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TRIBUTE TO AKHO NTANJANA



Why should young and promising eagles suddenly perish and be taken away from us forever? I am gutted and unable to understand why.

Akho Ntanjana was on a meteoric rise – he was excelling in his career and slowly transforming into a trailblazer in his own unique way. He was a quiet, focused, forward looking young man and destined to reach great heights.

Akho worked tirelessly on the accreditation of this journal by the Department of Higher Education and Training – a long and arduous process. The receipt of the accreditation letter made him smile – he was relieved and fulfilled when he achieved his objective. He reminded us all that the real work was about to begin to maintain the accreditation.

Akho will be sorely missed by his SAJEI colleagues, the SAJEI Editorial Board members, the authors, the JUTA team and, more specifically, by his mother, wife, and siblings. May his soul rest in peace and rise in glory.

DR. GOMOLEMO MOSHOEU

Production editor

Well done, Akho!

You have run your race; now, it is for us to take the baton
and continue on your well-defined route.

Thank you for being our guiding light.

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188 14th Road, Noordwyk, Midrand, 1687

Private Bag X10, Marshalltown, 2000

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BOOK REVIEWS

Applied Military Justice for Practitioners

by Michelle Nel, Sonja Els, and Vukile Sibiyi

First Edition. Juta. 2024

The aspirational ‘project’ of transformative constitutionalism¹ is intended to realise the potential of the Constitution of the Republic of South Africa, 1996, to create a more just and democratic society. The Constitution, among many other things, stipulates that there must be a ‘disciplined military force’ to defend and protect South Africa.² Soon after, jurisprudence confirmed the need for an updated military law and justice system that conforms to constitutional imperatives.³ As a result, the legislator promulgated the Defence Act,⁴ which incorporates the Military Discipline Code (MDC).⁵ The Military Discipline Supplementary Measures Act⁶ and the Rules and Procedures⁷ thereto supplement the MDC. This separate system of discipline for the South African Defence Force (SANDF) establishes the standard of control to which its members must conform. As with all other legislation, the military justice legislative framework must be consistent with the Constitution.

However, military justice has received limited academic attention despite its distinctive and complex nature.⁸ The limitations in the analysis, interpretation, and awareness of military law and justice have now been remedied by the publication of *Understanding the South African Military Justice System* by Michelle Nel, Sonja Els, and Vukile Sibiyi. The authors have extensive experience in military law’s practical and theoretical aspects. They are members of the Faculty of Military Science at the University of Stellenbosch and active duty officers holding the rank of lieutenant colonel in the Defence Legal Services Division of the SANDF.

The book is structured into twelve chapters, each concentrating on a specific aspect of military justice. The first chapter introduces the concept of

¹ K Klare ‘Legal culture and transformative constitutionalism’ *South African Journal on Human Rights* (1998) 14, 146.

² Constitution of the Republic of South Africa, 1996, s 200(1)–(2).

³ See, for example, *Freedom of Expression Institute v President, Ordinary Court Martial* 1999 (2) SA 471 (C).

⁴ Defence Act 42 of 2002.

⁵ See the First Schedule to the Defence Act 44 of 1957.

⁶ Military Discipline Supplementary Measures Act 16 of 1999.

⁷ See the *Schedule to the Military Discipline Supplementary Measures Act 16 of 1999*.

⁸ See M Nel ‘Military Law practitioners and academic discourse: A *sine qua non* for developing military law, *scientia militaria*’ *South African Journal of Military Studies* (2017) 45(2) 2, doi: 10.5787/45-2-1212.

military justice and how it operates within the broader context of the South African legal system. This chapter evaluates explicitly the extra-territorial application of the domestic military law framework and the composition of military courts. The jurisdiction of specific military courts is also evaluated in some detail. Chapter 2 confirms that military personnel belong to a distinct group and that specialised laws have to be developed to deal with the unique needs of the SANDE. The chapter distinguishes between criminal and disciplinary offences and delves into the specific military offences and their legal implications. The pre-arraignment and pre-trial procedures discussed in Chapters 3 and 4 are essential for understanding the initial stages of the military justice process. These chapters provide comprehensive guidance on the steps that must be taken before a trial commences, including gathering evidence, the procedural requirements that must be met, arrest, warning, charges and prescription periods. Chapters 5 and 6 focus on military trial procedures and trial advocacy. The authors provide a guide to conducting a military trial, from opening statements to presenting evidence and closing arguments. Military trials may commence in a Court of Senior Military Judge, Court of Military Judge or Commanding Officer's Disciplinary Hearing depending on the seriousness of the offence. Chapters 7 and 8 cover the procedural aspects of sentencing and military sentences, including references to issues such as the determination of sentences, the types of sentences, and sentencing principles. This chapter is necessary as the unique nature of military offences demands equally unique punishments that include cashiering (dismissal with dishonour), discharge with ignominy, dismissal, detention, confinement and reduction in rank. Chapter 9 examines the military appeal and review process, including the procedural steps involved in an appeal, grounds for appeal and the standards of review. Chapters 10 and 11 address the non-judicial aspects of the military justice system, such as the boards of inquiry and individual grievance procedures. This discussion is essential as uniformed members of the SANDF are excluded from the application of the Labour Relations Act⁹ as members are 'enrolled' and not employed, thus creating distinctive legal consequences and protections.

The book is easy to read as it incorporates comments by the authors and flow diagrams of the processes within the military justice system. Copies of forms used in the military justice process have also been included, thereby providing insight into the administrative procedures of military justice. It also includes an extensive bibliography of resources consulted and an index for ease of reference. The publication represents the first comprehensive,

⁹ Labour Relations Act 66 of 1995, s 2, see also *Minister of Defence v Potsane; Legal Soldier (Pty) Ltd v Minister of Defence* 2002 (1) SA 1 (CC) at 31 as discussed in the publication.

well-structured and convenient resource on military justice in South Africa. It is essential reading for legal professionals, military practitioners, academics, students, policymakers and journalists interested in military law.

DR ARTHUR VAN COLLER

*Faculty of Law
University of Fort Hare*