

REPORT BY THE GHANA ARMED FORCES ON CRIMINAL ACCOUNTABILITY  
OF UNITED NATIONS OFFICIALS AND EXPERTS ON MISSION FROM  
GOVERNMENTS

1. The legal regime that regulates the Ghana Armed Forces affords sufficient provision that makes its personnel serving as United Nations (UN) Officials and Experts on Mission accountable for crimes committed while performing such duties. The Code of Service Discipline of the Ghana Armed Forces regulates activities of service personnel operating in home establishment as well as those on external duties to ensure that proper conducts of discipline are maintained at all times. This write-up is therefore in respect of the Ghanaians who are subject to the Code of Service Discipline and who are working as UN officials or Expert on Mission.

2. The Armed Forces Act and its regulations create Service Offences which have the character of criminal offences. Personnel who violate the code are charged and tried summarily or in serious cases prosecuted before a court martial. Provisions in the laws are so comprehensively crafted to include any regulations, orders or instructions published for the general information and guidance of the Armed Forces, to which that person belongs, or to which he is attached or seconded. The violation of such orders and regulations are considered as act, conduct, disorder or neglect to the prejudice of good order and discipline. Specifically, Section 54 of the Armed Forces Act (Act 105) provides as follows:

*“54. (1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline shall be an offence and every person convicted thereof shall be liable to dismissal with disgrace from the Armed Forces or to any less punishment provided by this Act.*

*(2) no person may be charged under this section with any offence for which special provision is made in any other part of this Act but the conviction of a person so charged shall not be invalid by reason only of the charge being in contravention of this subsection unless it appears that an injustice has been done to the person charged by reason of the contravention; but the responsibility of any officer for that contravention is not affected by the validity of the conviction.*

*(3) an act or omission constituting an offence under section 13, or a contravention by any person of—*

*(a) Any of the provisions of this Act:*

*(b) Any regulations, orders or instructions published for the general information and guidance of the Armed Forces to which that person belongs, or to which he is attached or seconded; or*

*(c) Any general, garrison, unit, station, standing, local or other orders shall be an act, conduct, disorder or neglect to the prejudice of good order and discipline.*

*(4) An attempt to commit any of the offences in a provision of this Act is unless such attempt is in itself an offence punishable under that provision, is an act, conduct, disorder or neglect to the prejudice of good order and discipline.*

(5) *Subsection (3) or (4) does not affect the generality of sub section (1)”.*

3. The operative effect of Section 54 (3) (b) of the Armed Forces Act rules out the need to legislate or codify every act or omission considered an offence by any international body, including the United Nations Forces with whom Ghana Armed Forces personnel operate. In practical terms therefore, any violation of *any regulations, orders or instructions published for the general information and guidance of the United Nations Forces to which that person belongs, or to which he is attached or seconded* by any Ghanaian who is subject to the Code of Service Discipline serving as United Nations official or Expert in Mission, is a violation of the Armed Forces Act of Ghana and therefore deemed as a service offence. Any such person who commits such a Service Offence, upon investigation, if the allegation is substantiated, can be tried by a Service Tribunal and if convicted, punished in accordance with law.

4. Section 114 of Armed Forces Act defines Service Offence broadly to also include violation of any other enactment committed by a person while subject to the Code. An act or omission by a Ghanaian serving as United Nations Official or Expert on Mission which is considered an infraction by operation of any UN regulation, also finds expression in the laws of Ghana and entitles the Service Tribunal within the Ghana Armed Forces to try such a person under Section 78 of the Armed Forces Act as Service Trial of Civil offences. The said section 78 provides as follows:

*“an act or omission*

*(a) That takes place in the Republic and is punishable by a civil court or under any other enactment, or*

*(b) That takes place out of the Republic and would, if it had taken place in the Republic be punishable by a civil court or under any other enactment, is an offence and a person convicted of that offence is liable to the punishment provided... ..”*

Additionally, Section 80 of the said Armed Forces Act provides that:

*“a person alleged to have committed a service offence may be charged, dealt with and tried under the Code whether the alleged offence was committed in or out of the Republic”.*

The cumulative effect of these provisions is that, there are sufficient provisions within the legal regime of the Ghana Armed Forces to comprehensively ensure criminal accountability of persons who are subject to the Code of Service Discipline of the Ghana Armed Forces and working as UN officials or experts on Missions. No person subject to the Code of Service Discipline can get away from being held from being held criminally accountable for offences committed whether in or out of the Republic.

### Challenges

5. Notwithstanding the above provisions, there are some practical challenges that militate against the holding of UN officials and expert on Mission, criminally accountable. Notable among these are delays in receiving complaints, lack of cooperation by complainants during investigations and trials, loss or damage of critical evidence due to delays in receiving complaints, and the effluxion of time due to the time bar principle under Section 81 of the Armed Forces Act.

6. The refusal by complainants to appear as star witnesses to assist in disciplinary action against accused persons found liable for infraction of UN regulations, is a major challenge in the accountability process. Given the fact that most of the complainants are non-compellable witnesses, their refusal to testify usually stalls any disciplinary accountability process that the Service puts in place.

7. These challenges notwithstanding, the Ghana Armed Forces spares no opportunity to ensure that complaints of alleged misconducts received in respect of its personnel operating as UN officials and expert on Mission, are conclusively determined and appropriate sanctions imposed after due process is followed. It is worth noting that, steps are being put in place through Legislation review to create specific Service Offences of Peace Support Operations such as Sexual Exploitation and Abuse (SEA). Criminal accountability of personnel is of topmost priority as it forms the bedrock for discipline in the service.

8. Respectfully submitted, please.