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8th Army
Unit #15236
APO AP 96205

Army in Korea
Regulation 27-10

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Legal Services
MILITARY JUSTICE

*This regulation is the first edition.

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Summary. This regulation provides jurisdictional and procedural guidance in processing military justice matters and assigning personnel involved in the administration of military justice in units in 8th Army and its major subordinate commands (MSCs). It should be used in conjunction with Army Regulation (AR) 27-10, Military Justice.

Applicability. This regulation applies to United States (U.S.) Army personnel, units and activities assigned, located with, or attached to 8th Army or its MSCs.

Supplementation. Further supplementation of the regulation by subordinate commanders is prohibited without the concurrence of the Staff Judge Advocate (SJA), 8th Army.

Forms. Army in Korea (AK) forms are available at http://8tharmy.korea.army.mil/q1_AG/.

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System (ARIMS) website at <https://www.arims.army.mil>.

Suggested Improvements. Users are invited to send comments and suggestions on a DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Chief of Military Justice, SJA, 8th Army, Unit #15236, APO AP 96205-5236.

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Chapter 1

Introduction

1-1. Purpose

This regulation prescribes policies and procedures governing the administration of military justice within 8th Army.

1-2. References

Required and related publications are listed in appendix A.

1-3. Explanation of Abbreviations

Abbreviations used in this regulation are explained in the glossary.

1-4. Organization

a. Legal Assets on Peninsula. All Judge Advocate offices within 8th Army and its MSCs fall under the technical supervision of the Staff Judge Advocate (SJA), 8th Army, with the exception of Judge Advocate officers assigned to Trial Defense Services or the Trial Judiciary. The SJA, 8th Army, has overall responsibility for the assignment, management, and proper utilization of all legal personnel within 8th Army's jurisdiction. This applies to all judge advocates, civilian attorneys, legal administrators, paralegal specialists, paralegal noncommissioned officers (NCOs), civilian paralegals, legal assistants, and court reporters, regardless of table of organization and equipment (TOE) and table of distribution and allowances (TDA). The SJA, 8th Army, may task-organize commissioned officers, warrant officers, NCOs, and enlisted personnel serving in branch code or military occupational specialty 27, as required, to meet the legal needs of the command. An individual so tasked organized remains a member of the command to which assigned, including for quarters, rations, and administration, but may be tasked for duty at the discretion of the SJA, 8th Army, as required by legal operations. The SJA, 8th Army, will ordinarily defer to the SJA, 19th Expeditionary Sustainment Command (ESC), the SJA, 2d Infantry Division (2ID), and the SJA, Intelligence and Security Command (INSCOM), regarding task organization of assets within their units' TOE and/or TDA. Additionally, the SJA, 19th ESC, the SJA, 2ID, and the SJA, INSCOM remain responsible for the funding of training of legal assets within their respective organizations.

b. Chief, Paralegal NCO Responsibility. The Chief Paralegal NCO, 8th Army, is responsible for military occupational specialty-related training of all paralegal specialists and noncommissioned officers, including those with the court reporter skill identifier. Group and individual training will be conducted as directed or approved by the Chief Paralegal NCO, 8th Army, and is mandatory for all paralegals. The Chief Paralegal, NCO, 8th Army, under the direction of the SJA, 8th Army, has the overall responsibility for task organization of all enlisted Soldiers assigned or attached for duty in the Republic of Korea (ROK).

c. Consolidated Legal Centers. Consolidated Legal Centers are located in Areas I, II, III, and IV of the ROK. All enlisted Office of Staff Judge Advocate (OSJA) Soldiers' place of duty will be the consolidated legal center of where they are geographically located in Korea regardless if they are assigned to individual brigades or battalions. The exception to this rule is that enlisted Soldiers' place of duty may be at a battalion or brigade if a Judge Advocate (27A) is assigned to, and their place of duty is at a brigade. Presently, the only brigades with assigned Judge Advocates are 1st Heavy Brigade Combat Team, 501st Military Intelligence Brigade, 35th Air Defense Artillery Brigade, 411th Contracting Brigade, and 501st Sustainment Command Brigade. The Chief Paralegal NCO, 8th Army, under the direction of the SJA, 8th Army, may at his or her discretion grant further exceptions to this rule as warranted.

d. Use of Paralegals. As much as possible, enlisted 27D paralegals will perform only professional legal duties for which they are trained. They should not perform any non-legal duties, such as charge of quarters, staff duty, courtesy patrol, sexual assault prevention and response program unit victim advocate, range noncommissioned officer, or any other duties that would interfere with their primary assigned legal duties. This does not prohibit administrative duties within legal offices to include inventory noncommissioned officer, automation support, or other legal support duties directed by legal officers.

e. Brigade Judge Advocates. Judge Advocates assigned to brigades within 8th Army will be rated in accordance with The Judge Advocate General (TJAG) Policy Memorandum 08-01, Location, Supervision, Evaluation, and Assignment of Judge Advocates in Modular Force Brigades, dated 17 April 2008. Although some variation may be necessary, at a minimum, all Judge Advocates assigned to brigades will have a senior Judge Advocate in his or her rating chain to ensure the rated Judge Advocates are receiving appropriate professional guidance on the practice of law. Judge Advocates assigned to brigades will regularly train and coordinate with the Chief of Military Justice for their General Court-Martial Convening Authority (GCMCA). Brigade Judge Advocates will attend their respective GCMCA military justice teleconference. This weekly military justice meeting will serve as the primary, though not exclusive, military justice coordination vehicle. Military justice reports will be submitted and updated weekly, prior to the weekly military justice teleconference. Brigade Judge Advocates and trial counsels responsible for specific brigades will rate 27D noncommissioned officers that are assigned or attached to their brigade. Appendix B lists further responsibilities of Brigade Judge Advocates and trial counsels responsible for specific brigades.

f. Special Victim Prosecutor (SVP). In accordance with (IAW) TJAG Policy 09-03, Special Victim Prosecutors, dated 29 May 2009, the SVP will be detailed to every sexual assault or family violence case in 8th Army and its MSCs. The SVP is responsible for tracking all sexual assault and domestic violence cases regardless of their disposition in 8th Army and its MSCs. All trial counsel in 8th Army and its MSCs are responsible for immediate notification and final disposition notice to the SVP of any case that falls within the purview of the SVP's responsibility. The SVP will keep quarterly statistics every fiscal year on sexual assault disposition. The SVP is responsible for training, mentoring, and developing all 8th Army and its MSC trial counsel on effective prosecution techniques and procedures. The SVP is also responsible for developing and maintaining a sexual assault response team(s) to discuss and further implement training and coordination between SJA personnel, Criminal Investigation Division (CID) personnel, social workers, and medical personnel.

Chapter 2 Procedures and Policies

2-1. Jurisdiction

a. 8th Army General Court-Martial Convening Authority (GCMCA). Within 8th Army, the prescribed GCMCAs are as follows.

- (1) The Commanding General, 8th Army.
- (2) The Commanding General, 2d Infantry Division.
- (3) The Commanding General, 19th Expeditionary Sustainment Command.

The 8th Army Commander as the Senior Mission Commander in the ROK retains administrative control for military justice purposes over all Army officers, noncommissioned officers and enlisted Soldiers on active duty status assigned, attached, and within the Republic of Korea. This administrative control includes the ability to detail all Army personnel located in the ROK to courts-martial and administrative boards convened by 8th Army. Units and personnel assigned to units not mentioned below, but present within the Republic of Korea, shall be subject to the jurisdiction of the Garrison Commander (SPCMCA) in the Area within which those personnel are present for duty, and further subject to the GCMCA under which the Garrison Commander falls.

b. 8th Army Special Court-Martial Convening Authority (SPCMCA). Within 8th Army, the prescribed SPCMCAs are as follows.

(1) Under the Commanding General, 8th Army:

- (a) The Commander, 1st Signal Brigade.
- (b) The Commander, 501st Military Intelligence Brigade.
- (c) The Commander, 65th Medical Brigade.
- (d) The Commander, US Special Operations Command, Korea.
- (e) The Commander, 35th Air Defense Artillery Brigade.
- (f) The Commander, USAG-Yongsan.
- (g) The Commander, USAG-Humphreys.
- (h) The Commander, 411th Contracting Support Brigade.
- (i) The Commander, 6th Military Police Group (CID).

(2) Under the Commanding General, 2ID:

- (a) The Commander, 1st Heavy Brigade Combat Team.
- (b) The Commander, 210 Fires Brigade.
- (c) The Commander, 2d Combat Aviation Brigade.
- (d) The Commander, USAG-Red Cloud.

(3) Under the Commanding General, 19th ESC:

- (a) The Commander, 501st Sustainment Brigade.
- (b) The Commander, Materiel Support Center, Korea.
- (c) The Commander, 403d Army Field Support Brigade.
- (d) The Commander, USAG-Daegu.

Exclusion from this prescribed list does not preclude or disqualify any US Army commander in the ROK, otherwise qualified to exercise SPCMCA under Article 23, Uniform Code of Military Justice (UCMJ), from exercising the authority of an SPCMCA under the terms and conditions set forth in the UCMJ, Manual for Courts-Martial (MCM), AR 27-10, Military Justice, 3 October 2011, or this regulation.

c. **Command-Line Jurisdiction.** All nonjudicial, administrative separation, general officer memoranda of reprimand, and court-martial preferal and referral actions will be processed through the organic command-line chain of command. Trial counsels and Brigade Judge Advocates will be responsible for processing military justice actions through their units. A commander will properly dispose of misconduct pertaining to a Soldier under his/her command, or if necessary, forward such charges through superior officers in his/her chain of command only. The preference is for commanders to utilize command-line jurisdiction to process all non-judicial, administrative, and court-martial actions to the maximum extent. However, there are times where a military justice action may better be handled in a particular area. In this case, either the Garrison Commander (Area SPCMCA) or the Area GCMCA may request jurisdiction. Any commander's failure to comply with this memorandum will not defeat an exercise of personal jurisdiction over an individual as long as such exercise is otherwise lawful under the UCMJ, the MCM, and military regulations.

d. **Appellate Authority.** Absent withholding of authority by a GCMCA in a Soldier's chain of command, the appellate authority for Non-Judicial Punishment (NJP) is the next superior commander in the Soldier's chain of command. The Commanding General, 8th Army, will act on appeals from NJP imposed by the Commanding General, 2ID, and the Commanding General, 19th ESC. The Commanding General, United States Forces Korea (USFK), will act on appeals from non-judicial punishment imposed by the Commanding General, 8th Army.

e. **Commencement of Hostilities.** Notwithstanding anything within this regulation to the contrary, Army units in, or deployed to, the ROK without a GCMCA in their chain of command concurrently located in the ROK will be attached to the Commander, 19th ESC, as the GCMCA for the entire ROK during Reception Staging, Onward Movement, and Integration (RSO & I). Army units in, or deployed to, the ROK without an SPCMCA in their chain of command concurrently located in the ROK will be attached to the SPCMCA designated by the Commander, 19th ESC.

2-2. Limitations on Exercise of Authority

a. **Withholding Policy.** Court Martial Convening Authorities in 8th Army and its MSCs may issue standing policies withholding the authority to dispose of certain types of cases at their own or their subordinate commanders' levels, or may withhold authority to dispose of a particular case. Such policies or withholdings will be binding on the brigade, battalion, company, and detachment level commanders in their commands.

b. **Officer and E-8 and Above Misconduct.** In accordance with Rule for Courts-Martial (R.C.M.) 306(a), R.C.M. 401(c), Manual for Courts-Martial, and 8th Army Command Policy Letter #14 – Limitation on Exercise of Authority, dated 23 November 2011, the authority to dispose of alleged misconduct committed by commissioned officers, warrant officers, and noncommissioned officers in the grade of E-8 and above, assigned, attached or otherwise under the General Court-Martial jurisdiction of the Commanding General, 8th Army, is withheld to the Commanding General, 8th Army. This withholding does not withdraw authority from individuals to prefer court-martial charges they determine are appropriate IAW R.C.M. 307. Commanders are responsible for immediately informing the Commanding General, 8th Army (courtesy copying the SJA, 8th Army), of allegations of criminal misconduct or of any incident in which there is evidence of criminal misconduct by a commissioned officer, warrant officer, or noncommissioned officer in the grade of E-8 and above.

This notification should occur as soon as possible after the alleged incident. The Commanding Generals 19th ESC and 21D may have their own independent withholding policies and are not subject to 8th Army Command Policy Letter #14.

c. Courts-Martial. Special Court-Martial Convening Authorities in 8th Army or its MSCs may not refer cases to a special court-martial. This authority is withheld to the appropriate General Court-Martial Convening Authority. Special Court-Martial Convening Authorities may refer cases to a summary court-martial if they believe that such disposition is appropriate.

d. Sexual Assault and Hazing. Authority to dispose of cases that resulted from an allegation of sexual assault or hazing is withheld to the Summary Court-Martial Convening Authority in 8th Army and its MSCs (see paragraph 8a below).

2-3. Investigations

a. Investigations. IAW R.C.M. 303, investigations will be conducted when there is a potential violation of the UCMJ, when required by regulation, or when facts need to be discovered in order to identify system weaknesses and improve operations. Investigations provide commanders and senior leaders with a valuable tool for objectively determining the facts of a situation and preserving evidence. They must be done to standard and they must be done in a timely fashion. Investigations must be properly scoped and documented. Investigations must be conducted in a credible and transparent manner that enforces accountability and institutional learning. This includes paying close attention to the appointment of the right Investigating Officer at the start, and ensuring that the report is comprehensive, sets the incident in proper context, recommends measures to prevent recurrence, and considers whether and at what level supervisory responsibility applies.

b. Flags. Any Soldier that is being investigated for any form of misconduct through a commander's inquiry, AR 15-6 investigation, military police investigation, Korean law enforcement investigation, or Criminal Investigation Division (CID)/Office of Special Investigations (OSI)/National Crime Investigative Service (NCIS) investigation will be flagged IAW AR 600-8-2, Suspension of Favorable Personnel Actions, 23 December 2004, paragraph 1-12. Flags will be monitored to ensure that they are removed in a timely manner upon final disposition of an action.

2-4. Allegations of Sexual Assault and Hazing

a. Limitation of Authority. Authority to dispose of cases that resulted from an allegation of sexual assault or hazing (as defined in AR 600-20, Army Command Policy, 4 August 2011, paragraph 4-19) is withheld to the Summary Court-Martial Convening Authority (Battalion Commander) level and above in 8th Army and its MSCs. A commander authorized to dispose of cases involving an allegation of sexual assault or hazing may do so only after receiving the advice of his or her servicing Judge Advocate.

b. Sexual Assault Restricted and Unrestricted Reporting. Department of Defense (DoD) Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures, June 23, 2006, incorporating change 1, November 13, 2008 states there are only three types of personnel that can receive confidential restricted reports. These personnel are: sexual assault response coordinators/unit victim advocates; healthcare providers; and chaplains. Any report of a sexual assault to individuals not included in this group of personnel (or new personnel covered under the new Sexual Harassment/Assault Response and Prevention Program) is to be considered an unrestricted report. Upon receiving an unrestricted report of sexual assault, the command will

immediately notify Criminal Investigative Division (CID) and will send a Serious Incident Report through operation channels to the appropriate GCMCA.

c. Sexual Assault Victim's Rights. IAW DoD Directive-Type Memorandum (DTM) 11-063 – Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault, dated 16 December 2011, upon receiving an unrestricted report of sexual assault where reasonable grounds exist that an assault occurred, the company level command or higher **must** provide the victim a victim rights advisement and preference for transfer advisement notice as listed in Appendix C.

d. Trial Counsel Responsibilities. Trial counsel in 8th Army and its MSCs will update the SVP as to the status of all sexual assault investigations twice a month. If a sexual assault involving rape, forcible sodomy, aggravated sexual assault, or aggravated sexual contact under Article 120, UCMJ involves disposition less than court-martial, is unfounded, or lacks prosecutorial merit, the servicing trial counsel **must** provide a memorandum for the record for the command and the SVP as to the reason alternate disposition was recommended and/or the reason the case was unfounded or lacked prosecutorial merit.

2-5. Standards for Pretrial Restraint Other Than Pretrial Confinement

Pretrial restraint is moral or physical restraint on a person's liberty that is imposed before and during the disposition of offenses. It may consist of conditions on liberty restrictions in lieu of arrest, arrest, or confinement. Commanders will coordinate with their unit trial counsel when imposing pretrial restraint on any Soldier suspected of committing a criminal offense. Normally, coordination with the unit trial counsel should occur prior to the commander imposing pretrial restraint; however, in those instances where a trial counsel is not reasonably available, the commander may impose the restraint, and contact the trial counsel as soon as practicable thereafter. Commanders who order pretrial restraint will do so in writing with a copy forwarded to the unit trial counsel.

2-6. Pass-Privileges

Under R.C.M. 304(h), Commanders may impose administrative restraint on Soldiers, if necessary, for operational or other military purposes independent of military justice. Such administrative restraints may be considered necessary to ensure operational readiness and unit effectiveness, as well as ensuring the good order and discipline of the unit. One of the administrative restraints commanders may place onto their Soldiers is a suspension of their off-post pass privileges as dictated by the circumstances. IAW 8th Army Command Policy Letter #35 – Suspension of Pass Privileges for Soldiers Under Investigation by Republic of Korea Authorities for Assaulting Korean Nationals, dated 27 April 2011, any Soldier being investigated for an off-post assault incident involving a Korean National will have his/her off-post pass privileges revoked pending final disposition of the matter.

2-7. Authority to Order Pretrial Confinement

The authority to order pretrial confinement is contained in Rule for Courts-Martial (R.C.M.) 305(c), except for procedures listed below under paragraph 2-7. With the exception of confinement due to apprehension or arrest by military police authorities, the approval of the Soldier's SPCMCA with concurrence of the servicing GCMCA SJA, will be obtained prior to ordering a Soldier into pretrial confinement in a detention cell and/or the 8th Army Confinement Facility.

2-8. ROK-US SOFA Incidents

a. General. The US has primary jurisdiction for all crimes done in the course of official duty, that are violations of US law but not ROK law, or where the victim is a US SOFA member and the alleged perpetrator is a US SOFA member (regardless if the crime occurs on- or off-post). The

ROK has primary jurisdiction for all other crimes, including crimes involving non-US SOFA members. If the offense is committed in an area of the ROK under martial law, the US has exclusive jurisdiction over members of the US Armed Forces and disciplinary action may be initiated as soon as the commander's preliminary inquiry is complete.

b. ROK Exercising Jurisdiction. In cases involving violations of ROK law, where the ROK has primary jurisdiction, no non-judicial punishment will be imposed and no court-martial charges will be referred to trial until either (1) ROK authorities deliver notification to the appropriate SJA Office within 8th Army that they have waived jurisdiction in the case or (2) until 28 calendar days (plus any extension validly requested by the ROK Government) have elapsed from the date a request for waiver of primary jurisdiction is delivered to the ROK authorities without a response, whichever occurs first. The 28-day period (plus any valid extension) allows the ROK Government time to decide whether it will exercise jurisdiction in the case.

c. US Disciplinary Proceedings Subsequent to ROK Exercising Jurisdiction. IAW AR 27-10, Military Justice, 3 October 2011, paragraph 4-2, a Soldier who has been tried in a ROK civilian court may, but ordinarily will not, be tried by courts-martial or punished with non-judicial punishment for the same act over which the ROK civilian court has exercised jurisdiction. GCMCA's may authorize disposition of a case under the UCMJ despite a previous trial in unique circumstances. The GCMCA must personally determine that authorized administrative action alone is inadequate and punitive action is essential to maintain discipline in the command. If the GCMCA authorizes non-judicial punishment on the same offense, final disposition may occur in the ROK. However, in accordance with the US/ROK SOFA, if the GCMCA refers the case to court-martial for the same offense, the judicial proceeding may only occur outside of the physical territory of the ROK.

2-9. Pretrial Confinement Based upon a Violation of ROK Laws (SOFA Confinement)

a. General. The degree of custody required to meet any custodial obligations under the US/ROK SOFA is at the discretion of the commander of the Soldier under ROK criminal charges. Such custody may include restriction to certain prescribed limits or confinement in a U.S. installation confinement facility. Confinement in a U.S. installation confinement facility will only be authorized when it is necessary to ensure the presence of the accused at trial or other foreign criminal proceeding, or to avoid foreseeable future serious criminal misconduct by the accused.

b. SOFA Confinement Specific Procedures.

(1) If pretrial confinement for violation of ROK laws is pursued against a Soldier, the immediate commander can order the confinement. The SJA servicing the GCMCA in an accused Soldier's chain of command will then prepare a memorandum setting forth his or her recommendation regarding whether probable cause exists to believe that confinement is necessary to ensure the accused Soldier's presence at trial or other foreign criminal proceeding (including the accused's presence for transfer to the custody of ROK authorities), or necessary to avoid foreseeable future serious criminal misconduct by the accused within the ROK, destruction of evidence, or tampering with or intimidating witnesses. The SJA shall then cause a copy of that recommendation to be served on the accused, affording the accused a reasonable opportunity to consult with a legal advisor and to respond. The SJA will forward his or her recommendation regarding probable cause, along with the response (if any) of the accused, to the applicable GCMCA. Under the authority granted in AR 27-10, Military Justice, 3 October 2011, paragraph 16-3, upon receipt of the SJA's recommendation, the GCMCA will then determine whether to authorize continued confinement of the accused. This authorization will occur within seven calendar days after an accused has been confined, absent exigent operational circumstances.

(2) If the GCMCA orders continued pretrial SOFA confinement the following additional reviews will occur: A military magistrate will review the issue of whether probable cause exists to believe that confinement is necessary. This review should occur within seven calendar days after an accused has been confined, absent exigent operational circumstances. Unless otherwise provided for under SOFA obligations, the military magistrate will not inquire into the issue of whether probable cause exists to believe that the accused has committed the offenses charged under foreign law. The military magistrate may recommend release from confinement if the military magistrate determines that it is not necessary to ensure the accused's presence and that it is not foreseeable that the accused will engage in future serious criminal misconduct. This recommendation will be forwarded through the GCMCA to the Commander, USFK. The Commander, USFK in his discretion may direct release from confinement or order other disposition as deemed appropriate. The provisions of R.C.M. 305 do not apply to review of SOFA confinement.

(3) The requirement for continued pretrial confinement status will be reviewed every 60 days. The OSJA, international law division servicing the GCMCA from which the case arises will get a status report from the ROK KNP/prosecution office in charge of the case. This will ensure that the ROK is still planning on pursuing the case. The SJA servicing the GCMCA in the accused Soldier's chain of command will note any change of circumstances and submit a supplemental opinion to the GCMCA. The GCMCA will either authorize continued confinement or order release.

2-10. ROK Court Convictions

a. Delegation of Authority. IAW AR 635-200, Enlisted Separations, 6 September 2011, paragraph 14-9(a), the GCMCA of the 2ID and the 19th ESC are delegated authority to discharge Soldiers convicted by a ROK foreign tribunal/court.

b. Mandatory Separation Consideration. IAW 8th Army Policy #5 – Separation Actions Concerning Soldiers Convicted in ROK Foreign Tribunal/Court, dated 27 April 2011, when a ROK foreign tribunal/court convicts an enlisted Soldier where a punitive discharge is authorized for the same or a closely related offense under the Manual for Courts-Martial or when a sentence includes confinement for more than 6 months for an Officer or 6 months or more for an enlisted Soldier (without regard to suspension or probation of the sentence) the immediate commander of the Soldier or Officer **must** either initiate separation or forward a recommendation for retention through the chain of command to the appropriate GCMCA.

2-11. Witness Attendance for Administrative Boards, Pretrial Hearings, and Courts-Martial

a. General. Board Presidents, Article 32 Investigating Officers, Summary Courts-Martial Officers, and trial counsel detailed to Special Courts-Martial and General Courts-Martial have the lawful authority to require attendance of 8th Army, 2ID, 19th ESC Soldiers, Korean Augmentation To United States Army (KATUSA) Soldiers, and US and Korean appropriated and nonappropriated fund employees at the Board, Pretrial Hearing, or Courts-Martial if the witness is reasonably available. That authority extends to both prosecution and defense witnesses. Commanders and supervisors will ensure that requested witnesses appear at the specified time and place when they are found to be reasonably available.

b. Travel orders. The SJA, 8th Army, is responsible for authorizing the travel and transportation expenses of military and civilian witnesses, trial counsel, and court reporters at all Article 32, UCMJ, investigations and courts-martial convened by 8th Army, 2ID, and 19th ESC convening authorities. Requests for orders will be made to the 8th Army Victim/Witness Liaison (VWL) using the procedures in Appendix D.

c. Witnesses outside the ROK. Requests for military or civilian witnesses stationed or located outside Korea should be submitted a minimum of 30 days before the trial date. Requests for other witnesses located inside Korea will be submitted a minimum of 2 weeks before the trial date. Requests for overseas witnesses will be submitted using the procedures in Appendix D.

d. Accused/Respondent Presence. An accused/respondent's commander is responsible for arranging for the accused's appearance at an administrative board, pretrial hearing, or court-martial. The fact that an accused is in pretrial confinement does not relieve the accused Soldier's commander of this responsibility.

2-12. Original Documents Required for Special and General Courts-Martial

For all Special and General Courts-martial, trial counsel will ensure the court is provided with all original documents. Accordingly, there will be one charge sheet (or sheets) with all original signatures; any stipulations of fact or expected testimony be signed with original signatures, any motions will be signed with original signatures, and any offers to plead be signed with original signatures.

2-13. Post-Trial

a. Report of Results of Trial. After trial, copies of Department of the Army Report of Result of Trial (DA Form 4430) will be furnished to the following: the company, battalion, and brigade commanders or commanders of equivalent size units, as applicable; the provost marshal; the confinement facility (if applicable) the supporting finance and personnel offices; the military judge; and the convening authority. **It is imperative that the Report of Result of Trial is served upon the Finance Office as a Soldier confined or discharged could wrongfully receive pay and entitlements unless Finance properly annotates the court-martial or foreign conviction.**

b. Confinement Unit Identification Code (UIC). IAW AR 600-62, Army Personnel Control Facilities, 17 November 2004, paragraph, 3-12, Soldiers at the 8th Army Camp Humphreys Confinement Facility or ROK civilian correctional facilities who receive a sentence of 120 days (4 months) or fewer confinement, without a discharge, will remain assigned to their parent unit and serve their confinement at a confinement facility. However, Soldiers who receive a sentence of 121 days or more confinement without a punitive discharge, or adjudged a punitive discharge, will be assigned to the Camp Humphreys Confinement Facility and transferred to the appropriate designated Continental United States (CONUS) regional corrections facility for the purpose of confinement and/or post-trial processing.

c. Out-Processing. Soldiers who are confined at the Camp Humphreys Confinement Facility or a ROK civilian correctional facility who receive a punitive or administrative discharge from the Army will be attached to their parent unit subsequent to their confinement (regardless if they have been assigned to the Camp Humphreys Confinement Facility UIC) for their final out-processing from the Army.

2-14. Delegation of UCMJ Authority

a. Article 15, UCMJ. The Commander, 8th Army, delegates to the Deputy Commanding General, 8th Army, his powers under Article 15, UCMJ, pursuant to AR 27-10, Military Justice, 3 October 2011, paragraphs 3-7 and 3-30.

b. General Officer Memorandum of Reprimand (GOMOR). The Commander, 8th Army, delegates to the Deputy Commanding General, 8th Army, the ability to issue and make filing determinations for all GOMORs issued to Soldiers in 8th Army.

Appendix A

References

Section I. Required Publications

AR 27-10, Military Justice

AR 600-8-2, Suspension of Favorable Personnel Actions

AR 600-20, Army Command Policy,)

AR 600-62, United States Army Personnel Control Facilities and Procedures for Administering Assigned and Attached Personnel

AR 635-200, Active Duty Enlisted Administrative Separations

DoD Directive-Type Memorandum (DTM) 11-063, Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault, dated 16 December 2011

DoD Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures, June 23, 2006, incorporating change 1, November 13, 2008

TJAG Policy Memorandum 08-01, Location, Supervision, Evaluation, and Assignment of Judge Advocates in Modular Force Brigades, dated 17 April 2008

TJAG Policy 09-03, Special Victim Prosecutors, dated 29 May 2009

USFK Regulation 190-1, Motor Vehicle Traffic Supervision

8th Army Command Policy Letter #5, Separation Actions Concerning Soldiers Convicted in ROK Foreign Tribunal/Court

8th Army Command Policy Letter #14, Limitation on Exercise of Authority

8th Army Command Policy Letter #22, Limitation on Exercise of Authority in Fatality Cases

8th Army Command Policy Letter #35, Suspension of Pass Privileges for Soldiers Under Investigation by Republic of Korea Authorities for Assaulting Korean Nationals)

8th Army Command Policy Letter #41, Investigations

Section II. Required Form

DA Form 4430, Department of the Army Report of Result of Trial

Appendix B Trial Counsel Responsibilities

The following responsibilities are guidelines for how trial counsels should prosecute military justice actions. These responsibilities are not directives for MSCs. The SJA, 2ID and the SJA, 19th ESC may modify these responsibilities as dictated by circumstances.

B-1. Trial Counsel are responsible for all Military Justice actions in their brigade regardless of geographic location in Korea. All non-judicial, administrative separation, general officer memoranda of reprimand, and court-martial preferal and referral actions will be processed through the organic command-line chain of command. The intent of command line jurisdiction alignment is to provide commanders with better command visibility and control of all UCMJ, non-judicial, and adverse administrative actions that occur in their commands. With better visibility, trial counsel must work to ensure full command ownership of adverse actions so they are processed promptly and thoroughly in accordance with regulation and policy.

a. Example - 94th Military Police Battalion has a Soldier that is accused of assaulting another Soldier in Yongsan. The 19th ESC CG is the GCMCA in this case. The 501st Sustainment Brigade Judge Advocate (BJA) is the first chair on this court-martial. The USAG-Yongsan trial counsel will serve as the second chair. The Article 32 Hearing will occur at Yongsan. The Article 32 Officer will be appointed by the 501st Sustainment Brigade Commander. The 501st Sustainment Brigade Commander can request the USAG-Yongsan Area SPCMCA detail an officer located at USAG-Yongsan to serve as the Article 32 Investigator. The trial will occur in Daegu. The witnesses will travel from Seoul to Daegu for the court-martial along with the USAG-Yongsan trial counsel.

b. Example - 168th MMB, 65th Medical Brigade has a sexual assault which occurred in Daegu. This case belongs to 65th Medical Brigade Trial Counsel located at USAG-Yongsan. She places this case on her Brigade tracker and ensures that the Serious Incident Report is provided to both the Chief of Justice, 8th Army, and the Chief of Justice, 19th ESC. 8th Army is the GCMCA for this case. The 65th Medical Brigade Trial Counsel is the first chair and the second chair is the SVP. USAG-Daegu Trial Counsel provides administrative support as needed for witness production and CID contacts. The trial occurs at USAG-Yongsan.

B-2. Trial counsels will -

- a. Check the blotters in Areas I-IV where their brigade has Soldiers every day for misconduct.
- b. Personally meet the Commander and CSM/1SG for every company and battalion in their brigade. Every commander must have the trial counsel's number and know to call him/her if there are any UCMJ issues in their command.
- c. Personally review all Field Grade Article 15s in their brigades.
- d. Provide their phone number and email address to CID Special Agents in Charge in Areas I-IV and inform them to call regarding any investigation involving a Soldier in their brigade.
- e. Brief their commander(s) as to disposition decision regarding all closed investigations and have the command decide on disposition within 10 days. Effective military justice means timely military justice.

f. Ensure their monthly Military Justice Online report on UCMJ statistics is complete and submitted on time to servicing GCMCA, Chief of Justice.

g. First chair courts-martial of all Soldiers in their brigade regardless of geographic location (however, there may be times that it is more efficient/logistically easier for Area trial counsel to be first chair for certain units).

h. Fully coordinate with the servicing USAG Trial Counsel on courts-martial cases in their respective areas. There should be a joint effort of brigade trial counsel and garrison trial counsel in investigating and prosecuting court-martial cases. Additionally, brigade trial counsel must be able to depend on Area Legal Centers to facilitate Article 15s and Chapters.

i. Immediately coordinate with the SVP on all sexual assault cases and ensure the SVP receives notice on final disposition of cases within his/her purview.

j. Provide to the appropriate GCMCA's, Chief of Justice "a lacks prosecution merit" or "lacks probable cause" memorandum on any sexual assault case that lacks probable cause or prosecutorial merit.

k. Provide training classes on UCMJ issues to commanders and Soldiers in their brigade.

l. Attend command and staff meetings of their brigades and will be able to brief their commanders on all NJP, administrative actions, investigations, and Courts-Martial in their brigade.

B-3. Under command line jurisdiction, courts-martial are convened by the command-line GCMCA vice the Area GCMCA. The result at times is witnesses traveling from different geographic areas to where the command-line GCMCA is located for a court-martial. To ameliorate this logistic issue, Chiefs of Justice of 2ID, 19th ESC, and 8th Army will consider proposing to their convening authorities use of R.C.M. 502(a)(3) which allows convening authorities' to detail different panel members outside of their commands to a court-martial with the oral or written concurrence of the other convening authority. Convening Authorities using this provision could detail panels in all geographic areas located in Korea.

B-4. The key to implementing the command-line jurisdictional scheme is effective communication between Brigade Trial Counsel and the Chief of Justice of 2ID, 19th ESC, and 8th Army as well as the OIC for Camp Humphreys Legal Center. If a trial counsel's brigade is located in different geographic areas in the ROK, the trial counsel must ensure that the Area SJA office is fully coordinated in regard to all UCMJ actions that occur in that Area. The Area SJA office is responsible to both the Garrison Commander (SPCMCA) and the Senior Responsible Officer, General Officer, in the Area. Accordingly, they must have situational awareness of all significant misconduct and potential courts-martial for personnel in a unit residing in that Area.

Appendix C
Victim Rights Advisement and Preference for Transfer Advisement

XXXX-CDR-X

Date: _____

MEMORANDUM FOR PFC Jane Doe, Headquarters, X Battery, Y Battalion, Z Brigade, APO AP 55555

SUBJECT: Victim Rights Advisement and Preference for Transfer Advisement

1. Rights Advisement. You are hereby advised of your rights as a victim of a crime, under Titles 10 and 18, United States Code, which are:

- a. To be treated with fairness and respect for my dignity and privacy.
- b. To be reasonably protected from the accused offender.
- c. To be notified of court proceedings.
- d. To be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
- e. To confer with the attorney for the Government in the case. The Government attorney in your case is the Brigade Judge Advocate, 783-5581, who you may contact directly.
- f. To receive available restitution.
- g. To be provided information about the conviction, sentencing, imprisonment, and release of the offender.

2. Preference for Transfer Advisement. You are additionally advised the Commanding General has given you, as a victim of sexual assault, a preference for an expedited transfer or reassignment should you make such a request in writing to your unit commander. Upon such a request, your commander will respond in writing within 72 hours.

a. Request Process. You are required to initiate the transfer request in writing and submit it to your commanding officer. You will use the enclosed memorandum to elect your decision to request a transfer, or alternatively, to decline a transfer. You may change your decision at any time by submitting another request memorandum to your commander. Your commander will document the time and date your request memorandum is received on the same enclosed memorandum. Your commander is then expected to consider all factors involved before making a decision on your transfer request, and is required to take reasonable steps to prevent a transfer from negatively impacting you. All disapproved requests will be in writing, stating the reason, and forwarded to your commander's next superior commander for review, who may approve your request or forward on with written recommendations to the next superior commander. But only the first General Officer in your chain of command may disapprove your request. When a victim requests transfer to another installation, the authority to disapprove that request is the Commander, U.S. Army Human Resources Command.

b. Credible Allegation Requirement. Your commander will consider all requests for transfer or reassignments from victims of sexual assault who have made a credible report. A credible report is one based upon reasonable grounds that a sexual assault has been committed. But a credible report is limited only to unrestricted reports of sexual assault. Thus, if you file a restricted report and request an expedited transfer, you must affirmatively change your reporting option to unrestricted reporting on the DD Form 2910, "Victim Reporting Preference Statement" to be eligible for such a transfer.

c. Direct Counseling. By order of the Commanding General, you have the right to be personally counseled by your commander on the foregoing request process, as I am doing here.

d. Factors for Decision. Commanders may consider certain factors in determining whether a transfer or reassignment is appropriate. The victim's concerns, the nature and circumstances of the offense, and operational necessity of the victim should all be carefully weighed before a decision is made. Factors involving the alleged offender should also be taken into account, such as the location and status (Soldier or Civilian) of the alleged offender, as well as considering transferring the alleged offender instead of the victim. Commanders should consider the status of the investigation and the potential impact of the victim's transfer or reassignment on the future disposition of the investigation. Any other pertinent circumstances or relevant factors may also be considered. Commanders will take reasonable steps to prevent a transfer or reassignment from negatively impacting the victim's career.

3. Open Door Policy. As your Commander, I am greatly concerned for your well-being in this matter, so I will remain engaged and sensitive to your rights as a victim, and proactive about my responsibilities to you. You may engage me through my open door policy at any time regarding this or any other matter or concern you may have.

4. POC. Point of contact for this memorandum is the undersigned at 555-5555.

Encl

JOHN Q. DOE
CPT, AD
Commanding

ACKNOWLEDGEMENT & REQUEST/ELECTION

1. I have been fully advised, personally by my Commander, of my rights as a victim and the preference I have been given for expedited reassignment should I make such a request in writing, using this memorandum. I understand I can change my request/election at any time using this same memorandum.

2. Having been so advised, I hereby knowingly, freely and voluntarily request the following:

[] To be transferred or reassigned to:

BASIS FOR REQUEST:

[] To remain in my current unit and position at this time BECAUSE:

JANE Q. DOE
PFC, US Army

COMMAND ACTION UPON REQUEST

I have reviewed the foregoing request, first received by the chain of command at _____ hrs on _____, 2012, and have fully considered all relevant factors, including the impact upon the requesting victim, taking into account his or her needs and rights as a victim and I hereby recommend the following. Should I recommend denial, my basis for this recommendation will be provided by separate memorandum. I understand only the first General Officer in this Soldier's command may deny the request.

(approve) / (deny)

(approve) / (deny)

(approve) / (deny)

JOHN Q. DOE
Commander, X BTRY

JOHN Q. JONES
Commander, Y BN

JOHN Q. BONHAM
Commander, Z BDE

Appendix D

Uniform System for Payment of Civilian Witnesses who Testify in Courts-Martial in 8th Army

D-1. Although the responsibility for the proper treatment of witnesses belongs to the trial counsel, a Victim-Witness Liaison (VWL) should be used as a point of contact (POC) for the processing and payment of witnesses. In an isolated area, the POC can be made a class A agent if he or she is a commissioned or warrant officer. A class A agent can draw funds from the local finance and accounting office for the payment of witnesses.

D-2. Time requirements for requesting a witness:

a. Military and DoD civilian employee witnesses within the ROK should be requested not less than 10 working days before trial.

b. All witnesses located outside the ROK should be requested at a minimum 30 working days before trial.

c. Expert Witness requests take a minimum of two weeks for contracting approval and awarding process. Most experts reside outside the ROK. Accordingly, expert witness requests (from either the government or the defense) must be submitted to the 8th Army VWL a minimum of six weeks prior to trial.

d. Trial counsel should request witnesses as soon as possible. It is easier to revoke issued orders than to make necessary arrangements on the eve of trial, especially for civilian witnesses outside the ROK who do not possess a passport.

D-3. Procedures for requesting witnesses:

a. Request military and DoD civilian witnesses located in the ROK using the "Request for Travel Funding" form below. This request must be approved and then electronically mailed to the VWL, Office of the Staff Judge Advocate, 8th Army. Incomplete requests will not result in orders until the necessary information is provided.

b. When requesting examiners from the US Army Criminal Investigation Laboratory (USACIL), the formal request form must be at USACIL as soon as possible, as USACIL operates on a first-come, first-serve basis. Requests must be made to the VWL as soon as possible to ensure funding can be approved in a timely manner. USACIL strongly suggests that prior to submission of the request, counsel talk to the witness.

c. For government witnesses, the VWL will prepare a fund cite memo and process it through Resource Management, which takes approximately 3 duty days. The VWL will then e-mail the fund cite memo to the witness.

d. For civilian witnesses, the VWL will prepare the invitational travel orders, arrange travel, and contact the witness.

e. Communication by telephone, to keep the witness informed and to minimize potential problems, is encouraged.

f. Arrangements for lodging and transporting the witness from the airport (for air travelers) are the responsibility of the requesting office. Witnesses should be advised of their hotel reservations and the expected cost.

g. When the witness arrives, the VWL will ensure that the witness is familiar with payable fees and allowances and with payment procedures.

h. The VWL will assist civilian witnesses in completing and submitting DD Form 1351-2 (Travel Voucher or Subvoucher) along with all receipts for any reimbursement being claimed.

REQUEST FOR TRAVEL FUNDING			
All funding for travel (i.e. victims/witnesses/experts, etc.) relating to courts-martial cases in Korea is centrally funded by EUSA and managed by Mr. Feist, EUSA VWL, DSN 738-4826, Cell 010-4584-7690, E-Mail: VWLiaison@korea.army.mil			
CASE INFORMATION			
LAST NAME OF ACCUSED: U.S. v. _____		TYPE OF PROCEEDING: <input type="checkbox"/> Court-Martial <input type="checkbox"/> Article 32 <input type="checkbox"/> Deposition <input type="checkbox"/> Other:	
LOCATION OF PROCEEDINGS:		PROCEEDING START DATE:	PROCEEDING FINISH DATE:
Absent further justification below, and approval by DSJA/SJA, travelers flying to Korea will arrive two (2) days prior to "Proceeding Start Date" to allow one (1) full day for consultation before trial starts; and travelers in Korea will arrive the morning of "Proceeding Start Date". If traveler wishes to arrive early/depart later for personal convenience, annotate below.			
TRAVELER INFORMATION			
The below information is mandatory for ALL travelers in order to obtain necessary funding for official travel.			
TRAVELER IS: <input type="checkbox"/> Government Witness <input type="checkbox"/> Defense Witness <input type="checkbox"/> Other:			
<input type="checkbox"/> DOD US Military Service Member		<input type="checkbox"/> DOD US Civilian Contractor	
<input type="checkbox"/> DOD US Civilian Employee		<input type="checkbox"/> Non-DOD US Citizen	
<input type="checkbox"/> DOD Foreign National Employee		<input type="checkbox"/> Non-DOD Foreign National	
* DOD US Military & DOD US Civilian employees must be registered in DTS			
NAME (LAST, FIRST MI):		SSN/KID:	US GOV EMPL MIL RANK/ CIV GRADE:
UNIT NAME (For civilians, enter Street Address)		INSTALLATION or CITY:	STATE or COUNTRY: ZIP CODE:
E-MAIL ADDRESS:		PHONE NUMBER(S):	
AIRPORT DEPARTING FROM:		AIRPORT RETURNING TO (IF DIFFERENT FROM DEPARTURE):	
PLEASE ADDRESS BELOW ANY ADDITIONAL ISSUES, CONCERNS, OR SPECIAL NEEDS REGARDING THE TRAVELER:			
The following information is required to process airline tickets by CTO here in Korea. Failure to provide this information will prevent airline travel from being secured here in Korea.			
DATE OF BIRTH (DD-MMM-YY):		AD MILITARY ID EXPIRATION (DD-MMM-YY):	PASSPORT NUMBER (CIV ONLY): EXPIRATION DATE (DD-MMM-YY):
DOD US MILITARY AND DOD CIVILIAN EMPLOYEE INFORMATION ONLY			
RANK & NAME OF CDR/1SG OR CIVILIAN SUPERVISOR:		E-MAIL ADDRESS OF CDR/1SG OR CIVILIAN SUPERVISOR:	
The above information is necessary to ensure that notification can be given to more than just the traveler. Failure to provide information will prevent notification to traveler's chain of command, thereby relying on traveler to make arrangements.			
DOD US CIVILIAN CONTRACTORS AND NON-DOD PERSONNEL INFORMATION ONLY			
BANK ROUTING NUMBER (9-DIGIT)		BANK ACCOUNT NUMBER	TYPE OF ACCOUNT <input type="checkbox"/> Checking <input type="checkbox"/> Savings
The above banking information is only for US civilians with an SSN. Failure to provide banking information will not prevent travel, but WILL prevent advance pay/settlement through DTS. Foreign nationals will provide an EFT worksheet at settlement.			
DOES THE TRAVELER REQUEST ADVANCE PAY? Advance travel pay for civilians will only be initiated once they commence travel, and funds will only be accessible to them AFTER arrival in Korea by withdrawing funds from the bank account provided above.			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE TRAVELER HAVE AN ATM CARD TO WITHDRAW FUNDS FROM ABOVE BANK ACCOUNT?			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE TRAVELER HAVE A VALID PASSPORT (IF TRAVELING FROM OUTSIDE KOREA)? All travelers traveling to Korea (except Active Duty Military) MUST have a valid passport to enter Korea.			<input type="checkbox"/> YES <input type="checkbox"/> NO
COORDINATION/APPROVAL			
NAME OF AREA VWL COORDINATING TRAVEL/LODGING:		E-MAIL ADDRESS: @korea.army.mil	PHONE NUMBER:
Approved funding/travel documentation will be obtained by the EUSA VWL and send to the Area VWL listed above. The Area VWL is responsible for notifying the traveler/supervisor, providing transportation information to and from Incheon airport and case location, making lodging reservations, and notifying the EUSA VWL of funding issues that cannot be resolved.			
The above listed traveler is necessary for this proceeding for the following reason(s):			
Trial Counsel: The traveler is requested based on the above justification. Initials: _____			
Chief of Criminal Law: I _____ Concur _____ Nonconcur _____ with the need for this travel. Initials: _____			
COMMENTS:			
DSJA/SJA: I _____ Approve _____ Disapprove _____ the travel funds for this travel. Initials: _____			

Figure D-1. "Request for Travel Funding" Form

**Glossary
Abbreviations**

2ID	2d Infantry Division
19th ESC	19th Expeditionary Sustainment Command
AK	Army in Korea
AR	Army Regulation
CID	Criminal Investigation Division
CONUS	Continental United States
DTM	Directive-Type Memorandum
GCMCA	General Court-Martial Convening Authority
GOMOR	General Officer Memorandum of Reprimand
INSCOM	Intelligence and Security Command
KATUSA	Korean Augmentation To United States Army
MCM	Manual for Courts-Martial
MSC	Major Subordinate Command
NCO	Noncommissioned Officer
NCIS	National Crime Investigative Service
NJP	Non-Judicial Punishment
OSI	Office of Special Investigations
OSJA	Office of Staff Judge Advocate
POC	Point of Contact
R.C.M.	Rule for Courts-Martial
ROK	Republic of Korea
RSO & I	Reception Staging, Onward Movement, and Integration
SPCMCA	Special Court-martial Convening Authority
SJA	Staff Judge Advocate
SVP	Special Victim Prosecutor

TDA	Table of Distribution and Allowances
TOE	Table of Organization and Equipment
TJAG	The Judge Advocate General
UCMJ	Uniform Code of Military Justice
UIC	Unit Identification Code
U.S.	United States
USFK	United States Forces Korea
USACIL	US Army Criminal Investigation Laboratory
VWL	Victim/Witness Liaison