroying or demilitarizing Weapons, Explosives, Ammunition, Military Technology and Other Combat Equipment

(a) Intentionally destroying and demilitarizing weapons, ammunition, explosives, military technology and other combat equipment, when authorized by relevant authority, is punishable by confinement from one to ten years

(b) If the same crime is committed during time of war, combat, or mobilization, or results in serious consequences, then it is punishable by confinement of five to twenty years.

Article 38. Disclosing Military Information including Governmental Secrets

(a) Negligently disclosing military information containing governmental secrets without the intention to treason is punishable by confinement from three months to three years.

(b) Losing documents containing military information or governmental secrets by an individual whose responsibility is to maintain such document or violating the regulations related to the use and security of such documents is punishable by confinement six months to five years.

(c) If the offenses referenced above in section a, and b of this article result in serious consequences, then it is punishable by confinement from five to fifteen years.

(d) Disclosure of military information, which is not allowed to be announced but is not a governmental secret, is punishable by confinement for a term of one to six months.

Article 39. Abuse of, Failure to Exercise, or Exceeding Authority

(a) Abuse of authority, failure to exercise authority, or exceeding authority, by a supervisor or person in charge, if done repeatedly and intentionally, or for the purpose of obtaining financial gain, or which causes some harm, is punishable by confinement from one to ten years.

(b) If the same offense results in serious consequences, then it is punishable by confinement from two to fifteen years.

(c) If the offenses referenced above in section a, and b of this article, are committed during time of war, combat, or mobilization, then it is punishable by confinement for a term of five to fifteen years.

Article 40. Neglect or Dereliction of Assigned Duty

(a) Neglect of assigned duties, or avoiding duties, by any service member is punishable by confinement for a term of one month to two years.

(b) If the same offense results in serious consequences, then it is punishable by confinement for six months to three years.

(c) If the same crime referenced above in sections (a) and (b) of this article is committed during time of mobilization, combat, or war, then it is punishable by confinement from one to five years.

Article 41. Overthrow of Lawful Authority

(a) Any service member, who agrees with one or more other people and intends to overthrow lawful military authority; and agrees to disobey lawful orders, refuses to do his duty, or creates violence, shall be confined from five to fifteen years.

(b) Any service member, who agrees with one or more other people and intends to overthrow lawful civilian authority, and creates violence, disobedience, or a disturbance, shall be confined from five to fifteen years.

(c) Any service member who is aware of an attempt to overthrow lawful military or civilian authority under section (a) or (b) of this article, and does not make a reasonable attempt to inform his commanding officer or other higher authority, shall be confined from one to three years.

Article 42. Resisting Arrest

Any person listed in article three of this code who actively resists or flees arrest when the person attempting to arrest them has the authority to do so shall be subject to, in addition to the sentence imposed for the crime committed, confinement from one to six months.

Article 43. Escape from Custody, Detention, or Prison

(a) If any service member escapes from custody or detention, or tries to pave the way for his release by unlawfully influencing another person, he shall be subject to confinement from three to six months.

(b) If any service member, currently in confinement based on the conviction of a court, escapes from jail while he has not been dismissed or discharged, he shall be subject to confinement from six months to one year.

Article 44. Damage or Destruction of Personal Property

If any service member intentionally damages, destroys, or misuses the property of another person, he shall be subject to confinement from one month to five years.

Article 45. Beating and Injuring.

(a) If any service member, using his position, intentionally and unlawfully beats another person, shall be subject to confinement from one month to three years.

(b) If the person commits the act referenced in section a of this article with a dangerous weapon or other means or force likely to produce death or grievous bodily harm, he shall be subject to confinement from one to ten years.

Article 46. Making a Threat

Any service member, who makes a threat to wrongfully injure a person, shall be subject to confinement from one month to one year.

Chapter Three

Final Provisions

Article 47.

A member of the Armed Forces accused of committing a crime not specifically listed in this code will be punished according to the Afghan Civil Penal Code published in the Official Gazette No 347 of 1355. These cases can be heard, considering the place where the crime is committed and other circumstances of the case, in military or civilian courts.

Article 48. Effective Date of this Code

This law will come into effect when it is approved, and shall be published in the Official Gazette. The Law of Military Crimes published in Official Gazette No 604 of 1365 with its amendments is abolished.