



LAWS OF KENYA

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## **KENYA DEFENCE FORCES ACT**

No. 25 of 2012

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**KENYA DEFENCE FORCES ACT**

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## NO. 25 OF 2012

## KENYA DEFENCE FORCES ACT

[Date of assent: 27th August, 2012.]

[Date of commencement: 17th September, 2012.]

**An Act of Parliament to provide for the functions, organization and administration of the Kenya Defence Forces pursuant to Articles 232 and 239(6) of the Constitution; to give effect to Article 241 and other relevant Articles of the Constitution, to provide for disciplinary matters, and for connected purposes**

## PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the Kenya Defence Forces Act, 2012.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**acting rank**” means a rank from which the Commander, in the case of officers or a commanding officer, in the case of service members, has power to order the holder to revert and acting in relation to a specified rank shall be construed accordingly;

“**aids and abets**” means where one is not a perpetrator of an offence committed by the perpetrator, the person—

- (a) assists, encourages, advises, instigates, counsels, commands, or procures another to commit an offence; or
- (b) shares in the criminal purpose of design;

“**aircraft**” means any contrivance used or designed for transportation in the air and includes fighter aircraft and unmanned aerial vehicles;

“**aircraft material**” includes—

- (a) parts or components of, or accessories for, aircraft, whether for the time being in an aircraft or not;
- (b) engines, armaments, ammunition, bombs and other missiles of any description in, or for use in, an aircraft;
- (c) any other gear, apparatus or instruments in, or for use in, an aircraft;
- (d) any apparatus used in connection with the taking-off or landing of aircraft, or for detecting the movement of aircraft;
- (e) any fuel used for the propulsion of aircraft; and
- (f) any material used as a lubricant for aircraft or aircraft material;

“**air signal**” means a message, signal or indication given by any means whatsoever for the guidance of aircraft;

“**allied forces**” means military, air or naval forces of another country acting in co-operation with the Defence Forces and includes co-operating forces;

“**before the enemy**”, in relation to a person, means that the person is in action against the enemy or is about to go into action against the enemy or is under attack or threat of imminent attack by the enemy;

“**billeting order**” means a billeting order made under section 221;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to defence;

“**Chief Justice**” means the Chief Justice of the Republic of Kenya appointed in accordance with Article 166 of the Constitution;

“**Chief of the Defence Forces**” means the Chief of the Kenya Defence Forces appointed under section 23(1) of this Act;

“**civil court**” means a court of ordinary criminal or civil jurisdiction;

“**civil offence**” means—

- (a) an offence under Part XVII;
- (b) an offence under a written law other than this Act; or
- (c) an act which, if committed in Kenya, would constitute an offence contemplated in paragraph (a) or (b);

“**civil prison**” means a prison within the meaning of the law for the time being regulating matters relating to prisons;

“**close arrest**” when used in reference to a person who is subject to this Act, means a person who is confined and in the care and custody of an officer, guard, picket, patrol, sentry or a member of the military police;

“**colour service**” means service in the Defence Forces other than service in the reserve or in a cadet force and does not apply to officers;

“**commanding officer**”, when used in relation to a member of the Defence Forces, means the officer prescribed by regulations as having powers of command over that person;

“**convening officer**”, when used in relation to a court-martial, means the Defence Court-martial Administrator or Service Court-martial Administrator, who convenes that court-martial in accordance with section 163;

“**corresponding civil offence**” means a civil offence, the commission of which constitutes an offence under section 133;

“**corresponding rank**”, when used in relation to any rank in the Kenya Army, means the equivalent rank in the Kenya Air Force or the Kenya Navy as are prescribed;

“**date of attestation**”, in relation to any person, means the date on which the person is attested under section 258 and Part XV;

“**decoration**” includes medal, medal ribbon, clasp and good conduct badge;

“**Defence Council**” means the Defence Council established by Article 241(6) of the Constitution;

“**Defence Forces**” means the Kenya Defence Forces established by Article 241 of the Constitution;

“**enemy**” means—

- (a) any person or country committing external aggression against Kenya;
- (b) any person belonging to a country committing such aggression;
- (c) such other country as may be declared by the Cabinet Secretary, to be assisting the country committing such aggression;
- (d) any person belonging to the country referred to under paragraph (iii);

“**Magistrate’s Court**” means a Magistrate’s Court established under Article 169(1)(a) of the Constitution;

“**military**” means having to do with all or any part of the Defence Forces;

“**military police**” means an officer or service member who is appointed as military police by Service Commanders with the approval of the Defence Council pursuant to regulations made under this Act;

“**Ministry**” means the Ministry for the time being responsible for matters relating to defence;

“**mutiny**” has the meaning assigned to it in section 72;

“**National Security Council**” means the National Security Council established by Article 240(1) of the Constitution;

“**non-public fund**” means funds for the benefit and welfare of the members of a formation, unit or sub-unit which belongs to that formation, unit or sub-unit maintained and managed under the authority of the Chief of the Defence Forces and is not drawn from the Consolidated Fund;

“**non-public property**” means non-public funds or property acquired by members, a formation, unit or sub-unit from the non-public funds;

“**non-commissioned officer**” means a service member holding the rank of senior sergeant, sergeant or corporal, or corresponding rank, or the rank of lance corporal;

“**officer**” means—

- (a) a person commissioned in any Service of the Defence Forces; or
- (b) a person who is attached or seconded as a commissioned officer to any service of the Defence Forces;

“**officer of the patrol**” means a person subject to this Act who is—

- (a) on guard duty and posted or ordered to patrol;
- (b) on watch; or

(c) under orders to regulate traffic by land, water or air;

**“on active service”**—

- (a) when used in relation to a person, means that the person is serving in or with a unit of the Defence Forces engaged in operations against an enemy;
- (b) when used in relation to a unit of the Defence Forces, means that the unit is engaged in operations against an enemy;

**“open arrest”** refers to when a person subject to this Act is confined to a defined area and liable to report his presence at stated times;

**“police officer”** has the same meaning as in the National Police Service Act, 2011;

**“Principal Secretary”** means the Principal Secretary for the time being responsible for matters relating to defence;

**“prison”** means a service prison or a civil prison;

**“public establishment”** means any establishment of the Defence Forces;

**“public property”** includes any property of—

- (a) the national or a county government;
- (b) a public body;
- (c) allied forces; or
- (d) public fund authorised by the Chief of the Kenya Defence Forces, Service Commander or the commanding officer and managed in accordance with the law relating to public finance management;

**“recruiting officer”** means a person authorised to recruit service members under section 28(4);

**“Registrar”** means the Chief Registrar of the Judiciary;

**“regular reserve”** means the Kenya Army reserve, the Kenya Air Force reserve or the Kenya Naval reserve, as the case may be;

**“requisitioning order”** means a requisitioning order made under section 231;

**“reservist”** means a member of a regular reserve;

**“rules of procedure”** means rules of procedure made under section 305;

**“sentence”** in relation to imprisonment or active service punishment, includes an award made upon a case being dealt with summarily;

**“service”** when used as an adjective, means belonging to or connected with the Defence Forces;

**“Service”** when used as a noun means either, the Kenya Army, Kenya Air Force or Kenya Navy;

**“Service Commander”** means the Commander of the relevant service of the Defence Forces appointed under section 23(1);



“**service custody**” means the holding of any person under arrest or in confinement by the Defence Forces, including confinement in a Service prison;

“**service prison**” means premises set aside by any of the Service Commanders as a place of imprisonment for persons serving a service sentence of imprisonment;

“**service sentence of imprisonment**” means a sentence of imprisonment passed by a court-martial or awarded on a charge being dealt with summarily;

“**service member**” means any member of a service of the Defence Forces who is not an officer;

“**stoppages**” means the recovery, by the deduction from the pay of an offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

“**superior officer**”, in relation to a person, means—

- (a) an officer, warrant officer or non-commissioned officer of superior rank; or
- (b) an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as that person's superior;

“**ship**” or “**vessel**” includes warship and unmanned vehicles and every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

“**unit**” means any regularly organized body as defined by the Cabinet Secretary, but in no case may it be a body larger than a company, battalion, squadron, ship's crew, or body corresponding to one of them;

“**vehicle**” includes vehicles not used as a means of transportation and unmanned vehicles and every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land;

“**Vice Chief of the Defence Forces**” means the Vice Chief of the Kenya Defence Forces appointed in accordance with section 23(1);

“**war**” means any time during which the State is under threat of war, armed conflict, armed invasion or armed insurrection or is at war, and in respect of which the Defence Forces has been employed for service in the defence of the State;

“**warrant officer**” means a service member holding the rank of warrant officer class I or warrant officer class II or corresponding rank; and

“**wrongful act**” means an act contrary to law, regulation, lawful order, or custom.

(2) Despite subsection (1), until after the first general elections under the Constitution, references in this Act to the words “**Cabinet Secretary**” or “**Principal Secretary**” shall be construed to mean “**Minister**” or “**Permanent Secretary**” respectively.

- (3) Except as otherwise provided for in this Act, references to—
- (a) a particular rank are to that rank in the Kenya Army; or
  - (b) a person holding a particular rank include references to a person acting in that rank.

### **3. Guiding principles**

The Defence Forces shall, in fulfilling its mandate, observe and uphold the Bill of Rights, values and principles under Articles 10(2), 232(1) and 238(2) of the Constitution and shall—

- (a) strive for the highest standards of professionalism and discipline amongst its members;
- (b) prevent corruption and promote and practice transparency and accountability;
- (c) comply with constitutional standards of human rights and fundamental freedoms;
- (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
- (e) ensure that recruitment reflects the diversity of the Kenyan people in equitable proportions.

### **4. Application of the Act**

This Act applies to the following persons—

- (a) every member of the regular forces;
- (b) an officer or service member of the reserve force, whether of the regular or volunteer reserve who is called out for service or is in training;
- (c) auxiliary reserve force;
- (d) any person who, though not otherwise subject to this Act, is serving with the Defence Forces under an engagement, and has agreed to be subject to this Act;
- (e) cadets;
- (f) an alleged spy of the enemy;
- (g) a person who, though not otherwise subject to this Act, is in civil custody or in service custody in respect of any service offence committed or suspected to have been committed by the person;
- (h) a person who, pursuant to a treaty or agreement between Kenya and the State in whose armed forces the person is serving, is attached or seconded as an officer or non-commissioned member to the Defence Forces, subject to such exceptions, adaptations and modifications as may be prescribed by regulations;
- (i) a person, not otherwise a member of the Defence Forces, who accompanies any unit or other element of the Defence Forces that is on active service in any place; or

- (j) a person attending a Defence Forces institution of the Defence Forces established under this Act or any other written law, subject to such exceptions, adaptations and modifications as may be prescribed by regulations.

#### **5. Application to civilians**

(1) The application of this Act to a civilian shall be limited to a person, other than a member of the Defence Forces, who—

- (a) with the authority of an authorized officer, accompanies a part, unit or formation of the Defence Force that is—
  - (i) outside Kenya; or
  - (ii) on operations against the enemy; and
- (b) has consented, in writing, to subject himself or herself to this Act while so accompanying that part of the Defence Forces.

(2) The Defence Council shall, by regulations, prescribe the form and manner in which the consent under subsection (1)(b) may be obtained.

(3) For the purposes of this Act and subject to any limitations prescribed by the Defence Council, a person accompanies a unit or other element of the Defence Forces that is on service or active service if that person—

- (a) participates with that unit or other element in the carrying out of any of its movements, manoeuvres, duties in aid of a State organ, duties in a disaster or warlike operations;
- (b) is accommodated or provided with rations at the person's own expense or otherwise by that unit or other element in any country or at any place designated by the Defence Council;
- (c) is a dependant outside Kenya of an officer or non-commissioned member serving beyond Kenya with that unit or other element; or
- (d) is embarked on a vessel or aircraft of that unit or other element.

### **PART II – CONSTITUTION, STRUCTURE, COMMAND AND ADMINISTRATION OF THE DEFENCE FORCES**

#### **6. Constitution of the Defence Forces**

(1) Pursuant to Article 241(1) of the Constitution, the Defence Forces consist of—

- (a) the Kenya Army;
- (b) the Kenya Air Force; and
- (c) the Kenya Navy.

(2) There shall be, within the Defence Forces—

- (a) the regular force consisting of officers and service members;
- (b) the reserve force, consisting of the regular and volunteer reserve, as determined by the Defence Council or national legislation; and
- (c) the cadet forces, as may be determined, from time to time, by the Defence Council.

(3) The composition of command of the Defence Forces shall reflect the regional and ethnic diversity of the people of Kenya.

#### **7. Determination of strength of Defence Forces**

(1) The Defence Forces shall consist of such maximum number of members as shall be determined, from time to time, by the National Security Council, on the recommendation of the Defence Council.

(2) There shall be established such units and formations in the Defence Forces as the President may, in consultation with the Defence Council, determine.

(3) Under the direction of the President, the Cabinet Secretary shall, by notice in the *Gazette*, assign names to units and formations of the Defence Forces and vary or replace any such names.

#### **8. Functions of the Defence Forces**

(1) Pursuant to Article 241(3) of the Constitution, the Defence Forces—

- (a) shall be responsible for the defence and protection of the sovereignty and territorial integrity of the Republic;
- (b) shall assist and co-operate with other authorities in situations of emergency or disaster and report to the National Assembly whenever deployed in such circumstances; and
- (c) may be deployed to restore peace in any part of Kenya affected by unrest or instability only with the approval of the National Assembly.

(2) In performing their functions and exercising their powers, the Defence Forces and every member of the national security organs shall not—

- (a) act in a partisan manner;
- (b) further any interest of a political party or cause; or
- (c) prejudice a political interest or political cause that is legitimate under the Constitution.

(3) Where the Defence Forces is deployed for any purpose contemplated in subsection (1)(b) and (c), the Cabinet Secretary shall inform the National Assembly promptly and in appropriate detail of the—

- (a) reasons for such deployment;
- (b) place where the Defence Forces is being deployed;
- (c) number of persons involved;
- (d) period for which the Defence Forces is expected to be deployed; and
- (e) expenditure incurred or expected to be incurred.

(4) If the National Assembly is not in session during the first seven days after the deployment of the Defence Forces as contemplated in subsection (3), the Defence Council shall, through the President, provide the information required in that subsection (3) to the Speaker of the National Assembly.

**9. The Commander-in-Chief of the Defence Forces**

(1) Pursuant to Article 131(1)(c) of the Constitution, the President is the Commander-in-Chief of the Defence Forces.

(2) The President, as the Commander-in-Chief of the Defence Forces, shall—

- (a) appoint the Chief of the Defence Forces, Vice Chief of the Defence Forces and the three Service Commanders; and
- (b) be responsible for the organization and command of the Defence Forces.

(3) Any person appointed as Chief of the Defence Forces, Vice Chief of the Defence Forces or a Service Commander shall, on being appointed, take and subscribe to the oath or affirmation of office prescribed in the First Schedule.

(4) In making the appointments under subsection (2), the President shall ensure that the appointments reflect the regional and ethnic diversity of the people of Kenya.

**10. Functions of the Cabinet Secretary**

The Cabinet Secretary shall—

- (a) be the principal adviser to the President on matters relating to defence policy;
- (b) ensure the development of the defence policy;
- (c) advise the President and National Assembly on any matter relating to the Defence Forces;
- (d) perform such functions, in particular those necessary for the control and administration of the Defence Forces, as may be delegated to the Cabinet Secretary, by—
  - (i) the President over the Defence Forces; or
  - (ii) Parliament over the Ministry;
- (e) be appraised of the construction and maintenance of all Defence Forces establishments and works;
- (f) where appropriate, commission research relating to the defence of Kenya;
- (g) monitor compliance with policies and directions issued to the Chief of the Defence Forces and report thereon to the President and Parliament;
- (h) submit an annual report, in writing, to the President and Parliament on the expenditures, work, and accomplishments of the Ministry during the period covered by the report, together with—
  - (i) a report by the Chief of the Kenya Defence Forces on each Service of the Defence Forces indicating the expenditures, work and accomplishments of the Service;
  - (ii) itemized statements showing the utilization, savings of public funds, and the eliminations of unnecessary duplications;
  - (iii) such recommendations as he or she may consider appropriate; and

- (i) any other lawful function as may be assigned to the Cabinet Secretary by the President or any other written law.

### **11. Delegation of powers and assignment of duties by Cabinet Secretary**

(1) The Cabinet Secretary may, where appropriate and in writing, delegate any power or assign any duty conferred on him or her under this Act to—

- (a) the Chief of the Defence Forces; or
- (b) any member of the Defence Forces with the approval of the Chief of the Defence Forces and through the Service Commanders.

(2) A delegation or assignment under subsection (1) shall not prevent the Cabinet Secretary from exercising the power in question in person.

(3) A delegation under this section—

- (a) shall be subject to any conditions the Cabinet Secretary may impose;
- (b) shall not divest the Cabinet Secretary of the responsibility concerning the exercise of the powers or the performance of the duty delegated, and
- (c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or amended by the Cabinet Secretary.

### **12. Functions of the Chief of the Defence Forces**

The Chief of the Defence Forces shall—

- (a) be the principal adviser to the President and Cabinet Secretary on any military, operational and administrative matters within the competence of the Chief of the Defence Forces;
- (b) lawfully administer, control and manage the Defence Forces as a disciplined military force;
- (c) comply with any lawful direction issued by the Cabinet Secretary under the authority of the President;
- (d) formulate military policy and strategy in consultation with the Service Commanders;
- (e) execute commands by issuing lawful orders, directives or instructions to the Service Commanders;
- (f) subject to the general direction of the Defence Council, be responsible for the control, direction and general superintendence of the Defence Forces;
- (g) ensure the effective utilization of resources and the education, training and development of all members and employees of the Defence Forces;
- (h) provide the Cabinet Secretary and the Defence Council with such information, with regard to the Defence Forces, as may be requested by the Cabinet Secretary or the Defence Council;

- (i) be responsible for implementing the deployment of members of the Defence Forces in accordance with an authorization by the National Security Council and Defence Council granted in accordance with Articles 240(8) and 241(3)(c) of the Constitution and this Act;
- (j) ensure that members of the Defence Forces discharge the functions and exercise their powers in accordance with the Constitution and the law, including international treaties ratified and binding the State;
- (k) be responsible for the development of non-discriminatory institutional culture within the Defence Forces in accordance with the Constitution and the policy on equal opportunity and affirmative action;
- (l) monitor the implementation of the policy, operations and directions of the Defence Forces; and
- (m) perform any other lawful function as may be assigned by the President, the Cabinet Secretary, the Defence Council or any other written law.

### **13. Delegation of powers by Chief of the Defence Forces**

(1) The Chief of the Defence Forces may, where appropriate and in writing, delegate any power or assign any duty conferred on him or her under this Act or any other written law to—

- (a) any member of the Defence Forces, through the Service Commanders; or
- (b) any employee of the Ministry, with the approval of the Cabinet Secretary.

(2) A delegation or assignment under subsection (1) shall not prevent the Chief of the Defence Forces from exercising the power in question in person.

(3) A delegation under this section—

- (a) shall be subject to any conditions the Chief of the Defence Forces may impose;
- (b) shall not divest the Chief of the Defence Forces of the responsibility concerning the exercise of the powers or the performance of the duty delegated, and
- (c) may be withdrawn and any decision made by the person to whom delegation is made may be withdrawn or amended by the Chief of the Defence Forces.

(4) In delegating any power or duty under this section, the Chief of the Defence Forces shall not delegate a power exercisable by an officer of a specific rank, seniority or qualification as provided for in this Act, to an officer of a rank or seniority or who holds a qualification other than that contemplated by this Act.

### **14. Vice Chief of the Defence Forces**

(1) There is established the office of the Vice Chief of the Defence Forces which shall be a State office.

(2) The Vice Chief of the Defence Forces shall perform such functions and exercise such powers as are assigned by the Chief of the Defence Forces under this Act or any other written law.

#### **15. Service Commanders**

(1) There shall be a Service Commander of each Service of the Defence Forces as specified in Article 241(2) of the Constitution, namely—

- (a) Kenya Army;
- (b) Kenya Air Force; and
- (c) Kenya Navy.

(2) A Service Commander of a Service of the Defence Forces shall, command, control and administer the Service for which he or she is responsible.

#### **16. Functions of the Service Commanders**

(1) A Service Commander shall—

- (a) command, control and administer the service to which he or she is responsible, in accordance with the Constitution, this Act or any other written law, under the authority of the Chief of the Defence Forces or the Cabinet Secretary, as applicable;
- (b) be responsible for the issuance of instructions or orders in relation to the operations and administration of the respective Service of the Defence Forces;
- (c) implement policy decisions;
- (d) co-ordinate all Service operations;
- (e) advise the Chief of the Defence Forces or Defence Council on policy matters relating to the Service;
- (f) prepare budgetary estimates and develop the Service plan for the next financial year before the end of each financial year, setting out the priorities and objectives of the Service and the justification thereof;
- (g) ensure the implementation of the budget relating to the Service;
- (h) recommend, in relation to the Service and in consultation with other Service Commanders, to the Chief of the Defence Forces the establishment and maintenance units and formations;
- (i) determine the distribution and deployment of officers and service members in the Service;
- (j) recommend to the Chief of the Defence Forces the organization of the Service into various formations, units or components;
- (k) recommend to the Chief of the Defence Forces the establishment of, management and maintenance of training institutions, centers or places for training of officers and service members joining the Defence Forces and other members of the Defence Forces;
- (l) commission research and benchmark against best practices on the Service;



- (m) co-operate with other security organs and agencies subject to the Constitution, this Act, or any other written law; and
- (n) perform any other lawful function as may be assigned by the President, the Cabinet Secretary through the Chief of the Defence Forces, the Chief of the Defence Forces, the Defence Council or any other written law.

#### **17. Delegation by Service Commander**

(1) A Service Commander may, in writing, delegate any power or assign any duty conferred upon him or her under this Act or any other written law to—

- (a) any member of the Service for which he or she is responsible for; or
- (b) any employee of the Ministry, with the approval of the Cabinet Secretary and the Chief of the Defence Forces.

(2) A delegation or assignment under subsection (1) shall not prevent the Service Commander from exercising the power in question in person.

(3) A delegation under this section—

- (a) shall be subject to any conditions the Service Commander may impose;
- (b) shall not divest the Service Commander of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (c) may be withdrawn, and any decision made by the person to whom the delegation is made may be withdrawn or amended by the Service Commander.

(4) In delegating any power or duty under this section, the Service Commander shall not delegate a power exercisable by an officer of a specific rank, seniority or qualification as provided for in this Act, to an officer of a rank or seniority or who holds a qualification other than contemplated by this Act.

#### **18. Functions of the National Security Council in relation to the Defence Forces**

The National Security Council shall, with respect to Defence Forces and pursuant to Article 240(3), (6) and (8) of the Constitution and provisions of the National Security Council Act, exercise supervisory control and perform the following other functions—

- (a) determine, from time to time, the strength of the Defence Forces on the recommendation of the Defence Council;
- (b) integrate the domestic, foreign and military policies relating to national security in order to enable the Defence Forces to co-operate and function effectively;
- (c) deploy Defence Forces outside Kenya, with the approval of Parliament, for—
  - (i) regional or international peace support operations; or
  - (ii) other support operations;

- (d) approve, with the approval of Parliament, the deployment of foreign forces in Kenya; and
- (e) carry out any other function related to the Defence Forces as may be prescribed by national legislation.

**19. Composition of the Defence Council, etc.**

(1) The Defence Council established under Article 241(5) of the Constitution shall consist of—

- (a) the Cabinet Secretary, who is the chairperson;
- (b) the Chief of the Defence Forces;
- (c) the three Service Commanders of the Defence Forces; and
- (d) the Principal Secretary.

(2) The Defence Council shall appoint a public officer or a member of the Defence Forces to be the secretary to the Council.

(3) Acts and instructions of the Defence Council shall be signified, by a command of the Council, under the hand of the chairperson and the secretary to the Council.

(4) The secretary shall be responsible for—

- (a) communicating the decisions of the Defence Council; and
- (b) performing any other function as may be assigned from time to time by the Defence Council.

**20. Functions of the Defence Council**

(1) In addition to the functions provided for under Article 241(7)(a) of the Constitution, the Defence Council—

- (a) shall exercise oversight role on the training or undertaking of instructions of members of the Defence Forces in any country outside Kenya;
- (b) shall, upon approval by Parliament in accordance with Article 240(8) of the Constitution, order any member to proceed to any place outside Kenya for purposes of undertaking any duty related to the functions of the Defence Forces or employment;
- (c) shall receive and act on reports submitted to the Defence Council by the Cabinet Secretary, the Chief of the Defence Forces and Service Commanders;
- (d) shall formulate overall Defence Forces policy referred to under Article 241(7)(a) of the Constitution;
- (e) shall monitor the implementation of the policies referred to under paragraph (d);
- (f) shall receive and where necessary, upon request review findings and sentences arising out of summary disciplinary proceedings;
- (g) shall advise the President on any matter relating to and affecting the Defence Forces; and

- (h) may perform any other function as may be assigned to it under this Act and any other written law.

(2) In exercising the oversight role under subsection (1)(a), the Defence Council shall ensure that the provisions of Article 232(1)(i) of the Constitution are respected and upheld.

### **21. Conduct of business and affairs of the Defence Council**

(1) The business and affairs of the Defence Council shall be conducted in accordance with the Second Schedule.

(2) Except as provided for in the Second Schedule, the Defence Council may regulate its own procedure.

### **22. Committees of the Defence Council**

(1) The Defence Council may establish committees for the effective discharge of its functions.

(2) The Defence Council may co-opt into the membership of the committees established under subsection (1) other persons whose knowledge and skills are considered necessary for the functions of the Council.

(3) Any person co-opted into a committee of the Defence Council under subsection (2) may attend the meetings of the Council and participate in its deliberations, but shall not participate in the making of decisions.

### **23. Appointments**

(1) The Chief of the Defence Forces, the Vice Chief of the Defence Forces and the three Service Commanders shall be appointed by the President on the recommendation of the Defence Council.

(2) A person shall not be eligible for appointment as the Chief of the Defence Forces, the Vice Chief of the Defence Forces or Service Commander unless that person—

- (a) is a citizen of Kenya pursuant to Article 78 of the Constitution;
- (b) is a member of the regular Defence Forces; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) In appointing the Chief of the Defence Forces, the Vice Chief of the Defence Forces and the three Service Commanders, the President shall take into account—

- (a) seniority;
- (b) military and formal civil education;
- (c) the possession of a relevant degree from a university or an institution recognized in Kenya or such other equivalent qualifications as may be approved by the Defence Council; and
- (d) military and security experience.

(4) In the appointment of the Chief of the Defence Forces, the Vice Chief of the Defence Forces or the three Service Commanders, the President shall—

- (a) ensure that the provisions of Articles 27 and 241(4) of the Constitution are respected and upheld; and
- (b) be guided by the provisions of Article 73(2)(a), (b) and (d) of the Constitution.

#### **24. Term of office**

The Chief of the Defence Forces, the Vice Chief of the Defence Forces and the Service Commanders shall serve for a single term of four years or retire upon the attaining of the mandatory retirement age, whichever comes first.

#### **25. Determination of salaries**

The Salaries and Remuneration Commission shall set and regularly review the remuneration and benefits of the Chief of the Defence Forces, the Vice Chief of the Defence Forces and three Service Commanders in accordance with Article 230(4) of the Constitution and the Salaries and Remuneration Act, 2011 (Act No. 10 of 2011).

#### **26. Removal, retirement and deployment from Defence Forces**

The President may remove, retire or redeploy the Chief of the Defence Forces, the Vice Chief of the Defence Forces or any of the Service Commanders at any time before the expiry of the term of office.

#### **27. Vacancy**

(1) The Office of the Chief of the Defence Forces, the Vice Chief of the Defence Forces or a Service Commander shall become vacant if—

- (a) the holder—
  - (i) dies;
  - (ii) resigns from office by a notice in writing addressed to the President;
  - (iii) is retired, redeployed or removed from office in accordance with section 26;
  - (iv) is dismissed from the Defence Forces by a court-martial;
- (b) the holder's commission is terminated; or
- (c) the holder's service is terminated on disciplinary or any other ground.

(2) Where a vacancy occurs under subsection (1), the President shall appoint a replacement in accordance with section 23.

#### **28. Recruitment and appointment of members of Defence Forces**

(1) The Defence Council shall recruit and appoint members of the Defence Forces, other than the members who are State Officers.

(2) In developing the criteria for the recruitment, promotion and transfer of members of the Defence Forces, the Defence Council shall consult with the Public Service Commission.

(3) The Defence Council shall advertise the chances allocated per county at least thirty days before recruitment.

(4) The criteria developed under subsection (2) shall comply with the Constitution and this Act.

(5) The Defence Council may, in the prescribed manner and on its behalf, appoint a person authorised to recruit service members into the Defence Forces.

(6) The recruitment and appointment procedure under this Act shall comply with Article 232(1)(g), (h) and (i) of the Constitution.

### **29. Terms and conditions of service of members of the Defence Forces**

(1) The Defence Council shall, on the advice of the Salaries and Remuneration Commission, determine the salaries of the members of the Defence Forces.

(2) The Defence Council shall, in consultation with the Public Service Commission, determine the conditions of service of members of the Defence Forces.

### **30. Defence controlled unit and constabulary**

(1) The Defence Council shall from time to time—

- (a) establish defence controlled units of the Defence Forces, which shall be under the Chief of the Defence Forces;
- (b) establish a support staff unit to be known as the constabulary.

(2) The Defence Council shall by regulations determine the extent to which this Act shall apply to the members of the units created under subsection (1)(a) and (b).

## **PART III – CO-OPERATION WITH OTHER AUTHORITIES IN KENYA**

### **31. Co-operation with other authorities**

The Defence Forces—

- (a) shall assist and co-operate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances;
- (b) may be deployed to restore peace in any part of Kenya affected by unrest or instability but only with the approval of the National Assembly; and
- (c) shall, in the interest of national security, co-operate and work with other security organs in the discharge of its constitutional mandate.

### **32. Deployment of Defence Forces to restore peace in Kenya**

(1) Pursuant to Article 241(3)(c) of the Constitution, the Defence Council may deploy the Defence Forces in any part of Kenya affected by unrest or instability to restore peace.

(2) Whenever the Defence Forces are deployed to restore peace in any part of Kenya pursuant to subsection (1), the Chief of the Defence Forces shall be responsible for the administration, control and overall superintendence of the operation.

### **33. Deployment in support of National Police Service**

(1) The Defence Forces may be deployed in a joint operation and in support of the National Police Service in situations of emergency or disaster.

(2) The Defence Forces may, with the approval of the National Assembly, be deployed to restore peace in any part of Kenya.

(3) Whenever the Defence Forces are deployed pursuant to subsection (2), the Inspector-General of the National Police Service shall be responsible for the administration, command, control and overall superintendence of the operation.

### **34. Regulation of support operation, etc.**

(1) In the event of the Defence Forces being deployed in support of the National Police Service, such deployment shall comply with constitutional standards relating to human rights and fundamental freedoms.

(2) Where the deployment of the Defence Forces in support of the National Police Service is approved as contemplated in Article 241(3) of the Constitution and section 33(1), the Cabinet Secretary shall, within twenty four hours, issue a notice in the *gazette* of the commencement of such deployment.

(3) Where the deployment under subsection (2) has been discontinued, the Cabinet Secretary shall—

- (a) within twenty-four hours, issue notice in the *Gazette*, of the discontinuation of the deployment; and
- (b) report to the National Assembly on the deployment.

(4) Service in support of the National Police Service—

- (a) may only be performed in such area or at such place as the National Security Council may determine;
- (b) shall be discontinued as National Security Council deems expedient and necessary; and
- (c) shall be performed in accordance with—
  - (i) a code of conduct and operational procedures on the regulation of the Defence Forces support operations approved by the Defence Council;
  - (ii) joint operation plan and guidelines issued by the Chief of the Defence Forces and the Inspector-General of National Police Service regarding—
    - (A) co-operation between the Defence Forces and the National Police Service; and
    - (B) co-ordination of command over and control of members of the Defence Forces and the National Police Service during the operation.

**35. Powers and duties of members while being deployed**

(1) Whenever the Defence Forces or any portion or member thereof has been deployed under section 33, that member of the Defence Forces shall have the same powers and exercise the same duties as those conferred or imposed upon a member of the National Police Service.

(2) The powers and duties referred to in subsection (1) may only be exercised or performed for the purposes of—

- (a) successful execution of that deployment;
- (b) maintenance of law and order; or
- (c) preservation of the internal security of the State.

(3) The powers and duties referred to in subsection (1) shall not include powers and duties to investigate crime.

(4) A member of the Defence Forces who arrests or detains any person or seizes any article or object shall as soon as possible hand that person, article or object over to the National Police Service or any other appropriate functionary designated by relevant law.

(5) A member of the Defence Forces shall in respect of acts done or omitted to be done by him or her by virtue of this section—

- (a) be liable to the same extent as a member would have been liable in like circumstances if that member was a member of the National Police Service; and
- (b) have the benefit of all the indemnities to which a member of that National Police Service would in like circumstances be entitled to.

(6) A member of the Defence Forces who exercises any power by virtue of this section shall be regarded as a military police officer.

(7) Nothing in this section may be construed as giving—

- (a) a member of the National Police Service any power to exercise command or control over any member of the Defence Forces; or
- (b) a member of the Defence Forces any power to exercise command or control over any member of the National Police Service.

(8) A provision of this Act relating to the powers and duties of a member of the Defence Forces may not be construed as removing, detracting from or diminishing any power or duty expressly conferred, enforced or imposed by any other law upon such a member of the Defence Forces.

(9) Members of the Defence Forces deployed in terms of subsection (1) shall receive appropriate training prior to such deployment and shall be equipped accordingly.

PART IV – RELATIONSHIP WITH OTHER COUNTRIES AND  
EMPLOYMENT OUTSIDE KENYA

**36. Attachment to other forces and employment outside Kenya**

(1) The Defence Council may place any officer or service member at the disposal of the service authorities of any country for the purpose of undergoing instructions or training, subject to anything to the contrary in the conditions applicable to that officer or member's service.

(2) Pursuant to Article 240(8) of the Constitution, the National Security Council may with the approval of Parliament—

- (a) deploy national forces outside Kenya for—
  - (i) regional or international peace support operations; or
  - (ii) other support operations; and
- (b) approve the deployment of foreign forces in Kenya.

(3) Immediately after the National Security Council has deployed the Defence Forces under subsection (2), the President shall order the Chief of the Defence Forces to effect the deployment by ordering any unit of the Defence Forces to be employed outside Kenya as may be specified in the order.

(4) An officer or service member in service outside Kenya by virtue of this section—

- (a) shall not cease to be subject to this Act; and
- (b) shall retain the service member's rights and such service shall be taken into account to the same extent as if it had been service in Kenya for the purposes of gratuities and pension on discharge.

### **37. Co-operation with other forces and forces visiting Kenya**

(1) Any treaty or agreement between the Government of Kenya and any other State or international institution or organization regarding the use or provision of military forces shall provide for the legal status of—

- (a) members of the Defence Forces placed at the disposal of the military authorities of such State, institution or organisation;
- (b) foreign military personnel and their mission while the personnel are deployed in Kenya;
- (c) the conditions of operation of the Defence Forces, and the foreign military personnel outside *gazetted* areas; or
- (d) the compensation of local communities in the event of accidents in areas where the military is deployed.

(2) A treaty or agreement entered into under subsection (1) shall put in place mechanisms to protect the interests of the local community of the place where the foreign military forces are deployed and such treaty shall also provide that the foreign forces are subject to the Constitution and all the laws of Kenya.

### **38. Service by members in fulfillment of international obligation**

Service in fulfillment of an international obligation which entails participation by any member of the Defence Forces in a military force under the control or with the approval of an international body—

- (a) is subject to such member's rights and conditions of service under this Act, and shall be rendered by every member for such additional emoluments and benefits, including medical, travelling and subsistence, transport, leave, maintenance, assurance, insurance, tax, disability and death benefits as may be determined by agreement with the international body;



- (b) shall not be rendered by any such member in a rank lower than that which he or she holds in the Defence Forces;
- (c) shall be rendered in compliance with the customary international law and treaties or other international agreements ratified by, or binding on the State; and
- (d) shall not have the effect of detracting from the powers and duties of the President, the Cabinet Secretary or the Chief of the Defence Forces in relation to such member.

### **39. Attachment of personnel**

(1) The Defence Council may—

- (a) temporarily attach to the Defence Forces any member of a force of any State or country which is placed at the disposal of the Defence Forces for that purpose by the military authorities of that State or country as the case may be; or
- (b) subject to the conditions applicable to his or her service, place any member of the Defence Forces at the disposal of the military authorities of any State or country for purposes of being attached temporarily by those authorities to the forces of that country.

(2) Subject to subsection (3) and where an international treaty or agreement applies, a member of a force of any other State or country who is attached temporarily to the Defence Forces, is subject to the laws applicable to the Defence Forces and shall be treated, and has the same power of command and punishment over members of the Defence Forces, as if he or she were a member of the Defence Forces of a rank equivalent to that held by him or her as a member of the force of the State or country from which he or she belongs.

(3) The President may, by notice in the *Gazette*, direct that in relation to members of a force of any State or country specified in the notice, the laws relating to the Defence Forces apply with such exceptions and subject to such adaptations and modifications as may be so specified.

### **40. Command over members serving together with other military force or under control of international body**

(1) Whenever members of the Defence Forces and any military force of another country are—

- (a) serving together, every member of that military force shall be treated, and have powers of command over those members of the Defence Forces, as if he or she were a member of the Defence Forces of the relative rank; or
- (b) acting in combination, every officer of that military force appointed to command the combined forces or any part thereof shall be treated, and have powers of command and of punishment over those members of the Defence Forces, as if he or she were an officer of the Defence Forces of the relative rank.

(2) For purposes of this section, the Defence Forces and any other force shall be regarded as serving together or acting in combination whenever the President

has, by notice in the *Gazette*, declared that they are so serving or acting, and the relative rank of members of the Defence Forces and of such other force is as designated by such notice.

(3) Whenever the service contemplated in this section entails members of the Defence Forces and any military force under the control of an international body—

- (a) serving together, every member of that military force shall be treated, and have powers of command over those members of the Defence Forces, as if he or she were a member of the Defence Forces of the relative rank; or
- (b) acting in combination, every officer of that military force appointed to command the combined forces or any portion thereof, shall be treated, and have powers of command and punishment over those members of the Defence Forces, as if he or she were an officer of the Defence Forces of the relative rank.

#### **41. Application of UNCLOS in law enforcement power at sea**

The Defence Forces shall, in the enforcement of relevant Kenyan laws at sea comply with the provisions of the United Nations Convention on the Law of the Sea (UNCLOS).

### **PART V – LIMITATION OF RIGHTS AND FUNDAMENTAL FREEDOMS OF PERSON SUBJECT TO THIS ACT**

#### **42. Rights and fundamental freedoms**

All persons subject to this Act shall enjoy all rights and fundamental freedoms enshrined under Chapter Four of the Constitution unless limited to the extent specified in Article 24(5) of the Constitution, this Act or any other Act.

#### **43. Conditions for limitation of rights and fundamental freedoms**

(1) The purpose of this Part is to specifically limit or restrict certain rights or fundamental freedoms set out in Chapter Four of the Constitution, as contemplated in Article 24 of the Constitution.

(2) The limitations of rights and freedoms under this Part are necessary for purposes peculiar to military service, based on human dignity, to ensure—

- (a) the defence and protection of the sovereignty and territorial integrity of the Republic of Kenya;
- (b) the protection of classified information;
- (c) the maintenance and preservation of national security;
- (d) the security and safety of members of the Defence Forces;
- (e) that the enjoyment of the rights and fundamental freedoms by any individual member of the Defence Forces does not prejudice the rights and fundamental freedoms of any other individual member of the Defence Forces;
- (f) good order and service discipline; and
- (g) public health and safety.

(3) The limitation under this Part shall comply with Article 24 of the Constitution and shall satisfy the following four criteria—

- (a) ensure the protection of national security, public safety, public order, public health or morals, protection of the rights and freedoms of others;
- (b) be necessary to achieve the mandate of the Defence Forces;
- (c) operate without discrimination; and
- (d) be exceptional and not impair the essence of the freedom being limited.

#### **44. Limitation to freedom of conscience, religion, thought, belief and opinion**

(1) The right to freedom of conscience, religion, thought, belief and opinion set out in Article 32 of the Constitution shall be subject to limitations in respect of a person to whom this Act applies only under the conditions set out in subsection (2).

(2) Nothing contained in or done under the authority of this Act shall be held to be inconsistent with or in contravention of freedom of conscience, religion, thought, belief and opinion set out in Article 32 of the Constitution if that act is reasonably done—

- (a) in the interests of defence, security, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons including the right to observe and practice religion, belief, opinion without the unsolicited intervention of members of another religion; or
- (c) for good order and discipline in the Defence Forces.

#### **45. Limitation of freedom of expression**

(1) The right to freedom of expression set out in Article 33 of the Constitution shall be subject to limitation in respect of a person to whom this Act applies only under the conditions set out in subsection (2).

(2) The limitation to freedom of expression shall be to the extent that it is done—

- (a) in the interests of national defence, national security, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts martial or regulating the technical administration or the technical operation of telecommunication, posts, wireless broadcasting, communication, internet, satellite communication or television;

- (c) to impose restrictions upon military personnel or upon persons in the service of the Defence Forces, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in the military; or
- (d) for security and protection of information within the Defence Forces.

**46. Limitation of political rights**

(1) Despite political rights set out in Article 38 of the Constitution, a person to whom this Act applies shall not—

- (a) form, join, participate, campaign for any political cause or recruit members for a political party; or
- (b) serve as a member of Parliament, the Senate, a county assembly or any other political body.

(2) The provisions under subsection (1) shall not apply to that persons' right to register as a voter and to vote in an election, by-election or a referendum.

(3) The provisions under subsection (1) shall not apply to persons who serve in the reserve force who are not called out.

**47. Limitation to freedom of movement and residence**

Despite the right to freedom of movement and residence set out in Article 39 of the Constitution, that right in respect of a person to whom this Act applies shall be limited—

- (a) when the person is lawfully held in service custody;
- (b) when, within Kenya, the right of such person to leave Kenya; is reasonably restricted in the interests of defence, public security, public safety, public order, public morality or public health;
- (c) when entering or having entered, remaining within or around designated military areas subject to such conditions as may be prescribed; or
- (d) under any other circumstances which that person may be subjected to in respect of any movement or residence within or outside Kenya.

**48. Limitation of right to privacy**

(1) Despite the right to privacy set out in Article 31 of the Constitution, that right in respect of a person to whom this Act applies shall be limited where—

- (a) that person's home or property within the barracks or any military establishment is to be searched;
- (b) that person's possessions are to be seized;
- (c) information relating to that person's family or private affairs is required to be revealed; or
- (d) the privacy of a person's communications is to be investigated or otherwise interfered with.

(2) In order for the limitation under subsection (1)(c) to apply, the person shall have committed a crime or be suspected to have committed a crime.

**49. Limitation of right to access to information**

(1) The right of access to information set out in Article 35(1) and (3) of the Constitution shall be subject to limitation in respect of classified information or information under the custody of the Defence Forces only under the circumstances set out under subsection (2).

(2) The limitation referred to under subsection (1) shall be in respect of the right of access to information held by the Defence Forces to the extent of protecting the Defence Forces from—

- (a) demands to furnish persons with classified information;
- (b) disclosing and publicising information relating to covert operations of the Defence Forces; or
- (c) disclosing and publicising information, the disclosure or publication of which would be prejudicial to national security.

(3) For purposes of this section “**classified information**” means any information whose unauthorised disclosure would prejudice national security and includes information on the strategy, doctrine, capability, capacity and deployment.

(4) The Cabinet Secretary may by regulations determine the categories of security classification.

(5) Categories of classified information may include—

- (a) “**top secret**” which means information whose unauthorised disclosure would cause exceptionally grave damage to national security;
- (b) “**secret**” which means information whose unauthorised disclosure would cause serious injury to national security;
- (c) “**confidential**” which means information whose unauthorised disclosure would be prejudicial to the interest of the State;
- (d) “**restricted**” which means information which requires security protection other than that determined to be top secret, secret or confidential.

**50. Limitation of the right to freedom of association**

(1) Despite the right to freedom of association set out in Article 36 of the Constitution, a person to whom this Act applies shall not join or participate in the activities of an association that may be prescribed in regulations.

(2) The limitation under subsection (1) shall not apply to joining or participation in the activities of professional associations.

**51. Limitation of right to assembly, demonstrate, picket and petition**

Despite the right to assemble, demonstrate, picket and petition public authorities set out in Article 37 of the Constitution, a person to whom this Act applies shall not assemble, demonstrate, picket or petition public authorities to the extent of maintaining military discipline.

**52. Limitation of right to labour relations**

Despite the right to fair labour practices set out in Article 41 of the Constitution, a person to whom this Act applies shall not form, join, agitate or participate in the activities of trade unions or go on strike.

**53. Limitations of economic and social rights**

The economic and social rights set out in Article 43 of the Constitution, in respect of a person to whom this Act applies, may be limited to the extent necessary for military training and operation as shall be prescribed by regulations.

**54. Limitation of rights of an arrested person**

(1) The rights of an arrested person in Article 49 of the Constitution may be subject to limitation in respect of a person to whom this Act applies as set out in subsections (2) and (3).

(2) Nothing contained in or done under the authority of this Act shall be held to be inconsistent with or in contravention of the right of an arrested person in so far as the Act permits—

- (a) the holding of an arrested person jointly with the persons serving a sentence;
- (b) the holding of an arrested person without bail; or
- (c) the holding of an arrested person in custody notwithstanding that the offence is punishable by a fine only or imprisonment for a term not exceeding six months.

(3) An accused person shall not be held in custody for more than eight days before he or she is arraigned before a commanding officer or a court-martial unless the commanding officer, for reasons to be recorded in writing, is satisfied that the continued arrest of the accused person is necessary.

(4) The commanding officer shall review his or her decision in subsection (3) after the lapse of eight days until the accused person is brought before a commanding officer or a court-martial.

**PART VI – SERVICE OFFENCES***General provisions on offences and trials***55. Offences not triable by a court-martial**

(1) A court-martial shall not try any civilian person who is subject to this Act and charged with any of the offences under the Sexual Offences Act, 2006 (Act No. 3 of 2006) and the law relating to protection from domestic violence where that offence is committed in Kenya.

(2) Notwithstanding subsection (1), where a person who is subject to this Act commits an offence referred to under subsection (1) outside Kenya, that person shall be tried and sentenced by a court-martial.

**56. Trials in civil courts**

Nothing in this Act or any order, disciplinary code, rules, regulations or manual shall affect the jurisdiction of any civil court to try a person for any offence triable by a civil court.

**57. Persons guilty of an offence**

(1) A person who is subject to this Act is party to and guilty, upon conviction by a court-martial, of an offence, if that person—

- (a) actually commits the offence;
- (b) does or omits to do anything for the purpose of aiding any person to commit the offence;
- (c) abets any person in committing the offence; or
- (d) counsels or procures any person to commit the offence.

(2) A person subject to this Act who, having an intent to commit an offence, does or omits to do anything for the purpose of carrying out the intention is guilty of an attempt to commit the offence whether or not it was possible under the circumstances to commit the offence.

(3) Where two or more persons form an intention in common to carry out an unlawful purpose and to, assist each other in carrying out the common purpose, each of them commits an offence and anyone who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is party to and guilty, upon conviction by a court-martial, of that offence.

*Treachery, Cowardice and Offences arising out of Service***58. Aiding the enemy**

(1) A person who is subject to this Act commits an offence if that person, with intention to assist an enemy or otherwise—

- (a) abandons or delivers up any place or post which it is the person's duty to defend, or abandons the person's place of duty;
- (b) induces any person to abandon or deliver up any place or post which it is that person's duty to defend, or induces any person to abandon that person's place of duty;
- (c) does any act calculated to imperil, the success of operations of the Defence Forces, or of any co-operating forces, or any part of the Defence Forces or of co-operating forces;
- (d) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities, or in the taking of measures calculated to influence morale;
- (e) furnishes the enemy with arms or ammunition, or with supplies of any description, or with any other thing, whether similar to the foregoing or not;
- (f) harbours or protects an enemy who is not a prisoner of war;
- (g) fails to make known to the proper authorities any information received from an enemy;

- (h) gives any false air signal, or alters or interferes with any air signal or any apparatus for giving an air signal; or
- (i) when ordered by the person's superior officer, or otherwise under orders, to carry out any warlike operations in the air, fails to use the person's utmost exertions to carry such orders into effect.

(2) A person subject to this Act who negligently causes or allows the capture, or destruction, by the enemy of any of the aircraft of the Defence Forces or of any co-operating forces commits an offence.

(3) A person who commits an offence under this section is liable, upon conviction by a court-martial—

- (a) to suffer death or any other punishment provided for by this Act if the offence is committed with intent to assist the enemy; or
- (b) to life imprisonment or any lesser punishment provided for by this Act, in any other case.

### **59. Communication with enemy**

(1) A person subject to this Act who, without authority, communicates with or gives intelligence to the enemy or to any unauthorised person, commits an offence and shall be liable, upon conviction by a court-martial—

- (a) to suffer death or any other punishment provided for by this Act if the offence is committed with intent to assist the enemy; or
- (b) to imprisonment for life or any less punishment provided for by this Act, in any other case.

(2) For the purposes of this section, “**intelligence**” means information that is, or purports to be, about any matter that would or might be directly or indirectly useful to an enemy and, includes information about—

- (a) the number, description, armament, equipment, disposition, movement or condition of the Defence Forces or any co-operating forces, or of any unit of the Defence Forces or any co-operating forces, or any of the vehicles, aircraft or ships of the Defence Forces or any co-operating forces;
- (b) any operations or projected operations of the Defence Forces or of any co-operating forces, or of any unit thereof, or of any of their aircraft or ships;
- (c) any code, cipher, call sign, password, countersign or frequency;
- (d) any measures for the defence or fortification of any place on behalf of the Defence Forces or of any co-operating forces;
- (e) the number, description or location of any prisoners of war; or
- (f) weapons or munitions of war.

### **60. Spying**

(1) A person who is subject to this Act who, in time of war or armed conflict is found acting as a spy—

- (a) in or about any place, vessel, aircraft, within the control or jurisdiction of the Defence Forces;



- (b) in or about any shipyard, any manufacturing or industrial plant; or
- (c) any other place or institution engaged in work in aid of the operations of war by the Defence Forces or elsewhere,

commits an offence and shall be liable, on conviction by a court-martial, to suffer death or other punishment provided for by this Act.

(2) For purposes of this Act a person shall be deemed to be a spy if, acting clandestinely or on false pretences, the person obtains, or endeavors to obtain, intelligence in the zone of operations of the Defence Forces, with the intention of communicating it to the enemy.

(3) For purposes of this section a person can be a spy only when, acting clandestinely, whether overtly or covertly or under false pretences, to obtain or seek to obtain information with the intent to convey it to a hostile party.

(4) For purposes of this section, it is not essential that the accused obtain the information sought or that it be communicated.

#### **61. Offences by service member or officer when in action**

(1) A person who is subject to this Act commits an offence if that person, being a service member or officer, not otherwise in command—

- (a) fails to obey orders issued by a person in command to carry out an operation of war or, on coming into contact with an enemy that it is the duty of the service member or officer to engage, does not bring his or her vessel, aircraft or other material into action;
- (b) being in action, improperly withdraws from the action;
- (c) improperly fails to pursue an enemy or to consolidate a position gained,
- (d) improperly fails to relieve or assist a friendly force to the utmost of his or her power and ability, or
- (e) when in action, improperly forsakes his or her station.

(2) A person who commits an offence under subsection (1) shall be liable, upon conviction by a court-martial—

- (a) if the officer or service member acted traitorously, to suffer death;
- (b) if the officer or service member acted from cowardice, to imprisonment for life or lesser punishment; or
- (c) in any other case a lesser punishment.

#### **62. Offences by a person in command when in action**

(1) A person who is subject to this Act commits an offence if that person, being in command of any aircraft, ship, vehicle or establishment of the Defence Forces—

- (a) fails to use the person's utmost exertions to bring into action any aircraft, ship or vehicle that it is the person's duty to bring into action;

- (b) surrenders to the enemy any aircraft, ship, vehicle of the defence, any establishment or any part of an establishment of the Defence Forces, when it is capable of being successfully defended or destroyed;
- (c) fails to pursue an enemy whom it is the person's duty to pursue, or to assist to the utmost of the person's ability any member of a friendly force whom it is the person's duty to assist; or
- (d) in the course of any action by or against the enemy, improperly abandons his or her command;

(2) A person who commits an offence under subsection (1) shall be liable, upon conviction by a court-martial—

- (a) if the person acted traitorously, to suffer death or any other punishment provided for by this Act if the offence is committed with intent to assist the enemy; or
- (b) to imprisonment for life or any lesser punishment provided for by this Act, in any other case.

### **63. Misconduct in action by others**

A person who is subject to this Act, who fails, if not in command of any aircraft, ship, vehicle or establishment of the Defence Forces, to use the person's utmost exertions to carry out lawful orders of superior officers into execution when ordered to prepare for action by or against the enemy or during any such action, commits an offence and shall be liable, upon conviction by a martial court—

- (a) to suffer death or any other punishment provided for by this Act if the offence is committed with intent to assist the enemy; or
- (b) to imprisonment for life or any lesser punishment provided for by this Act, in any other case.

### **64. Cowardice**

(1) A person who is subject to this Act commits an offence if that person, when before an enemy, and in such a manner as to show cowardice—

- (a) leaves the post, position or other place where it is the person's duty to be;
- (b) throws away the person's arms, ammunition or tools;
- (c) otherwise behaves in such a manner as to show cowardice;
- (d) induces other persons subject to this Act to commit an offence of cowardice under this section;
- (e) runs away; or
- (f) shamefully abandons, surrenders or delivers up any command, unit, place, or military property which it is his or her duty to defend under this section.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for life or any lesser punishment provided for by this Act.

(3) In this section—

(a) **“running away”** means—

- (i) that the accused was before or in the presence of the enemy;
- (ii) that the accused misbehaved by moving away; and
- (iii) that the accused intended to avoid actual or impending combat with the enemy by running away.

(b) **“abandoning, surrendering, or delivering up command”** means—

- (i) that the accused was charged by orders or circumstances with the duty to defend a certain command, unit, place, ship, or military property;
- (ii) that without justification, the accused abandoned, surrendered; or
- (iii) delivered up that command, unit, place, ship, or military property.

### **65. Neglect of duty**

A person subject to this Act who neglects to perform or performs negligently any duty lawfully imposed on that person commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

### **66. Offences against morale**

(1) A person who is subject to this Act commits an offence if that person—

- (a) spreads, whether orally, in writing, by signal or otherwise, reports relating to operations of the Defence Forces or of any co-operating forces, or of any part of any of the Defence Forces or of any co-operating Defence Forces, being reports calculated to create despondency or unnecessary alarm; or
- (b) when before the enemy, uses words calculated to create despondency or unnecessary alarm.

(2) A person who commits an offence under the provisions of subsection (1) shall be liable, upon conviction by a court-martial, to imprisonment for life or any lesser punishment provided for by this Act.

### **67. Advocating governmental change by force**

A person subject to this Act who, within Kenya, unlawfully advocates for governmental change through the use of force by—

- (a) publishing or circulating any writing, printing, or document in whatever form, including electronic form;
- (b) teaching or advocating the use of force,

commits an offence and on conviction is liable to suffer death or to lesser punishment provided for under this Act.

**68. Being captured through disobedience or neglect, and failure to rejoin Defence Forces**

- (1) A person who is subject to this Act commits an offence if that person—
- (a) is captured by an enemy through disobedience of orders or willful neglect of the person's duty;
  - (b) having been captured by an enemy—
    - (i) fails to take any reasonable and available steps to rejoin the Defence Forces; or
    - (ii) prevents or discourages any other person subject to this Act who has been captured by the enemy from taking any reasonable and available steps to rejoin the Defence Forces.

(2) A person who commits an offence under the provisions of subsection (1) shall be liable, upon conviction by a court-martial, to imprisonment for life or any lesser punishment provided for by this Act.

**69. Offences by or in relation to sentries, etc.**

- (1) A person who is subject to this Act commits an offence if that person—
- (a) while on guard duty or watch—
    - (i) sleeps at the person's post; or
    - (ii) is drunk; or
    - (iii) leaves the person's post without having been regularly relieved or otherwise leaves any place where it is the person's duty to be;
  - (b) when not on duty at a post, is asleep at a time when the person is not allowed to be asleep; or
  - (c) strikes or otherwise uses force against a person on guard duty or watch, being a member of the Defence Forces or any co-operating forces or of any visiting force; or
  - (d) by the threat of force, compels any person contemplated in paragraph (c), to let any person pass.

(2) For the purposes of subsection (1)(a)(ii), a person is drunk if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, the person—

- (a) is unfit to be entrusted with any duty that the person may be called upon to perform; or
- (b) behaves in a disorderly manner, or in a manner likely to bring discredit to the Defence Forces.

(3) References in this section to a person on guard duty or watch are references to a person who—

- (a) is posted or ordered to patrol, or has adopted the position of sentry at a post or has undertaken the patrol;

- (b) is a member of a guard or other party mounted or ordered to patrol, for the purpose of protecting any persons, premises or place, or of controlling access to or egress from any premises or place, or of regulating traffic by road or rail or on any inland navigation; or
- (c) has been ordered to keep a specific watch.

(4) A person who commits an offence under this section shall be liable, on conviction by a court-martial, to imprisonment—

- (a) for life or any lesser punishment provided for by this Act, if the offence was committed on active service; or
- (b) for not more than five years, in any other case.

## **70. Looting and pillaging**

(1) A person who is subject to this Act commits an offence if, without lawful excuse, that person—

- (a) takes or steals any property from a person who has been killed, injured, captured or detained in the course of an action or operation of the Defence Forces or of any force co-operating with them; or
- (b) steals any property that has been left exposed or unprotected in consequence of an action or operation of the Defence Forces or of any force co-operating with them; or
- (c) takes any aircraft, ship, vehicle, equipment or stores abandoned by the enemy, other than for the public service;
- (d) searches such a person with the intention of taking property from the person.

(2) A person who is subject to this Act commits an offence if, without lawful excuse, that person—

- (a) takes any property which has been left exposed or unprotected in consequence of—
  - (i) an action or operation of the Defence Forces or of any force co-operating with them; or
  - (ii) an event, or state of affairs, in relation to which such an action or operation is undertaken; or
- (b) searches any place or thing with the intention of taking property of a description mentioned in paragraph (a).

(3) A person who is subject to this Act commits an offence if that person takes otherwise than for the public service any vehicle, equipment or stores abandoned by an enemy.

(4) A person who commits an offence under this section, shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding ten years or any lesser punishment provided for under this Act.

## **71. Offences against civil population**

(1) A person who is subject to this Act commits an offence if that person commits any wrongful act outside Kenya against the person or property of any member of the civil population.

(2) A person who commits an offence under subsection (1), shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

## 72. Mutiny

(1) A person who is subject to this Act commits an offence if that person—

- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence; or
- (b) takes part in a mutiny having as its object or one of its objects—
  - (i) the refusal or avoidance of any duty or service against, or in connection with operations, against an enemy; or
  - (ii) the impeding of the performance of any such duty or service; or
- (c) incites any person to take part in such a mutiny, whether actual or intended.

(2) For the purposes of this Part, “**mutiny**” means a combination between two or more persons who are subject to this Act, or between persons, at least two of whom are subject to this Act—

- (a) to overthrow or resist lawful authority in the Defence Forces or any co-operating forces, or in any part of the Defence Forces or any co-operating forces;
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connection with operations against, the enemy; or
- (c) to impede the performance of any duty or service in the Defence Forces or in any co-operating forces, or in any part of the Defence Forces or of any co-operating forces.

(3) A person who commits an offence under subsection (1) shall be liable, upon conviction by a court-martial—

- (a) to suffer death or any other punishment provided for by this Act if the offence committed falls under subsection (1)(a) and (b); or
- (b) to imprisonment for life or any lesser punishment provided for by this Act, in case of an offence under subsection (1)(c).

## 73. Failure to suppress mutiny

(1) A person who is subject to this Act commits an offence if that person—

- (a) fails to use the person’s utmost exertions to suppress or prevent a mutiny; or
- (b) fails to report to a superior officer or any other appropriate authority without delay that the mutiny is taking place or is intended.

(2) A person who commits an offence under subsection (1), shall be liable, upon conviction by a court-martial—

- (a) to suffer death or any other punishment provided for by this Act if the offence was committed with intent to assist an enemy; or

- (b) to imprisonment for life or any less punishment provided for by this Act, in any other case.

*Offences relating to desertion and absence without leave*

**74. Desertion**

- (1) A person who is subject to this Act commits an offence if that person—
  - (a) deserts; or
  - (b) persuades or procures any person subject to this Act to desert.
- (2) A person deserts if that person—
  - (a) with the intention, either at the time or formed later, of remaining permanently absent from duty—
    - (i) leaves the Defence Forces; or
    - (ii) fails to join or rejoin the Defence Forces when it is the person's duty to join or rejoin them;
  - (b) being an officer, enlists in or enters the Defence Forces without having resigned the person's commission;
  - (c) being a service member, enlists in or enters the Defence Forces without having been discharged from any previous enlistment;
  - (d) is absent without leave, with intent to avoid serving in any place outside Kenya, or to avoid service or any particular service when before an enemy; or
  - (e) is absent without leave for a continuous period of more than ninety days.
- (3) A person who commits an offence under subsection (1), shall be liable, upon conviction by a court-martial—
  - (a) to imprisonment for life or any lesser punishment provided for by this Act if—
    - (i) the offence was committed under subsection (1)(a), the person was on active service or under orders for active service at the time when it was committed; or
    - (ii) the offence was committed under subsection (1)(b) the person in relation to whom it was committed was on active service or under orders for active service at that time; or
  - (b) to imprisonment for not more than two years, in any other case.
- (4) In addition to, or without any other punishment, a court-martial that convicts an officer or service member of desertion; other than a reservist called out on permanent service, may direct that the whole or any part of any service preceding the period of desertion shall be forfeited.

**75. Absence without leave**

- (1) A person who is subject to this Act commits an offence if that person—
  - (a) is absent without leave; or
  - (b) persuades or procures any person subject to this Act to be absent without leave.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

#### **76. Assisting desertion or absence without leave**

(1) A person who is subject to this Act commits an offence if that person—

- (a) knowingly assists any person who is subject to this Act to desert, or to be absent without leave; or
- (b) knowing that any person subject to this Act has deserted or is absent without leave, or is attempting to desert or to be absent without leave, fails to report that fact without delay, or fails to take any reasonable steps to cause that person to be apprehended.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

(3) For purposes of this Act, a person absents himself or herself without leave if—

- (a) without authority, leaves his or her place of duty;
- (b) without authority, is absent from his or her place of duty; or
- (c) having been authorised to be absent from his or her place of duty, fails to return to his place of duty at the expiration of the period for which the absence of that person was authorised.

#### *Offences relating to disobedience of orders*

#### **77. Disobedience to standing orders**

(1) A person subject to this Act who contravenes, or refuses or fails to comply with, any provision of any standing or routine orders, being a provision that the person is aware of, or might reasonably be expected to be aware of, commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.

(2) For the purposes of subsection (1), “**standing or routine orders**” means any order of a continuing nature, made for any formation or unit or body of service members, or for any command or other area, garrison or place, or for any ship train or aircraft.

#### **78. Disobedience of particular orders**

(1) A person who is subject to this Act commits an offence if that person disobeys any lawful command given or sent directly to that person in such a manner as to show a willful defiance or neglect of authority.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term—

- (a) not exceeding five years or any lesser punishment provided for by this Act, if the offence was committed on active service; or



- (b) for not more than two years or any lesser punishment provided for by this Act, in any other case.

**79. Disobeying a lawful order**

A person subject to this Act who disobeys a lawful command of a superior officer, commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.

**80. Issuing a manifestly unlawful order**

A person subject to this Act who issues a manifestly unlawful order commits an offence and shall, on conviction by a court-martial, be sentenced to a term not exceeding five years.

**81. Failure to perform military duties**

(1) A person who is subject to this Act commits an offence if that person without reasonable or lawful excuse, fails to attend for any parade or other service duty of any description or leaves any such parade or duty before being permitted to do so.

(2) A person who commits an offence under subsection (1) shall be liable, upon conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.

*Insubordination***82. Insubordinate behaviour**

(1) A person who is subject to this Act commits an offence if that person knowingly or having reasonable cause to believe, that a person subject to this Act is a superior officer—

- (a) strikes or otherwise uses violence against, or offers violence to that officer; or
- (b) uses threatening or insubordinate language or displays disrespectful behavior to that officer.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment—

- (a) for a term not exceeding five years or any lesser punishment provided for by this Act, if the offence was not committed on active service and did not involve striking or otherwise using violence against, or offering violence to, a superior officer exercising authority as such; or
- (b) for life or any lesser punishment provided for by this Act, in any other case.

**83. Obstruction of officers, service member, etc.**

A person who is subject to this Act commits an offence if that person obstructs or, when called upon, refuses to assist any person known to that person to be—

- (a) an officer, service member, duty officer or officer of the patrol; or

- (b) a person, whether subject to this Act or not, lawfully exercising authority under or on behalf of a military police, duty officer or officer of the patrol.

(2) A person who commits an offence under subsection (1) shall be liable, upon conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

*Malingering, drunkenness and quarrelling*

**84. Malingering**

- (1) A person who is subject to this Act commits an offence if that person—
- (a) falsely pretends to be suffering from sickness or disability; or
  - (b) incurs a self-inflicted injury with the intent to become unfit or temporarily unfit for service, or with that intent, causes or allows another person to inflict such an injury on him or her; or
  - (c) injures another person subject to this Act at the instance of that other person, with the intent to render that other person unfit or temporarily unfit for service; or
  - (d) with intent to become or remain unfit or temporarily unfit for service, does or fails to do anything to produce, prolong or aggravate any sickness or disability, whether at the time of the act or omission the person is in hospital or not.

(2) A person who commits an offence under subsection (1) shall be liable, upon conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

**85. Unfitness or misconduct through alcohol or drugs**

- (1) A person who is subject to this Act commits an offence if, due to the influence of alcohol or any drug—
- (a) that person is unfit to be entrusted with his or her duty or any other duty which he or she might reasonably be expected to be called upon to perform; or
  - (b) that person's behavior is disorderly or likely to bring discredit to the Defence Forces.
- (2) Subsection (1) shall not apply to the influence of a drug on the person if—
- (a) the drug was taken or administered on medical advice and the person complied with any directions given as part of that advice;
  - (b) the drug was taken or administered for a medicinal purpose, and the person had no reason to believe that the drug might impair his or her ability to carry out the duties mentioned in subsection (1)(a) or as the case may be, result in his behaving in a way mentioned in subsection (1)(b);
- (3) In this section—
- (a) “**drug**” includes any intoxicant other than alcohol;
  - (b) “**behavior**” includes an act, sign or anything said by that person.

(4) A person guilty of an offence under this section is liable to imprisonment, upon conviction, for a term not exceeding two years or to any lesser punishment provided for by this Act.

#### **86. Quarrelling, fighting and threatening behaviour**

(1) A person subject to this Act who without reasonable excuse—

- (a) fights, threatens or quarrels with any other person whether subject to this Act or not; or
- (b) uses threatening, abusive, insulting or provocative words or behaviour with the intent to provoke or cause disturbance,

commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

(2) In this section “**behavior**” includes acts, signals or anything said by that person.

#### *Offences relating to property*

#### **87. Offences concerning public or non-public property**

A person who is subject to this Act commits an offence if that person—

- (a) steals or fraudulently misapplies, misappropriates any public or non-public property, or is concerned in or connives at the stealing or fraudulent misapplication of that property;
- (b) receives or retains any public or non-public property, knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied or misappropriated;
- (c) willfully damages, or is involved in the willful damage of, any public or non-public property; or
- (d) by willful neglect causes damage by fire to any public or non-public property.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding seven years or any lesser punishment provided for by this Act.

#### **88. Offences concerning property of persons subject to Act**

(1) A person who is subject to this Act commits an offence if that person—

- (a) steals or fraudulently misapplies any property belonging to a person subject to this Act, or is concerned in or connives at the stealing or fraudulent misapplication of any such property;
- (b) receives or retains any property, knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied; or
- (c) willfully damages, or is concerned in the willful damage of, any property.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.

### 89. Damage to or loss of property

- (1) A person subject to this Act commits an offence if that person—
- (a) does an act that causes damage to or the loss of any public, non-public property or any property belonging to another person subject to this Act; and
  - (b) either—
    - (i) intends to cause damage to or the loss of any such property, and there is no lawful excuse for his or her act; or
    - (ii) is reckless as to whether he or she causes damage to or the loss of the property.
- (2) A person subject to this Act commits an offence if that person—
- (a) negligently, does an act that causes damage to or the loss of any public or non-public property; or
  - (b) does an act that is likely to cause damage to or the loss of any public or non-public property and—
    - (i) is reckless as to whether he causes damage to or the loss of the property; or
    - (ii) is negligent.
- (3) For the purposes of this section—
- (a) “**act**” includes an omission and references to the doing of an act are to be read accordingly;
  - (b) references to “**causing**” include allowing;
  - (c) “**loss**” includes temporary loss;
  - (d) “**property**” means property of a tangible nature, and references to public property, non-public property, or property belonging to a person subject to this Act are to be read accordingly.

(4) A person who commits an offence under this section is liable to upon conviction by a court-martial, to imprisonment for a term not exceeding fifteen years or to any lesser punishment provided for under this Act.

### 90. Causing fire

A person subject to this Act who willfully or negligently or by neglect of, or contrary to regulations, orders or instructions, does any act or omits to do anything, which act or omission causes or is likely to cause fire to occur in any material, the Defence Forces establishment or work for the Defence Forces, commits an offence and on conviction by a court-martial—

- (a) if the person acted willfully, is liable to imprisonment for life or to lesser punishment; or
- (b) in any other cases, is liable to imprisonment for term not exceeding two years or to lesser punishment.

**91. Stealing**

(1) A person subject to this Act who steals commits an offence and on conviction—

- (a) if by reason of the person's rank, appointment or employment or as a result of any lawful command the person, at the time of the commission of the offence, was entrusted with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to lesser punishment; or
- (b) is liable to imprisonment for a term not exceeding seven years or to lesser punishment.

(2) A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, would be deemed to have stolen that thing or property.

(3) A person who takes anything capable of being stolen or who converts any property is deemed to do so fraudulently if he or she does so with—

- (a) an intent permanently to deprive the general or special owner of the thing of it;
- (b) an intent to use the thing as a pledge or security;
- (c) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;
- (d) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;
- (e) in the case of money, an intent to use it at the will of the person who takes or converts it, although he or she may intend afterwards to repay the amount to the owner;

(4) For the purposes of this section "**special owner**" includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question.

(5) When a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion, or whether it is at the time of the conversion in the possession of the person who converts it, and it is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it.

(6) When a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of the conversion the person taking or converting the thing does not know who is the owner, and believes on reasonable grounds that the owner cannot be discovered.

(7) A person shall not be deemed to have taken a thing unless he or she moves the thing or causes it to move.

**92. Receiving property**

Any person who is subject to this Act who receives or retains in his or her possession any property obtained by the commission of any service offence, knowing the property to have been so obtained, commits an offence and on conviction by a court-martial is liable to imprisonment for a term not exceeding seven years or to lesser punishment.

**93. Destruction of property etc.**

A person subject to this Act who—

- (a) willfully destroys or improperly sells or wastefully expends any non-public or public property or property of any forces cooperating with the Defence Forces;
- (b) willfully destroys or improperly sells any property belonging to another person who is subject to this Act; or
- (c) sells, pawns or otherwise disposes of any cross, medal, insignia or other decoration of the Defence Forces,

commits an offence and on conviction by a court-martial is liable to imprisonment for a term not exceeding two years or to lesser punishment provided for under this Act.

**94. Loss or hazarding of aircraft, ship or vehicle**

A person subject to this Act who, either willfully or negligently, causes or allows any aircraft, ship or vehicle of the Defence Forces to be captured, lost, destroyed, damaged, stranded or hazarded commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for—

- (a) life or any lesser punishment provided for by this Act, if the person acted willfully or with willful neglect; or
- (b) imprisonment for a term not exceeding two years, in any other case.

**95. Improper carriage of goods**

A person subject to this Act who, being in command of an aircraft, ship or vehicle of the Defence Forces or being a member of its crew, without lawful authority—

- (a) receives or permits to be received on board the aircraft, ship or vehicle any goods or merchandise intended for disposal or delivery by way of trade or business (whether on own account or on account of any other person), not being merchandise received in the course of salvage; or
- (b) agrees to carry any goods or merchandise on board the aircraft, ship or vehicle in consideration of the payment of freight, or demands or receives any payment in respect of such carriage,

commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

**96. Miscellaneous Offences relating to property**

- (1) A person who is subject to this Act commits an offence if that person—
- (a) loses, or by negligence damages any public property or non-property of which the person has the charge or which has been entrusted to the person's care, or which forms part of property of which the person has the charge or which has been entrusted to the person's care, or any service decoration granted to the person;
  - (b) loses, or by negligence damages any clothing, arms, ammunition or other equipment issued to the person for use for the purposes of the service; or
  - (c) by negligence causes damage by fire to any public property; or
  - (d) fails to take proper care of any animal or bird of which the person has the charge and which is used in the public service; or
  - (e) pawns, sells, destroys or otherwise makes away with any service decoration granted to the person or any clothing, arms, ammunition or other equipment issued to the person for use for service purposes,

unless, in the case of a person charged with losing any property or any service decoration, the person took all reasonable steps for its care and preservation.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

*Offences relating to Billeting and Requisitioning of Vehicles***97. Billeting offences**

A person who is subject to this Act commits an offence if that person—

- (a) obtains billets, or orders or procures another person to obtain them, knowing that no billeting order is in force authorising the person to demand those billets or that the person is otherwise not authorised to demand them;
- (b) takes, agrees to take or demands from a person on whom that person or any other person or any vehicle is or is to be billeted under a billeting order any money or thing as consideration for not requiring, or for ceasing to require, accommodation for himself or herself or the said other person or standing room for the vehicle; or
- (c) commits any wrongful act against the person or property of the occupier of premises in which the person is billeted under a billeting order or of any other person who is in those premises, or against any other property in those premises, or willfully or by willful neglect damages those premises or any such property as aforesaid.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

**98. Offences in relation to requisition of vehicles**

(1) A person who is subject to this Act commits an offence if that person—

- (a) gives directions for the provision of a vehicle, or orders or procures another person to give them, knowing that no requisitioning order is in force authorising the person to give direction for the provision of that vehicle and that the person is not otherwise authorised to give such directions;
- (b) in purported exercise of powers conferred by a requisitioning order, takes or orders or procures any other person to take possession of a vehicle, knowing that no requisitioning order is in force under which the taking possession of the vehicle could be authorised or that the taking possession thereof is otherwise not authorised under such an order; or
- (c) takes or agrees to take, or demands, from a person any money or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or for possession of a vehicle not being taken or not being retained, under a requisitioning order.

(2) Subsection (1) applies in relation to aircraft, ships, boats, trains, railway rolling stock, horses, mules, donkeys and camels, food, forage and stores within the meaning of Part XIII, as it applies in relation to vehicles.

(3) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years or any lesser punishment provided for by this Act.

*Flying Offences***99. Dangerous flying**

A person subject to this Act who, either willfully or by negligence, does any act or makes any omission in flying an aircraft of the Defence Forces, or in the use of any such aircraft, or in relation to any such aircraft or to aircraft material, which causes or is likely to cause loss of life or bodily injury to any person commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for—

- (a) a term not exceeding two years, if the person has not acted willfully or with willful neglect; or
- (b) life or any lesser punishment provided for by this Act, in any other case.

**100. Low flying**

A person subject to this Act who, being the pilot of an aircraft of the Defence Forces, flies it at a height less than the prescribed height, except—

- (a) while taking off or landing; or
- (b) in such other circumstances as may be prescribed,

commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.



**101. Annoyance by flying**

A person subject to this Act who, being the pilot of an aircraft of the Defence Forces, flies it so as to cause, or as to be likely to cause, unnecessary annoyance to any person commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

*Offences relating to Custody***102. Irregular arrest and confinement**

(1) A person subject to this Act who—

- (a) when another person subject to this Act is under arrest—
  - (i) unnecessarily delays taking any steps that the person is responsible to take for investigating the allegations against that other person, or for having the allegations against that other person investigated by military police or tried by a court-martial; or
  - (ii) fails to release, or effect the release of, that other person when responsible to do so; or
- (b) having committed a person, in this paragraph referred to as the “prisoner”, to the custody of an officer or non-commissioned officer the person fails without reasonable cause to deliver to the person to whose custody the prisoner was committed a report signed by himself or herself of the offence that the prisoner is alleged to have committed—
  - (i) at the time of the committal; or
  - (ii) if it is not practicable so to do at the time of the committal, within twenty-four hours after the committal; or
- (c) is in command of a guard and—
  - (i) a prisoner is committed to the charge of that person; and
  - (ii) upon being relieved of that guard duty, or in any case within twenty-four hours after the committal, that person fails, without reasonable cause, to give to the officer to whom it is the person’s duty to report—
    - (A) a written statement containing, so far as known, the prisoner’s name and alleged offence and the name and rank or other description of the person by whom the prisoner is alleged to have committed the offence; and
    - (B) the report required by paragraph (b), if that person has received it,

commits an offence.

(2) A person who commits an offence under this section shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

**103. Permitting escape, and unlawful release of prisoners**

(1) A person subject to this Act and who—

- (a) willfully allows a prisoner who is within the person's charge, or whom it is the person's duty to guard, to escape; or
- (b) without proper authority releases a prisoner who is within the person's charge; or
- (c) without reasonable excuse, allows a prisoner who is within the person's charge, or whom it is the person's duty to guard, to escape,

commits an offence.

(2) A person who commits an offence under subsection (1) shall be liable, upon conviction by a court-martial, to imprisonment for a term not exceeding—

- (a) seven years, or any lesser punishment provided for by this Act, in case of an offence committed under subsection (1)(a); or
- (b) two years or any lesser punishment provided for by this Act, in any other case.

**104. Resistance to arrest**

(1) A person who is subject to this Act commits an offence if that person, being concerned in any quarrel or disorder—

- (a) refuses to obey any officer who orders the person be arrested; or
- (b) strikes or otherwise uses violence against, or offers violence to—
  - (i) any such officer; or
  - (ii) another person, whose duty it is to apprehend the person, or who has custody of the person,

whether or not the officer is the person's superior officer or that other person under paragraph (b)(i) is subject to this Act.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding three years or any lesser punishment provided for by this Act.

**105. Escape from custody**

A person subject to this Act who escapes from arrest, prison or other lawful custody (whether service custody or not) commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

*Offences concerning Courts Martial and other Authorities***106. Offences concerning courts martial**

(1) A person who is subject to this Act commits an offence if that person—

- (a) having been duly summoned or ordered to attend as a witness before a court-martial, fails to comply with the summons or order;
- (b) refuses to swear an oath or affirm when duly required by a court-martial to do so;

- (c) refuses to produce any document in the person's custody or under the person's control, and which a court-martial has lawfully required the person to produce;
- (d) when as a witness, refuses to answer any question which a court-martial has lawfully required the person to answer;
- (e) willfully insults or intimidates any person who is a member of a court-martial or a witness, or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or willfully insults any person while that person is going to or returning from the proceedings of the court; or
- (f) willfully interrupts the proceedings of a court-martial or otherwise misbehaves before the court.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by court-martial, other than the court in relation to which the offence was committed, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

(3) Despite subsection (2), if an offence under subsection (2)(e) or (f) is committed in relation to a court-martial, that court-martial may, by order under the hand of the presiding officer, order the offender to be imprisoned for a term not exceeding twenty-one days, if the court-martial considers that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court-martial.

#### **107. False evidence**

(1) A person subject to this Act who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court-martial or before any board or person having power under this Act to administer oaths, makes a statement that is material in those proceedings, knowing it to be false, or not believing it to be true, commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding seven years or any lesser punishment provided for by this Act.

(2) A person shall not be liable of an offence under this section solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

#### **108. Obstruction of police officer**

A person who is subject to this Act commits an offence if that person prevents or obstructs a police officer or any other person—

- (a) in executing a warrant for the arrest of a person subject to this Act who has committed or is suspected of having committed an offence triable by a civil court; or
- (b) in lawfully arresting without a warrant a person subject to this Act.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

*Prize Offences***109. Prize offences by person in command**

(1) A person subject to this Act who is in command of an aircraft or ship commits an offence if that person—

- (a) having taken any aircraft or ship as prize, fails to send to the High Court; or to some other prize court having jurisdiction in the case, all the aircraft's papers or ship's papers, as the case may be, found on board;
- (b) unlawfully makes any agreement for the ransoming of any aircraft, ship or goods taken as prize; or
- (c) under any agreement contemplated in paragraph (b), or otherwise by collusion, restores or abandons any aircraft, ship or goods taken as prize.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years or any lesser punishment provided for by this Act.

**110. Prize offences by others**

(1) A person who is subject to this Act commits an offence if that person—

- (a) strikes or otherwise ill-treats any person who is on board an aircraft or ship taken as prize, or who unlawfully takes from any such person anything in the person's possession;
- (b) removes out of any aircraft or ship taken as prize, otherwise than for safe keeping or for the necessary use of the Defence Forces, any goods not previously adjudged by a prize court to be lawful prize; or
- (c) breaks bulk on board any aircraft or ship taken as prize, or detained in exercise of any belligerent right or under any law, with intent to embezzle or fraudulently misapply anything therein.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years or any lesser punishment provided for by this Act.

*Miscellaneous Offences***111. Political activities**

A person subject to this Act and who—

- (a) promotes or is a member of, or takes part in the activities of, any political association;
- (b) expresses political views in public; or
- (c) addresses any meeting, or joins in any demonstration, the purpose of which is to express support for a political association or object or for a candidate in a national, county election or a cause in a referendum,

commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act but this section does not prevent any person from voting at such an election or referendum.

**112. Making false statement on enlistment**

A person who is subject to this Act commits an offence if that person, when before a recruiting officer for the purpose of being attested under this Act knowingly gives a false answer to any question contained in the attestation paper and put to the person by or by the direction of the recruiting officer.

**113. False information**

Any person subject to this Act who knowingly—

- (a) gives a false answer to any question set out in any document required to be completed; or
- (b) furnishes any false information or false document, in relation to the enrolment of that person,

commits an offence and on conviction is liable to imprisonment for a term of less than two years or to lesser punishment.

**114. Making false document**

(1) A person who is subject to this Act commits an offence if that person—

- (a) makes, signs or makes an entry in any report, return, pay list or certificate or other document, being a document or entry which is to the person's knowledge false in a material particular;
- (b) alters any report, return, pay list or certificate or other document, or alters any entry therein, so that the document or entry is to the person's knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is the person's duty to preserve or produce; or
- (c) fails to make an entry in any such document so that the document is to the person's knowledge false in a material particular.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years or any lesser punishment provided for by this Act.

**115. False entry**

A person subject to this Act who—

- (a) willfully or negligently makes a false statement or entry in a document made or signed by that person and required for official purposes or who, being aware of the falsity of a statement or entry in a document so required, orders the making or signing thereof;
- (b) when signing a document required for official purposes, leaves in blank any material part for which the signature is a voucher;
- (c) with intent to injure any person or with, intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

commits an offence and on conviction is liable to imprisonment for a term not exceeding three years or to lesser punishment.

**116. Falsely obtaining or prolonging leave**

A person subject to this Act who knowingly makes a false statement to any member or authority of the Defence Forces, or to a police officer, or to an administrative officer, for the purpose of obtaining or prolonging leave commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

**117. Inaccurate certification**

A person who is subject to this Act commits an offence if the person, without having ensured its accuracy, makes or signs—

- (a) a certificate relating to any aircraft of the Defence Forces or any aircraft material; or
- (b) a certificate relating to any, matter affecting the sea going or fighting efficiency of any ship of the Defence Forces.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.

**118. Scandalous conduct of an officer**

Any officer who behaves in a scandalous manner, unbecoming the character of an officer, commits an offence and shall be, on conviction by a court-martial, dismissed from the Defence Forces or any other lesser punishment provided for under this Act.

**119. Striking or ill-treatment of subordinate**

Any officer, warrant officer or non-commissioned officer who knows or has reasonable cause to believe that a person subject to this Act is of inferior rank, or is of the same rank but of less seniority, strikes or otherwise ill-treats such a person, that officer commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding five years or any lesser punishment provided for by this Act.

**120. Disgraceful conduct**

A person subject to this Act who engages in an act or disgraceful conduct of a cruel, indecent or unnatural kind commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding ten years or any lesser punishment provided for by this Act.

**121. Conduct to prejudice of good order and discipline**

Any person subject to this Act who commits any act, conduct or neglect to the prejudice of good order and service discipline commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for by this Act.

**122. False accusation**

- (1) A person subject to this Act commits an offence if that person—
- (a) makes an accusation against any other person subject to this Act, knowing it to be false or not believing it to be true; or
  - (b) in making a complaint that the person has been wronged—
    - (i) makes a statement affecting the character of another person subject to this Act, knowing it to be false or not believing it to be true; or
    - (ii) willfully suppresses any material facts.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding seven years or any lesser punishment provided for by this Act.

**123. Negligent or deliberate discharge**

A person subject to this Act who negligently or deliberately fires or discharges ammunition from a weapon in the person's charge or entrusted to the person's care, or which forms part of property within the person's charge or issued to the person for use for service purposes, commits an offence and shall be liable, on conviction by a court-martial, be liable to imprisonment—

- (a) for a term not exceeding two years or any lesser punishment provided for by this Act in the case of negligent firing or discharge of ammunition; or
- (b) for a term not exceeding seven years or any lesser punishment provided for by this Act in the case of deliberate firing or discharge of ammunition.

**124. Corruption, economic crimes, etc.**

- (1) A person subject to this Act who—
- (a) engages in corruption, malpractices, or any act or omission while in the course of duty for selfish purposes or gains; or
  - (b) causes loss by their dereliction of duty,

commits an offence and shall, upon conviction, be punished, as the circumstances may require, in accordance with the provisions of the Penal Code (Cap. 63), the Anti-Corruption and Economic Crimes Act, 2003 (Act No. 3 of 2003) the law relating to public procurement and disposal of public property, or any other written law.

- (2) The offence under subsection (1) shall be triable in the civil courts.

**125. Failure to take essential security measures**

(1) A person subject to this Act who, during an operation or in any other service circumstances, fails to—

- (a) take reasonable precautionary or security measures necessary to safeguard the lives and health of persons and animals; or

- (b) maintain in good order or ensure the safety of the depots, installations, works, resources or other objects, for which he or she is responsible,

thereby hazarding them, commits an offence and shall upon conviction by a court-martial be sentenced to imprisonment for a term not exceeding one year or to a lesser punishment as is provided for under this Act.

(2) Where the offence is committed in time of emergency, general mobilization or war, the offence is punishable with imprisonment for a term—

- (a) not exceeding three ears in the case of intentional failure; or
- (b) not exceeding one year in the case of negligence.

#### **126. Abuse of military authority**

(1) A person subject to this Act who abuses or improperly uses his or her title, position or rank in a manner that injures or adversely affects the right of any other person, commits an offence and shall be liable on conviction, by a court-martial, to imprisonment for a term not exceeding seven years or to a lesser punishment as may be provided for under this Act.

(2) A person subject to this Act who, in abuse of his or her commission or of the military authority conferred upon him, exempts from service a person who is legally under a liability to perform it, commits an offence and shall be liable on conviction, by a court-martial, to imprisonment for a term not exceeding seven years or to a lesser punishment as may be provided for under this Act.

(3) Where the offence is committed in time of emergency, general mobilization or war, the person shall on conviction by a court-martial to imprisonment for a term not exceeding ten years or to a lesser punishment provided for in this Act.

#### **127. Exceeding authority**

A person subject to this Act, who exceeds the authority he or she exercises by virtue of his or her commission, appointment, rank or title abuses such authority or improperly assumes authority not conferred by such commission, commits an offence and shall be liable on conviction, by a court-martial, to imprisonment for a term not exceeding seven years or to a lesser punishment as may be provided for under this Act.

#### **128. Fraternalization**

(1) A person subject to this Act who fraternizes with another person subject to this Act commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.

(2) For purposes of this section, a person shall not be guilty of an offence specified under subsection (1), unless the act in question constitutes the following elements—

- (a) an accused person is or was at the time of the commission of the offence, a commissioned officer;
- (b) an accused person fraternized on terms of military equality with one or more service members in a certain manner prescribed by regulations;



- (c) the accused person at the time of the fraternization, knew the person to be an enlisted member;
- (d) the fraternization violated military customs and traditions;
- (e) under the circumstances, the conduct of the accused resulted to prejudice of good order and discipline in the Defence Forces; and
- (f) under the circumstances, the conduct of the accused was of such nature as to bring discredit upon the Defence Forces.

### **129. Offences relating to dual citizenship**

(1) A person who is subject to this Act commits an offence if that person—

- (a) fails to disclose on enlistment or commissioning the fact that the person holds dual citizenship; or
- (b) acquires dual citizenship while in service.

(2) A person who commits an offence under subsection (1) shall be liable, on conviction by a court-martial, to imprisonment for a term not exceeding two years or any lesser punishment provided for under this Act.

### **130. Cheating in examination**

(1) A person subject to this Act who, before, at, during or in anticipation of an examination, cheats commits an offence and shall be liable, on conviction by a court-martial, to imprisonment for a term, not exceeding two years or any lesser punishment provided for under this Act.

(2) For purposes of this section, “**cheating**” includes any act or omission—

- (a) by a fraudulent trick or device or in abuse of office or with intent to unjustly benefit any person, by which the person procures, a question paper or an answer script produced or intended to be used in an examination or graded exercise, or gives, allows to be given to another person, allows to be procured for another person or is in any way concerned in the unjust benefit, procurement or giving of such a paper or script; or
- (b) by any false pretence with intent to cheat or unjustly benefit the person or any other person or for any other purpose whatsoever, buys, sells, procures or otherwise deals with a question paper or answer script intended for use or represented as genuine in respect of a particular examination or graded exercise of persons.

(3) For the purposes of subsection (2), it is immaterial that the question paper or answer sheet concerned is proved not to be the one in question, or to be false, not genuine or not related to the examination.

### **131. Attempt to commit an offence**

A person subject to this Act who attempts to commit an offence under any of the provisions of this Act commits an offence and shall be liable, on conviction by a court-martial, to—

- (a) imprisonment for a term not exceeding seven years, if the attempted offence is punishable by death or by imprisonment for life; or

- (b) the same punishment as is provided for the attempted offence, in this Act or any other law.

### **132. Aiding, abetting, counselling or procuring**

(1) Where a person subject to this Act who aids, abets, counsels or procures the commission by another person of an offence to which this Act applies, that person commits an offence.

(2) A person who commits an offence under subsection (1) may be charged, tried, including dealt with at a summary hearing and punished as a principal offender.

(3) A person subject to this Act who aids, abets, incites, counsels, procures or connives at the commission by another person of an offence under any of the provisions of this Part commits an offence and shall be liable to be charged, tried, and on conviction by a court-martial, punished as a principal offender.

### **133. Civil offences**

(1) A person subject to this Act who commits a civil offence whether in Kenya or elsewhere, shall be, on conviction by a court-martial—

- (a) if the civil offence is treason or murder, sentenced to death; and
- (b) in any other case, liable to any punishment which a civil court could award for the civil offence if committed in Kenya being one or more of the punishments provided for by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is provided for by this Act.

(2) Where a civil court cannot sentence to imprisonment, a person convicted shall be liable to suffer that punishment, less than dismissal from the Defence Forces as is provided for by this Act.

(3) Where the civil offence is murder or manslaughter, the offence shall be deemed to have been committed at the place where the act or omission which caused the death occurred, irrespective of the place of death.

### **134. Declaration of circumstances for release from Defence Forces**

A person subject to this Act who, having been released from the Defence Forces by reason of a sentence of a court-martial or by reason of misconduct, has afterwards been enrolled in the Defence Forces without declaring the circumstances of that release commits an offence and on conviction by a court-martial, is liable to imprisonment for a term not exceeding two years or to lesser punishment.

### **135. Offence in relation to enrolment**

A person subject to this Act who is concerned in the enrolment of any other person and who knows or has reasonable grounds to believe that by being enrolled that other person commits an offence under this Act commits an offence and on conviction by a court-martial is liable to imprisonment for a term not exceeding two years or to lesser punishment.

**136. Offences in relation to inoculation, etc.**

A person subject to this Act who, on receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, except diseases precluded by any written law, willfully and without reasonable excuse disobeys that order commits an offence and on conviction by a court-martial is liable to imprisonment for a term not exceeding two years or to lesser punishment provided for under this Act.

**PART VII – ARREST OF PERSONS SUBJECT TO THE ACT****137. Power to arrest offenders**

Subject to section 139, a member of the military police may arrest any person who is subject to this Act, suspected to have committed an offence under this Act.

**138. Search by other persons upon arrest**

A member of the Defence Forces who is exercising a power of arrest, may search the arrested person on reasonable grounds.

**139. Conditions for an arrest**

(1) A person subject to this Act who is found committing an offence under this Act, or is alleged to have committed or is reasonably suspected of having committed an offence under this Act, may be arrested without warrant in accordance with this section.

(2) An officer may be arrested by an officer of superior rank, or, if engaged in a quarrel or disorder, by an officer of any rank.

(3) A service member or cadet may be arrested by an officer, a warrant officer or a non-commissioned officer, but shall be arrested only by a person of superior rank.

(4) A member of the military police may arrest any officer or service member, but an officer shall be arrested only on the order of another officer in accordance with subsection (2).

(5) A member of the military police may arrest a service member of any rank.

(6) The power of arrest given by this section may be exercised either personally, or by ordering the arrest of the person to be arrested or by giving orders for that person's arrest.

**140. Provisions for avoiding delay after arrest**

(1) The allegations against a person arrested under sections 137 or 141 shall be investigated without unnecessary delay, and as soon as practicable thereafter either proceedings shall be instituted to deal with the allegations or the person shall be released from arrest.

(2) Where a person who is subject to this Act remains in custody for eight days without being tried by a court-martial or dealt with summarily—

- (a) a special report on the necessity for further delay shall be made by the person's commanding officer to the Service Commander in the prescribed manner; and
- (b) a similar report shall be made to the Service Commander in the prescribed manner every eight days until a court-martial sits or the offence is dealt with summarily or the person is released from arrest.

(3) Where an accused person is on active service, subsection (2) shall not apply except so far as is reasonably practicable, having regard to the exigencies of active service.

(4) Notwithstanding the extensions granted under subsection (2), circumstances under subsection (3) or limitation of rights of an arrested person provided for under section 54, a person shall not, at any given time, whether in active service or not, be held in custody for a period exceeding forty two days in aggregate.

(5) Where the summary disciplinary proceeding have not commenced or the court-martial has not been convened after the expiry of forty two days, the commanding officer shall hold the accused person under open arrest on such conditions as the commanding officer may determine.

#### **141. Power to arrest deserter or an absentee**

(1) A police officer may arrest any person whom the police officer has reasonable cause to suspect of being an officer or service member who has deserted or is absent without leave.

(2) If a police officer is not available, any person may arrest another person whom the first person has reasonable cause to suspect of being an officer or service member who has deserted or is absent without leave.

(3) Any person who has the authority to issue a warrant for the arrest of a person suspected of committing or having committed a criminal offence, who is satisfied by evidence on oath that there is an officer or service member who has, or is reasonably suspected of having, deserted or is absent from duty without leave within the authorised person's jurisdiction, may issue a warrant authorising that person's arrest.

(4) Any person who is arrested under this section shall as soon as is reasonably practicable be brought before a Magistrates' Court.

(5) Despite provisions of any other written law, a person who has been arrested and brought before a Magistrates' Court under this section or under sections 142 or 143 shall not be entitled to bail.

#### **142. Proceedings before civil court where a suspected deserter or an absentee is arrested and arraigned in court**

(1) This section applies when a person, who is brought before a Magistrates' Court, is alleged to be an officer or service member or a member of the constabulary who has deserted or is absent without leave.

(2) If a person brought before the Magistrates' Court as contemplated in subsection (1) is simultaneously in custody for some other cause, the Magistrates' Court may act in accordance with subsections (3) or (4), as applicable.

(3) If the person admits to being illegally absent from the Defence Forces, and the Magistrates' Court is satisfied of the truth of the admission, the Magistrates' Court shall forthwith—

- (a) cause the person to be delivered into service custody in such manner as the Magistrates' Court considers fit; or
- (b) commit the person to a prison, police station or other place provided for the confinement of persons in custody, for a period that the Magistrates' Court may consider reasonably necessary for the purpose of enabling that person to be delivered into service custody or until delivered into service custody.

(4) If the person does not admit to being illegally absent, or if the Magistrates' Court is not satisfied of the truth of the admission, the Magistrates' Court shall consider the evidence and any statement of the accused, and shall—

- (a) cause that person to be delivered into service custody or commit the person as provided for in subsection (3), if the Magistrates' Court is satisfied that—
  - (i) the accused is subject to this Act; and
  - (ii) there is sufficient evidence to justify the accused being tried under this Act for the offence of desertion or absence without leave; or
- (b) discharge the accused, unless the accused is in custody for another reason.

(5) The time fixed by the Magistrates' Court under subsection (2) may be extended from time to time if it appears to the Magistrates' Court reasonably necessary to do so for any legitimate cause under this Act.

(6) The provisions of the Criminal Procedure Act (Cap. 75) relating to the constitution and procedure of Magistrates' Courts, powers of adjournment and remand of persons accused, and relating to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to proceedings under this section.

#### **143. Deserter or absentee surrendering to police**

(1) If an officer, service member or a member of the constabulary who has deserted or is absent without leave, surrenders to a police officer elsewhere than at a police station, the police officer shall bring that person to a police station.

(2) If an officer, service member or a member of the constabulary who has deserted or is absent without leave, surrenders to a police officer at a police station, or is brought to a police station under subsection (1), the police officer in charge of the police station shall forthwith inquire into the case, and, if it appears

that the person is an officer, service member or a member of the constabulary who has deserted or is absent without leave, the police officer may—

- (a) cause the person to be delivered into service custody without being brought before a Magistrates' Court; or
- (b) bring the person before a Magistrates' Court.

#### **144. Certificate of arrest or surrender of deserter or absentee**

(1) If a Magistrates' Court deals with a person under section 142, when that person is delivered into service custody, there shall be handed over with the person, a certificate in the prescribed form, signed by a magistrate, containing particulars of the arrest or surrender and of the proceedings before the court.

(2) If a person is delivered into service custody without being brought before a court under section 143, or under any other lawful power, there shall be handed over with the person a certificate, in the prescribed form, signed by the police officer who causes the person to be delivered into service custody, containing the particulars of the person's surrender.

(3) In any proceedings for an offence under sections 74 or 75—

- (a) a document, purporting to be a certificate under subsection (1) or subsection (2) of this section, or under the corresponding provisions of any service law other than this Act, and to be signed as required, shall be evidence of the matter stated in the document; and
- (b) if the proceedings are against a person who has been taken into service custody on arrest or surrender, a certificate purporting to be signed by a military police or any corresponding officer of the forces of another country, or by any other officer in charge of the guard-room or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender, shall be evidence of the matters stated in the certificate.

#### **145. Superintendent of prison to receive deserters and absentees**

It shall be the duty of the superintendent or other person in charge of a civil prison, or the person in charge of any police station or other place provided for the confinement of persons in custody, to receive any person duly committed to that prison, police station or place by a Magistrates' Court as being an officer, service member or member of the constabulary who has deserted or is absent without leave, and to detain that person until delivered into service custody in accordance with the directions of the court.

#### **146. Temporary reception of person in service custody into civil custody**

(1) If a person who is charged with, or with a view to being charged with, an offence under Part VI is in service custody, it shall be the duty of the superintendent or other person in charge of a civil prison, or the person having charge of any police station or other place provided for the confinement of persons in custody, to receive and detain that person for a period not exceeding fifteen days, upon receiving a written order, in the form prescribed in the Third Schedule, and signed by the person's commanding officer.

(2) Despite subsection (1), if a person who is charged with an offence under Part VI or the corresponding provisions of any service law other than this Act is in service custody, a magistrate empowered to hold any Magistrates' Court, on application being made by affidavit or other sworn evidence by the commanding officer of the person in custody and being satisfied that it is in the interest of law and order to do so may, by warrant, from time to time, remand the person to a civil prison, police station or other place provided for the confinement of persons in custody for a reasonable time not exceeding twenty-one days at any one time.

(3) A magistrate to whom an application is made under subsection (2) may, on the same application or on a subsequent application made by the commanding officer, by endorsement on the warrant, order that the person in custody be returned to service custody for such periods as may be necessary to enable a court-martial to be held, or may order the person's discharge from the civil prison or other place of detention.

## PART VIII – SUMMARY DISCIPLINARY PROCEEDINGS

### 147. Guiding principles

- (1) Summary disciplinary proceedings under this Act shall be guided—
- (a) by Article 47 of the Constitution; and
  - (b) with necessary modifications, and without derogating from the essence of the right or limiting the right to fair hearing of an accused person by Article 50 of the Constitution.

### 148. Certain charges may be dealt with summarily

(1) Subject to the prescribed limits, the commanding officer or appropriate superior authority may summarily deal with a charge for an offence prescribed as disciplinary offence which a commanding officer or appropriate superior authority may deal with summarily.

(2) Despite subsection (1), a commanding officer of the rank of major or corresponding rank shall not deal summarily with a charge against an officer of the rank of captain or corresponding rank or above, and a commanding officer below the rank of major or corresponding rank shall not deal summarily with a charge against any officer.

### 149. Appropriate superior authority

For purposes of this Act, the appropriate superior authority is the Chief of the Defence Forces, Service Commander or such officer, not below the rank of Lieutenant-Colonel or corresponding rank, as may be prescribed but an officer of a prescribed rank shall not be the appropriate superior authority for the purposes of a case in which the accused is above the prescribed rank.

### 150. Reporting and investigation of offences

If a person who is subject to this Act is accused of an offence under Part VI, the accusation shall be reported in the form of a complaint to the accused's commanding officer, and the commanding officer shall forward the complaint to the military police for investigation in the prescribed manner.



**151. Rights and representation of an accused person during trial**

(1) An accused person who is subject to this Act shall be informed of the charges against him or her and of his or her right to be represented during the summary disciplinary proceedings or trial.

(2) Subject to subsection (1), a person may be nominated as a representative if—

- (a) that person is an officer or a service member and remains as such while carrying out that function;
- (b) that person consents to the nomination;
- (c) the nominee is available and accessible at the time of the proposed trial; and
- (d) the nominee is not of an equivalent rank or higher rank than the trial authority.

(3) The nominee under subsection (2) shall not be a person trained as a lawyer.

(4) Notwithstanding subsection (3), where the offence is punishable by death, the accused person shall be entitled to legal representation at the expense of the State.

**152. Conditions to be satisfied**

(1) A commanding officer or appropriate superior authority may try an accused person by summary trial if the following conditions are satisfied—

- (a) the accused person is within the prescribed ranks, that the commanding officer or appropriate superior authority is authorised to deal with;
- (b) having regard to the gravity of the offence, the commanding officer considers that his or her powers of punishment are adequate;
- (c) if the accused person has the right to elect to be tried by a court-martial, the accused person has not elected to be so tried;
- (d) the offence is not one that, according to regulations, the commanding officer is precluded from trying; and
- (e) the commanding officer does not have reasonable grounds to believe that the accused person is unfit to stand trial or was suffering from a mental disorder at the time of the commission of the alleged offence.

(2) Unless it is not practicable, having regard to all the circumstances, for any other commanding officer to conduct the summary trial, a commanding officer may not preside at the summary trial of a person charged with an offence if the commanding officer laid the charge or caused it to be laid or is the complainant.

**153. Limitation of time for trial of offences**

(1) A person shall not have a charge dealt with summarily for an offence under this Act, other than an offence under sections 72, 73 or 74(1)(a), unless the trial begun within three years after the commission of the offence, subject to subsections (2) and (3).



(2) When calculating a period contemplated in subsection (1), any period during which a person was illegally absent or a prisoner of war shall be disregarded.

(3) In applying subsection (1), in the case of an offence under section 133, if any written law requires that proceedings for the corresponding civil offence shall be brought within a particular time, that time limit shall apply to the trial of the offence under that section instead of three years (the same periods being disregarded).

#### **154. Hearing procedures**

(1) If a person who is subject to this Act accepts summary trial, that person or his or her representative may present evidence and call witnesses during the hearing.

(2) The commanding officer shall consider all information offered during the hearing, and shall be convinced that the accused person actually committed the offence he or she is accused of before imposing the punishment.

#### **155. Charges against officers and cadets**

(1) After investigating a complaint against an officer or a cadet, the military police shall forward the investigation report in the form of an abstract of evidence and appropriate charges, if any, to the commanding officer, who—

- (a) may deal summarily with the charge if it is one that the commanding officer has power to deal with summarily, and the commanding officer considers that the charge should be so dealt with;
- (b) may dismiss the charge on the grounds that it ought not to be further proceeded with; or
- (c) shall refer the abstract of evidence and the charge in the prescribed manner to the Director of Military Prosecutions or the appropriate superior authority as the case may be, in any other case.

(2) If the commanding officer deals with a charge summarily and records a finding of guilt, the punishments that may be awarded to an officer of the rank of captain or corresponding rank or below are, subject to the limitations hereinafter provided, those set out in the following scale—

- (a) forfeiture of up to six months' seniority of rank;
- (b) a fine not exceeding half a month's pay;
- (c) severe reprimand;
- (d) reprimand;
- (e) admonition; or
- (f) if the offence has occasioned any expense, loss or damage, stoppages.

(3) If the commanding officer deals with a charge summarily and records a finding of guilt, the punishments that may be awarded to a cadet are, subject to the limitations hereinafter provided, those set out in the following scale—

- (a) dismissal from the Defence Forces;
- (b) severe reprimand;

- (c) reprimand;
- (d) admonition; or
- (e) such minor punishments as may be prescribed.

(4) If the commanding officer refers a charge to the appropriate superior authority, the appropriate superior authority shall either—

- (a) deal summarily with the charge, if it is one that the authority has power to deal with summarily, and the authority considers that the charge should be so dealt with; or
- (b) in any other case, refer the charge in the prescribed manner to the Director of Military Prosecutions.

(5) If the appropriate superior authority deals with a charge summarily and records a finding of guilt, the punishments that may be awarded are, subject to the limitations hereinafter provided, those set out in the following scale—

- (a) forfeiture of up to twelve months seniority of rank;
- (b) a fine not exceeding one month's pay;
- (c) severe reprimand;
- (d) reprimand;
- (e) admonition; or
- (f) where the offence has occasioned any expense, loss or damage, stoppages.

(6) Except where expressly provided for by this Act, not more than one punishment shall be awarded under this section for one offence.

(7) Stoppages may be awarded either in addition to or without any other punishment.

(8) A severe reprimand or a reprimand may be awarded in addition to forfeiture of seniority of rank or a fine not exceeding one month's basic pay.

(9) Notwithstanding subsections (1) to (8), the recovery under this section, in any one instance, shall not be more than half of the basic salary.

#### **156. Charges against service member**

(1) After investigating a complaint against a service member, the officer or service member shall forward the investigation report in the form of an abstract of evidence and appropriate charges, if any, to the commanding officer, who—

- (a) shall deal summarily with the charge if the charge is one that the commanding officer has power to deal with summarily and the commanding officer considers that the charge should be so dealt with;
- (b) may dismiss the charge if the commanding officer considers that it ought not to be proceeded with further; or
- (c) shall refer the abstract of evidence and the charge in the prescribed manner to the Director of Military Prosecutions, in any other case.

(2) If the commanding officer deals with a charge summarily and records a finding of guilt, the punishments that may be awarded are, subject to the limitations hereinafter provided, those set out in the following scale—

- (a) if the accused is a warrant officer or a non-commissioned officer—
  - (i) dismissal from the Defence Forces;
  - (ii) reduction in rank by one rank;
  - (iii) forfeiture of seniority of rank for up to a maximum of six months;
  - (iv) a fine of a sum not exceeding one month's pay;
  - (v) severe reprimand;
  - (vi) reprimand;
  - (vii) such minor punishments as may be prescribed;
  - (viii) admonition; or
  - (ix) where the offence has occasioned any expense, loss or damage, stoppages;
- (b) if the accused is a service member other than a warrant officer or non-commissioned officer—
  - (i) imprisonment for a term not exceeding forty-two days or, if the accused is on active service, active service punishment for a period not exceeding forty-two days and where more than one term of imprisonment or active service punishment is awarded in the course of the same hearing, the terms shall not exceed forty-two days in the aggregate;
  - (ii) dismissal from the Defence Forces;
  - (iii) a fine of a sum not exceeding one month's pay;
  - (iv) such minor punishments as may be prescribed;
  - (v) admonition;
  - (vi) where the offence has occasioned any expense, loss or damage, stoppages.

(3) The punishment of—

- (a) dismissal;
- (b) reduction in rank of a warrant officer, senior sergeant or sergeant, or corresponding rank,

shall be subject to confirmation by the Service Commander.

(4) Except where expressly provided by this Act, not more than one punishment shall be awarded under this section for one offence.

(5) In the case of a warrant officer or non-commissioned officer, a severe reprimand or reprimand may be awarded in addition to forfeiture of seniority of rank or a fine.

(6) If an offender is on active service on the day of the sentence, a fine may be awarded in addition to active service punishment.

(7) Stoppages may be awarded either in addition to or without any other punishment.

(8) Minor punishments may be awarded in addition to a fine.

(9) Notwithstanding the above provisions, the recovery under this section, in any one instance, shall not be more than half of the basic salary.

#### **157. Option election by accused to be tried by court-martial**

(1) Before dealing with a charge summarily, the commanding officer or appropriate superior authority, as the case may be, shall give the accused the opportunity to opt to be tried by a court-martial.

(2) If an accused opts to be tried by a court-martial, the commanding officer or appropriate superior authority, as the case may be, shall refer the charge to the Director of Military Prosecutions.

(3) If two or more charges against an accused are to be heard summarily together, an option stands for trial by a court-martial in respect of any of the charges.

(4) If, after the start of a summary hearing—

- (a) a charge is amended;
- (b) a charge is substituted for another charge; or
- (c) an additional charge is brought,

this subsection shall apply to the amended, substituted or additional charge as if the reference in subsection (1) to dealing with a charge summarily were a reference to proceeding with the hearing.

(5) If the accused refuses to make an option, that refusal shall be treated as option to be tried by a court-martial and the accused shall be so informed.

(6) The accused may withdraw an option to be tried by a court-martial at any time before the court-martial is convened.

#### **158. Review of summary findings and awards**

(1) If a charge has been dealt with summarily and has not been dismissed, the reviewing authority may at any time review the finding or award.

(2) If, on a review under this section, it appears expedient to the reviewing authority, by reason of any mistake of law in the proceedings or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, the authority may quash the finding, and if the finding is quashed the authority shall also quash the award.

(3) If, on a review under this section, it appears to the reviewing authority that—

- (a) a punishment awarded was invalid;
- (b) a punishment awarded was too severe;
- (c) if the award included two or more punishments, those punishments or some of them could not validly have been awarded in combination or taken together, are too severe; or
- (d) a punishment awarded was too lenient,

the authority may vary the award by substituting such punishment or punishments as the authority thinks proper, being a punishment or punishments

which could have been included in the original award, but no award shall be varied under this subsection to the prejudice of the accused unless the accused has had an opportunity of being heard by, or of making written representation to, the reviewing authority.

(4) In this section, “**the reviewing authority**” means—

- (a) the officer superior in command to the officer who dealt summarily with the charge;
- (b) the Service Commander;
- (c) the Chief of the Kenya Defence Forces, if the Commander was involved in the summary proceedings; or
- (d) the Defence Council.

#### **159. Automatic administrative review**

(1) Upon reaching a determination in relation to any offence tried by the commanding officer, the commanding officer shall, within fourteen days, submit the findings of the trial in writing, to a superior commander for review.

(2) The superior commander shall within fourteen days of receipt of the findings, review the findings and inform the accused person of the outcome of the review, in writing.

(3) The administrative review under subsection (1) shall not preclude the accused person from seeking other legal redress from any other authority provided for under this Act or any other written law, or applying for a review to the Defence Council.

### PART IX –COURTS MARTIAL

#### *Constitution of Courts Martial*

#### **160. Constitution of the courts martial**

(1) In the case of any proceedings, the courts martial established under Article 169 of the Constitution shall consist of—

- (a) a Judge Advocate, appointed under section 165, who shall be the presiding officer;
- (b) at least five other members, appointed by the Defence Court-martial Administrator if an officer is being tried; and
- (c) not less than three other members in any other case.

(2) The members of the court-martial shall be officers so qualified and not ineligible in accordance with section 164.

(3) At least one of the members provided for in subsection (1) shall be—

- (a) of equivalent rank as the accused person where the accused person is an officer; and
- (b) the lowest ranking officer in the Defence Forces where the accused person is a service member.

(4) The Chief Justice may make rules generally to regulate the administration and proceedings of the courts martial.

**161. Guiding principles in exercising Judicial authority**

In addition to other principles and values provided for in the Constitution, the court-martial shall, in the exercise of its powers and discharge of its functions, be guided by the principles provided for under Article 159(2) of the Constitution.

**162. Sitting and power of the court-martial**

(1) The court-martial may sit in any place, whether within or outside the Republic of Kenya.

(2) If a court-martial sitting at some place considers it necessary in the interests of justice to sit at some other place, it may adjourn for the purpose of sitting at that other place.

(3) A court-martial shall have the power to try any person subject to this Act for any offence under this Act, and to award any punishment provided for by this Act for that offence.

**163. Convening of court-martial**

(1) A court-martial may be convened by the Defence Court-martial Administrator or Service Court-martial Administrator in respect of each service, as the case may be.

(2) An order convening a court-martial shall be signed either by the Defence Court-martial Administrator or by the Service Court-martial Administrator in respect of each Service.

(3) For purposes of this section, the Defence Court-martial Administrator and Service Court-martial Administrators shall be legal officers who qualify to be appointed as Registrars of the Court of Appeal and High Court respectively, and shall be appointed by the Defence Council.

**164. Disqualifications for membership of court-martial**

(1) The convening officer shall not be a member of a court-martial which that officer convenes.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the accused's commanding officer, and any officer who has investigated the charge against the accused, or who under service law has held or been one of the persons holding an inquiry into matters relating to the subject-matter of the charge, shall not be a member of the court-martial which tries that accused, nor shall that person be Judge Advocate at the court-martial.

**165. Appointment of Judge Advocate**

There shall be a Judge Advocate at each court-martial, who shall be—

- (a) a magistrate; or
- (b) an advocate of not less than ten years standing,

appointed by the Chief Justice.

**166. Indemnity from personal liability**

In the performance of their duties, court administrators, prosecutors, the presiding officer and the members of a court-martial shall not be liable for any criminal or civil proceedings or administrative sanctions for anything done, omitted to be done, reported or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function under this Act.

*Provisions relating to trial***167. Challenge**

(1) An accused person may, on any reasonable grounds, object to any member of the court, whether appointed originally or in place of another member.

(2) To enable the accused person exercise the right of objection conferred by subsection (1), the names of the members of the court shall be read out in the presence of the accused person before their swearing in, and the accused shall be afforded an opportunity to object to any of those members.

(3) Every objection made by an accused to a member shall be considered by the other members of the court.

(4) If the objection is to the presiding officer and a majority of the other members of the court allow it, the court shall adjourn and the Chief Justice shall appoint another presiding officer in accordance with section 165.

(5) If the objection is to any other member of the court and a majority of the members entitled to vote allow it, the member objected to shall retire and the vacancy may be, or if the number of members would be reduced below the legal minimum shall be, filled in the prescribed manner by another officer.

**168. Oaths and affirmations**

(1) An oath shall be taken by every member of a court-martial, the Judge Advocate and any other person attending as interpreter person recording the proceedings or officer under instruction.

(2) Every witness before a court-martial shall give evidence on oath, but—

- (a) if a child called as a witness does not, in the opinion of the court, understand the nature of the oath, the child's evidence may be received unsworn if in the opinion of the court the child is sufficiently intelligent to justify the evidence being received and understands the duty of speaking the truth, but if the child's evidence is given unsworn on behalf of the prosecution, the accused may not be convicted upon that evidence unless it is corroborated by some other material evidence supporting it and implicating the accused; or
- (b) if a person objects to being sworn on the ground either that the person has no religious belief or that the taking of an oath is contrary to the person's religious belief, or if it is not reasonably practicable to administer an oath to a person in the manner appropriate to the person's religious belief, that person shall make an affirmation instead.

(3) An oath or affirmation required to be made under this section shall be in the prescribed form and shall be administered at the prescribed time, by the prescribed person and in the prescribed manner.

#### **169. Court-martial to sit in open court**

(1) Subject to this section, a court-martial shall sit in open court and in the presence of the accused.

(2) A court-martial may sit in closed court if it considers it necessary or expedient in the interests of the administration of justice to do so, and without prejudice to that power a court-martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to disclosure of any information which might directly or indirectly endanger security, to protect witnesses or vulnerable persons, morality and public order.

(3) A court-martial shall sit in closed court while deliberating on its finding or sentence on any charge.

(4) A court-martial may sit in closed court on any other deliberation amongst its members.

(5) If a court-martial sits in closed court, any other person shall not be present except the members of the court and such other persons as may be prescribed.

#### **170. Evidence**

(1) The rules as to the admissibility of evidence to be observed in proceedings before courts martial shall be the same as those observed in civil courts.

(2) A person shall not be required in proceedings before a court-martial to answer any question or to produce any document which that person could not be required to answer or produce, as the case may be, in similar proceedings before a civil court.

(3) Despite the provisions of section 25A of the Evidence Act (Cap. 80), confessions recorded before an officer not below the rank of major, other than the investigating officer, shall be admissible in a trial before a court-martial and such confessions shall be recorded in accordance with the Evidence (Out of Court Confessions) Rules, 2009.

(4) A statutory declaration—

- (a) shall, in a trial by a court-martial, be admissible as evidence of the facts declared in it in a case where, and to the extent to which, oral evidence to similar effect would be admissible in that trial;
- (b) shall not be admitted in evidence in a trial by a court-martial on behalf of either the prosecution or the defence—
  - (i) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been delivered to the accused;



- (ii) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, or within such shorter period as the court may allow, been delivered to the Director of Military Prosecutions; or
- (iii) in any case, if within three days before the commencement of the trial or such longer period as the court may in special circumstances allow, the accused or the Director of Military Prosecutions has delivered a notice in the prescribed form to the any of them requiring that oral evidence shall be given instead of a statutory declaration; or
- (iv) in any case, if the court-martial is of the opinion that it is desirable in the interests of justice that oral evidence should be given instead of a statutory declaration and records that it is of that opinion.

(5) A court-martial shall take judicial notice of all matters of common knowledge, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court.

#### **171. Privileges of witnesses and others**

A witness before a court-martial or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court.

#### **172. Contempt of court**

The courts martial shall, in relation to persons who are subject to this Act or not, and in the exercise of its powers and performance of its functions, have the powers and jurisdiction to try matters of contempt of court as provided for under section 121 of the Penal Code (Cap. 63).

#### **173. Power to convict of offence other than that charged**

(1) An accused charged before a court-martial with an offence under Part VI may be convicted of the offence as having been committed in circumstances involving a less punishment, if it is not proved that the offence was committed in circumstances involving a greater punishment.

(2) An accused charged before a court-martial with an offence may be convicted of attempting to commit that offence.

(3) An accused charged before a court-martial with attempting to commit an offence may be convicted on that charge although it is proved that he or she actually committed the offence.

(4) If an accused is charged before a court-martial under section 133 with attempting to commit a civil offence, the accused may be convicted on that charge although it is proved that the accused actually committed the civil offence.

(5) If an accused is charged before a court-martial with an offence under section 133 and—

- (a) the corresponding civil offence is one in proceedings for which, if the accused had been tried by a civil court for committing the offence in Kenya, the accused might have been convicted of another civil offence; and
- (b) the court-martial finds that the accused has committed that other civil offence,

the accused may be convicted of an offence under section 133 in respect of the commission of that other civil offence.

(6) An accused charged before a court-martial with an offence under Part VI may be convicted for another offence under Part VI where the evidence shows that the accused has committed that other offence.

#### **174. Death of a judge advocate or member of the courts martial**

(1) If after the trial has begun—

- (a) the court-martial is, by reason of the death of the Judge Advocate or for any other reason, the Judge Advocate is unavailable to proceed with the hearing of the matter, his or her successor, appointed in accordance with this Act, may deal with any evidence taken down under this Act as if such evidence had been taken down by him or her or under his or her direction under this Act, and may proceed with the case from the stage at which his or her predecessor left it; or
- (b) it is represented to the court-martial that, owing to the sickness or other incapacity of the accused, it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the presiding officer may declare a mistrial.

(2) Where for any reason, three or more members of the court-martial who started the initial hearing of the matter at hand are absent or are unable to continue with the hearing, the accused person shall have the discretion to choose to proceed with the matter with the newly appointed members or request for a retrial.

(3) In the event that a mistrial is declared, a new court-martial may be reconvened to try the accused.

#### **175. Rulings and directions by Judge Advocate**

(1) In proceedings before a court-martial, rulings and directions on questions of law, procedure or practice shall be given by the Judge Advocate.

(2) Any rulings or directions given under subsection (1) shall be binding on the court.

#### **176. Decision of court-martial**

(1) Subject to this section, every question to be determined on a trial by a court-martial shall be determined by a majority of the votes of the members of the court.

(2) The Judge Advocate is not entitled to vote on the finding.

(3) In the case of an equality of votes on the finding, the court shall acquit the accused.

(4) In the case of an equality of votes on the sentence, the Judge Advocate has a casting vote.

(5) A conviction, where the only punishment that the court can award is death shall not have effect unless it is reached with the concurrence of all members of the court and, where all the members do not concur in a conviction in such a case, the presiding officer shall declare a mistrial and the accused may be tried by another court.

#### **177. Finding and sentence**

(1) Without prejudice to section 169, the finding of a court-martial on each charge shall be announced in open court.

(2) The sentence of a court-martial, together with any recommendation to mercy, shall be announced in open court.

#### *Finding of Insanity*

#### **178. Where accused incapable of making defence**

(1) If, on the trial of a person by a court-martial, the court is of the opinion that the accused is of unsound mind and consequently incapable of making a defence, the court shall so find.

(2) A finding under subsection (1) shall not have effect until it is promulgated in terms of section 183 of this Act.

(3) If a finding under subsection (1) has been promulgated, it shall forthwith be reported to the President, and the accused shall be kept in custody during the President's pleasure in such place and manner as the President may direct, and pending the President's directions the accused shall be kept in service custody.

(4) A finding under subsection (1) of this section shall not be a bar to further proceedings under this Act.

#### **179. Where an accused person is insane**

(1) Where a person is charged with an act or omission as an offence, and evidence is presented at the trial of that person for that offence, that the person was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission made, then if it appears to the court before which the person is being tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.

(2) When a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such place and in such manner as the court shall direct.

(3) The President may order the person to be detained in a mental hospital, prison or other suitable place of safe custody.

(4) The officer in charge of a mental hospital, prison or other place in which a person is detained by an order of the President under subsection (3) shall make a report in writing to the Cabinet Secretary for the consideration of the President in respect of the condition, history and circumstances of the person so detained, at the expiration of a period of three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report.

(5) On consideration of the report, the President may order that the person so detained be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(6) Notwithstanding subsections (4) and (5), a person or persons thereunto empowered by the President may, at any time after a person has been detained by order of the President under subsection (3), make a special report to the Cabinet Secretary for transmission to the President, on the condition, history and circumstances of the person so detained, and the President, on consideration of the report, may order that the person be discharged or otherwise dealt with, subject to such conditions as to his remaining under supervision in any place or by any person, and to such other conditions for ensuring the safety and welfare of the person in respect of whom the order is made and of the public, as the President thinks fit.

(7) The President may at any time order that a person detained by order of the President under subsection (3) be transferred from a mental hospital to a prison or from a mental hospital, or from any place in which he or she is detained or remains under supervision to either a prison or a mental hospital.

*Punishment by the court-martial*

**180. Punishment of officers**

(1) The punishments that may be imposed on an officer by sentence of a court-martial are, subject to the limitations hereinafter provided, those set out in the following scale—

- (a) death;
- (b) imprisonment;
- (c) dismissal from the Defence Forces;
- (d) reduction in rank by one rank;
- (e) forfeiture of up to twelve months seniority of rank;
- (f) a fine not exceeding the equivalent of three months' pay;
- (g) severe reprimand or reprimand;
- (h) admonition;
- (i) where the offence has occasioned any expense, loss or damage, stoppages, and in relation to an officer references in this Act to punishments are references to those punishments; or
- (j) fine not exceeding three million shillings.

(2) For the purposes of this Act, a punishment specified in any paragraph of the scale contained in subsection (1) shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the succeeding paragraphs, of the scale.

(3) Except where expressly provided for by this Act, not more than one punishment shall be awarded under this section for one offence.

(4) Stoppages may be awarded either in addition to or without any other punishment.

(5) A severe reprimand or a reprimand may be awarded in addition to forfeiture of seniority of rank or a fine.

(6) If an officer is sentenced by a court-martial to imprisonment, the officer shall also be sentenced to dismissal from the Defence Forces and, if the court-martial fails to sentence the officer to such dismissal, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of such dismissal.

### **181. Punishment of service members**

(1) The punishments that may be awarded to a service member by sentence of a court-martial are, subject to the limitations hereinafter provided, those set out in the following scale—

- (a) death;
- (b) imprisonment;
- (c) dismissal from the Defence Forces;
- (d) where the offender is on active service on the day of the sentence, active service punishment for a period not exceeding ninety days;
- (e) in the case of a warrant officer or non-commissioned officer, reduction in rank to private or corresponding rank, or any less reduction in rank;
- (f) in the case of a warrant officer or non-commissioned officer, forfeiture of seniority of rank for up to a maximum of twelve months;
- (g) a fine not exceeding the equivalent of three months' pay;
- (h) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (i) admonition; or
- (j) where the offence has occasioned any expense, loss or damage, stoppages.

(2) For the purposes of this Act, a punishment specified in any paragraph of the scale contained in subsection (1) shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the succeeding paragraphs, of the scale.

(3) Except where expressly provided for by this Act, not more than one punishment shall be awarded under this section for one offence.

(4) If a service member is sentenced by a court-martial to imprisonment, the member shall also be sentenced to dismissal from the Defence Forces and, if the

court-martial fails to sentence the member to such dismissal, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of such dismissal.

(5) If a warrant officer or non-commissioned officer is sentenced by a court-martial to imprisonment or active service punishment, that person shall also be sentenced to reduction in rank to private or corresponding rank and, if the court-martial fails to sentence that person to such reduction in rank, the sentence shall not be invalid but shall be deemed to include a sentence of such reduction in rank.

(6) In the case of a warrant officer or non-commissioned officer, a severe reprimand or a reprimand may be awarded by a court-martial in addition to forfeiture of seniority of rank or a fine.

(7) If an offender is on active service on the day of the sentence, a fine may be awarded in addition to active service punishment.

(8) Stoppages may be awarded by a court-martial either with or without any other punishment.

(9) Active service punishment shall consist of such duties or drills (in addition to those which the offender might be required to perform if not undergoing punishment) and such loss of privileges, as may be prescribed in the regulations, and may include confinement in such place and manner as may be prescribed and such personal restraint necessary to prevent the escape of the offender, as may be prescribed.

#### **182. Restitution or compensation for theft, etc.**

(1) This section applies if a person has been convicted by a court-martial, or having been dealt with summarily has been found guilty, of unlawfully obtaining any property, whether by stealing it, by receiving or retaining it knowing or having reason to believe it to have been stolen, by fraudulently misapplying it or by any other means.

(2) If any of the property unlawfully obtained has been found in the possession of the offender, the court-martial may order that it be delivered or paid to the person appearing to be its owner.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by the conversion or exchange of any of the property unlawfully obtained, the court-martial may order that it be delivered to the person appearing to be the owner of the property unlawfully obtained.

(4) If money is found in the possession of the offender, whether or not it appears to have been obtained as aforesaid, or any pay or other money is due or is to become due to the offender, an order may be made that the person appearing to be the owner of the property unlawfully obtained shall be paid a specified sum out of that money as or towards compensation for the loss caused by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) If any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know that it had been unlawfully obtained, an order may be made that the other person, upon restoring to its owner the

property sold or given as aforesaid, shall be paid a specified sum out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn) or out of any pay or other money due or to become due to the offender, as or towards compensation for the loss caused in consequence of the sale or giving in pawn.

(6) If any of the property unlawfully obtained has been given in exchange to some other person who did not then know that it had been unlawfully obtained, an order may be made that the other person, upon restoring to its owner the property given as aforesaid shall have restored the property given in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court-martial by whom the offender is convicted or by the commanding officer or appropriate superior authority making the finding of guilty, as the case may be, or by any reviewing authority.

(8) In this section “**appearing**” means appearing to the court, officer or authority making the order.

(9) The operation of an order under this section shall be suspended—

- (a) if a notice of Appeal to the High Court against the conviction is lodged, until either the notice is withdrawn or the appeal is determined or abandoned; or
- (b) in any other case, until the expiration of the period prescribed under section 188 as the period within which such notice may be lodged.

(10) If the operation of an order is suspended under subsection (9)—

- (a) the order shall not take effect if the conviction is quashed on appeal;
- (b) the High Court may by order annul or vary the order although the conviction is not quashed;
- (c) the prescribed steps shall be taken for the safe custody, during the period which the operation of the order is suspended, of the property ordered to be restored or the money ordered to be paid.

(11) Despite subsections (9) and (10), an order under this section shall not be suspended, so far as it relates to the restoration of property to the person appearing to be its owner, if the court, officer or authority making the order directs to the contrary in any case in which the title to the property appears to be undisputed.

(12) An order under this section shall not bar the right of any person, other than the offender or a person claiming through the offender, to recover any property delivered or money paid under the order from the person to whom it is delivered or paid.

### *Promulgation*

#### **183. Promulgation of finding or sentence**

Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be prescribed.



**184. Approval of Death sentence by President**

A sentence of death passed on a person on active service shall not be carried out on that person unless the sentence is approved by the President.

**185. Custody of court-martial records and right of accused to copy**

(1) The record of the proceedings of a court-martial shall be kept in the custody of the Defence Court-martial Administrator and the respective Service Court-martial Administrator for the prescribed period.

(2) Subject to this section, a person tried by a court-martial shall be entitled to obtain from the Defence Court-martial Administrator on demand at any time within the prescribed period a copy of the record of the proceedings of the court, on payment of the prescribed fee.

(3) If a person tried by a court-martial dies within the prescribed period, the personal representative of that person shall be entitled to obtain from the Defence Court-martial Administrator on demand at any time within the prescribed period a copy of the record of the proceedings of the court, on payment of the prescribed fee.

(4) If a person applies for a copy of the record of any proceedings under subsection (2) or subsection (3), and the Service Commander certifies that it is requisite for reasons of security that the proceedings or a part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or of that part and this decision may, upon application, be reviewed by the Defence Council.

(5) In this section, “**the prescribed period**”, in relation to any person tried by court-martial, means the period of six years beginning with the date of the acquittal or conviction.

**PART X – APPEALS FROM COURTS MARTIAL****186. Appeal to High Court**

(1) If a person has been convicted by a court-martial—

- (a) the person convicted may appeal to the High Court and make subsequent appeals to any other superior court, against the conviction, the sentence, or both; or
- (b) the Director of Public Prosecutions may appeal to the High Court against the sentence.

(2) If a person has been acquitted of a charge by a court-martial, the Director of Public Prosecutions may appeal to the High Court against the acquittal.

**187. Notice of Appeal**

(1) An appeal to the High Court shall not lie unless a notice of Appeal is lodged with the Registrar within twenty-one days after the acquittal, conviction or sentence, as the case may be.

(2) The notice of appeal shall be in the prescribed form.



(3) Except in the case of a conviction involving sentence of death, the High Court may extend the period within which a notice or Appeal shall be lodged, whether that period has expired or not.

(4) An appellant may present the appeal case in writing.

#### **188. Determination of appeal in ordinary cases**

(1) Subject to section 189, the High Court shall—

- (a) allow an appeal against conviction and quash the conviction if it considers that the conviction—
  - (i) is unreasonable;
  - (ii) cannot be supported, having regard to the evidence;
  - (iii) involves a wrong decision on a question of law; or
  - (iv) there was a miscarriage of justice,
 unless the court finds that no substantial miscarriage of justice has actually occurred; or
- (b) dismiss the appeal.

(2) The court shall allow an appeal against acquittal and convict the accused if it considers that—

- (a) the evidence was such that the person acquitted should have been convicted; or
- (b) the acquittal involves a wrong decision on a question of law,

and shall pass such sentence as it thinks proper, and otherwise it shall dismiss the appeal, and section 173 shall apply as it applies to a trial by a court-martial.

(3) On an appeal against sentence, the court may reduce or increase the sentence or alter the nature of the sentence, as it thinks proper.

#### **189. Powers of court in special cases**

(1) If the High Court determines that an appellant—

- (a) was not properly convicted on a particular charge brought before the court-martial; and
- (b) was properly convicted on some other charge so brought,

then, if the sentence passed by the court-martial on the appellant was not one which could lawfully be passed for the offence of which the appellant was convicted on that other charge, the High Court shall pass on the appellant such sentence as it thinks proper, in substitution for the sentence passed by the court-martial.

(2) If an appellant has been convicted of an offence, and—

- (a) the court-martial could lawfully have convicted the appellant of some other offence; and
- (b) it appears to the High Court that the court-martial shall have been satisfied of facts which proved the appellant guilty of that other offence,

the High Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on

the appellant such sentence as it thinks proper (being a sentence which could lawfully have been passed for that other offence and not one of greater severity), in substitution for the sentence passed by the court-martial.

(3) If—

- (a) an appellant has been convicted of an offence committed in circumstances involving the greater of two punishments, and it appears to the High Court that the court-martial ought to have found the appellant guilty of an offence as being committed in circumstances involving the less punishment; or
- (b) an appellant has been convicted of an offence and it appears to the High Court that the court-martial ought to have convicted the appellant of the offence subject to exceptions or variations,

the High Court, instead of allowing or dismissing the appeal, may substitute for the conviction a conviction of the offence as being committed in circumstances involving the less punishment or, as the case may be, a conviction of the offence subject to exceptions or variations, and pass on the appellant such sentence as it thinks proper (being a sentence which could lawfully have been passed, for the offence specified or involved in the substituted finding and not one of greater severity) in substitution for the sentence passed by the court-martial.

(4) If, on an appeal, the High Court considers that the appellant did the act or made the omission charged but was insane so as not to be responsible for the acts or omissions at the time when the act was done or the omission was made, it shall quash the conviction and substitute a special finding that the appellant was guilty of the act or omission charged but was insane, and section 179(2) shall apply accordingly.

(5) The term of any sentence of imprisonment passed by the High Court under this section shall, unless the High Court otherwise directs, run from the time from which it would have run if it had been passed in the proceedings appealed against, and a sentence passed by the High Court shall be deemed for the purposes of this Act to be a sentence passed by the court-martial.

#### **190. Court may appoint expert**

The High Court may appoint a person with special or expert knowledge to assist the Court in any such manner as it deems expedient in the discharge of justice, if the court considers that such knowledge is required for the proper determination of an appeal before it.

#### **191. Proceedings to be heard in absence of appellant**

(1) An appellant shall not be entitled to be present at the hearing of an appeal or at any proceedings preliminary or incidental to such an appeal, except where—

- (a) rules of court provide that the appellant shall have the right to be present; or
- (b) the High Court grants leave to be present.

(2) Any power of the High Court under this Part to make a determination or pass a sentence may be exercised despite the absence of the appellant.

**192. Defence on appeal**

If a person appeals against a conviction, sentence or both, the Director of Public Prosecutions shall make arrangements for the defence of the appeal.

**193. Person sentenced to death to have opportunity to appeal**

If a person is convicted by a court-martial and sentenced to death that person—

- (a) shall not be executed until after the expiration of the period within which a notice of appeal may be lodged to the High Court against the conviction or sentence or both; and
- (b) if such a notice is duly lodged, the sentence shall not be executed until either the notice is withdrawn or the appeal is determined or abandoned.

**194. Removal of prisoner**

An appellant who is in custody, shall be taken to, kept in custody at, and brought back from, any place at which the appellant is entitled to be present for the purposes of this Part in the prescribed manner, and the High Court may order the appellant to be taken to any prescribed place for the purpose of any proceedings of the High Court.

**195. Composition of court**

Upon the hearing of an appeal under this Part, the High Court shall consist of one or more Judges.

**196. Furnishing of documents**

In the case of an appeal, under this Part, it shall be the duty of the Defence Court Administrator to furnish the Registrar, in accordance with rules of court, with a record of the proceedings of the court-martial.

**197. Duties of Registrar**

(1) The Registrar shall take all necessary steps obtaining the determination of an appeal under this Part, and shall obtain and lay before the High Court in proper form all documents, exhibits and other things relating to the proceedings before the court-martial that appear necessary for the proper determination of appeal.

(2) The Registrar shall furnish the necessary forms and instructions relating to an appeal under this Part to any person who asks for them, to persons in charge of prisons and to such other persons as the registrar thinks fit, and every person in charge of a prison shall cause the forms and instructions so furnished to be placed at the disposal of persons imprisoned who desire to lodge an appeal under this Part.

**198. Saving of prerogative of mercy**

Nothing in this Part shall affect the exercise of the power of mercy under Article 133 of the Constitution.

**199. Procedure**

Subject to this Part and to any rules of court, the provisions of the Criminal Procedure Act (Cap. 75) relating to the hearing of appeals from subordinate courts shall apply to the hearing and determination of appeals under this Part.

**PART XI – PROVISIONS CONCERNING TRIAL AND PUNISHMENT****200. Commencement of sentence of imprisonment**

(1) A sentence of imprisonment or of active service punishment in respect of an offence under Part VI shall run from the beginning of the day on which sentence was originally pronounced by the court-martial, or was originally awarded by the commanding officer or appropriate superior authority, as the case may be, subject to subsection (2).

(2) If, after being convicted or found guilty of an offence, a person is convicted or found guilty of another offence either before sentence is passed under the first conviction or before the expiration of that sentence, any sentence of imprisonment or active service punishment in respect of the subsequent conviction shall be executed after the expiration of the former sentence, unless the sentence is executed concurrently with the former sentence or any part thereof.

**201. Duration of sentence of imprisonment**

(1) If a person who is serving a sentence of imprisonment in respect of an offence under Part VI becomes unlawfully at large during the currency of the sentence—

- (a) in calculating the period for which the person is liable to be imprisoned under the sentence, no account shall be taken of the time beginning with the day on which the person became at large and ending with the day on which the person is taken into service custody or the custody of a civil authority or (not having been taken into such custody) returns to the place of imprisonment before he or she become unlawfully at large;
- (b) but the person satisfies the prescribed authority that, during any part of a period contemplated in paragraph (a), the person was in the custody of a civil authority otherwise than on account of an offence committed while unlawfully at large, such part shall not be disregarded in calculating the period for which the person is liable to be imprisoned under the sentence.

(2) For the purposes of subsection (1), “**civil authority**” means an authority, other than a service authority, of Kenya or of a foreign country (including a police officer), authorised by law to detain persons.

(3) A person who—

- (a) is serving a sentence of imprisonment in a civil prison in respect of an offence under Part VI; and

- (b) after being temporarily released under some law, is at large at any time during the period for which the person is liable to be imprisoned in a civil prison under the sentence,

shall be deemed to be unlawfully at large if the period for which the person was temporarily released has expired or if an order recalling the person has been made under that law.

(4) Without prejudice to subsection (1), if any person who is serving a sentence of imprisonment for an offence under Part VI has been temporarily released on compassionate grounds in the prescribed circumstances, in calculating the period for which the person is liable to be imprisoned under the sentence, no account shall be taken of the time beginning with the day after that on which the person is released and ending with the day on which the person is required to return to custody.

(5) A person who is—

- (a) released under subsection (4) for any period; or  
(b) otherwise allowed out of service custody, under regulations made under this Act, for any period or subject to any condition,

shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (1), as being unlawfully at large.

#### **202. Service of sentence of imprisonment**

If a sentence of imprisonment is passed on or awarded to a person for an offence under Part VI, that person's commanding officer shall cause the person to be sent to a prison and the superintendent or other person in charge of the prison shall receive and imprison the person until the sentence has been served, or the person is otherwise lawfully required to be delivered from the prison.

#### **203. Committal to civil prison**

A person who is sentenced to death or imprisonment, and who is committed or transferred to a civil prison, shall be imprisoned and otherwise dealt with in the same manner as a person imprisoned in the same prison under a similar sentence of civil court.

#### **204. Sentence of imprisonment passed outside Kenya**

If a person is sentenced by a court-martial held outside Kenya to imprisonment for a term exceeding forty-two days, the person shall be returned to Kenya as soon as practicable after the sentence has been passed.

#### **205. Indemnity for person acting under warrant**

An action shall not lie in respect of anything done by any person under a sentence of imprisonment for an offence under Part VI, if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

#### **206. Proof of certain facts by documentary evidence**

(1) This section applies to evidence in proceedings under this Act, whether before a court-martial, a commanding officer, the appropriate superior authority, a court or otherwise.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate properly to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on enlistment shall be evidence of the person having given the answers to questions that the person is therein recorded as having given.

(4) A letter, return or other document stating that a person—

- (a) was or was not serving at any particular time, or during any particular period, in the Defence Forces or in any particular service of the Defence Forces or part thereof, or was discharged therefrom at or before any particular time;
- (b) held or did not hold at any particular time any particular rank or appointment in any particular service of the Defence Forces, or had at or before any particular time been attached, posted or transferred to the Defence Forces or any particular service of the Defence Forces or part thereof, or at any particular time or during any particular period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
- (c) was or was not at any particular time authorized to use or wear any particular decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by the President, the Chief of the Kenya Defence Forces or the Service Commander, or by a person authorized in writing by any of them, be evidence of the matters stated in the document.

(5) A record made in any service book or other prescribed document, being a record made under this Act or otherwise under service duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein, and a document purporting to be a copy of any such record (including the signature thereto) and to be certified to be a true copy by a person stated in the certificate properly to have the custody of the service book or other prescribed document shall be evidence of the record.

(6) A document purporting to be issued by order of the President, the Chief of the Kenya Defence Forces or the Service Commander and to contain instructions or orders given or made by the President, the Chief of the Kenya Defence Forces or the Service Commander shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be signed by the President or the Chief of the Kenya Defence Forces, or by a person authorised in writing by either of them, and stating—

- (a) that a decoration of a description specified in or annexed to the certificate is a service decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorised by the President or the Chief of the Kenya Defence Forces,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person's commanding officer or by an officer purporting to be authorised to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for—

- (a) any formation or unit or body of men and women of the Defence Forces;
- (b) any command or other area, garrison or place; or
- (c) any aircraft, ship or train,

shall in proceedings against that person be evidence of the matters stated in the certificate.

(9) A certificate purporting to be signed by the Defence Council that any unit is a unit of the Defence Forces shall be conclusive evidence of the facts stated therein.

(10) A certificate purporting to be signed by a person's commanding officer stating that such person is or is not a member of any unit of the Defence Forces shall, in proceedings against such person, be evidence of the facts stated in such certificate.

#### **207. Proof of outcome of civil trial**

(1) If a person who is subject to this Act has been tried by a civil court (whether at the time of the trial the person was subject to this Act or not), a certificate of the court—

- (a) that the person has been tried by the court for a particular offence;
- (b) as to the result of the trial;
- (c) as to what judgment or order was given or made by the court; or
- (d) that other specified offences were taken into consideration at the trial,

shall for the purposes of this Act be evidence of the matters so certified.

(2) A document purporting to be a certificate under this section and to be signed by a judge or a magistrate shall, unless the contrary is shown, be taken to be such a certificate.

#### **208. Evidence of proceedings of court-martial**

(1) The original proceedings of a court-martial purporting to be signed by the presiding officer of the court shall, on production from proper custody, be admissible in evidence before a court-martial or a civil court.

(2) A document purporting to be a copy of the, record of the proceedings of a court-martial or of any part thereof and to be certified to be a true copy by a person stated in the document properly to have the custody of the record shall be evidence of the record or of that part thereof.



**209. Trial of offence after offender ceases to be subject to Act**

(1) Subject to section 211, if a person who is subject to this Act has committed, or is reasonably suspected to have committed an offence under Part VI, the person shall, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation or charges, trial and punishment by a court-martial and execution of sentences in relation to that offence or suspected offence, be treated, as being still subject to this Act, although that the person may have ceased to be subject to this Act.

(2) If a person—

- (a) who is treated, by virtue of subsection (1), as being still subject to this Act and is in service custody; and
- (b) while in such custody (whether before or after trial) commits, or is reasonably suspected of having committed, an offence which, if he or she were actually subject to this Act, would be an offence under Part VI,

for the purposes of the provisions under subsection (1) and the provisions of this Act relating to dealing summarily with charges in relation to that offence or suspected offence, that person shall be treated as having been subject to this Act when the offence was committed or is suspected of having been committed and as continuing to be subject to this Act thereafter.

(3) If a person who is treated as being at any time subject to this Act by virtue of either or both of subsections (1) and (2), such treatment shall extend to the person—

- (a) if the person holds any rank in the Defence Forces, as to a person having that rank;
- (b) in any other case, as to a person having the rank which the person held when last actually subject to this Act.

(4) If, under subsection (3), any provision of this Act, apart from this subsection, would apply to a person in relation to different offences, as to a person having different ranks, it shall apply to the person as to a person having the lower or lowest of those ranks.

**210. Limitation of time for trial of offences**

(1) A person shall not be tried by a court-martial for an offence under this Act, other than an offence under sections 72, 73, or 74(1)(a), unless the trial is begun within three years after the commission of the offence, subject to subsections (2) and (3).

(2) When calculating a period contemplated in subsection (1), any period during which a person was illegally absent or a prisoner of war shall be disregarded.

(3) In applying subsection (1)—

- (a) in the case of an offence under section 133, if any written law requires that proceedings for the corresponding civil offence shall be brought within a particular time, that time limit shall apply to the trial of the offence under that section instead of three years (the same periods being disregarded); and



- (b) subject to any time limit applicable by virtue of paragraph (a), a person may be tried by a court-martial for a civil offence committed outside Kenya despite the fact that it was committed more than three years before the beginning of the trial, if the Director of Public Prosecutions consents to the trial.

(4) A person shall not be tried by a court-martial for an offence under Part VI, other than an offence under sections 72, 73 or 74(1)(a), unless—

- (a) the trial is begun within three months after the person ceases to be subject to this Act; or
- (b) the trial is for a civil offence committed outside Kenya and the Director of Public Prosecutions consents to the trial.

(5) If a person who has committed an offence under section 45(1)(a) (otherwise than on active service) has subsequently served as a member of the Defence Forces continuously in an exemplary manner for not less than three years, that person shall not be tried for that offence.

### **211. Trials by civil courts**

(1) Nothing in this Act restricts the offences for which a person may be tried by a civil court, or the jurisdiction of a civil court to try a person subject to this Act for an offence other than an offence under Part VI.

(2) Where a person—

- (a) is tried by a civil court for a civil offence; and
- (b) has already been sentenced to or awarded punishment for an offence under Part VI consisting of an act or omission that constitutes (whether wholly or in part) the civil offence,

section 63 of the Interpretation and General Provisions Act (Cap. 2) shall not apply but the civil court shall, in sentencing the person, have regard to the punishment imposed in respect of the offence under Part VI.

### **212. Persons not to be tried under this Act for offences already disposed of**

(1) A person who is subject to this Act shall not be liable in respect of an offence to be tried by a court-martial or to have the case dealt with summarily if the person—

- (a) has been tried for that offence by a competent civil court or under Part VI, or has had an offence committed by the person taken into consideration by any court or by a court-martial in sentencing the person; or
- (b) has been charged with an offence under Part VI, and has had the charge dismissed, or has been found guilty on the charge, by the person's commanding officer or the appropriate superior authority; or
- (c) has had an offence condoned by the person's commanding officer or the appropriate superior authority, as the case may be.

(2) For the purposes of this section—

- (a) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority despite the fact that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review;
- (b) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised in relation to the alleged offence, with knowledge of all relevant circumstances, has informed the person that charges will not be brought against the person in relation to the alleged offence;
- (c) a person ordered under section 106(2) to be imprisoned for an offence under that section shall be deemed to have been tried by a court-martial for the offence.

(3) Except as provided for under this section, proceedings for an offence under Part VI (whether before a court-martial or before a commanding officer or appropriate superior authority) shall not be barred on the ground of condonation.

#### *Military prosecutions*

### **213. Director of military prosecutions**

(1) There shall be a Director of Military Prosecutions in the Ministry responsible for Defence who shall be appointed by the Defence Council.

(2) A person shall not be appointed as the Director of Military Prosecutions unless the person is—

- (a) an officer of at least the rank of Brigadier; and
- (b) an advocate of the High Court of Kenya of not less than ten years standing.

(3) A person appointed as the Director of Military Prosecutions under this section shall—

- (a) have power to direct military police to investigate any information or allegation of criminal conduct, and a military police shall comply with any such direction;
- (b) exercise powers of prosecution under this Act and shall undertake prosecutions at a court-martial against any person subject to this Act in respect of any alleged offence under Part VI;
- (c) have power with the permission of the Judge Advocate to discontinue any proceedings before a court-martial at any stage before summing up by Judge Advocate.

(4) The Director of Military Prosecutions shall not discontinue proceedings before a courts martial unless with the permission of the Judge Advocate.

(5) Except as provided for in this Act, the Director of Military Prosecutions shall not require the consent of any person or authority for prosecutions and, in the exercise of the powers or functions under subsection (3) of this section shall not be under the direction or control of any person or authority.

(6) The office of the Director of Military Prosecutions shall be a separate office from that of the legal department in the Defence Forces or Ministry.

#### **214. Delegation of powers and function by the Director of Military Prosecutions**

(1) The powers of the Director of Military Prosecutions, except the power to discontinue proceedings before a court-martial, may be exercised in person, or by any legal officers, appointed by the Defence Council and acting under the Director of Military Prosecutions.

(2) A delegation or assignment under subsection (1) shall not prevent the Director of Military Prosecutions from exercising the power in question in person.

(3) A delegation under this section—

- (a) shall not divest the Director of Military Prosecutions of the responsibility concerning the exercise of the powers or the performance of the duty delegated; and
- (b) may be withdrawn, and any decision made by the person so delegated to may be withdrawn or amended by the Director of Military Prosecutions.

### **PART XII – FORFEITURES AND DEDUCTIONS**

#### **215. General Provisions**

(1) No forfeiture of the pay of an officer or service member shall be imposed and no deduction from such pay shall be made unless it is authorised by this Act or as prescribed.

(2) Where deduction or forfeiture is ordered from the pay of an officer or service member, that person shall, subject to the deduction or forfeiture remain in receipt of payment at a rate not less than that prescribed for the purposes of this section and any amount which the person should pay or forfeit for any period may be recovered by deduction from pay until all payment or amount due is recovered.

(3) Any amount authorised to be deducted from the pay of an officer or service member may be deducted from any balance (whether or not representing pay) which may be due to the officer or service member, and references in this Act to the making of deductions from pay shall be construed accordingly.

#### **216. Forfeiture of pay for absence from duty**

(1) The pay of an officer or service member shall be forfeited—

- (a) for any day of absence in circumstances that constitute an offence under sections 74 or 75 or, if the Chief of the Kenya Defence Forces or an authorised officer so directs, for any day of other absence without leave (other than absence by reason of having been captured by the enemy);
- (b) for any day of imprisonment or active service punishment to which the officer or service member is sentenced by a court-martial or that

is awarded by the commanding officer or the appropriate superior authority, or imprisonment of any description to which the person is liable by virtue of a sentence or order of a civil court;

- (c) if the person is convicted or found guilty of an offence under Part VI, for any day (whether before or after he or she is convicted or found guilty) on which the person is in hospital on account of sickness or injury certified by a medical officer to have been occasioned by the offence.

(2) The pay of an officer or service member shall be forfeited for any day of absence by reason of that person having been captured by an enemy, if the Defence Council is satisfied that—

- (a) the person was captured through disobedience of orders or willful neglect of duty;
- (b) having been captured, failed to take any reasonable steps available to rejoin the Defence Forces; or
- (c) while in captivity the person served with or aided the enemy in the prosecution of hostilities or in the taking of measures calculated to influence morale, or in any other way whatsoever not authorised by inter usage.

(3) Time shall be computed for the purposes of this section (and in particular, as to the counting or disregarding of parts of days) in the prescribed manner.

#### **217. Deductions for penalties**

(1) If a fine is imposed on an officer or service member under this Act, the amount of the fine may be deducted from that person's pay.

(2) If an officer or service member is charged with a civil offence, whether within or outside Kenya, and is sentenced or ordered by the court to pay any fine, penalty, damages, compensation or costs, and the whole or part thereof is met by a payment made by or on behalf of any service authority, the amount of the payment may be deducted from the person's pay.

#### **218. Compensation for loss occasioned by wrongful act or negligence**

(1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect if, after the prescribed investigation, it appears to the Service Commander or an authorised officer that any loss of, or damage to public property has been occasioned by any wrongful act or negligence of an officer or service member (in this section referred to as the person responsible).

(2) The Service Commander or authorised officer may order the person who is responsible to pay a specified sum as or towards compensation for the loss or damage, and any such sum may be deducted from the person's pay, so far as it has not otherwise been paid by the person responsible.

(3) An order shall not be made under subsection (2) if, in proceedings before a court-martial, the commanding officer or the appropriate superior authority, the person responsible—

- (a) has been exonerated by a finding that the person was not guilty of the wrongful act or negligence in question; or

- (b) has been awarded stoppages in respect of the same loss or damage,

but otherwise the fact that such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order under subsection (2).

#### **219. Deduction for barrack damage**

(1) If damage occurs to any premises in which one or more units of the Defence Forces, or parts of such units, are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, and it appears on investigation in the prescribed manner that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units but that those persons cannot be identified, any person belonging to any of the units or parts of units may be required to contribute in the prescribed manner, towards compensation for the damage or loss, such amount as may be determined to be just, and the amount may be deducted from each such person's pay.

(2) Subsection (1) extends to vehicles, aircraft, ships and trains in which units or parts of units of the Defence Forces are being transported, and reference to premises, quartering and occupation shall be construed accordingly.

#### **220. Remission of forfeitures and deductions**

A forfeiture or deduction imposed under any of sections 147, 160, 161 or 162 or under regulations made or under this Act, may be remitted by the Service Commander, or by such authority as may be prescribed.

### **PART XIII – BILLETING AND REQUISITIONING**

#### **221. Billeting orders**

At any time when this section is in operation by virtue of an order under section 182, if an officer not below the rank of major or corresponding rank commanding a unit of the Defence Forces, considers it necessary for the purpose of securing accommodation for members of the Defence Forces or their vehicles, the officer may issue a billeting order requiring the police officer in charge of police for a specified area to provide billets at specified places in that area for a specified number of members of the Defence Forces, or for a specified number of vehicles of the Defence Forces, or for both.

#### **222. Full and prompt compensation**

(1) Billeting in this Act shall be subject to the Bill of Rights under the Constitution.

(2) A person who has been deprived of his or her property under an order made pursuant to this Part shall be entitled to prompt payment in full of just compensation.

#### **223. Instances where billeting orders may be issued**

Billeting orders shall only be issued and take effect during—

- (a) a state of emergency;

- (b) war; or
- (c) armed conflict.

**224. Premises in which billets may be required**

(1) Billets for persons may be required to be provided—

- (a) in any hotel (whether licensed or not) or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward;
- (b) in any other building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of public funds; or
- (c) in any dwelling, outhouse, warehouse, barn or stables, but not in any other premises.

(2) Billets for vehicles may be required to be provided in any building or on any land.

**225. Billeting**

(1) If a billeting order has been produced to a police officer in charge of police for the specified area, the officer, on the demand of the officer commanding a unit of the Defence Forces, or on the demand of an officer or service member authorized in writing by such an officer, shall billet on the occupiers of premises which fall within section 224, and are at one of the places specified in the billeting order, such number of persons, or vehicles as may be required by the officer or service member, not exceeding the number specified in the billeting order.

(2) The police officer in charge of police shall exercise the functions under this section in such manner as the police officer considers will cause least hardship to persons on whom billeting takes place.

(3) The police officer in charge of police may, to such extent and subject to such restrictions as the police officer thinks proper, authorise any police officer to exercise functions under this section, and the provisions of this section shall apply accordingly.

**226. Accommodation to be provided, and payment thereof**

(1) If persons are billeted under a billeting order, the occupier on whom they are billeted shall furnish such accommodation and meals as the officer or service member demanding the billets may require and are available, not exceeding such accommodation and meals as may be prescribed.

(2) If vehicles are billeted under a billeting order, the occupier on whom they are billeted shall furnish standing room for the vehicles.

(3) If persons or vehicles have been billeted under billeting order, they may, so long as section 221 is in operation, continue to be billeted for such period as is requisite, and the allotment of the billets among the persons or vehicles concerned may be varied from time to time.

(4) The occupier on whom any person or vehicle is billeted shall be entitled to receive the prescribed payment for the billeting, but no payment shall be required in respect of vehicles billeted otherwise than in a building unless the land on which they are billeted—

- (a) has its surface made up for the passage or parking of vehicles; and
- (b) is not land where vehicles are normally allowed to stand free of charge irrespective of the persons by whom they are owned or driven.

(5) Payment for billeting shall be made—

- (a) at least once in every seven days, if the billeting continues for more than seven days; and
- (b) before the persons billeted finally leave, or the vehicles are finally removed from the premises where they are billeted.

### **227. Where there is no Occupier**

In relation to premises of which there is no occupier, this Part shall apply as if the person entitled to possession thereof were the occupier.

### **228. Appeals Against billeting**

(1) Any person who—

- (a) is aggrieved by having an undue number of persons billeted upon the person under a billeting order; or
- (b) claims that by reason of special circumstances the person should be exempted from having persons so billeted, either generally or on a particular occasion,

may apply to a committee consisting of a person or persons appointed by the Cabinet Secretary.

(2) On an application under subsection (1)(a), the committee may direct that such number of the persons billeted as may seem just shall be billeted on some other occupier, or may dismiss the application.

(3) On an application under subsection (1)(b), the committee may grant such exemption as may seem just, or may dismiss the application.

(4) An application under subsection (1) shall not affect billeting pending the determination of the application.

(5) The Cabinet secretary shall make regulations to give effect to this section.

### **229. Compensation for damage**

(1) If any damage is caused to any premises by the billeting of persons or vehicles under a billeting order, the occupier shall recover from the Government, compensation of an amount equal to the cost of repair to the premises caused by the damage.

(2) Such court of competent jurisdiction, as the Chief Justice shall determine, shall have jurisdiction to deal with any claim arising under subsection (1), irrespective of the amount of the claim.



(3) In awarding compensation under this Part the Court shall respect and uphold the right to property under Article 40 of the Constitution.

### **230. Application to civilians employed with Defence Forces and to aircraft, ships and boats**

(1) In relation to persons employed with the Defence Forces and not entitled under the provisions of this Part to be billeted being persons of such descriptions as may be prescribed, those provisions shall apply as they apply in relation to members of the Defence Forces.

(2) The provisions of this Part apply in respect of aircraft, ships and boats as they apply in respect of vehicles, and in relation to ships and boats, land shall include water.

### *Requisitioning of Vehicles*

#### **231. Requisitioning orders**

At any time when this section is in operation by virtue of an order made under section 240, if an officer not below the rank of major or corresponding rank commanding any part of the Defence Forces considers it is necessary in the interest of defence or public safety and the necessity is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the vehicles, may issue a requisitioning order authorising the requisitioning of specified vehicles, or of a specified number of vehicles of a specified description from among the vehicles in a specified area for meeting the needs of any specified unit of the Defence Forces or any part thereof.

#### **232. Requisitioning directions**

(1) A requisitioning order may be issued to the officer commanding any part of the Defence Forces, and that officer, or any officer or service member authorised in writing, may give directions for the provision—

- (a) in so far as the requisitioning order authorises the requisitioning of specified vehicles, of all or any of those vehicles; or
- (b) in so far as the order authorizes the requisitioning of vehicles of a specified description, of the number of vehicles of that description specified in the order or any lesser number of such vehicles.

(2) A direction under subsection (1), given as respects a vehicle, shall be a direction given to the person having possession of the vehicle either—

- (a) to furnish it immediately at the place where it is; or
- (b) to furnish it at a place within one hundred kilometers from the premises of that person, at a time specified by the officer or service member giving the direction, but no direction shall be given under this paragraph as respects either a vehicle that is not mechanically propelled, or a trailer normally drawn by a mechanically propelled vehicle.



(3) If the officer to whom the requisitioning order was issued, or any officer or service member authorised in writing—

- (a) is satisfied that a person Who has been directed to furnish a vehicle under subsections (1) and (2) has refused or failed to furnish it in accordance with that direction; or
- (b) has reasonable grounds for believing that it is not practicable without undue delay to give such a direction to the person having possession of the vehicle,

the person may take, or authorise any officer or service member to take, possession of the vehicle and, if possession is taken of a vehicle under this subsection, this Part shall, with the necessary modifications, apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefore as if it had been so furnished.

(4) The police officer in charge of police for any area specified in a requisitioning order shall, on being so requested by or on behalf of the officer to whom the requisitioning order was issued, give instructions for securing that so far as practicable police officers will be available, if required, for accompanying officers or service member requisitioning vehicles under the requisitioning order.

### **233. Period for which vehicles are to be requisitioned**

If a vehicle has been furnished under a requisitioning order, it may be retained, so long as section 231 is in operation, for a period for which it is required for any purpose connected with the needs of the Defence Forces.

### **234. Provision of vehicles for purchase**

A requisitioning order may require any person to furnish a vehicle for the purpose of its being purchased by the Government.

### **235. Payment for vehicles requisitioned**

(1) The person by whom a vehicle is furnished under a requisitioning order, otherwise than for the purpose of its being purchased, shall be entitled to be paid—

- (a) a sum for the use of the vehicle calculated, by reference to the period for which possession of the vehicle is retained, at the rate of payment commonly recognized or generally prevailing in the area at the time at which the vehicle is furnished or, if no such rate is readily ascertainable, at such rate as may be just;
- (b) a sum equal to the cost of making good any damage caused to the vehicle, not being damage resulting in its total loss or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and which has not been made good during that period by the government; and
- (c) if, during the said period, a total loss of the vehicle occurs, a sum equal to the value of the vehicle immediately before the occurrence of the damage which caused the loss.

(2) For purposes of subsection (1), “**fair wear and tear**” means such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.

(3) The person by whom a vehicle is furnished under a requisitioning order for the purpose of its being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.

(4) If a vehicle is furnished under a direction under section 234—

- (a) for the purposes of subsection (1)(a) and (b) (if that subsection applies), the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and for the purposes of subsection (3) (if that subsection applies), the vehicle shall be deemed to have been furnished at that time;
- (b) in addition to the payments provided for by subsection (1) or subsection (3), the person by whom the vehicle is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him or her in complying with the direction.

(5) If a direction to furnish a vehicle is given under section 234, and after the giving of the direction any damage occurs to the vehicle (whether or not resulting in its total loss), if the damage prevents the vehicle being furnished in accordance with the requisitioning order, the foregoing provisions of this section shall apply as if the vehicle had been furnished and had been furnished otherwise than for the purpose of its being purchased (despite the fact that it may have been required to be furnished for the purpose of its being purchased), subject however to the following modifications—

- (a) subsection (1) shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage; and
- (b) subsection (4) shall have effect as if the expression “in complying with” were replaced by the expression “by reason of anything done for the purpose of complying with”.

(6) If a person is required by a direction to furnish a vehicle—

- (a) the person shall notify the details of the requisitioning and of any payment thereof to any person known to that person to have an interest in the vehicle; and
- (b) any person having an interest shall be entitled to recover from the person giving notice the part, if any, of the payment received by that person for the vehicle as may be just.

(7) If, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then—

- (a) for the purposes of subsection (1), that period shall be deemed to have come to an end immediately after the occurrence of the loss; and
- (b) no claim shall be made for the return of the vehicle, if it still exists, or for any payment in respect thereof other than what is provided for by subsection (1).

(8) The Court shall have jurisdiction to deal with any claim arising under this section irrespective of the amount of the claim.

### **236. Avoidance of hardship in requisitioning vehicles**

In deciding which of alternative vehicles is to be specified in a requisitioning order, or is to be the subject of a direction under section 234, the person issuing the direction given shall act in such manner as that person consider will cause the least hardship.

### **237. Issue of Search warrant**

If a Judge or a magistrate is satisfied that a person has failed to afford facilities for inspection as required by or under regulations made under section 308 of this Act, the Judge or magistrate may issue a search warrant authorizing a named police officer to enter any premises within which the facilities are required, accompanied by that person, at any time between six o'clock in the morning and nine o'clock in the evening, and to inspect anything that may be found therein.

### **238. Damage by vehicles being delivered for requisitioning**

A person who is using a vehicle for the purpose of its being furnished under a direction under section 231(2) shall be deemed, as respects any claim in respect of injury or damage to any other person or property, to be using the vehicle as a servant of the Government, and section 4 of the Insurance (Motor Vehicles Third Party Risks) Act (Cap. 405) shall not apply to the use of a vehicle for that purpose.

### **239. Application to aircraft, ships, horses, etc. food, forage and stores**

(1) Subject to this section, the provisions of this Part, except the provisions which relate to mechanically propelled vehicles and trailers normally drawn thereby, apply in respect of aircraft, ships, boats, horses, mules, donkeys, camels, food, forage, fuel and stores as they apply in respect of vehicles.

(2) Where stores are required and can be conveyed with, a vehicle with respect to which a direction is given under section 234, direction may also be given in relation to the stores and the foregoing provisions of this Part shall apply accordingly but section 235(5) shall not apply and if after the direction is given the furnishing of the stores is prevented by damage to them or to the vehicle, such payment, if any, shall be made in respect of the stores as may be just in all the circumstances.

(3) For the purposes of this section, “stores” means any chattel (other than a vehicle, aircraft, ship, boat, horse, mule, donkey or camel, or food, forage or fuel) that is required for, or is for use in connection with—

- (a) persons, vehicles, aircraft, ships or boats billeted or to be billeted under a billeting order or otherwise temporarily accommodated or to be temporarily accommodated; or
- (b) vehicles, aircraft, ships, boats, horses, mules, donkeys or camels furnished or to be furnished under a requisitioning order.

**240. Bringing into operation sections 221 and 231**

Following a declaration of a state of emergency pursuant to Article 58 of the Constitution, if it appears to the President that, in the interest of national security or public interest, the provisions of either or both sections 221 and 231 come into operation for a specified period, either generally or in respect of a specified area, the President may, by order in the *Gazette*, direct that section or those sections, as the case may be, thereupon come into operation and remain in operation for the period specified in the *Gazette*.

**241. Reports by the Defence Council on billeting**

The Defence Council shall report to Parliament all property billeted and the justification for billeting.

**PART XIV – SERVICE IN DEFENCE FORCES****242. Application**

Unless the contrary appears from the context, this Part applies to members of the regular force and to members of the reserve force.

**243. Regular force**

(1) The regular force consists of persons not younger than eighteen years of age and not older than sixty two years and is organized in the manner prescribed.

(2) The terms and conditions of service in the regular force as well as the conditions and procedures regarding enrolment, appointment, promotion and transfer, but not remuneration, are as prescribed.

(3) In relation to regular forces the following shall apply—

- (a) the relevant provisions of any applicable law relating to the granting of pensions and related benefits, as well as any rules and regulations made in terms of or under those laws, apply to members of the regular force; and
- (b) any member enrolled in the regular force shall serve therein until he or she has been officially discharged therefrom.

(4) A person shall not be enrolled in the regular force unless that person is a citizen.

(5) A member of the regular force shall not participate in any other gainful employment unless prior authority has been obtained from the Cabinet Secretary.

**244. Pensions and gratuity**

(1) The members of the Defence Forces shall be entitled to such pensions and gratuity as shall be determined by the Treasury in consultation with the Defence Council in accordance with regulations.

(2) Where an officer or a service member has been dismissed under any circumstances provided for under this Act, the Defence Council may withhold, reduce the amount or suspend any such benefits payable to the officer or the service member under subsection (1).

(3) A decision to withhold, reduce in amount or suspend any benefits of an officer or a service member contemplated under subsection (2) shall be made with the concurrence of the Public Service Commission.

#### **245. Protection of members on active service**

(1) For the purposes of this section “**member**” includes an employee deployed with the Defence Forces.

(2) Where a member of the Defence Forces has been captured or has gone missing in circumstances not constituting an offence under this Act, and the member’s commanding officer is satisfied that the member’s capture or absence arose from the performance of his or her duties while rendering services in terms of this Act, such member shall be regarded to be still serving in the Defence Forces for all purposes until the day on which he or she again reports for duty or on which his or her death is confirmed or on which a competent court issues an order whereby the death of such person is presumed.

(3) The pay, salary and allowances accruing to a member during his or her captivity or other absence contemplated in subsection (2) shall be paid to a beneficiary designated by the member concerned.

(4) The Chief of the Defence Forces shall take the necessary steps to ensure that in respect of every member of the Defence Force there is at all times a record of the particulars of the beneficiary designated by such member for purposes of subsection (3).

(5) A member of the Defence Forces may at any time designate another person in the place of the person designated for purposes of paragraph (3) and shall ensure that any change in designation is notified to the Chief of the Kenya Defence Forces in writing.

(6) Any change in designation becomes valid for purposes of subsection (3) when it is received by or on behalf of the Chief of the Defence Forces.

(7) Subject to any other law relating to the protection of citizens who are in active service on behalf of the State, no appropriations, including seizures or attachments, may be made under or by virtue of any writ of execution, garnishee or sequestration order issued against a member of the Defence Forces who is employed on active service in time of war or during a state of national defence or in fulfillment of the Republic’s international obligations, except appropriations under or by virtue of a maintenance order issued against the said member.

(8) A member of the Defence Forces who, through no misconduct on his or her part, sustains a wound or injury or contracts an illness while on military service or undergoing training is, under such conditions and for such period as may be prescribed, entitled to be provided with medical, dental and psychological or other necessary treatment for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond that member’s service contract.

(9) A member who is receiving the treatment referred to in subsection (8) shall receive his or her pay and allowances on their becoming due and such period of treatment shall for all purposes be regarded as duty.

(10) The Government shall compensate members or families of members of the Defence Forces, as the case may be, who lose their lives or suffer disabilities while exercising military service or training.

#### **246. Obligation to serve during a state of emergency**

(1) Subject to this Act, every person who is contracted to serve in the Defence Forces is obliged to serve and remain in service during a state of emergency or when so required.

(2) Nothing in this section may be construed as prohibiting an application for exemption or deferment of service by a member of the Defence Forces in terms of this Act.

#### **247. Termination of service of members of regular force**

The service of a member of the regular force is terminated upon—

- (a) retirement;
- (b) resignation;
- (c) termination of commission;
- (d) dismissal from service; or
- (e) discharge from service.

#### **248. Legal representation for members**

A member of the Defence Forces against whom a civil claim or any other action arising from his or her acts or omissions in the course of duty, has been instituted in any court, is entitled to legal representation at the expense of the State if substantive injustice would otherwise arise.

### **PART XV – COMMISSIONING OF OFFICERS AND ENLISTMENT OF SERVICE MEMBERS**

#### **249. Commissioned officers**

(1) Subject to subsection (5), the President may confer a commission on any member of the Defence Forces.

(2) A commission may either be—

- (a) a regular commission; or
- (b) a short service commission for a term not exceeding five years in the first instance.

(3) Upon being granted a commission, a person shall take an oath of allegiance in the prescribed form as set out in the Fourth Schedule.

(4) A member upon whom a commission has been conferred shall be issued with a Presidential parchment bearing the President's signature.

(5) In order to qualify for a commission a person shall—

- (a) take oath and declare allegiance to the Republic and the Constitution;
- (b) meet prescribed criteria or training;

- (c) never have been convicted of a criminal offence;
- (d) be a fit and proper person to serve and shall have a trustworthy and exemplary character; and
- (e) comply with the prescribed security grading requirements.

(6) Where the holder of a commission cannot be traced after a diligent search that is appropriate in the circumstances, the commission may be cancelled without such notification.

(7) An officer may by notice in writing to the Defence Council, request to be relieved of his or her commission and, unless otherwise determined by the Defence Council, the request shall take effect on the date indicated in the notice.

(8) Where the Defence Council declines to approve resignation request under subsection (7), the Defence Council, shall within reasonable time and in writing, communicate such decision and reasons for declining.

(9) A former officer is not, in consequence of the withdrawal of his or her commission, exempt from—

- (a) any service or training for which he or she may be liable in terms of this Act unless exempted in accordance with regulations.
- (b) the repayment of any money stipulated in a contract pertaining to any education or training he or she may have undergone or may be in the process of undergoing at State expense.

(10) Officers who have retired from the Defence Forces and while still in service held commission, may retain the use of their rank after they have so retired and are no longer in service, but shall append the appellation "Rtd" whenever it is used.

(11) Commissioned officers from other countries who are attached to the Defence Forces by means of temporary appointment in terms of this Act shall be entitled to all privileges bestowed on commissioned officers in the Defence Forces by virtue of their rank.

## **250. Reserve liability**

(1) An officer holding a regular commission who retires from the Defence Forces with a pension or gratuity shall thereupon be transferred to the reserve, and shall serve in it until the age of—

- (a) sixty-two years, in the case of an officer retiring with the rank of Major-General or corresponding rank or above;
- (b) sixty years, in the case of an officer retiring with the rank of Brigadier, Colonel or Lieutenant-Colonel or corresponding rank; or
- (c) fifty five years, in the case of an officer retiring with the rank of Major or corresponding rank or below.

(2) An officer holding a short service commission who completes the term of the commission with a pension or gratuity shall on such completion be transferred to the regular reserve and shall remain in it for a period of three years.



**251. Termination of commission**

(1) Subject to Article 47 of the Constitution—

- (a) the President may terminate the commission of any officer above the rank of major or corresponding rank or above;
- (b) the Defence Council may terminate the commission of any officer of the rank of major or corresponding rank or below; or
- (c) a Service Commander may terminate the commission of any officer during the first eighteen months of the officer's actual commission in the Service.

(2) In any case of termination of a commission in this section, the President, the Defence Council or the Service Commander, as the case may be, shall accord and specify reasons for the termination of the commission to the affected officer, in writing.

**252. Enlistment**

A person who is offering to enlist in the Defence Forces shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the enlistment, and a recruiting officer shall not recruit any person unless that person satisfies the recruiting officer that the person has been given such a notice, understands it, and wishes to enlist.

**253. Term of enlistment**

(1) The term for which a person who has attained the age of eighteen years may enlist, shall be one of the prescribed periods of colour service (not exceeding twelve years) beginning on the date of attestation.

(2) In computing the period of service of a service member, there shall be excluded therefrom—

- (a) all periods during which the member has been absent from duty by reason of—
  - (i) imprisonment; or
  - (ii) desertion; or
  - (iii) absence without leave exceeding seven days; and
- (b) any period ordered by a court-martial to be forfeited.

(3) Within two years before completing the period of colour service of a service member who is of good character, the member, with the approval of the competent service authority, may re-engage for such further period of colour service as may be prescribed, subject to subsection (5).

(4) Except as provided by subsection (6), the further period of colour service, together with the previous period of colour service, shall not exceed a total continuous period of twenty-one years colour service from the date, of the original attestation or the date upon which the person attained the age of eighteen years, whichever is the later.



(5) A service member who has completed a period of twenty-one years colour service may—

- (a) with the approval of the Service Commander or an Officer authorised by the Service Commander in that behalf, continue to serve from year to year in all respects as if the period of colour service were still unexpired, and
- (b) at any time give to the member's commanding officer three months' notice to be discharged, and on the expiration of that notice the member may claim to be discharged.

(6) A service member who completes a period of colour service (and any period by which that service is prolonged under subsection (6) of this section or under section 255, or is otherwise discharged (other than under sections 254 or 256) shall thereupon be transferred to the reserve, and shall serve therein until attaining the age of fifty-five years.

#### **254. Prolongation of service**

Any officer due to retire or who completes the term of the officer's commission, and any service member whose period of colour service expires, during a state of war, insurrection, hostilities or public emergency or at a time of active service, may be retained in the Defence Forces and the service prolonged for such further period as the Defence Council may determine.

#### **255. Discharge**

(1) A service member may be discharged by the Service Commander or an officer authorised in that behalf, at any time during the member's period of colour service—

- (a) if, within two years after the date of attestation, the commanding officer considers that the member is unlikely to be an efficient member of the Defence Forces;
- (b) for activities or behavior likely to be prejudicial to the preservation of public security;
- (c) if the member is convicted of a civil offence; or
- (d) if the member is pronounced by a medical officer to be mentally or physically unfit for further service;
- (e) on reduction of establishment;
- (f) at the member's request on compassionate grounds;
- (g) if for any reason the member's services are no longer required;
- (h) if the member is granted a commission; or
- (i) if the member is sentenced by a court-martial to be dismissed from the Defence Forces.

(2) The Service Commander or an officer authorised in that behalf, as the case may be, shall accord and specify reasons in writing for any discharge, to the affected service member.

**256. Postponement of discharge or transfer pending proceedings for offences, etc.**

Despite anything in this Part, a service member is not entitled to be discharged or transferred to the reserve—

- (a) at a time when that member has become liable, as a person subject to this Act, to be proceeded against for an offence under Part VI; or
- (b) where that member is serving a sentence of imprisonment in respect of an offence under Part VI, during the currency of the sentence.

**257. Mode of discharge**

(1) Subject to this Part, every service member becoming entitled or liable to be discharged shall be discharged immediately but shall, until discharged, remain subject to this Act.

(2) When a service member who is entitled or liable to be discharged is serving outside Kenya, the member shall be returned to Kenya free of cost and shall be discharged on arrival or, if the member consents to the discharge being delayed, within six months after arrival in Kenya.

(3) A service member shall not be discharged unless the discharge has been authorised by order of the Service Commander or an officer authorised in that behalf.

(4) Every service member shall be given, on discharge, a certificate of discharge containing the prescribed particulars.

(5) A service member who is discharged in Kenya shall be entitled to be conveyed free of cost from the place where the member is discharged to the place stated in the member's attestation paper to be the place of attestation, or to any place in Kenya at which the member intends to reside and to which the member can be conveyed at no greater cost.

**258. Validity of attestation and enlistment**

(1) If a person has made the prescribed declaration upon attestation, and has thereafter received pay as a service member—

- (a) the validity of that person's enlistment shall not be called in question on the grounds of any error or omission in the attestation paper; and
- (b) if, within a period of three months after the date of the declaration, the member claims that the enlistment is invalid by reason of non-compliance with the requirements of this Act or any other matter whatsoever (not being an error or omission in the attestation paper), the claim shall be submitted to the Defence Council as soon as may be, and if the claim is well founded the Defence Council shall cause the member to be discharged immediately.

(2) If no claim is made within the period stated under subsection (1)(b), or if the Defence Council is of the opinion that the claim is unfounded, the person concerned shall be deemed to have been validly enlisted despite any non-compliance or other matter and the person shall be a service member until discharged.

(3) If a person has received pay as a service member without having previously made the prescribed declaration upon attestation the person—

- (a) shall be a service member until discharged; and
- (b) may claim to be discharged at any time within three months after the first day in respect of which the person has received pay.

(4) Nothing in this section shall prejudice the determination of any question as to the term for which a person enlisted or prevent the discharge of a person who has not claimed a discharge.

## PART XVI –THE RESERVES

### **259. Transfer to reserve**

(1) Every officer and every service member who is liable to be transferred to the regular reserve shall until transferred remain subject to this Act.

(2) When an officer or a service member who becomes eligible to be transferred to the regular reserve is serving outside Kenya, the person shall be returned to Kenya free of cost immediately, and shall be transferred to the regular reserve on arrival or, within six months after arrival if the person consents to the transfer being delayed.

(3) A service member who is transferred to the regular reserve in Kenya shall be entitled to be conveyed free of cost to the place stated in the attestation paper to be the place of attestation, or to any place in Kenya at which the person intends to reside and to which the person can be conveyed at no greater cost.

### **260. Volunteer reserve**

(1) If the Defence Council decides in pursuant to this Act that there shall be a volunteer reserve, it shall consist of such officers and service members as the Defence Council determines.

(2) Commissions in the volunteer reserve shall be granted and may be terminated as is provided for by sections 249 and 251 of this Act in relation to the regular force.

(3) A person may be enlisted into the volunteer reserve, and when enlisted shall serve in the volunteer reserve, in the same manner as is provided for the regular forces under this Act, and those sections shall apply with necessary changes in relation to enlistment and service members enlisted into the volunteer reserve as they apply to enlistment and service members enlisted into the regular forces.

### **261. Calling out reservists for annual training**

(1) A reservist may be called out for training for a period not exceeding, or for periods not exceeding in the aggregate, twenty eight days in any one year.

(2) During any training the reservist may be posted or attached to and trained with any unit of the Defence Forces.

**262. Calling out reservists temporarily**

(1) At any time the President, by notice in the *Gazette*, may temporarily call out reservists, whether by class or by name to—

- (a) strengthen the Defence Forces in time of war; or
- (b) support the civil power in the maintenance of order in the event of disturbances, insurrection, hostilities or public emergency for a period not exceeding twenty-eight days.

(2) In a notice issued under subsection (1), the President may give or authorise the Cabinet Secretary to give such directions as may seem necessary or proper for facilitating the calling out of the reservists.

(3) Every notice and directions under this section shall be obeyed, and every reservist called out by the notice shall attend at the place and time appointed by the notice or the directions, and after that time shall be deemed to be called out on temporary service.

**263. Calling out reservists on permanent service**

(1) At any time when Article 58 of the Constitution applies is or in operation (whether generally or in a part of Kenya), the President may, by proclamation, call out reservists, whether by class or by name, on permanent service, either generally or (as the case may be) in that part of Kenya.

(2) In a proclamation issued under subsection (1), the President may give or authorise the Cabinet Secretary to give such directions as may seem necessary or proper for facilitating the calling out of the reservists.

(3) Every reservist who is an officer called out on permanent service is liable to serve until the officer's services are no longer required, but in any case not beyond the age limits specified in section 251(2), irrespective of whether the officer held a regular commission or a short service commission, together with such further period as the Cabinet Secretary may determine.

(4) Every reservist who is a service member called out on permanent service is liable to serve as a service member until the member's services are no longer required, but in any case not longer than the remainder of the member's period of service in the reserve together with such further period as the Cabinet Secretary may determine.

**264. Punishment for non-attendance**

(1) Any reservist who, without leave lawfully granted or other reasonable excuse, fails to report when called out under this Part shall if—

- (a) called out under sections 261 or 262, commits an offence of absence without leave within the meaning of section 75;
- (b) called out under section 263, commits an offence, according to the circumstances, of desertion within the meaning of section 74, or of absence, without leave within the meaning of section 75.

(2) Section 137 shall apply to reservists who commit an offence under this section as it applies to persons otherwise subject to this Act.

**265. Record of illegal absence**

Where a reservist fails to report when called out and the absence continues for at least twenty-one days, an entry of such absence shall be made by an officer in the service books, and the entry shall be, at first glance, evidence of the fact of absence.

**266. Release from reserve during active service**

(1) Upon completion of a reservist's period of service in the reserve, the reservist shall be released from the reserve, unless—

- (a) the reservist is on active service;
- (b) the reserve has been called out on permanent service; or
- (c) at the expiration of the period, the reservist stands charged as a person subject to this Act with the commission of, or is undergoing punishment for, an offence under this Act.

(2) If the reservist stands charged or is undergoing punishment as provided under subsection (1)(c), the service shall be prolonged and release deferred until the reservist has been tried and undergone any punishment awarded in respect of the offence, or until the punishment is completed, as the case may be.

**267. Release from service**

A reservist may be released from the reserve by the Service Commander or an officer authorised in that behalf, at any time if—

- (a) the reservist is pronounced by a medical officer to be mentally or physically unfit for further service; or
- (b) the reservist's services for any reason are no longer required.

**PART XVII – CIVIL OFFENCES CONCERNING THE DEFENCE FORCES****268. Application of this part**

(1) This Part shall apply to civilians and any other person not otherwise subject to this Act.

(2) Offences under this Part shall be tried by civil courts.

**269. Obstructing the military police, etc.**

Any person who—

- (a) assaults, resists or willfully obstructs a member of the military police in the performance of duties under this Act, or any person acting in the aid of such a member;
- (b) induces or does any act calculated to induce a member of the military police to neglect or to act contrary to duty as a member; or
- (c) induces or does any act calculated to induce a member of the military police to commit any breach of discipline or any act whereby

any lawful order given to a member of the military police or any written law with which it is the duty of a member of the military police to comply may be evaded or infringed,

commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding three years, and may be arrested without a warrant by any member of the military police or any police officer.

#### **270. Prohibition of torture or cruel treatment**

(1) A member of the Defence Forces shall not subject any person to torture, cruel, inhuman or degrading treatment.

(2) A member of the Defence Forces who subjects a person to torture commits an offence and is liable on conviction to a fine not exceeding ten million shillings or imprisonment for a term not exceeding twenty five years or both.

(3) A member of the Defence Forces who subjects a person to cruel, inhuman or degrading treatment commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding fifteen years or both.

(4) In this section—

“**cruel, inhuman or degrading treatment or punishment**” means a deliberate and aggravated treatment or punishment not amounting to torture, inflicted by a person in authority or the agent of the person in authority against a person under his or her custody, causing suffering, gross humiliation or debasement to the person;

“**torture**” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of—

- (i) obtaining information or a confession from the person or from a third person;
- (ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed;
- (iii) intimidating or coercing that person or a third person; or
- (iv) for any reason based on discrimination of any kind,

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

#### **271. Procuring and assisting desertion**

A person who—

- (a) procures or persuades a person to desert or to be absent without leave from the Defence Forces;
- (b) knowing that a person is about to desert or be absent without leave from the Defence Forces, assists the person in so doing; or
- (c) knowing a person to be a deserter or absentee without leave from the Defence Forces, conceals the person or assists in such concealment in rescuing the person from custody,

commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding one year.

**272. Pretending to be a deserter**

Any person who falsely represents himself or herself to any service authority or civil authority to be a deserter or absentee without leave from the Defence Forces commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

**273. Obstructing person in execution of duty**

Any person who willfully obstructs or otherwise interferes with an officer or service member acting in the execution of a duty, commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

**274. Aiding malingering**

Any person who—

- (a) produces in an officer or service member any sickness or disability; or
- (b) supplies to or for an officer or service member any drug or preparation calculated or likely to render the person permanently or temporarily unfit for service, or lead to the belief that the person is permanently or temporarily unfit for service,

with a view to enabling the person to avoid service in the Defence Forces, whether permanently or temporarily, commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding one year.

**275. Unlawful purchase of military stores, etc.**

(1) Any person who acquires any service stores, or solicits or procures any person to dispose of any service stores, or acts for any person in the disposing of any service stores, commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding two years.

(2) A person shall not be liable under subsection (1) if that person proves that—

- (a) he or she did not know, and could not reasonably be expected to know, that the chattels in question were service stores;
- (b) the chattels in question had (by the transaction with which he or she is charged or by some earlier transaction) been disposed of by order or with the consent of the Government or of some other person or authority who had, or whom he or she had reasonable cause to believe to have, power to give the order or consent; or
- (c) the chattels in question had become the property of an officer who had retired or ceased to be an officer, or of a service member who had been discharged, or of the personal representatives of an officer or service member who had died.

(3) A police officer may arrest without warrant any person who is reasonably suspected of having committed an offence under this section, and may seize any property that is reasonably suspected of having been the subject of the offence.



(4) Any person who has authority to issue a warrant for the arrest of a person charged with a crime may, if satisfied by evidence on oath that a person is in possession or is reasonably suspected of having in possession of such property, issue a warrant to search for such property and if the property reasonably suspected of being the subject of such an offence is found on such, it shall be seized by the officer executing the warrant and bring the person in whose possession or keeping the property is found before a court.

(5) For the purposes of this section—

- (a) “**acquire**” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);
- (b) “**dispose of**” means sell, offer or expose for sale, give in exchange, pledge or otherwise hand over (whether apart from this section the handling over is lawful or not); and
- (c) “**service stores**” means any chattels or goods of any description belonging to the Government, which have been issued for use for the purpose of the Defence Forces or are held in store for the purpose of being so issued when required, and any chattels or goods which had belonged, and had been issued or held, as aforesaid at some past time.

(6) For the purpose of subsection (4), property shall be deemed to be in the possession of a person if he or she has it under his or her control for own use or benefit or for the use or benefit of another.

#### **276. Refusal to receive persons billeted, etc.**

(1) A person who—

- (a) refuses to receive any person billeted under a billeting order, or without reasonable excuse fails to furnish the required accommodation;
- (b) gives or agrees to give to any person billeted under a billeting order any money or reward in place of receiving any person or vehicle or of furnishing required accommodation properly; or
- (c) obstructs the billeting of any vehicle, aircraft, ship or boat in the person’s building or on any land or water under the person’s control,

commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

#### **277. Enforcement of requisitioning**

(1) A person who—

- (a) fails to furnish any vehicle or specified thing as directed to furnish under a requisitioning order, or fails to furnish any such vehicle or specified thing at the time and place as directed to furnish it;
- (b) fails to comply with any regulations made under section 304(1)(u); or



- (c) obstructs any officer or other person in the exercise of any functions under Part XIII in relation to the inspection or requisitioning of vehicles or specified things,

commits an offence and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

(2) For the purposes of subsection (1), “**specified thing**” means one of the things, animals and commodities specified in section 239(1).

**278. Illegal dealings in documents relating to pay, pensions, mobilization, etc.**

(1) Any person who—

- (a) receives, detains or has possession of any official document issued in connection with any pay, pension, allowance, gratuity or other money payable to any person in respect of any person's service in the Defence Forces—
- (i) as a pledge or a security for a debt;
  - (ii) with a view to obtaining payment, from the person entitled to the pay, pension, allowance, gratuity or other money, of a debt due either to any person; or
- (b) without lawful authority or reasonable excuse has in possession of any document, or official document issued in connection with the mobilization or demobilization of the Defence Forces or any part or member thereof,

commits an offence and shall be liable on conviction by a civil court to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year.

(2) For the purposes of this section, a document shall be deemed to be in the possession of a person if that person has it under control and irrespective of whether the person has it for the use or benefit of the person or another.

**279. Unauthorised use of and dealing in uniform, decorations, etc.**

(1) A person who—

- (a) without authority, uses or wears any service decoration, uniform, or any badge, insignia of rank, wound stripe or emblem supplied or authorized by the President or the Defence Council;
- (b) uses or wears any uniform, decoration, badge, insignia of rank, wound stripe or emblem so nearly resembling any service decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorised, as to be calculated to deceive;
- (c) falsely represents himself or herself to be a person who is or has been entitled to use or wear any service uniform, decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorized as; or

- (d) purchases or takes in pawn any service uniform, decoration awarded to any member of the Defence Forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof,

commits an offence under this section and shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding one year.

(2) Despite provisions under subsection (1)(a), (b) and (c), a person shall not be prohibited from wearing brooches or ornaments representing service badges.

## PART XVIII – VISITING FORCES

### 280. Interpretation of Part

In this Part—

“**appropriate authority**”, in relation to a country, means such authority as is appointed by the Government of that country for the purposes of this Part;

“**civilian component**” means the civilian personnel accompanying a visiting force, who are employed in the service of the visiting force or are employed by an authorized service organization accompanying a visiting force, and who are not stateless persons or citizens of Kenya or persons ordinarily resident in Kenya;

“**dependant**” means a person who is not ordinarily resident in Kenya and who is the wife, husband or a child of a member of a visiting force who is under the age of twenty one years;

“**designated country**” means a country designated under section 281;

“**forces**”, in relation to a country, means the naval, military or air forces of that country;

“**member**”, in relation to a visiting force, includes a member of the civilian component of that visiting force, and a dependant;

“**sentence**” includes any punishment awarded or imposed by a service court;

“**service court**”, in relation to a country, means a court established under the service law of that country, or any authority empowered by that service law to investigate or try charges, or any authority empowered by that service law to review the proceedings of such a court or authority;

“**service law**”, in relation to a country, means the laws governing the forces of that country; and

“**visiting force**” means anybody of the forces of a designated country which for the time being is lawfully present in Kenya in time of peace under a treaty, agreement to which the Government is party to.

### 281. Power to apply Part

(1) If it appears to the Defence Council that it is expedient that this Part should have effect in relation to any particular country, the Cabinet Secretary responsible for Foreign Affairs may, by order, designate that country as a country to which this Part applies.

(2) An order under subsection (1) may provide that it shall have effect subject to limitations or conditions, or that this Part shall apply with modifications or adaptations.

### **282. Powers of service courts of visiting forces**

(1) The service courts and service authorities of a designated country may, within Kenya or on board any ship or aircraft belonging to the Government, exercise over members of a visiting force that belongs to that country all such powers as are exercisable by them according to the law of the country, subject to the Constitution of Kenya.

(2) If a sentence has been passed, whether within or outside Kenya, by a service court of a designated country upon a member of a visiting force then, for the purposes of proceedings in a court of Kenya—

- (a) the service court shall be deemed to have been properly constituted;
- (b) the sentence shall be deemed to have been within the jurisdiction of the service court and to have been in accordance with the law of the designated country; and
- (c) the sentence, if executed according to the tenor of the sentence, shall be deemed to be lawfully executed.

(3) Any person who is detained in custody under a sentence contemplated in subsection (2) is in lawful custody.

(4) Despite the provisions of this section, a sentence of death passed by a service court of a designated country shall not be carried out in Kenya unless under the law of Kenya a sentence of death could have been passed in a similar case.

### **283. Prosecution and trial for civil offences**

(1) The Kenyan civil courts shall have exclusive jurisdiction and primary right to try any member of a visiting force for any civil offence committed in contravention of any Kenyan law, customary international law, treaty or an agreement the Kenyan Government is party to.

(2) Despite subsection (1), a provision in a treaty or agreement to which the Kenyan Government is party to may confer exclusive and primary right to try any member of a visiting force to the authorities of that visiting force.

(3) If a member of a visiting force has been tried by a court of the country to which the force belongs—

- (a) the member shall not be tried for the same offence by a Kenyan court; and
- (b) if the member is subsequently convicted by a Kenyan court and it appears to that court that the conviction is wholly or partly in respect of acts or omissions in respect of which the person was convicted by the court, the Kenyan court in sentencing shall have regard to any sentence passed by the court.

**284. Proof of certain facts**

(1) For purposes of this Part, a certificate issued by or on behalf of the appropriate authority of a designated country—

- (a) that a body of the forces of that country is or was at a particular time present in Kenya shall, in proceedings in a Kenyan court, be conclusive evidence of the fact certified;
- (b) that a named person at a particular time either was or was not a member (whether as a member of the force or as a member of the civilian component or as a dependant) of a visiting force of that country shall, in proceedings in a Kenyan court, be sufficient evidence of the fact, unless the contrary is proved;
- (c) that a named person—
  - (i) on particular date was sentenced by a service court of that country to a particular punishment;
  - (ii) is, or was at a particular time, detained in custody under a sentence passed by a service court of that country; or
  - (iii) at a particular time and place, was tried by a service court of that country for a particular offence,

shall, in proceedings in a Kenyan court, be conclusive evidence of the fact certified.

(2) If—

- (a) in a certificate issued for the purposes of this section reference is made to a person by name; and
- (b) in proceedings in a Kenyan court, reference is made to a person by that name (whether as a party to the proceedings or otherwise),

the reference in the certificate and the reference in the proceedings shall be presumed to be references to the same person, unless the contrary is proved.

(3) A document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of a particular authority, shall be presumed to be a certificate issued by or on behalf of that authority, unless the contrary is proved.

(4) If a document purporting to be a certificate issued for the purpose of this section—

- (a) is one which under this section may be issued by or on behalf of the appropriate authority of a designated country; and
- (b) purports to be signed by or on behalf of an authority of that country,

that authority shall, in any proceedings in a Kenyan court, be presumed to be the appropriate authority of that country for the purposes of this section, unless the contrary is proved.

(5) If in proceedings in a Kenyan court it is admitted or proved (whether by means of a certificate or otherwise) that a body of the forces of a designated country is or was at a particular time present in Kenya, it shall be presumed in those proceedings that the body is or was at that time lawfully present in Kenya, unless the contrary is proved.

## PART XIX – FINANCIAL PROVISIONS

**285. Funds of the Defence Forces**

(1) The funds of the Defence Forces shall consist of—

- (a) monies allocated by Parliament for the purposes of the Defence Forces;
- (b) such monies or assets as may accrue to the Defence Forces in the course of the exercise of its powers or the performance of its functions under this Act; and
- (c) all monies from any other source provided for or donated to the Defence Forces.

(2) The Funds of the Defence Forces shall be in a separate vote.

(3) Monies donated to the Defence Forces under subsection (1)(c) shall be disclosed and reported in accordance with this Act and the law relating to management of public funds.

**286. Allocations of Funds**

(1) The National Assembly shall allocate adequate funds to enable the Defence Forces to perform its functions.

**287. Financial year**

The financial year of the Defence Forces shall be the period of twelve months commencing on the first of July and ending on the thirtieth of June of the subsequent year.

**288. Annual estimates**

At least three months before the commencement of each financial year, the accounting officer in the Ministry designated by the Treasury shall cause to be prepared the estimates of the revenue and expenditure of the Defence Forces for that year.

**289. Accounts and audits**

(1) The Defence Forces shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Defence Forces.

(2) Within a period of three months after the end of each financial year, the accounting officer in the Ministry shall submit to the Auditor-General the accounts of the Defence Forces in respect of that year for audit together with—

- (a) statement of the income and expenditure for that year; and
- (b) cash flow statement.

(3) The annual accounts of the Defence Forces shall be prepared, audited and reported upon in accordance with the provisions of Articles 225 and 228 of the Constitution and the Public Audit Act, 2003 (Act No. 12 of 2003).

**290. Reports**

(1) The Defence Council shall cause an annual report to be prepared for each financial year.

(2) The Defence Council shall submit the annual report to the President and Parliament within three months after the end of the year to which it relates.

(3) The Defence Council shall cause the annual report to be published and publicised in such manner as the Defence Council may determine.

## PART XX – MISCELLANEOUS

**291. Uniforms of the Defence Forces**

(1) The Defence Council shall from time to time, by notice in the *Gazette*, specify and designate suitable and distinct uniforms for the members of the Defence Forces.

(2) For purposes of this section “uniform” includes apparel, kit, badge, decoration, insignia, wound stripes, emblems, brooch, costume or any other distinctive item as the Defence Council shall from time to time determine.

**292. Precedence and command of members of Defence Forces**

(1) Officers, warrant officers, non-commissioned officers and service members below the rank of non-commissioned officer shall stand in relation to each other in the order of precedence in which they are named in this subsection.

(2) Officers, warrant officers and non-commissioned officers of the same rank shall, as between themselves, stand in order of precedence and command according to any order which may be made by the Defence Council, and where no such order is in force, according to their seniority reckoned by the date of their respective appointments to their current rank.

**293. Exemptions from tolls, etc.**

Duties or tolls for embarking from or disembarking on or securing alongside any pier, wharf, berth, quay or landing place, or for landing and taking off from an airstrip, airfield or airport, or for passing over any road, ferry or bridge, or for mooring or anchoring (which are maintained or run by public authorities) shall not be payable in respect of—

- (a) members of the Defence Forces or of any co-operating forces, when on duty;
- (b) vehicles, ships, boats, aircraft of the Defence Forces or of any co-operating forces;
- (c) animals of the Defence Forces.

**294. Exemption from execution against public property**

No judgment, decree or order given or made against a member of the Defence Forces by any court shall be enforced by the levying of execution on any property in the possession of the person against whom it is given or made which is public property used by the person for service purposes.

**295. Certain officers may take statutory declarations**

(1) A person subject to this Act may make a statutory declaration under the Oaths and Statutory Declarations Act (Cap. 15) outside Kenya before any officer of the rank of major or corresponding rank or above, in this section referred to as an "authorized officer".

(2) A statutory declaration purporting to have been made before an authorised officer, and containing in the attestation a statement of the date on which and the place at which the declaration was made and of the full name and rank of that officer, shall be admitted in evidence without proof that the signature is the signature of that officer.

**296. Residence and next of kin to be recorded**

(1) Every officer on being commissioned and every service member on being enlisted shall give particulars of the place, district and county in which the person ordinarily resides and the name and address of the next of kin, and those particulars shall be recorded at the headquarters of the person's unit.

(2) The record shall be verified periodically, and it shall be the duty of the officer or service member to report any alteration that may occur in the recorded particulars.

**297. Execution of wills**

A will made by a member of the Defence Forces who has the legal capacity to make a will, shall be validly executed if it is in writing and—

- (a) is signed by the member in the presence of an officer, who subscribes the officer's name as witness in the member's presence; or
- (b) it is executed with the formalities prescribed by any other written law for the execution of a will.

**298. Administration of estates and missing persons**

(1) If a member of the Defence Forces dies leaving a valid will, the paymaster or any officer having charge or control of any pay, accumulation of pay, allowances, gratuity or other money or any other movable property belonging to the member, shall pay or deliver it to the member's executor.

(2) If a member of the Defence Forces dies without leaving a valid will, the paymaster or any officer having charge or control of any pay, accumulation of pay, allowances, gratuity or other money or any movable property belonging to the member, shall pay or deliver it to the personal representative, or failing that, to the Public Trustee together with a copy of the record specified in section 296, and the Public Trustee shall administer and distribute the money or property in accordance with the Public Trustee Act (Cap. 168).

(3) Despite the provisions of any other law, if a member of the Defence Forces disappears or is lost at sea, land or air under circumstances that, in the opinion of the Service Commander, raise beyond reasonable doubt a presumption that the member is dead, the Service Commander may issue a



certificate, in the prescribed form in the Fifth Schedule, declaring that the member is deemed to be dead and stating the date on which the death is presumed to have occurred, and the member shall henceforth, for the purposes of this Act and the regulations, and in relation to the member's status and service in the Defence Forces, be deemed to have died on that date.

### **299. Uniforms and decorations not part of estate**

Uniforms and decorations shall not be treated as part of the estate of a deceased member of the Defence Forces in relation to claims or creditors or for any of the purposes of administration under this Act or otherwise, and they shall be delivered to the Service Commander and thereafter disposed of in the manner to be prescribed by regulation.

### **300. Property of deserter**

(1) In every case of desertion, the movable property of the deserter in the charge or control of the paymaster or any other officer, including any money belonging or due to the deserter, shall be disposed of in a manner prescribed by regulations.

(2) Regulations contemplated under subsection (1) shall not arbitrarily deny a person of his or her entitlements or benefits.

### **301. Board of inquiry**

(1) The Service Commander, or any officer authorised by regulations made under this Act, may convene a board of inquiry to investigate and report on the facts relating to—

- (a) the absence of any person subject to this Act;
- (b) the capture of any person by the enemy;
- (c) the death of any person if an inquiry into the death is not required to be held by a civil authority; or
- (d) any other matter of a prescribed class,

and a board of inquiry shall, if directed to do so, express an opinion on any question arising out of any matters referred to the board.

(2) The Defence Council, the Service Commander or the commanding officer may convene a board of inquiry to investigate and report on any other matter.

(3) A board of inquiry shall consist of the prescribed number of persons, being persons subject to this Act, and the chairperson of the board shall be an officer not below the rank of Lieutenant or corresponding rank.

(4) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court-martial, appropriate superior authority or commanding officer other than proceedings for an offence under section 107, or for an offence, under section 133 if the corresponding civil offence is perjury.

### **302. Report of inquiry into absence to be recorded**

(1) If a board of inquiry into the absence of an officer or service member reports that the person has been absent without leave or other sufficient cause for a period of at least twenty one days, as specified in the report, a record of the report shall be entered in the service books.



(2) A record entered under subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Defence Council or a subsequent board of inquiry, have the same effect as a conviction by a court-martial for desertion.

### **303. Establishment of internal grievance mechanism**

(1) The Defence Council shall establish an internal grievance mechanism which shall be under the Office of the Chief of the Kenya Defence Forces to address any complaint brought by or against a member of the Defence Forces.

(2) The Defence Council shall, within ninety days of the commencement of this Act make rules of procedure with respect to internal grievance mechanism established under subsection (1).

(3) The rules of procedure made under subsection (2) shall be in accordance with Article 47 of the Constitution and shall make provisions with respect to investigation and determination of any complaint by or against a member of the Defence Forces and without prejudice to the generality of the foregoing, the rules of procedure shall make provisions with respect to—

- (a) the procedure to be observed in lodging a complaint;
- (b) manner in which the complaint is to be investigated; and
- (c) manner in which appeals are to be made where a member of the Defence Forces has not obtained a satisfactory redress.

### **304. Regulations**

(1) Subject to the powers of the President under this Act, and unless otherwise provided for under this Act, the Defence Council may make regulations for better carrying out the provisions and purposes of this Act, and generally for the good government of the Defence Forces and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to—

- (a) the commissioning and appointment of officers, and their terms of service, retirement, resignation and precedence, and similar matters;
- (b) the enlistment of recruits;
- (c) the administration of oaths and affirmations;
- (d) the promotion of officers and service members;
- (e) the persons, being members of the Defence Forces, in whom command over any service of the Defence Forces or any part or member thereof is vested, and as to the circumstances in which such command is vested;
- (f) the attachment and secondment of officers and service members under Part IV;
- (g) with the consent of the National Treasury, the pay, allowances, pensions and gratuities of members of the Defence Forces, including the manner of reckoning service before the commencement of this Act for pensions and gratuities;

- (h) the seniority in rank, and the pension and other benefits, of a person who resigns a commission or is discharged from the defence forces to facilitate being granted a commission or enlisting in the defence forces;
- (i) the periods and terms of service in the volunteer, reserve, and other matters concerning service in the volunteer reserve;
- (j) the distribution, organization and duties of the Defence Forces;
- (k) the government, discipline, pay and conditions of service of cadet forces;
- (l) the distribution, posting, transfer, attachment and inspection of personnel;
- (m) the description, supply, use and disposal of arms, accoutrements, clothing and other stores, including investigation into losses thereof;
- (n) the proper administration and control of establishments of the Defence Forces, including prohibiting, regulating or controlling, entry into, presence within, meetings in and traffic within such establishments;
- (o) the discipline, good order and guidance of the Defence Forces;
- (p) forfeiture of pay and deductions from pay (but not so as to permit a penal deduction, meaning a deduction to be made by reason of the commission of an offence or other wrongful act or in consequence of negligence), and the determination of questions concerning forfeiture of pay and deductions from pay;
- (q) the delegation of any or all of the functions of a commanding officer under this Act, in specified cases and to a specified extent, to officers of a specified class;
- (r) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;
- (s) the execution of sentences of imprisonment under this Act, including the prisons in which they are to be served, and the classification, treatment, employment, discipline, control, removal and temporary release on compassionate grounds of persons serving such sentences, and the appointment, powers and duties of inspectors, visitors, governors and members of the staff of service prisons, and the removal of prisoners;
- (t) active service punishment;
- (u) billeting and requisitioning, including requiring persons to furnish particulars of the motor vehicles, and of the trailers normally drawn by motor vehicles, and of the ships, boats, barges, horses, mules, donkeys, camels, food, forage, fuel and stores in their possession and to afford proper facilities for their inspection;
- (v) the administration, discipline and pay of the reserve, including calling out reservists and requiring reservists to report themselves from time to time and to obtain the permission of the competent service authority before leaving Kenya;

- (w) the convening, constitution and procedure of boards of inquiry, the rules of evidence to be observed and the taking of evidence by such boards, including the administration of oaths and affirmations to witnesses;
- (x) fees and forms;
- (y) the making of inquiries regarding members of the Defence Forces missing in action and the giving of awards and decorations, the promotion of, and the disposal of pay and allowances of, such persons;
- (z) the re-employment, appointment and terms and conditions for retired officers and service members;
- (aa) the establishment of school of Military law and other Military schools; and
- (bb) equal opportunity and affirmative action, including measures to ensure that all members of the Defence Forces are afforded adequate and equal opportunities for appointment, training and advancement.

### **305. Rules of Procedure**

The Defence Council may make rules with respect to the investigation, trial of, and awarding of punishment for offences heard by, commanding officers and appropriate superior authorities, and, without prejudice to the generality of the foregoing, the rules may make provision with respect to—

- (a) the procedure to be observed in bringing charges before commanding officers and appropriate superior authorities;
- (b) the manner in which charges are to be investigated, and the taking of evidence (whether orally or in writing, whether on oath or not and whether in full or in abstract form) for the purpose of summarily hearing the charges or other preliminary procedures to a hearing, and make provision for the application of section 168 where evidence shall be taken on oath;
- (c) additional charges, replacement of charges where new offences are disclosed by evidence taken on the investigation, and treating the investigation as the investigation of the new charge;
- (d) the convening and constitution of courts martial;
- (e) the sittings, adjournment and dissolution of courts martial.
- (f) the representation of the accused at trials;
- (g) procuring the attendance of witnesses before courts martial and at the taking of evidence in the circumstances described in paragraph (b);
- (h) applying in relation to proceedings before commanding officers and appropriate superior authorities, and otherwise in relation to proceedings preliminary to trial by court martial, all or any of the provisions of sections 170, 171 and 172;

- (i) empowering a court-martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to specified exceptions or variations, if it appears to the court that the difference is not so material as to have prejudiced the defence of the accused;
- (j) the forms of orders and other documents to be made for the purposes of any provision of this Act or the rules of procedure relating to the investigation or trial of, or award of punishment for, offences which may be tried by courts martial, commanding officers or appropriate superior authorities; and
- (k) any matter that may be prescribed in relation to the matters mentioned in this subsection.

### **306. Rules of the courts martial**

The Chief Justice may make rules prescribing the practice and procedure in courts martial and appeals from the courts martial.

### **307. Powers exercisable in subsidiary legislation**

(1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases and to make different provision for different cases or classes of cases, and classes of cases may be defined by reference to any circumstances specified in the instrument.

(2) Any regulations, rules, orders or other instruments made under this Act may—

- (a) impose conditions, or require acts or things to be performed or done to the satisfaction of any person named therein, whether or not the person is a member of the Defence Forces;
- (b) empower such a person to issue directions, either orally or in writing, requiring acts or things to be performed or done, or prohibiting acts or things from being performed or done; or
- (c) prescribe periods or dates within, upon or before which such acts or things shall be performed or done or such conditions shall be fulfilled, and providing for appeal against any such imposition, requirement, or directions.

### **308. Execution of orders, instruments, etc.**

Save as expressly provided by this Act, any direction, requirement, order or determination which under this Act may be given or made by an officer or a service authority may be signified under the hand of any officer duly authorised in that behalf, and any instrument signifying such direction, requirement, order or determination and purporting to be signed by an officer stated therein to be so authorised shall, unless the contrary is proved, be presumed to have been signed by an officer so authorised.

## PART XXI – REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS

**309. Repeal of Cap. 199**

The Armed Forces Act, (Cap. 199) is repealed.

**310. Transitional and savings**

(1) Notwithstanding section 309—

- (a) any reference to the Armed Forces Act, under any written law shall be construed as a reference to this Act.
- (b) any regulations, directives, orders, or instructions or other administrative measures taken or issued under the Armed Forces Act, in force immediately before the commencement of this Act, shall be deemed to have been made and issued under this Act.
- (c) all Service orders, rules or regulations existing before the commencement of this Act shall be reviewed, amended or revised to conform to the provisions of the Constitution and this Act within twelve months after coming into force of this Act.

(2) Until the orders, regulations, rules, circulars, notices, proclamations, or other instrument made in exercise of a power conferred by a written law applicable and having the force of law are amended in accordance with this section, they shall apply and be construed with alterations, qualifications, and exceptions necessary to bring them in conformity with the Constitution and this Act.

**311. Transfer of officers and members of the Defence Forces**

A person who immediately before the commencement of this Act was serving as an officer or a service member of the Armed Forces shall, at the commencement of this Act, be deemed to be an officer or service member of the Defence Forces.

**312. Transfer of seconded or attached persons**

A person who immediately before the commencement of this Act was an employee of the Government seconded or attached to the Armed Forces shall, upon the commencement of this Act, be deemed to have been seconded or attached under this Act.

**313. Transfer of members of the reserve force**

A person who immediately before the commencement of this Act was serving as a reserve forces shall be regarded as having been enrolled as a member of the reserve force under this Act for the remainder of the predetermined period of the said service.

**314. Transfer of members of the constabulary**

A person who immediately before the commencement of this Act was serving as a constabulary in the Armed Forces Constabulary shall be regarded as having been enrolled as a member of the constabulary under this Act for the remainder of the predetermined period of the said service.

**315. Transfer of assets, etc.**

(1) All property, assets, rights, liabilities, obligations, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by or on behalf of the Armed Forces, shall upon the commencement of this Act, be deemed to have vested in or to have been acquired, incurred or entered into by or on behalf of the Defence Forces to the same extent as they were enforceable by or against the Defence Forces before the commencement of the Act.

(2) Where the transfer of any property transferred to or vested in the Defence Forces under subsection (1) is required by any written law to be registered, the Defence Force's shall, within three months from the commencement of this Act or within such other period as the written law may prescribe, apply to the appropriate registering authority for the registration of the transfer and thereupon the registering authority shall, at no cost to the Defence Forces or any person by way of registration fees, stamp or other duties—

- (a) make such entries in the appropriate register as shall give effect to the transfer;
- (b) where appropriate, issue to the Defence Forces a certificate of title or other statutory evidence of ownership of the property or make such amendments on such certificates or in the appropriate register as may be necessary; and
- (c) make any necessary endorsements on such deeds or other documents as may be presented to such registering authority relating to the title, right or obligation concerned.

**316. Continuous and sustainable reforms**

The Defence Council shall put in place systems and policies of ensuring continuous and sustainable Defence Forces reforms.

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FIRST SCHEDULE

[Section 9(3).]

OATH FOR THE CHIEF OF DEFENCE FORCES, AND SERVICE COMMANDERS

I....., (Chief of the Kenya Defence Forces/Vice Chief of the Kenya Defence Forces Service Commander) do (swear in the name of the Almighty God)/(solemnly affirm) that I will be faithful and bear true allegiance to the Republic of Kenya and to the President as the Commander in Chief of the Kenya Defence Forces; that I will obey, preserve, protect and defend this Constitution of Kenya and all other laws of the Republic; and that I will protect and uphold the sovereignty, integrity and dignity of the people of Kenya, that I will diligently serve the people and Republic of Kenya without any fear, favour, bias, affection, ill will, prejudice or any political, religious or other influence.

In the exercise of the functions entrusted to me, I will at all times and to the best of my ability respect, uphold, preserve, protect and defend the Constitution, people and Republic of Kenya and obey all laws, orders, regulations, directions and instructions concerning the Kenya Defence Forces. (So help me God)

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## SECOND SCHEDULE

[Section 21(1).]

### CONDUCT OF BUSINESS AND AFFAIRS OF THE DEFENCE COUNCIL

1. The Defence Council shall meet as often as may be necessary for the dispatch of its business but shall hold at least one meeting in each quarter in any financial year.
2. A meeting of the Defence Council shall be held on such date and at such time as the Defence Council shall decide.
3. The Chairperson shall, on the written application of one-third of the members, convene a special meeting of the Defence Council.
4. Unless the majority of the total membership of the Defence Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Defence Council.
5. The quorum for the conduct of business at a meeting of the Defence Council shall be five members but the quorum of the Defence Council shall not be properly constituted in the absence of the Cabinet Secretary and the Principal Secretary.
6. Unless a unanimous decision is reached, a decision on any matter before the Defence Council shall be by concurrence of a majority of all the members.
7. Subject to paragraph 5, no proceedings of the Defence Council shall be invalid by reason only of a vacancy among the members thereof.
8. Unless otherwise provided by or under any law, all instruments made by and decisions of the Defence Council shall be signified in writing under the hand of the Chairperson and the secretary.
9. The Defence Council shall cause minutes of all proceedings of meetings of the Defence Council to be entered in books for that purpose.
10. If any person is present at a meeting of the Defence Council or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Defence Council or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.
11. A disclosure of interest made under paragraph 10 shall be recorded in the minutes of the meeting at which it is made.

12. A person who contravenes paragraph 10 commits an offence and upon conviction shall be liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

13. Subject to paragraph 14 the members of the Defence Council who are subject to this Act, shall be tried and sentenced by a court-martial.

14. A member of the Defence Council shall not transact any business or trade with the Defence Forces.

15. A member of the Defence Council who is subject of a discussion in a meeting of the Defence Council shall be disqualified from attending, participating and voting on the matter.

THIRD SCHEDULE

[Section 146(1).]

ORDER FOR TEMPORARY CONFINEMENT IN CIVIL CUSTODY

To:

\*THE SUPERINTENDENT OF ..... PRISON.

\*THE OFFICER-IN-CHARGE OF ..... POLICE STATION.

In pursuant of section 146(1) of the Kenya Defence Forces Act, I, the undersigned, the commanding officer of Number ..... Name

..... Unit ..... a person in service custody, order you to receive him into your custody and to detain him for a period not exceeding fifteen days or until you receive from me an order for his release, whichever is the earlier

Place .....

Date ..... 20.....

.....  
(Signature of Commanding Officer)

\* Delete as applicable

FOURTH SCHEDULE

[Section 249(3).]

OATH OF ALLEGIANCE

I .....

do hereby swear by Almighty God [or do hereby solemnly and sincerely affirm] that—

- (i) I will be faithful and bear true allegiance to the President as the Commander in Chief of the Kenya Defence Forces and to the Republic of Kenya;



FOURTH SCHEDULE—*continued*

- (ii) I will faithfully serve the President and the Republic of Kenya as an Officer [*or Service member*] [*or Constabulary*] of the Kenya Defence Forces;
- (iii) I will obey all laws, and all orders, regulations, directions and instructions concerning the Kenya Defence Forces; and
- (iv) I will discharge all the duties of an Officer [*or Service member*] [*or Constabulary*] of the Kenya Defence Forces according to the law, without fear, favour, affection or ill will.

.....  
*Signature or thumb-print of  
 person making the oath*

Sworn [*or affirmed*] by the said .....  
 after the oath had been read over and  
 explained to him in the .....  
 language, which he acknowledged to  
 understand, at ..... this  
 ..... day of .....,  
 20 .....

.....  
*Name & Signature of witness*

FIFTH SCHEDULE

[Section 298(3).]

CERTIFICATE OF PRESUMPTION OF DEATH

By virtue of the Powers vested in me under Section 298(3) of the Kenya Defence Forces Act, I .....  
 (Service Commander KA/KAF/KN) having perused the findings and report of the Board of Inquiry dated ..... 20..... convened to investigate the circumstances under which .....  
 (Rank, Name and Svc No.) disappeared on land or in air, or was lost at sea on ..  
 ..... 20 ..... and having satisfied myself in that respect and having regard to all the prevailing circumstances which in my opinion raise a beyond reasonable doubt presumption that the said .....  
 ..... (Rank, Name and Svc No.) is dead, therefore;  
 I ..... (Service Commander KA/KAF/KN) **HEREBY DECLARE** that the said .....

FIFTH SCHEDULE—*continued*

(Rank, Name and Svc No.) of ..... unit be presumed  
dead and he shall be deemed to have died on ..... day  
of ..... 20.....

Dated ..... 20.....

.....

(*Service Commander*)  
(*specify service*)

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## NO. 25 OF 2012

## ARMED FORCES ACT

## SUBSIDIARY LEGISLATION

*List of Subsidiary Legislation*

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**ARMED FORCES (GENERAL) REGULATIONS, 1968**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation.
2. Interpretation.
3. Commanding officer.
4. Officer appointed to command.
5. Second in command.
6. Senior officer.
7. Powers of command.
8. Appointments, promotion, pay and allowances.
9. Standing orders.
10. Manner of promulgation.
11. Form of certificates of arrest.
12. Prescribed documents of record.
13. Investigation of barrack damage.
14. Contribution towards barrack damage.
15. Investigation into loss or damage of public property.
16. Deductions and forfeitures.
17. Forfeiture of pay for absence from duty.

SCHEDULES

- FIRST SCHEDULE – CERTIFICATE UNDER SECTION 75(1) OF THE ARMED FORCES ACT
- SECOND SCHEDULE – CERTIFICATE UNDER SECTION 75(2) OF THE ARMED FORCES ACT
- THIRD SCHEDULE
-

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[Subsidiary]

## ARMED FORCES (GENERAL) REGULATIONS, 1968

[L.N. 251/1969.]

### 1. Citation

These Regulations may be cited as the Armed Forces (General) Regulations, 1969.

### 2. Interpretation

In these Regulations—

“**civilian employee**” means a person who is subject to the Act by virtue of section 9 thereof;

“**detachment**” means a part of a unit which is so separated from the unit to which it belongs, that the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it, or a ship.

### 3. Commanding officer

(1) For the purposes of the definition contained in section 2(1) of the Act, the commanding officer in relation to a member of the armed forces is the officer who has powers of command over that member and who—

- (a) is in immediate command of the unit to which that member belongs or is attached and who is directly responsible in disciplinary matters to an officer empowered to convene a court-martial to try an officer or serviceman belonging or attached to that unit; or
- (b) where that member is serving with a detachment which has not been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that detachment; or
- (c) where that member is serving with a unit or detachment which has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that other unit or other detachment; or
- (d) in any case not falling within paragraph (a) or paragraph (b) of this regulation, is by the custom of the service the officer entitled to exercise the powers of a commanding officer in relation to that member (otherwise than by delegated authority).

(2) In paragraph (1) of this regulation, the reference to a member of the armed forces belonging or being attached to or serving with a unit or detachment, includes a reference to a civilian employee being employed in the service of that unit or detachment or of any part or member thereof or accompanying that unit or any part thereof.

### 4. Officer appointed to command

(1) An officer appointed to command a unit shall, irrespective of seniority, exercise command over all other officers serving therein.

(2) The powers of punishment vested in a commanding officer by virtue of section 81(2) and section 82(4) of the Act shall only be exercised by the commanding officer of an accused or by an officer to whom those powers have been delegated by the commanding officer.

**5. Second in command**

An officer holding an authorized appointment of second in command of a unit shall, irrespective of seniority, exercise command over all other officers serving therein except the officer appointed to command the unit.

**6. Senior officers**

In the absence of both the officer in command of a unit and the officer appointed second in command thereof, the senior officer in that unit shall exercise command over all other officers serving therein.

**7. Powers of command**

The powers of command to be exercised by officers shall be over officers junior to them and over all servicemen.

**8. Appointments, promotion, pay and allowances**

The Chief of General Staff may make standing orders with respect to the administration of pay and allowances and the promotion of personnel, and the appointments which may be held by personnel.

**9. Standing orders**

The Chief of General Staff or the Commander, in respect of his service, may make general, special, routine and standing orders with respect to the following matters—

- (a) discipline, control, good order and guidance;
- (b) organization, administration and duties;
- (c) the distribution, posting, transfer, attachment and inspection of personnel;
- (d) the description, supply, use and disposal of arms, accoutrements, clothing and other stores.

**10. Manner of promulgation**

Any matter required by the Act to be promulgated shall be promulgated either—

- (a) by being communicated to the accused; or
- (b) if the accused absents himself without leave before the matter can be communicated to him, by being published in the orders of the unit to which he belongs or is attached; or
- (c) in such other manner as may be directed by the confirming officer or reviewing authority in exceptional cases.

**11. Form of certificates of arrest**

(1) The certificate required by section 75(1) of the Act to be handed over with a person delivered into service custody as illegally absent, shall be in the form and shall contain the particulars set out in the First Schedule to these Regulations.

(2) The certificate required by section 75(2) of the Act to be handed over with a person delivered into service custody, shall be in the form and contain the particulars set out in the Second Schedule to these Regulations.

**12. Prescribed documents of record**

For the purposes of section 138(5) of the Act, the prescribed documents are those specified in the Third Schedule to these Regulations.

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[Subsidiary]

### 13. Investigation of barrack damage

Without prejudice to any proceedings under any other section of the Act, the cause and extent of all damage or loss to which section 149 of the Act relates, and the time at which such damage or loss was occasioned, shall be investigated—

- (a) if personnel belonging to more than one unit are concerned, by a board of inquiry convened under the Act; or
- (b) if personnel belonging only to the one unit are concerned—
  - (i) by a board of inquiry convened as aforesaid; or
  - (ii) by the commanding officer of the unit concerned, or by an officer appointed by him both of whom may consider evidence, either written or oral, relating to such damage or as aforesaid:

Provided that in every case where the cost and extent of the damage or loss will total two thousand shillings or more such investigation shall be by a board of inquiry convened as aforesaid.

### 14. Contribution towards barrack damage

The amount which a person may be required to contribute under subsection (1) of section 149 of the Act towards compensation for any damage or loss shall be the amount of the damage or loss divided by the number of persons who could under the said subsection be required to contribute towards compensation for the said damage or loss:

Provided that where any part of the amount of the damage or loss has been written off, or is the subject of an application for write-off, as a charge against the public under any regulations for the time being in force relating to write-off, the amount of the damage or loss for the purposes of these Regulations shall be the total amount of the damage or loss less the part which has been so written off or is the subject of such application.

### 15. Investigation into loss or damage of public property

(1) Subject to paragraph (2) of this regulation, an investigation for the purpose of section 148(1) of the Act into the cause of any loss or damage to public property shall be by—

- (a) a board of inquiry convened under section 223 of the Act; or
- (b) an examination by the Commander, or by an officer authorized by him, or evidence, whether oral or written, relating to any matter.

(2) Where during the course of an examination of evidence under paragraph (1)(b) it appears to the Commander or authorized officer that a person may have been responsible for such loss or damage as aforesaid, that person shall be given an opportunity of making a statement, if he so desires, for the consideration of the Commander or authorized officer:

Provided that, where in any proceedings before a court-martial or an appropriate superior authority a person has been convicted in circumstances involving a finding that he was guilty of a wrongful act or negligence which occasioned such loss or damage as aforesaid, it shall not be necessary to give him an opportunity of making any such statement as aforesaid.

### 16. Deductions and forfeitures

(1) The pay of an officer or serviceman shall be available to meet any restitution order or deductions which may be awarded or ordered and any forfeiture or fine which may be awarded under service law.

(2) For the purposes of section 145 of the Act, the minimum monthly rate of pay which an officer or serviceman shall be allowed to remain in receipt of shall be not less than one-half of the net salary payable in any month after all deductions from his gross salary have been made in respect of Governmental imposts and the recovery of advances.



[Subsidiary]

(3) Notwithstanding paragraph (2) of this regulation, when an officer or serviceman proceeds on terminal leave any amount authorized to be deducted from the pay will be deducted from any balance (whether or not representing pay) which may be due to him.

(4) Without prejudice to the power of remission of forfeitures and deductions by the Commander under section 150 of the Act, any deduction of pay imposed under section 148 of the Act may be remitted by any officer superior in command to the officer imposing the deduction.

**17. Forfeiture of pay for absence from duty**

For the purposes of section 146(3) of the Act, the number of days a person is absent or is in hospital shall be computed as follows—

- (a) The number of days shall be reckoned from the time that the absence, or as the case may be, the time spent in hospital, commences;
- (b) every period of twenty-four hours shall be reckoned as one day and save as hereinafter provided a part of a day shall be reckoned as one day; and
- (c) when the total period of absence or the time spent in hospital is less than six hours no account shall be taken thereof unless the person was, by reason of his being absent or in hospital, prevented from performing a service duty which thereby devolved on some other person.

FIRST SCHEDULE

[Regulation 11(1).]

CERTIFICATE UNDER SECTION 75(1) OF THE ARMED FORCES ACT

I certify that ..... (full name)  
 whose service particulars are given below appeared before the .....  
 Magistrate's Court in accordance with section 73 of the Act at .....  
 on the ..... 20 ..... alleged to have deserted/to be absent without  
 leave\* having surrendered to ..... /been arrested by\* .....  
 at ..... (place) on ..... (date) and was committed to  
 civil custody/delivered into service custody\*. The officer/serviceman\* admitted/did not admit\* that he  
 had illegally absented himself without leave from his unit at ..... (place)  
 on ..... (date).

<i>Service particulars of the officer          or serviceman referred to above</i>	}	No. ....
		Rank .....
		Name .....
		Unit .....

Dated this ..... day of ..... 20 .....

Magistrate

\* Delete as appropriate.

Kenya Defence Forces

[Subsidiary]

SECOND SCHEDULE

[Regulation 11(2).]

CERTIFICATE UNDER SECTION 75(2) OF THE ARMED FORCES ACT

I certify that ..... (full name)
surrendered himself at ..... (place) on the .....
day of ..... 20 ....., as being illegally absent from his unit
at ..... (place) on the ..... day of
..... 20 ....., and gave the following particulars—

- No. ....
Rank .....
Name .....
Unit .....

Dated this ..... day of ....., 20 .....

Police officer who caused the above-named
person to be delivered into service custody

THIRD SCHEDULE

[Regulation 12.]

- 1. Unit order book.
2. Unit order book, box file.
3. Register of deserters.
4. Registers of Public animals – horses and mules, camels.
5. Register of guard dogs.
6. Register of recruits.
7. Unit ammunition state.
8. Ledger for clothing and equipment.
9. Equipment ledger (mechanical transport).
10. Account of rations.
11. Account of forage/guard dogs rations.
12. Postage book.
13. Guard report.
14. Minor offence report.
15. Record of service (officers).
16. Record of service (servicemen).
17. Historical records.
18. Conduct sheets.
19. Educational record.
20. Record of the report of a board of inquiry into the illegal absence of an officer
or serviceman.
21. Record of leave.

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[Subsidiary]

22. Official service accounting documents.
  23. Flying log book – pilots.
  24. Aircraft and aircraft material servicing forms.
  25. Air traffic controller's watch log.
  26. Runway controller's logbook.
  27. Authorization for movement of mechanical transport.
  28. Mechanical transport vehicle logbook.
  29. Ship's logbook.
-



**ARMED FORCES (ACTIVE SERVICE PUNISHMENT) REGULATIONS, 1969**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation.
  2. Interpretation.
  3. Places where punishment may be carried out.
  4. Nature of punishment.
  5. Personal restraint.
-

---

[Subsidiary]

## ARMED FORCES (ACTIVE SERVICE PUNISHMENT) REGULATIONS, 1969

[L.N. 252/1969.]

### 1. Citation

These Regulations may be cited as the Armed Forces (Active Service Punishment) Regulations, 1969.

### 2. Interpretation

In these Regulations—

“**offender**” means a person subject to the Act who has been awarded active service punishment by sentence of a court-martial or by a commanding officer.

### 3. Places where punishment may be carried out

An offender shall undergo active service punishment with the unit to which he belongs or to which he is for the time being attached:

Provided that where the officer commanding any body of servicemen or any command or other area (not being below the rank of lieutenant-colonel) has appointed an officer to supervise the carrying out of active service punishment, the offender may be required to undergo the whole or any part of his punishment elsewhere under the supervision of that officer.

### 4. Nature of punishment

Active service punishment consists of one or more of the following, in addition to those duties which an offender might be required to perform if he were not undergoing punishment—

- (a) solitary confinement not exceeding three days in any one week and in such place and such manner as may be directed by the officer commanding the unit in which the offender undergoing the punishment is serving, or by the officer appointed to supervise the carrying out of such punishment;
- (b) additional drill not exceeding three separate periods of one hour each in any one day with an interval of not less than one hour between each drill:

Provided that such drill shall not be performed on Sundays or, if the offender is not of the Christian religion, any other day which is the equivalent of a Sunday in the religion to which the offender belongs;

- (c) such other duties and loss of privileges as may be directed by the officer commanding the unit in which the offender undergoing the punishment is serving, or by the officer appointed to supervise the carrying out of the punishment,

but so that an offender shall not be subjected to any treatment to which he could not be subjected if he were undergoing a sentence of imprisonment in a service prison.

### 5. Personal restraint

- (1) An offender may not be placed under personal restraint except—
  - (a) to prevent his escape; or
  - (b) to protect himself or others from injury.

[Subsidiary]

(2) An offender may not be placed under personal restraint except in accordance with the following conditions—

- (a) The period for which the offender may be kept continuously under personal restraint shall not exceed twenty-four hours:

Provided that the officer superior in command to the officer supervising the personal restraint may authorize such additional period as he may consider necessary so long as the total period of such restraint does not exceed forty-eight hours at any one time; and

- (b) handcuffs shall not be placed with the hands of the offender behind his body unless it is necessary by reason of his violence.
-





**ARMED FORCES (BOARD OF INQUIRY) REGULATIONS, 1969**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation.
2. Interpretation.
3. Convening authority.
4. Order convening a board.
5. Constitution of board.
6. Duties of board.
7. Matters for reference to board.
8. Deferring and staying of proceedings.
9. Assembly of board.
10. Procedure of board.
11. Adjournment and reassembly.
12. Witnesses.
13. Persons who may be affected by findings.
14. Oaths.
15. Exhibits.
16. Record of proceedings.
17. Record of report.

SCHEDULE

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[Subsidiary]

## ARMED FORCES (BOARD OF INQUIRY) REGULATIONS, 1969

[L.N. 253/1969.]

### 1. Citation

These Regulations may be cited as the Armed Forces (Board of Inquiry) Regulations, 1969.

### 2. Interpretation

In these Regulations, “**represented**” means represented by an officer or an advocate.

### 3. Convening authority

A Board of Inquiry may be convened for the purposes of section 223 of the Act by order of the Commander, any officer commanding a formation or body of servicemen or any officer commanding a unit or detachment of the armed forces, hereinafter referred to as the convening authority.

### 4. Order convening a board

The following provisions shall apply in relation to the order convening a board—

- (a) The order shall specify the composition of the board and the place and time at which the board shall assemble;
- (b) the order may, and where the matter referred to the board is that mentioned in rule 7(1)(a) of these regulations shall, specify the terms of reference of the board and be published in service orders;
- (c) the order may direct the board to express their opinion on any question arising out of any matter referred to the board; and
- (d) the convening authority may at any time revoke, vary or suspend the order.

### 5. Constitution of board

(1) A board convened to investigate any matter shall consist of not less than three persons subject to service law of whom one shall be of the rank of lieutenant or above or corresponding rank who shall be the president of the board and not more than one of whom may be a serviceman of the rank of Warrant Officer Class II or above or corresponding rank.

(2) The convening authority shall appoint the chairman and members of a board by name.

### 6. Duties of board

It shall be the duty of a board to investigate and report on the facts relating to any matter referred to the board and, if directed so to do, to express their opinion on any question arising out of any such matter.

### 7. Matters for reference to board

(1) Subject to the provisions of these Regulations, a board shall be convened with reference to—

- (a) the absence of any person subject to the Act who has been continuously absent without leave for a period of not less than twenty-one days and the deficiency (if any) in public property issued to him for his use;

[Subsidiary]

- (b) the capture of any person subject to the Act by the enemy and his conduct in captivity if, on his return from captivity, the convening authority considers that there are reasonable grounds for suspecting—
  - (i) that he was captured through disobedience to orders or wilful neglect of his duty; or
  - (ii) that having been captured he failed to take any reasonable steps available to him to rejoin the armed forces; or
  - (iii) that having been captured he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorized by international usage; and
- (c) the death of any person subject to the Act, where an inquiry into the death is not required to be held by any civil authority.

(2) Subject as aforesaid, a board may be convened with reference to any matter which the convening authority decides to refer to a board.

#### 8. Deferring and staying of proceedings

(1) Subject to paragraph (2) of this regulation where any matter is the subject of investigation by any authority of the armed forces, or by a civil authority, or of proceedings under service law, or of proceedings in a civil court whether within or outside Kenya, and—

- (a) a board has not been convened with reference thereto, the convening authority may defer the convening of a board until the completion of such investigation or proceedings as aforesaid and upon completion thereof shall not be required to convene a board if satisfied that a board is not necessary; or
- (b) a board has already been convened with reference thereto, the convening authority may stay the proceedings of the board until such investigation or proceedings have been completed and shall then dissolve the board if satisfied that a board is not necessary.

(2) Paragraph (1) of this regulation does not apply to the convening of a board with reference to such absence and such deficiency (if any) as are mentioned in regulation 7(1)(a) of these Regulations but where the convening authority is satisfied that the absence has terminated, and—

- (a) a board has not yet been convened with reference to the absence and deficiency (if any), the convening authority shall not be required to convene a board; and
- (b) a board has already been convened with reference thereto, the convening authority may forthwith dissolve the board.

#### 9. Assembly of board

A board shall assemble at the time and place stated in the order convening the board.

#### 10. Procedure of board

The president shall lay the terms of reference before the board, and the board shall proceed to hear and record evidence in accordance with these Regulations.

#### 11. Adjournment and reassembly

(1) The president may from time to time adjourn the board, which shall sit on such occasions and in such places as he may from time to time direct.

**[Subsidiary]**

(2) Without prejudice to paragraph (1) of this regulation, the convening authority may at any time direct the board to reassemble for such purpose as may be specified by the convening authority.

**12. Witnesses**

(1) A board shall hear the evidence of the witnesses who have been made available by the convening authority, and may hear the evidence of such other person as they think fit.

(2) While a civilian witness is giving evidence before a board, he may be represented, but subject to regulation 13 of these Regulations, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

(4) The board may receive any evidence which it considers relevant to the matter referred to it, whether oral or written and whether or not it would be admissible in a civil court.

**13. Persons who may be affected by finding**

(1) Where it appears to the convening authority, or if a board has been convened either to the convening authority or to the president, that any witness or other person may be affected by the findings of the board, the convening authority or, as the case may be the president, shall take such steps as are in his view reasonable and necessary to secure that such witness or other person has notice of the proceedings and, if he so desires, has an opportunity of being present, and represented, at the sittings of the board, or at such part thereof as the convening authority or, as the case may be, the chairman, may specify.

(2) Any such witness or other person referred to in paragraph (1) of this rule may give evidence, question witnesses or call witnesses to give evidence on the matters which may affect him, and, if he is represented, his representative may question witnesses, but a representative shall not address the board except with the permission of the president.

**14. Oaths**

(1) The convening authority shall have power to direct that, subject to paragraph (3) of this regulation every witness before a board shall be examined on oath:

Provided that, where a child of tender years called as a witness does not, in the opinion of the board, understand the nature of an oath, his evidence may be received though not given on oath if, in the opinion of the board, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) Subject to paragraph (3) of this regulation, an oath shall be administered to any person in attendance on a board as interpreter.

(3) An oath shall be administered before a board in the form and manner prescribed by the Armed Forces Rules of Procedure, 1969.

**15. Exhibits**

(1) Subject to paragraph (2) of this regulation, any document or thing produced to a board by the witness when giving his evidence shall be made an exhibit.

(2) When an original document or book is produced to a board by a witness, the board may, at the request of the witness, compare a copy of it or an extract therefrom of the relevant parts with the original, and after they have satisfied themselves that such copy or

[Subsidiary]

extract is correct and the chairman has certified thereon that the board have compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall—

- (a) be marked with a number or letter and be signed by the president or have a label affixed to it bearing a number or letter and the signature of the chairman;
- (b) be attached to or kept with a record of the proceedings unless in the opinion of the board it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under paragraph (3)(b) of this regulation, the chairman shall ensure that proper steps are taken for its safe custody.

**16. Record of proceedings**

(1) The chairman shall record or cause to be recorded the proceedings of the board in writing and in sufficient detail to enable the convening authority to follow the course of the proceedings.

(2) The evidence of each witness shall be recorded in narrative form recording as nearly as possible the words used:

Provided that, if the board considers it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2) of this regulation, shall be read over to him and shall be signed by him.

(4) A record of the proceedings shall be signed by the president and such other members of the board as there may be and forwarded to the convening authority.

**17. Record of report**

Where a board reports that a person subject to the Act has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is a deficiency in any public property issued to him for his use, a record of the report of such deficiency shall, in addition to the record required by section 224(1) of the Act, be entered in the book maintained for the purpose and in accordance with the form set out in the Schedule to these Regulations; and such entry shall be signed by the commanding officer of the person declared to be absent.

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SCHEDULE

[Regulation 17.]

Record of a report of a Board of Inquiry into the absence of .....

.....  
.....

[number, rank, name and unit]

entered in pursuance of section 224 of the Armed Forces Act, 1968.

The Board of Inquiry sitting at .....

on the ..... day of ....., 20 .....

and consisting of .....

Kenya Defence Forces

[Subsidiary]

SCHEDULE—continued

..... [rank, name and unit] chairman, and  
..... [rank, name and unit] }  
..... [rank, name and unit] } members.

report that ..... [number, rank, name and unit] has been absent from ..... [unit] at ..... [place] without leave or other sufficient cause for a period beginning on the ..... day of ..... , 20..... , and is still so absent, and further report\* that the said ..... [rank and name] was on the ..... day of ..... 20 ..... , and still is deficient of the public property issued to him for his use particulars of which are set out below—

.....  
.....  
.....  
.....

Dated this ..... day of ..... 20 .....

(Signed) .....  
Commanding Officer of the person referred to in  
the report

\* Omit if no such further report is made.



**ARMED FORCES (SUMMARY JURISDICTION) REGULATIONS, 1969**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation.
2. Interpretation.
3. Commanding officer.
4. Delegation.
5. Restriction on commanding officer dealing summarily with charges.
6. Limitation on awarding stoppages.
7. Limitation on powers of commanding officer of the rank of captain.
8. Limitation on powers of commanding officer not above lieutenant.
9. Commanding officer of detachment.
10. Limitation on powers of officer exercising delegated powers.
11. Appropriate superior authority.
12. Limitation on powers of appropriate superior authority.
13. Award of minor punishments.

SCHEDULE – CIVIL OFFENCES WHICH A COMMANDING OFFICER OR APPROPRIATE SUPERIOR AUTHORITY MAY DEAL WITH SUMMARILY

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[Subsidiary]

## ARMED FORCES (SUMMARY JURISDICTION) REGULATIONS, 1969

[L.N. 254/1969, L.N. 145/1985, L.N. 553/1988.]

### 1. Citation

These Regulations may be cited as the Armed Forces (Summary Jurisdiction) Regulations, 1969.

### 2. Interpretation

(1) In these Regulations—

“**civilian employee**” means a person who is subject to the Act by virtue of section 9 thereof;

“**detachment**” means a part of a unit which is so separated from the unit to which it belongs, that the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it, or a ship;

“**subordinate commander**” means an officer appointed as such by the commanding officer of the accused.

(2) These Regulations do not apply in respect of members of the Constabulary.

### 3. Commanding officer

(1) For the purposes of these Regulations, the commanding officer of an accused is the officer who has powers of command over the accused and who—

- (a) is in immediate command of the unit to which the accused belongs or is attached and who is directly responsible in disciplinary matters to an officer empowered to convene a court-martial to try an officer or serviceman belonging or attached to that unit; or
- (b) where the accused is serving with a detachment which has not been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that detachment; or
- (c) where the accused is serving with a unit or detachment which has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that other unit or other detachment; or
- (d) in any case not falling within paragraph (a) or paragraph (b) of this regulation, is by the custom of the service the officer entitled to exercise the powers of a commanding officer in relation to the accused (otherwise than by delegated authority).

(2) In paragraph (1) of this regulation, the reference to the accused belonging or being attached to or serving with a unit or detachment includes a reference to a civilian employee being employed in the service of that unit or detachment or of any part or member thereof or accompanying that unit or any part thereof.

### 4. Delegation

(1) Subject to regulation 10 of these Regulations, a commanding officer may delegate to a subordinate commander of whatever rank who is under his command and directly responsible to him in disciplinary matters the power to investigate and deal summarily with charges with which he himself may so deal.



[Subsidiary]

(2) Notwithstanding the restrictions placed upon the powers of a subordinate commander by virtue of regulation 10 of these Regulations, where a unit or detachment is serving with and has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, that commanding officer may appoint a subordinate commander and delegate to him the full powers of a commanding officer.

(3) A delegation under paragraph (1) or paragraph (2) of this regulation shall not include—

- (a) the power to remand the accused for trial by court-martial; or
- (b) the power to order the making of an abstract of evidence.

(4) When a commanding officer delegates the power to investigate and deal summarily with charges under this regulation, he may impose such restrictions as he considers proper upon the exercise of that power by the officer to whom it is delegated, in addition to the restrictions imposed by regulation 10 of these Regulations.

#### 5. Restriction on commanding officer dealing summarily with charges

A commanding officer shall not deal summarily with a charge under any of the following sections of the Act—

- (a) Sections 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26 and 28(1);
- (b) Section 31, unless the desertion alleged falls within the definition of that offence in subsection (2)(d);
- (c) sections 38(a) and 39(a), where the subject-matter exceeds in value one thousand shillings;
- (d) sections 38(b) and 39(b), 40, 43, 44, 45, 46, 47, 49(1), 52, 53, 55, 56, 57, 60, 61, 62, 63, 64 and 65;
- (e) section 66, where the commanding officer may not deal summarily with the substantive offence;
- (f) section 69, unless the corresponding civil offence is one of those specified in the Schedule to these Regulations.

[L.N. 145/1985, L.N. 553/1988, s. 2.]

#### 6. Limitation on awarding stoppages

A commanding officer shall not, without the permission of higher authority, award the punishment of stoppages exceeding one thousand shillings.

[L.N. 553/1988, s. 3.]

#### 7. Limitation of powers on commanding officer of the rank of captain

A commanding officer of the rank of captain or corresponding rank may only award the following punishments—

- (a) To a warrant officer or non-commissioned officer—
  - (i) a fine not exceeding the equivalent of half a month's pay;
  - (ii) severe reprimand;
  - (iii) reprimand;
  - (iv) admonition;
  - (v) stoppages up to a maximum of five hundred shillings;
- (b) to a serviceman, other than a warrant officer or non-commissioned officer—
  - (i) imprisonment for a period not exceeding forty-two days;
  - (ii) a fine not exceeding the equivalent of half a month's pay;
  - (iii) the minor punishments specified in regulation 13 of these Regulations;
  - (iv) admonition;
  - (v) stoppages up to a maximum of two hundred shillings.

[L.N. 553/1988, s. 4.]

[Subsidiary]

**8. Limitation on powers of commanding officer not above lieutenant**

A commanding officer of the rank of lieutenant or corresponding rank, or below, may only award the following punishments—

- (a) To a warrant officer or non-commissioned officer—
  - (i) a fine not exceeding the equivalent of a quarter of a month's pay;
  - (ii) severe reprimand;
  - (iii) reprimand;
  - (iv) admonition;
  - (v) stoppages up to a maximum of three hundred shillings;
- (b) to a serviceman, other than a warrant officer or non-commissioned officer—
  - (i) imprisonment for a period not exceeding twenty-one days;
  - (ii) a fine not exceeding the equivalent of a quarter of a month's pay;
  - (iii) the minor punishments specified in regulation 13 of these Regulations;
  - (iv) admonition;
  - (v) stoppages up to a maximum of three hundred shillings.

[L.N. 553/1988, s. 5.]

**9. Commanding officer of detachment**

Where the commanding officer is commanding officer by virtue of paragraph (b) of regulation 3 of these Regulations —

- (a) the commanding officer of the unit to which the sub-unit or detachment belongs may restrict him in the exercise of his power having regard to his rank or experience;
- (b) where he has been so restricted in the exercise of his powers, he may nevertheless exercise his full powers as a commanding officer if he considers it necessary for him to do so for the maintenance of discipline, but if he does so he shall immediately report his action to the commanding officer who restricted him in the exercise of his powers.

**10. Limitation on powers of officer exercising delegated powers**

A subordinate commander to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 of these Regulations may only award the following punishments—

- (a) If he is of the rank of major or corresponding rank or above—
  - (i) to a non-commissioned officer—
    - (a) a fine not exceeding the equivalent of half a month's pay;
    - (b) severe reprimand;
    - (c) reprimand;
    - (d) admonition;
  - (ii) to a serviceman, other than a warrant officer or non-commissioned officer—
    - (a) imprisonment for a period not exceeding twenty-eight days;
    - (b) a fine not exceeding the equivalent of half a month's pay;
    - (c) the minor punishments specified in regulation 13 of these Regulations;
    - (d) admonition;

[Subsidiary]

- (b) if he is of the rank of captain or corresponding rank or below—
- (i) to a senior sergeant or sergeant—
    - (a) reprimand;
    - (b) admonition;
  - (ii) to a corporal or lance corporal—
    - (a) a fine not exceeding the equivalent of a quarter of a month's pay;
    - (b) severe reprimand;
    - (c) reprimand;
    - (d) admonition;
  - (iii) to a private—
    - (a) imprisonment for a period not exceeding fourteen days;
    - (b) a fine not exceeding the equivalent of a quarter of a month's pay;
    - (c) the minor punishments specified in regulation 13 of these Regulations;
    - (d) admonition.

### 11. Appropriate superior authority

Any officer not below the rank of lieutenant-colonel or corresponding rank who is appointed appropriate superior authority by the Commander is hereby prescribed for the purposes of section 79 of the Act as the appropriate superior authority, in addition to the Commander:

Provided that an officer of the rank specified in the first column hereunder or corresponding rank shall not be the appropriate superior authority for the purposes of a case in which the accused is above the rank specified in the second column hereunder or corresponding rank—

lieutenant-colonel	captain
colonel	major
brigadier	lieutenant-colonel.
major-general	colonel
lieutenant-general	brigadier
general	major-general.

[L.N. 145/1985.]

### 12. Limitation on powers of appropriate superior authority

The appropriate superior authority shall not deal summarily with a charge against an officer under any of the following sections of the Act—

- (a) Sections 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26 and 28(1);
- (b) sections 38(a) and 39(a) where the subject-matter exceeds in value two thousand shillings;
- (c) sections 38(b) and 39(b), 40, 43, 44, 45, 46, 47, 49(1), 52, 53, 55, 56, 57, 60, 61, 62, 63, 64 and 65;
- (d) section 66, where the appropriate superior authority may not deal summarily with the substantive offence;
- (e) section 69, unless the corresponding civil offence is one of those specified in the Schedule to these Regulations.

[L.N. 145/1985, L.N. 553/1988, s. 6.]

[Subsidiary]

**13. Award of minor punishments**

(1) The minor punishments which a commanding officer may award under section 82(4)(a)(vii) and (b)(iv) of the Act are—

- (a) up to twenty-eight days' confinement to barracks or stoppage of short leave, with or without extra duties;
- (b) up to twenty-eight days' loss of privileges;
- (c) extra guards or picquets,

except that a commanding officer of the rank of captain or corresponding rank or below shall not award minor punishments for a period exceeding twenty-one days.

(2) The minor punishments which a subordinate commander may award are—

- (a) up to twenty-one days' confinement to barracks or stoppage of short leave, with or without extra duties;
- (b) up to twenty-one days' loss of privileges;
- (c) extra guards or picquets,

except that a subordinate commander of the rank of captain or corresponding rank or below, shall not award minor punishments for a period exceeding fourteen days.

(3) The periods specified in this regulation are the maximum periods which may be awarded in the course of any one hearing.

[L.N. 553/1988, s. 7.]

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**SCHEDULE**

[Regulations 5 and 12.]

**CIVIL OFFENCES WHICH A COMMANDING OFFICER OR APPROPRIATE SUPERIOR  
AUTHORITY MAY DEAL WITH SUMMARILY**

1. Theft, contrary to section 275 of the Penal Code (Cap. 63), where the value of the thing stolen does not exceed two hundred shillings.
  2. Common assault, contrary to section 250 of the Penal Code.
  3. Careless driving of a motor vehicle, contrary to section 49 of the Traffic Act (Cap. 403).
  4. Taking and driving away a motor vehicle without the consent of the owner or other lawful authority, contrary to section 65 of the Traffic Act.
  5. Reckless or dangerous driving of a bicycle, contrary to section 86 of the Traffic Act.
  6. Careless driving of a bicycle, contrary to section 87 of the Traffic Act.
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**ARMED FORCES (COMMISSIONING OF OFFICERS) REGULATIONS, 1969**

[L.N. 256/1969.]

1. These Regulations may be cited as the Armed Forces (Commissioning of Officers) Regulations, 1969.
2. (1) There is hereby established a Board, to be known as the Armed Forces Commissions Board and hereinafter referred to as the Board.  
(2) The function of the Board shall be to make recommendations to the Defence Council pursuant to the provisions of section 169 of the Armed Forces Act, 1968, in relation to each service of the armed forces as to the grant of commissions in that service to citizens of Kenya.
3. The Board shall consist of—
  - (a) the Chief of General Staff, or a person deputed by him in writing for the purposes of these Regulations, who shall be chairman;
  - (b) two officers of or above the rank of captain or corresponding rank;
  - (c) the Permanent Secretary in the Office of the President, or a person deputed by him in writing for the purposes of these Regulations;
  - (d) the Permanent Secretary of the Ministry for the time being responsible for defence, or a person deputed by him in writing for the purposes of these Regulations; and
  - (e) the Permanent Secretary of the Ministry for the time being responsible for education, or a person deputed by him in writing for the purposes of these Regulations.
4. The Board shall meet at such times as the chairman of the Board may decide.
  - (2) The chairman and not less than three members shall constitute a quorum.
  - (3) The chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote; a decision of the majority of members present and voting at the meeting shall be the decision of the Board.
  - (4) Every recommendation of the Board shall be signified under the hand of the chairman.
  - (5) Subject to the provisions of these Regulations the Board may regulate its own proceedings.
  - (6) The chairman may co-opt to serve on the Board for such length of time as he thinks fit any person or persons whose assistance or advice he may require, but a person so co-opted shall not be entitled to vote at any meeting of the Board or be counted as a member for the purposes of forming a quorum.
  - (7) The chairman may appoint a secretary to the Board.



**ARMED FORCES (ARMED FORCES CONSTABULARY – SUMMARY  
JURISDICTION) REGULATIONS, 1969**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation.
2. Interpretation.
- 3.
4. Delegation of powers.
5. Limitation of powers.
6. Stoppages.
7. Dismissal and reduction in rank.
8. Restriction on summary dealing with charges by commanding officer of the rank of captain.
9. Restriction on summary dealing with charges by commanding officer of the rank of lieutenant.

SCHEDULE – CIVIL OFFENCES WHICH A COMMANDING OFFICER OR  
APPROPRIATE SUPERIOR AUTHORITY MAY DEAL WITH  
SUMMARILY

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[Subsidiary]

**ARMED FORCES (ARMED FORCES CONSTABULARY – SUMMARY JURISDICTION) REGULATIONS, 1969**

[Section 227, L.N. 250/1969, L.N. 552/1988.]

**1. Citation**

These Regulations may be cited as the Armed Forces (Armed Forces Constabulary–Summary Jurisdiction) Regulations, 1969.

**2. Interpretation**

In these Regulations—

“**commanding officer**” means the commanding officer of the unit to which a member of the Constabulary is attached;

“**detachment**” means any formation of the Constabulary attached to any unit of the Armed Forces;

“**detachment commander**” means a member of the Constabulary, not below the rank of Inspector of Constabulary, who is in immediate command of a detachment.

**3. Deleted by L.N. 552/1988.****4. Delegation of powers**

(1) Subject to paragraph (2) of this regulation the Commandant, with the agreement of the commanding officer, may delegate to a detachment commander of whatever rank the power to investigate and deal summarily with charges which he himself may investigate and deal:

Provided that such a delegation shall not include—

- (i) the power to remand the accused for trial by court-martial; or
- (ii) the power to order the making of an abstract of evidence.

(2) A detachment commander to whom the power to investigate and deal summarily with charges has been delegated under paragraph (1) may only award the following punishments—

- (a) a fine not exceeding the equivalent of a quarter of a month’s pay;
- (b) stoppages up to a maximum of three hundred shillings.

(3) The commanding officer may not delegate his powers of punishment to any other officer.

[L.N. 552/1988.]

**5. Limitation of powers**

The Commandant and the commanding officer shall not deal summarily with a charge under any of the following sections of the Act—

- (a) sections 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28(1) and 31;
- (b) sections 38(a) and 39(a), where the subject matter exceeds in value one thousand shillings;
- (c) sections 38(b), 39(b), 40, 43, 44, 45, 46, 47, 49(1), 52, 53, 55, 56, 57, 60, 61, 62, 63, 64 and 65;
- (d) section 66, where the Commandant and the commanding officer may not deal summarily with the substantive offence;



[Subsidiary]

- (e) section 69, unless the corresponding civil offence is one of those specified in the Schedule.

[L.N. 552/1988.]

**6. Stoppages**

The Commandant and the commanding officer shall not, without the permission of higher authority, award the punishment of stoppages exceeding one thousand shillings.

[L.N. 552/1988.]

**7. Dismissal and reduction in rank**

The punishments of dismissal and reduction in rank, when awarded by a commanding officer, are subject to confirmation by the Commandant.

**8. Restriction on summary dealing with charges by commanding officer of the rank of captain**

A commanding officer of the rank of Deputy Commandant may only award the following punishments—

- (a) a fine not exceeding the equivalent of half a month's pay;
- (b) stoppages up to a maximum of five hundred shillings.

[L.N. 552/1988.]

**9. Restriction on summary dealing with charges by commanding officer of the rank of lieutenant**

A commanding officer of the rank of Inspector of Constabulary or below may only award the following punishments—

- (a) a fine not exceeding the equivalent of a quarter of a month's pay;
- (b) stoppages up to a maximum of three hundred shillings.

[L.N. 552/1988.]

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SCHEDULE

[Rule 5.]

CIVIL OFFENCES WHICH A COMMANDING OFFICER OR APPROPRIATE SUPERIOR AUTHORITY MAY DEAL WITH SUMMARILY

1. Theft, contrary to section 275 of the Penal Code (Cap. 63), where the value of the thing stolen does not exceed two hundred shillings.
  2. Common assault, contrary to section 250 of the Penal Code.
  3. Careless driving of a motor vehicle, contrary to section 49 of the Traffic Act (Cap. 403).
  4. Taking and driving away a motor vehicle without the consent of the owner or other lawful authority, contrary to section 65 of the Traffic Act.
  5. Reckless or dangerous driving of a bicycle, contrary to section 86 of the Traffic Act.
  6. Careless driving of a bicycle, contrary to section 87 of the Traffic Act.
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**ARMED FORCES RULES OF PROCEDURE, 1969**

ARRANGEMENT OF RULES

PRELIMINARY

*Rule*

1. Citation.
2. Definitions.

ARREST AND AVOIDANCE OF DELAY

3. Avoidance of delay by commanding officer in investigating charges.
4. Report to higher authority where no investigation commenced within forty-eight hours of arrest.
5. Eight-day delay report.
6. Arrest not to exceed 72 days without permission from higher authority.

INVESTIGATION OF CHARGES BY COMMANDING OFFICER

7. Methods of investigating charge.
8. Hearing of evidence by commanding officer.
9. Abstract of evidence.
10. Investigation before summary dealing by commanding officer.
11. Dismissal of charge by commanding officer.
12. Reference of charge to higher authority.

PREPARATION OF, CHARGE-SHEETS AND FRAMING OF CHARGES

13. Charge-sheets.
14. Charges.
15. Joint charges.
16. Construction of charge-sheets and charges.

ACTION BY HIGHER AUTHORITY ON RECEIPT OF CHARGE

17. Action by higher authority on receipt of charge.

INVESTIGATION OF AND SUMMARY DEALINGS WITH, CHARGES BY APPROPRIATE SUPERIOR AUTHORITY

18. Documents to be given to officers, servicemen and civilians dealt with summarily.
19. Investigations of and summary dealing with charges against officers, servicemen and civilians.
20. Alternative courses open to appropriate superior authority.

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21. Duties of convening officer when convening court-martial.
22. Appointment of President and Members.
23. Officers under instruction.
24. Preparation of defence.

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[Subsidiary]

### ASSEMBLY AND SWEARING OF COURT

#### Rule

25. Preliminary matters to be considered by court and beginning of trial.
26. Objections to court.
27. Swearing of court.
28. Swearing of judge advocate.
29. Swearing of officers under instruction.
30. Appointment and swearing of, and objections to, interpreters and shorthand writers.
31. No right of objection to judge advocate, prosecutor or officer under instruction.
32. Order of trial.
33. Oaths and solemn affirmations.

### ARRAIGNMENT OF ACCUSED

34. Arraignment of accused.
35. Plea to jurisdiction of court.
36. Objection to charge.
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**ARMED FORCES RULES OF PROCEDURE, 1969**

[Rule 228, L. N. 249/1969.]

## PRELIMINARY

**1. Citation**

These Rules may be cited as the Armed Forces Rules of Procedure, 1969.

**2. Definitions**

In these Rules—

“**convening a fresh court**” includes dissolving the existing court;

“**member**”, in relation to a court-martial, does not include the president;

“**sexual offence**” means an offence under section 69 of the Act where the corresponding civil offence is an offence under Chapter XV of the Penal Code (Cap. 63), or an attempt to commit such an offence, and shall include any offence of an indecent or unnatural kind under section 64 of the Act, or any attempt to commit such offence under section 66 of the Act, or an offence of an indecent kind under section 68 of the Act;

“**special finding**”, in relation to—

- (a) section 96 of the Act, means a finding which a court-martial may make in accordance with that section;
- (b) section 101 of the Act, means a finding in accordance with subsection (1) of that section that the accused is guilty of the act or omission charged but was insane when he did the act or made the omission;
- (c) rule 64(3) of these Rules, means a finding that the accused is guilty of the charge subject to the exception or variation specified in the finding.

## ARREST AND AVOIDANCE OF DELAY

**3. Avoidance of delay by a commanding officer in investigating charges**

When a person is detained by service authority in arrest his commanding officer shall, unless it is impracticable, within forty-eight hours of becoming aware that he is so detained have such person brought before him, inform him of the charge against him and begin to investigate it.

**4. Report to higher authority where no investigation commenced within forty-eight hours of arrest**

Every case of a person being detained by service authority in arrest beyond the period of forty-eight hours referred to in rule 3 without such investigation having begun and the reason therefor shall be reported by his commanding officer to higher authority.

**5. Eight-day delay report**

The report required by section 72(2) of the Act with regard to the necessity for further delay in bringing an accused to trial shall be in form set out in the First Schedule to these Rules and shall be signed by his commanding officer. The report shall be sent to the officer who would be responsible for convening a court-martial for the trial of the accused.



**6. Arrest not to exceed 72 days without permission from higher authority**

An accused shall not be held in arrest for more than seventy-two consecutive days without a court-martial being convened for his trial, unless the officer who would be responsible for convening the court-martial directs in writing that he shall not be released from arrest. When giving such a direction the officer shall state his reasons for giving it.

## INVESTIGATION OF CHARGES BY COMMANDING OFFICER

**7. Methods of investigating charge**

(1) Subject to paragraphs (2) and (3) of this rule, when a commanding officer investigates a charge, he shall first read and, if necessary, explain the charge to the accused and shall then—

- (a) hear the evidence himself in accordance with rule 8 of these Rules; or
- (b) cause the evidence to be reduced to writing in the form of an abstract of evidence made in accordance with rule 9 of these Rules, and read and consider it:

Provided that—

- (i) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;
- (ii) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 8 of these Rules; and
- (iii) before he submits to higher authority a charge against an officer or against a civilian to whom Parts IV to X of the Act apply by virtue of section 9 of the Act, or remands a serviceman for trial by court-martial, he shall cause the evidence to be reduced to writing.

(2) Where the evidence taken in accordance with paragraph (1) of this rule discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these Rules, as the investigation of the added or substituted charge.

(3) Where a civilian to whom Parts IV to X of the Act apply by virtue of section 9 of the Act is charged with an offence with which an appropriate superior authority can deal summarily, it shall not be necessary for his commanding officer to read the charge to the accused; but it shall be a sufficient compliance with this rule if his commanding officer causes to be delivered to the accused a copy of the charge-sheet and of the abstract of evidence and considers them together with any statement made by the accused under rule 9(3) of these Rules.

**8. Hearing of evidence by commanding officer**

When a commanding officer investigates a charge by hearing the evidence himself—

- (a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to the accused a written statement made by the witness:

Provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

- (b) the accused shall be allowed to cross-examine any prosecution witness;
- (c) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;
- (d) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;

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- (e) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;
- (f) if the evidence is given on oath the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 33 of these Rules;
- (g) when a commanding officer awards the punishment of forfeiture of seniority of rank that award shall be in the appropriate form set out in the Fifth Schedule to these Rules.

**9. Abstract of evidence**

(1) An abstract of evidence shall be in form in the First Schedule to these Rules and shall be made in the following way—

- (a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the accused shall not be present while the abstract of evidence is being made;
- (c) it shall consist of signed statements by such witnesses as are necessary to prove the charge:  
Provided that if, in the case of any witness, a signed statement is not readily procurable, a précis of the evidence to be given by that witness may be included instead of a signed statement;
- (d) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with paragraph (1) of this rule a copy of it shall be handed to the accused and he shall then be cautioned in the following terms—

“This is a copy of the abstract of evidence in your case. You are not obliged to say anything with regard to it unless you wish to do so, but you should read it and when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence.”

(3) Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it.

(4) The accused's statement, and a certificate in by the person who recorded the statement stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall thereafter form part of it. The certificate shall be in the form set out in the First Schedule to these Rules

**10. Investigation before summary dealing by commanding officer**

Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing—

- (a) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and
- (b) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

**11. Dismissal of charge by commanding officer**

(1) A commanding officer may dismiss a charge at any time during his investigation if he is of the opinion that it ought not to be proceeded with further.

(2) If in the course of dealing summarily with a charge a commanding officer determines that it is desirable that the charge should be tried by court-martial, he may refer the charge to higher authority in accordance with rule 12.

(3) After a commanding officer has referred a charge to higher authority in accordance with paragraph 12 of these Rules he shall not dismiss it unless it has been referred back to him with a direction that it shall be dismissed in accordance with section 81(3) or section 82(2)(b) of the Act.

**12. Reference of charge to higher authority**

When a commanding officer submits to higher authority a charge against an officer, or against a civilian to whom Parts IV to X of the Act apply by virtue of section 9 of the Act, or has remanded a serviceman for trial by court-martial, he shall send to higher authority—

- (a) a copy of the charge-sheet on which the accused is held;
- (b) a draft charge-sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court-martial;
- (c) the abstract of evidence;
- (d) a statement of the character and service record of the accused; and
- (e) a recommendation as to how the charge should be proceeded with.

**PREPARATION OF CHARGE-SHEETS AND FRAMING OF CHARGES****13. Charge-sheets**

(1) A charge-sheet shall contain the whole of the issue or issues to be tried at one time, and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character:

Provided that charges under paragraph (a) of section 31(1), paragraph (a) of section 32, paragraphs (a) and (b) of section 42 (where the charge is connected with a charge under either of the before-mentioned paragraphs) or section 51 of the Act may be included in any charge-sheet, notwithstanding that other charges in that charge-sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

(2) Every charge-sheet shall in its layout follow the appropriate illustration given in the Second Schedule to these Rules.

(3) The commencement of each charge-sheet shall be in the appropriate form set out in the Second Schedule to these Rules, and shall state the number, rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to the Act or otherwise liable to trial by court-martial.

**14. Charges**

(1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges, but in no case shall they be charged in the alternative in the same charge. When charges are laid in the alternative they shall be set out in order of gravity commencing with the most serious.

(3) Each charge shall consist of two parts, namely—

- (a) the statement of the offence; and

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(b) the particulars of the act, neglect or omission constituting the offence.

(4) The statement of an offence, if it is not a civil offence, shall be in the appropriate form in the Second Schedule to these Rules, and if it is a civil offence in such words as sufficiently describe that offence.

(5) The particulars shall state—

- (a) such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;
- (b) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a less degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted; and
- (c) any additional facts which it is intended to prove as rendering the accused liable to the punishment of stoppages if convicted.

**15. Joint charges**

(1) Any number of accused may be charged in the same charge-sheet with offences alleged to have been committed by them separately if the acts on which the charges are founded are so connected that it is in the interests of justice that they be tried together.

(2) (a) Any number of accused may be charged jointly in one charge for an offence committed by them jointly;

(b) where so charged any one or more accused may at the same time be charged in the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly, provided such charges could, if the accused to whom they relate had been tried separately, have been included under rule 13(1) in the same charge-sheet as the other charges against him.

**16. Construction of charge-sheets and charges**

In the construction of a charge-sheet or charge there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together.

**ACTION BY HIGHER AUTHORITY ON RECEIPT OF CHARGE****17. Action by higher authority on receipt of charge**

When a higher authority receives a charge against an accused he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or himself convene a court-martial to try the accused, refer the charge either to an appropriate superior authority in order that that authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court-martial to try the accused, and shall, when he so refers the charge, send to the appropriate superior authority or other officer concerned the documents mentioned in rule 12 of these Rules together with his own recommendation as to how the case should be proceeded with.

**INVESTIGATION OF, AND SUMMARY DEALINGS WITH, CHARGES BY AN APPROPRIATE SUPERIOR AUTHORITY****18. Documents to be given to officers, servicemen and civilians dealt with summarily**

An appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than twenty-four hours before

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the charge is so investigated and dealt with, a copy of the charge-sheet containing the charge upon which he will be so dealt with and a copy of the abstract of evidence.

#### **19. Investigations of and summary dealing with charges against officers, servicemen and civilians**

When an appropriate superior authority investigates and deals summarily with a charge—

- (a) he shall first read the charge to the accused;
- (b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them;
- (c) if the witnesses against the accused do not give their evidence orally the appropriate superior authority shall read the abstract of evidence to the accused if he so requires;
- (d) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;
- (e) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;
- (f) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 33 of these Rules;
- (g) when an appropriate superior authority awards the punishment of forfeiture of seniority of rank that award shall be in the appropriate form set out in the Fifth Schedule to these Rules;
- (h) a record shall be made of the proceedings in accordance with the form set out in the Third Schedule to these Rules.

#### **20. Alternative courses open to appropriate superior authority**

An appropriate superior authority shall, if an accused elects to be tried by court-martial or the appropriate superior authority in the course of investigating, or whilst dealing summarily with, a charge determines that it is desirable that the charge should be tried by court-martial, either himself convene the court-martial or refer the charge to higher authority in accordance with rule 17 of these Rules.

### CONVENING OF COURTS MARTIAL

#### **21. Duties of convening officer when convening court-martial**

When an officer convenes a court-martial he shall—

- (a) issue a convening order in the appropriate form set out in the Fourth Schedule to these Rules ;
- (b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court-martial upon those charges either by his commanding officer or by the appropriate superior authority who has investigated them;
- (c) if he is of the opinion that charges should be put in separate charge-sheets, so direct and direct the order in which they are to be tried;
- (d) direct, if there is more than one accused, whether the accused are to be tried separately or jointly;
- (e) appoint the presiding officer and members of the court and any waiting members in accordance with rule 22 of these Rules;

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- (f) take the necessary steps to procure the appointment of a judge advocate;
- (g) appoint an officer or counsel assisted by an officer to prosecute or detail a commanding officer to appoint an officer to prosecute:  
Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;
- (h) appoint the date, time and place for the trial;
- (i) send to the presiding officer the charge-sheet, the convening order and, if he considers it necessary or desirable, a copy of the abstract of evidence from which any evidence which in his opinion would be inadmissible under the Act at the court-martial has been expurgated;
- (j) send to each member of the court and to each waiting member a copy of the charge-sheet;
- (k) send to the prosecutor copies of the charge-sheet and convening order together with the original abstract of evidence and, where an expurgated copy thereof has been sent to the president, an unexpurgated copy thereof showing the passages which have been expurgated in that copy;
- (l) send to the judge advocate copies of the charge-sheet and convening order and an unexpurgated copy of the abstract of evidence showing, where an expurgated copy has been sent to the president, the passages which have been expurgated in that copy;
- (m) ensure that the accused is given a proper opportunity to prepare his defence in accordance with rule 24 to these Rules; and
- (n) take steps in accordance with rule 89 of these Rules to procure the attendance at the court-martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24 of these Rules:

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be, such cost, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

**22. Appointment of president and Members**

The convening officer shall—

- (a) appoint the presiding officer of a court-martial by name;
- (b) appoint the members of a court-martial by name; and
- (c) appoint such waiting members as he thinks expedient by name.

**23. Officers under instruction**

(1) Subject to rule 79 of these Rules, any officer subject to the Act may, by direction of the convening officer or at the discretion of the president, remain with a court-martial throughout the proceedings as an officer under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

**24. Preparation of defence**

(1) An accused who has been remanded for trial by court-martial may be represented by counsel and shall be afforded a proper opportunity for preparing his defence and allowed proper communication with his defending officer or counsel and with his witnesses.

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(2) A defending officer or counsel shall be appointed by the commanding officer to defend an accused who has been remanded for trial by court-martial, unless the accused states in writing that he does not wish such an appointment to be made.

(3) If the prosecution is to be undertaken by a legally qualified officer or by counsel the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him.

(4) As soon as practicable after an accused has been remanded for trial by court-martial, and in any case not less than twenty-four hours before his trial, he shall be given—

- (a) a copy of the charge-sheet;
- (b) an unexpurgated copy of the abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the President;
- (c) notice of any additional evidence which the prosecution intends to adduce; and
- (d) a list of the ranks, names and units of the presiding officer and members who are to form the court and of any waiting members.

(5) When an accused is given a copy of the charge-sheet and of the abstract of evidence in accordance with this rule he shall—

- (a) if necessary, have the charge explained to him; and
- (b) be informed that, upon his making a written request to his commanding officer not less than twenty-four hours before his trial requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken at the possible expense of the accused in accordance with these Rules to procure the attendance of any such witness at his trial.

(6) When an accused is served with a copy of a statutory declaration which the prosecution proposes to hand to the court in accordance with section 93(2) of the Act and rule 56 of these Rules, he shall be informed of his right under that section to require that oral evidence shall be given in lieu of such statutory declaration.

(7) (a) When it is intended to try two or more accused jointly notice of this fact shall be given to each such accused when he is given a copy of the charge-sheet.

(b) Any such accused may, before trial, by written notice to the convening officer claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately. In such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately.

(8) When a charge-sheet contains more than one charge the accused may, before trial, by written notice to the convening officer claim to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

#### ASSEMBLY AND SWEARING OF COURT

##### **25. Preliminary matters to be considered by court and beginning of trial**

(1) Upon a court-martial assembling, the court shall, before beginning the trial, satisfy themselves in closed court—

- (a) that the court has been convened in accordance with the Act and these Rules;



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- (b) that the court consists of not less than the legal minimum of officers;
- (c) that the president and members are of the required rank and length of service;
- (d) that the president and members have been duly appointed and are not disqualified under the Act;
- (e) that the judge advocate has been duly appointed;
- (f) that the accused appears from the charge-sheet to be subject to service law or otherwise liable to trial by court-martial and to be subject to the jurisdiction of the court; and
- (g) that each charge is on its face correct in law and framed in accordance with these Rules.

(2) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles the president may appoint a duly qualified waiting member to fill that vacancy.

(3) The president may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(4) If the court is not satisfied on any of the matters mentioned in paragraph (1) of this rule, and is not competent to rectify the matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereon.

(5) When the court has complied with this rule and is ready to proceed with the trial the president shall open the court and the trial shall begin.

**26. Objections to court**

(1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused, who shall be given an opportunity to object to any of those officers in accordance with section 90 of the Act.

(2) When a court is convened to try more than one accused, whether separately or jointly, each accused shall be given an opportunity to object to any officer on the court in accordance with the preceding paragraph and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the president is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers on the court including any officer who has been appointed by the president in accordance with paragraph (9) of this rule in place of an officer who has retired.

(8) When an objection to an officer is allowed that officer shall forthwith retire and take no further part in the proceedings.



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(9) When an officer objected to (other than the president) retires and there is a duly qualified waiting member in attendance the president shall immediately appoint him to take the place of the officer who has retired.

(10) The court shall satisfy themselves that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this rule.

(11) If an objection to the president is allowed the court shall report to the convening officer without proceeding further with the trial.

(12) If as a result of the allowance of an objection to a member there are insufficient officers available to form a court in compliance with the Act, the court shall report to the convening officer without proceeding further with the trial, and the convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

### **27. Swearing of court**

(1) Immediately after rule 26 has been complied with an oath shall be administered to the president and each member of the court in accordance with rule 33 of these Rules and in the presence of the accused.

(2) The oath shall be administered by the judge advocate to the president first and afterwards to each member of the court.

(3) A court may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the president or to any member of the court, the court may, if they think fit, proceed to determine that objection in accordance with rule 26 of these Rules, or postpone the trial of that accused and swear the court for the trial of the other accused only.

### **28. Swearing of judge advocate**

After the court has been sworn an oath shall be administered to the judge advocate in accordance with rule 33 of these Rules and in the presence of the accused.

### **29. Swearing of officers under instruction**

After the court and judge advocate have been sworn an oath shall be administered to any officer under instruction in accordance with rule 33 and in the presence of the accused.

### **30. Appointment and swearing of, and objections to, interpreters and shorthand writers**

(1) A competent and impartial person may be appointed at any time to act as an interpreter or shorthand writer at a trial by court-martial and before he so acts an oath shall be administered to him in accordance with rule 33 of these Rules and in the presence of the accused.

(2) Before a person is sworn as an interpreter or as a shorthand writer the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court, and, if the court think that the objection is reasonable, that person shall not act as an interpreter or shorthand writer.

### **31. No right of objection to judge advocate, prosecutor or officer under instruction**

The accused shall have no right to object to a judge advocate, a prosecutor or an officer under instruction.

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### 32. Order of trial

(1) When a court has been convened to try two or more accused separately and have been sworn in accordance with rule 27(3) of these Rules, the court shall try them in the order indicated by the convening officer or, where he has given no such indication, in such order as the court think fit.

(2) When a court has been convened to try an accused on charges which are included in more than one charge-sheet, the court shall take the charge-sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as they think fit.

### 33. Oaths and solemn affirmations

(1) An oath which is required to be administered under these Rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule to these Rules:

Provided that the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 27(2) of these Rules, every oath shall be administered at a court-martial by the president, a member of the court or the judge advocate.

(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath the affirmation shall be in the appropriate form set out in the Sixth Schedule to these Rules.

## ARRANGEMENT OF ACCUSED

### 34. Arraignment of accused

(1) When the court and judge advocate have been sworn the accused shall be arraigned.

(2) If there is more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there is more than one charge-sheet against the accused before the court the court shall arraign and try the accused upon the charge in the first of such charge-sheets and shall announce their finding thereon, and if the accused has pleaded guilty the court shall comply with paragraphs (1) and (2) of rule 44 of these Rules before they arraign him upon the charge in any subsequent charge-sheet.

### 35. Plea to jurisdiction of court

(1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court. If he does so—

- (a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and
- (b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea they shall adjourn and report to the convening officer.

(3) When a court report to the convening officer under this rule the convening officer shall—

- (a) if he approves the decision of the court to allow the plea, dissolve the court;
- (b) if he disapproves the decision of the court—
  - (i) refer the matter back to the court and direct them to proceed with the trial; or

- (ii) convene a fresh court to try the accused.

### 36. Objection to charge

(1) An accused before pleading to a charge may object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules, and if he does so the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the court uphold the objection they shall either amend the charge, if permissible under rule 81 of these Rules, or adjourn and report to the convening officer:

Provided that if there is another charge or another charge-sheet before the court the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court reports to the convening officer under this rule, the convening officer shall—

- (a) if he approves the decision of the court to allow the objection—
- (i) dissolve the court; or
  - (ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
  - (iii) amend the charge to which the objection relates if permissible under rule 82 of these Rules, and direct the court to try it as amended;
- (b) if he disapproves the decision of the court to allow the objection—
- (i) direct the court to try the charge; or
  - (ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
  - (iii) convene a fresh court to try the accused.

### 37. Plea in bar of trial

(1) An accused, before pleading to a charge, may offer a plea in bar of trial in reliance upon section 142 or section 144 of the Act; and if he does so—

- (a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and
- (b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea, they shall adjourn and report to the convening officer:

Provided that, if there is another charge or another charge-sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this rule the convening officer shall—

- (a) if he approves the decision of the court to allow the plea—
- (i) dissolve the court; or
  - (ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only;

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- (b) if he disapproves the decision of the court to allow the plea—
- (i) direct the court to try the charge; or
  - (ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
  - (iii) convene a fresh court to try the accused.

**38. Application by accused at joint trial to be tried separately**

(1) Where two or more accused are charged jointly any one of the accused may, before pleading to the charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately.

(2) If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) If the court are of the opinion that the interests of justice so require they shall allow the application and try separately the accused who made it.

**39. Application by accused to have charges tried separately**

(1) Where a charge-sheet contains more than one charge the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge.

(2) If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) If the court are of the opinion that the interests of justice so require they shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

**40. Plea to charge**

(1) After any pleas under rules 35 and 37, any objection under rule 36, and any application under rules 38 and 39 of these Rules, have been dealt with, the accused shall be required (subject to paragraph (2)) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 96 of the Act to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where they could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 64 of these Rules, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a lesser degree of punishment or to the offence charged subject to such exceptions or variations.

**41. Acceptance of plea of guilty**

(1) If an accused pleads guilty to a charge under paragraph (1) or paragraph (2) of rule 40 of these Rules the judge advocate shall, before the court decide to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either paragraph (1) or paragraph (2) of rule 40 of these Rules if—

- (a) the court are not satisfied that the accused understands the nature of the charge or the effect of his plea; or

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- (b) the president, having regard to all the circumstances, considers that the accused should plead not guilty; or
- (c) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under rule 40(2) of these Rules a court shall also not accept the plea unless the convening officer concurs and they are satisfied of the justice of such a course. The concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under paragraph (1) or paragraph (2) of rule 40 of these Rules is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When a court are satisfied that they can properly accept a plea of guilty under paragraph (1) or paragraph (2) of rule 40 of these Rules they shall record a finding of guilty in respect thereof.

#### **42. Pleas on alternative charges**

(1) When an accused pleads guilty to the first of two or more alternative charges the court, if they accept the accused's plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges the court may—

- (a) proceed as if the accused had pleaded not guilty to all the charges; or
- (b) with the concurrence of the convening officer (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it on the charge-sheet; and where the court record such findings the prosecutor shall before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the court have found the accused guilty and which is placed after it in the charge-sheet.

#### PROCEDURE AFTER RECORDING FINDING OF GUILTY

#### **43. Order of trial where pleas of guilty and not guilty**

(1) After the court have recorded a finding of guilty, if there is no other charge in the same charge-sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge-sheet, they shall proceed with the trial as directed by rule 44 of these Rules.

(2) If there is another charge in the charge-sheet to which the accused has pleaded not guilty, or there is another accused who has pleaded not guilty to a charge in that charge-sheet, the court shall not comply with rule 44 of these Rules until after they have dealt with such other charge or tried such other accused and have announced and recorded their finding in respect thereof.

#### **44. Procedure on finding of guilty after plea of guilty**

(1) After the court have recorded a finding of guilty in respect of a charge to which an accused pleaded guilty the prosecutor shall, subject to rule 43 of these Rules, read the abstract of evidence to the court or inform the court of the facts contained therein:

Provided that, if an expurgated copy of the abstract was sent to the president, the prosecutor shall not read to the court those parts of the abstract which have been expurgated or inform the court of the facts contained in those parts, and shall not hand the original abstract to the court until the trial is concluded.

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(2) If the abstract of evidence is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

(3) After paragraph (1) and (2) of this rule have been complied with the accused may—

- (a) adduce evidence of character and in mitigation of punishment; and
- (b) address the court in mitigation of punishment.

(4) After paragraph (3) has been complied with, the court shall proceed as directed in paragraph (1), (2), (3) and (4) of rule 69 of these Rules.

**CHANGES OF PLEA****45. Change of plea**

(1) An accused who has pleaded not guilty may at any time before the court close to deliberate on their finding withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 40(2) of these Rules), and in such case the court shall, if they are satisfied that they can accept the accused's changed plea, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 44 of these Rules.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under paragraph (2) of this rule, they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 42, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

**PROCEDURE ON PLEAS OF NOT GUILTY****46. Application for adjournment of trial**

After a plea of not guilty to any charge has been entered—

- (a) the court shall ask the accused whether he wishes to apply for an adjournment on the grounds that any of these Rules relating to procedure before trial have not been complied with and that he has been prejudiced thereby, or on the ground that he has not had sufficient opportunity for preparing his defence;
- (b) if the accused applies for an adjournment—
  - (i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and
  - (ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;
- (c) the court may grant an adjournment if they think the interests of justice so require.

**47. Case for prosecution**

(1) The prosecutor may if he desires, and shall if required by the court, make an opening address explaining the charge, where necessary, and the nature and general effect of the evidence which he proposes to adduce.

(2) The witnesses for the prosecution shall then be called and give their evidence.

**48. Calling of witnesses whose evidence not contained in abstract of evidence**

(1) If the prosecutor intends to adduce evidence which is not contained in any abstract of evidence given to the accused notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused a reasonable time before the evidence is adduced.

(2) If such evidence is adduced without notice or particulars having been given the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

**49. Notice to accused that witness will not be called by prosecutor**

The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the abstract of evidence nor a witness whom he has notified the accused that he intends to call under rule 48 of these Rules, but if the prosecutor does not intend to call such a witness to give evidence he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available.

## CALLING AND EXAMINATION OF WITNESSES

**50. Swearing of witnesses**

Subject to section 91 of the Act, an oath shall be administered to each witness in accordance with rule 33 of these Rules before he gives evidence and in the presence of the accused.

**51. Exclusion of witnesses from court**

During a trial a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence the court may direct the witness to withdraw during such discussion.

**52. Examination of witnesses**

(1) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceedings, and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and, unless an objection is made by the witness, the court, the judge advocate, the prosecutor or the accused, the witness shall reply forthwith. If such an objection is made the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

**53. Examination of witnesses by court**

(1) The president, the judge advocate and, with permission of the president, any member of the court, may put questions to a witness.

(2) Upon any such questions being answered the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.



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#### 54. Reading back of evidence to witnesses

(1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may ask for the record to be corrected or explain the evidence which he has given.

(2) If any such correction is made or explanation given the prosecutor and the accused may put such questions to the witness respecting the correction or explanation as seem proper to the court.

(3) When a shorthand writer is employed, it shall not be necessary to comply with paragraphs (1) and (2) of this rule if, in the opinion of the court and the judge advocate, it is unnecessary to do so:

Provided that if any witness so demands paragraph (1) shall be complied with.

#### 55. Calling of witnesses by court and recalling of witnesses

(1) The court may, at any time before the judge advocate begins to sum up, call a witness or recall a witness if in the opinion of the court it is in the interests of justice to do so; and, if the court call a witness or recall a witness under this rule, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the judge advocate begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

#### 56. Statutory declarations

A statutory declaration which is admissible in accordance with the provisions of section 93 of the Act shall be handed to the court by the prosecutor or the accused, as the case may be, without being produced by a witness.

### SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASE

#### 57. Submission of no case to answer and power of court to stop a case

(1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a *prima facie* case for him to answer and that he should not be called upon to make his defence to that charge. If the accused makes such a submission the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(2) The court shall not allow the submission unless they are satisfied that—

- (a) the prosecution has not established a *prima facie* case on the charge as laid; and
- (b) it is not open to them on the evidence adduced to make a special finding under either section 96 of the Act or rule 64(3) of these Rules.

(3) If the court allow the submission they shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith; if the court disallow the submission they shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if they do so they shall announce such finding in open court forthwith.



## CASE FOR THE DEFENCE

**58. Explanation to accused of rights when making defence**

(1) After the close of the case for the prosecution the president or, if he so directs, the judge advocate shall explain to the accused that—

- (a) if he wishes he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;
- (b) if he gives evidence on oath he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate, but that if he makes a statement without being sworn no one will be entitled to ask him any questions; and
- (c) whether he gives evidence or makes a statement or remains silent he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the president or judge advocate has complied with paragraph (1) of this rule, he shall ask the accused if he intends to give evidence on oath or to make a statement without being sworn and if he intends to call any witness on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself or to hand in a statutory declaration as to the facts of the case he may make an opening address outlining the case for the defence before the evidence for the defence is given.

**59. Evidence for defence**

(1) After rule 58 has been complied with, the witnesses for the defence (if any) shall be called and give their evidence.

(2) Rules 50, 51, 52, 53, 54, 55 and 56 to these Rules shall apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

**60. Evidence in rebuttal**

After the witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

**61. Closing addresses**

(1) After all the evidence has been given the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor.

(3) Where two or more accused are represented by the same defending officer or counsel he may make one closing address only.

## SUMMING UP BY JUDGE ADVOCATE

**62. Summing up by judge advocate**

After the closing addresses, the judge advocate shall sum up the evidence and advise the court on the law relating to the case in open court.

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DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON CHARGE

**63. Deliberation on finding on charge**

(1) After the judge advocate's summing up the court shall close to deliberate on their finding on the charge.

(2) While the court are deliberating on their finding on the charge no person shall be present except the president and members of the court and any officer under instruction.

(3) If the court, while deliberating on their finding on the charge, require further advice from the judge advocate the court shall suspend their deliberation and ask and be given such advice in open court.

**64. Expression of opinions on, and form of, finding**

(1) The opinion of the president and each member as to the finding shall be given in closed court, orally, and on each charge separately, and their opinions shall be given in order of seniority commencing with the junior in rank.

(2) Save as is otherwise provided in paragraph (4) of this rule, the court shall record on every charge on which a plea of not guilty has been recorded—

- (a) a finding of guilty or a special finding in accordance with section 96 or section 101(1) of the Act or paragraph (3) of this rule; or
- (b) a finding of not guilty or of not guilty and honourably acquitted of the charge.

(3) Where the court are of the opinion as regards any charge that the facts which they find to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation which they shall specify in the finding.

(4) Where the court have recorded a finding of guilty on a charge which is laid in the alternative they shall find the accused not guilty of any charge alternative thereto which is placed before it in the charge-sheet and record no finding on any charge alternative thereto which is placed after it in the charge-sheet.

**65. Announcement of finding**

(1) The finding on each charge shall be announced in open court forthwith.

(2) Every conviction shall be announced as being subject to confirmation.

(3) The finding shall be in the appropriate form set out in the Fourth Schedule to these Rules.

PROCEDURE AFTER ANNOUNCEMENT OF FINDING

**66. Completion of procedure on plea of guilty before deliberation on sentence**

After the court have announced their finding on any charge on which the court have entered a plea of not guilty, if there is another charge in the same charge-sheet on which the court have accepted a plea of guilty, the court shall comply with paragraphs (1) and (2) of rule 44 of these Rules in respect of that charge before proceeding further with the trial.

**67. Trial of charges in other charge-sheets before deliberation on sentence**

Where there is another charge-sheet against the accused before the court the court shall not comply with rules 68, 69 and 70 of these Rules until they have arraigned and

tried the accused and have complied with rule 65 of these Rules and, if necessary, with rule 66 of these Rules in respect of each charge in such other charge-sheet, unless that charge-sheet is withdrawn under rule 80 of these Rules.

#### 68. Release of accused

If the findings on all charges against the accused are not guilty the court shall order the accused to be released and the president and judge advocate shall date and sign the record of the proceedings. The president shall then forward the record as directed in the convening order.

#### 69. Accused's record and plea in mitigation

(1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 96 of the Act or rule 64(3) of these Rules, the court, before deliberating on their sentence, shall whenever possible take evidence of his age, rank and service record. Such service record shall include—

- (a) any recognized acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled;
- (b) particulars of any offence of which the accused has been found guilty during his service and which is recorded in the service books relating to the accused; and
- (c) the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in paragraph (1) of this rule may be given by a witness producing to the court a written statement containing a summary of the entries in the service books relating to the accused, after the witness has in court verified such statements and identified the accused as the person to whom it relates. Such statement shall be in the appropriate form set out in the Fourth Schedule to these Rules.

(3) In addition to the evidence contained in the statement referred to in paragraph (2) of this rule it shall be the duty of the prosecutor whenever possible to call as a witness an officer to give to the court any information in the possession of the service authorities regarding—

- (a) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;
- (b) his general conduct in the service; and
- (c) particulars of offences which do not appear in the statement above referred to of which the accused has been found guilty by a civil court, not being offences of which he was found guilty while under the age of fourteen years, and which are of the same general nature as that of which the accused has been found guilty by the court-martial:

Provided that the court shall not be informed of any such civil offence unless the finding is proved in accordance with section 139 of the Act, or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with paragraph (2) and (3) of this rule and, if the accused so requires, the service books, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service books or such certified copy the court shall cause the form to be corrected accordingly.

(5) After paragraphs (1), (2), (3) and (4) of this rule have been complied with the accused may—

- (a) give evidence on oath and call witnesses in mitigation of punishment and to his character; and

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- (b) address the court in mitigation of punishment.

**70. Request by accused for other offences to be taken into consideration**

(1) Before the court close to deliberate on their sentence the accused may request the court to take into consideration any other offence under the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seem proper.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the judge advocate, who shall ask the accused if he admits having committed them.

(3) The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration. The list shall be signed by the president and be attached to the record of the proceedings as an exhibit.

**DELIBERATION ON SENTENCE****71. Persons entitled to be present during deliberation on sentence**

While the court are deliberating on their sentence no person shall be present except the president, the members, the judge advocate and any officer under instruction.

**72. Sentence and recommendation to mercy**

(1) The court shall award a sentence in respect of each of the offences of which the accused is found guilty; and the sentence or sentences shall be in the appropriate form set out in the Fifth Schedule to these Rules.

(2) The opinion of the president and each member as to the sentence shall be given orally and in closed court, and their opinions shall be given in order of seniority commencing with the junior in rank.

(3) When the court have agreed to take into consideration an offence or offences not included in the charge-sheet the court shall award one sentence in respect of the list of offences which they are taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty, save that they may include in their sentence a direction that such deductions shall be made from the pay of the accused as they would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

(4) The court may make a recommendation to mercy and if they do so shall record in the proceedings their reasons for making it.

**73. Postponement of deliberation on sentence**

Where two or more accused are tried separately by the same court upon charges arising out of the same transaction the court may, if they think that the interests of justice so require, postpone their deliberation upon the sentence to be awarded to any one or more of such accused until they have recorded and announced their findings in respect of all such accused.

**ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL****74. Announcement of sentence and conclusion of trial**

(1) The sentence or sentences, and any recommendation to mercy together with the reasons for making it, shall be announced in open court. The sentence or sentences shall be announced as being subject to confirmation.

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(2) When paragraph (1) has been complied with the president shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the president and judge advocate shall date and sign the record of the proceedings.

(4) The president shall then forward the record as directed in the convening order.

#### GENERAL DUTIES OF PRESIDENT, PROSECUTOR AND DEFENDING OFFICER OR COUNSEL

##### 75. General duties of president

It shall be the duty of the president to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice, and in particular—

- (a) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these Rules;
- (b) to ensure that the accused does not suffer any disadvantage in consequence of his position as such or of his ignorance, or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear and intelligible, or otherwise;
- (c) to ensure that an officer under instruction does not express an opinion to the court on any matter relating to the trial before the court have come to their finding, nor on sentence before the court have decided upon the sentence; and
- (d) to ensure that the record of the proceedings and the exhibits attached to or kept with such record are kept in safe custody.

##### 76. General duties of prosecutor and defending officer or counsel

(1) It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court and judge advocate with due respect and to present their cases fairly, and in particular—

- (a) to conform with these Rules and the practice of the civil courts relating to the examination, cross-examination and re-examination of witnesses;
- (b) not to refer to any matter not relevant to the charge before the court; and
- (c) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of paragraph (1) of this rule it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of the accused.

##### 77. Counsel

(1) Subject to these Rules, the following persons shall be allowed to appear as counsel at a court-martial—

- (a) an advocate;
- (b) with the consent of the convening officer, any person who is recognized by him as having in any country or territory outside Kenya rights and duties similar to those of an advocate and as being subject to punishment or disability for a breach of professional rules.

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**[Subsidiary]**

(2) Any right granted by these Rules to the accused at a court-martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court-martial and any right granted to the accused by rules 24(5), (7) and (8), 26, 30, 35, 36, 37, 38, 39, 46, 57, 70, 78(2), 90 and 92(2) of these Rules, may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court-martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court-martial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than twenty-four hours before his trial.

## POWERS AND DUTIES OF JUDGE ADVOCATE

### 78. General duties of judge advocate

(1) The judge advocate shall be responsible for the proper discharge of his functions to the Chief Justice.

(2) The prosecutor and the accused respectively are at all times after the judge advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial whether he is in or out of court, subject when he is in court to the permission of the court.

(3) (a) On the assembly of the court the judge advocate shall advise the court of any defect in the constitution of the court or in the charge-sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise.

(b) The court shall accept the judge advocate's advice on all such matters unless they have weighty reasons for not doing so, and if the court do not accept it their reasons for not doing so shall be recorded by the president in the record of the proceedings.

(4) After the closing addresses the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court close to deliberate on their finding. If in the course of deliberating on their finding the court require further advice from the judge advocate, they shall suspend their deliberation and ask and be given such advice in open court.

(5) If when the court announce a finding of guilty or a special finding under section 96 of the Act or rule 64(3) of these Rules the judge advocate is of the opinion that such finding or special finding is contrary to the law relating to the case—

- (a) he shall once more, but not more than once more, advise the court what findings are in his opinion open to them;
- (b) the court shall then reconsider their finding in closed court; and
- (c) the record of the proceedings relating to such reconsideration shall be in the appropriate form set out in the Fourth Schedule to these Rules.

(6) The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(7) The judge advocate has equally with the president the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.

(8) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 90 of these Rules.

**79. Judge advocate sitting alone**

- (1) If—
- (a) during the course of a trial any question as to the admissibility of evidence arises; or
  - (b) during a joint trial an application is made by any of the accused for a separate trial; or
  - (c) an application is made by an accused that a charge should be tried separately,

the president may direct that the point at issue shall be determined by the judge advocate in the absence of the president and the members of the court and of any officer under instruction. Where the president so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The judge advocate shall, when the president and members of the court and any officer under instruction have withdrawn in accordance with paragraph (1) of this rule, hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary. After the judge advocate has given his ruling the president and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this rule the proceedings before him shall form part of the proceedings of the court, and sections 52(1), 53, 91, 92(1) and (2), 93, 94, 95 and 97 of the Act and rules 33, 50, 51, 52, 53, 54, 55, 56, 76, 77, 83, 84, 85, 89, 90, 91, 92, 95, 96 and 103 of these Rules shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the president and members of the court, and anything which is authorized by those sections and those rules to be done by the court or by the president may be done by the judge advocate when sitting alone.

(4) When a judge advocate is sitting alone in accordance with this rule and a person subject to the Act commits an offence against section 52(1) of the Act, the judge advocate shall report the occurrence to the president who shall take such action as he considers appropriate.

(5) The judge advocate shall be responsible for ensuring that the president and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

**WITHDRAWAL AND AMENDMENT OF CHARGE-SHEETS AND CHARGES****80. Withdrawal of charge-sheets and charges**

A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge-sheet before the accused is arraigned on any charge therein.

**81. Amendment of charge-sheets and charges by court**

(1) At any time during a trial, if it appears to the court that there is in the charge-sheet—

- (a) a mistake in the name or description of the accused;
- (b) a mistake which is attributable to a clerical error or omission,

the court may amend the charge-sheet so as to correct the mistake.



**[Subsidiary]**

(2) At any time during a trial, if it appears to the court before they close to deliberate on their finding that it is desirable in the interests of justice to make any addition to or omission from or alteration in a charge which cannot be made under paragraph (1) of this rule, they may, if such addition, omission or alteration can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

**82. Amendment of charges by convening officer**

When a court report to the convening officer under rule 36(2) of these Rules he may amend the charge in respect of which they have reported to him by making any addition to or omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

**SITTINGS AND ADJOURNMENT OF COURT****83. Sittings of court**

Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day, and the court shall sit for such time each day as may be reasonable in the circumstances:

Provided that the court shall not sit on a Sunday, or on a public holiday, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

**84. Adjournment**

(1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

(2) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening officer.

(3) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

**85. View by court**

(1) If at any time during a trial before the court close to deliberate on their finding it appears to the court that they should in the interests of justice, view any place or thing, they may adjourn for this purpose.

(2) When the court view any place or thing the president, members of the court, judge advocate, prosecutor, accused and defending officer or counsel (if any) shall be present.

**86. Absence of president, members or judge advocate**

(1) If after the commencement of a trial the president or judge advocate dies or is otherwise unable to attend the court shall adjourn and report to the convening officer, who shall dissolve the court if there is any likelihood of a long delay.

(2) If after the commencement of a trial any member of the court dies or is otherwise unable to attend the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum the court shall adjourn and the president shall report to the convening officer, who shall dissolve the court if there is any likelihood of a long delay.



[Subsidiary]

(3) If the president, judge advocate, or a member of the court is absent during any part of a trial he shall take no further part in it, and the like steps shall be taken as if the president, judge advocate or member, as the case may be, had died.

(4) An officer cannot be added to the court after the accused has been arraigned.

(5) Where a court is dissolved in accordance with this rule the convening officer shall without undue delay take the prescribed steps to convene another court to try the accused.

## INSANITY

### 87. Insanity

(1) Where on the trial of a person the question of his fitness to be tried falls to be determined in accordance with section 100(1) of the Act the court shall take evidence as to his condition and, if after considering the evidence the court are of the opinion that the accused is fit to stand trial, they shall proceed with the trial. If they are of the opinion that the accused is unfit to stand his trial they shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation.

(2) If a court, in the course of their deliberation on their finding on a charge, find pursuant to section 101 of the Act that the accused was guilty of the offence but was insane when he committed the act or made the omission, their finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under paragraph (1) or paragraph (2) of this rule the president shall announce in open court that the proceedings are terminated and thereupon the president and the judge advocate shall date and sign the record of the proceedings, and the president shall then forward the record as directed in the convening order.

## INTERVIEWING AND ATTENDANCE OF WITNESSES

### 88. Interviewing of witnesses

(1) The prosecution shall not without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness whose attendance at the trial the accused has requested in accordance with rule 24(5)(b) of these Rules, or who has made a statutory declaration a copy of which the accused has served on the prosecution in accordance with section 93 of the Act.

(2) Except as provided in rule 49 of these Rules, neither the accused nor any person on his behalf shall, without the consent of the convening officer, or, after the trial has begun, without the consent of the president, interview any witness for the prosecution whose evidence is included in the abstract of evidence, or in respect of whom the prosecution have given the accused notice under rule 48 of these Rules that they intend to call him as a witness at the trial, or who has made a statutory declaration a copy of which the prosecution have served on the accused in accordance with section 93 of the Act.

### 89. Procuring attendance of witnesses

(1) A witness who is subject to the Act may be ordered by the proper service authority to attend at the taking of an abstract of evidence or a trial by court-martial.

(2) A witness who is not subject to the Act may be summoned to attend—

- (a) the taking of an abstract of evidence by an order under the hand of the commanding officer of the accused; or

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**[Subsidiary]**

- (b) a trial by court-martial by an order under the hand of an officer authorized to convene a court-martial or of a staff officer on his behalf or, after the assembly of the court, of the president.

(3) The summons referred to in paragraph (2) shall, when it relates to the taking of an abstract of evidence, be in Form IV in the First Schedule, and when it relates to a trial by court-martial it shall be in Form III in the Fourth Schedule, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

(4) At the time of service of the summons referred to in paragraph (2) of this rule there shall be paid or tendered to the witness a sum in respect of his reasonable expenses in respect of journeying to, attending at and returning from the taking of the abstract of evidence or the trial, as the case may be:

Provided that for the purpose of this paragraph the tender of a warrant or voucher entitling the witness to travel free of charge shall be deemed to constitute tender of his expenses in respect of any traveling authorized by the warrant or voucher.

(5) Section 95 of the Act applies in relation to proceedings at the taking of an abstract of evidence as it applies in relation to proceedings at a court-martial as though the words "officer taking the abstract of evidence" were substituted for the words "president of the court-martial".

## RECORD OF PROCEEDINGS

### 90. Record of proceedings

The proceedings of courts-martial shall be recorded as follows—

- (a) the proceedings shall be recorded in writing in accordance with the appropriate form set out in the Fourth Schedule of these Rules and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge the merits of the case;

- (b) when there is no shorthand writer present, the evidence shall be taken down in narrative form as nearly as possible in the words used:

Provided that, if the court, the judge advocate, the prosecutor or the accused considers it necessary, any particular question and answer shall be taken down verbatim;

- (c) when an objection, submission or application is made during a trial at which there is no shorthand writer, a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or judge advocate thinks fit:

Provided that if the prosecutor or accused so requests a note shall be made of the objection, submission or application, the grounds therefor, the advice of the judge advocate thereon and the decision of the court;

- (d) when any address by the prosecutor or the accused or summing up of the judge advocate is not in writing and there is no shorthand writer present, it shall only be necessary to record as much of such address or summing up as the president or the judge advocate thinks proper:

Provided that if the prosecutor or accused so requests a note shall be made of any particular point in such address or summing up;

- (e) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but, if any comment or report seems to the court to be necessary, the president may forward it to the proper service authority in a separate document.

**91. Exhibits**

(1) Subject to paragraph (2) of this rule, any document or thing admitted in evidence shall be made an exhibit.

(2) When an original document or book is produced to the court by a witness, the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after they have satisfied themselves that such copy or extract is correct and the judge advocate has certified thereon that the court has compared it with the original and found it correct, the court may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall—

- (a) be marked with a number or letter and be signed by the judge advocate or have a label bearing a number or letter and the signature of the judge advocate affixed to it;
- (b) be attached to or kept with the record of proceedings unless in the opinion of the court having regard to the nature of the exhibit or for other good reason it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under paragraph (3)(b) the president shall ensure that proper steps are taken for its safe custody.

**92. Custody and inspection of record of proceedings during trial**

(1) During a trial the record of proceedings and the exhibits shall be deemed to be in the custody of the president, save when he has withdrawn from the court in accordance with rule 79(1) when they shall be deemed to be in the custody of the judge advocate.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him and, if proper precautions are taken for its safety, inspect any exhibit.

**CONFIRMATION, REVISION AND PROMULGATION****93. Confirmation and promulgation**

(1) When a confirming officer receives the record of the proceedings of a court-martial and the finding of the court requires confirmation he shall record, in the appropriate form set out in the Fourth Schedule to these Rules, his decision with regard to the proceedings, and any sentence and any order which the court may have made under section 104 of the Act, on the record of the proceedings; and such record of his decision shall form part of the record of the proceedings.

(2) When a court have accepted a plea of guilty made under rule 40(2) the confirming officer may confirm their finding, notwithstanding that the court have accepted the plea without the concurrence of the convening officer, if in the opinion of the confirming officer it is in the interests of justice to do so.

(3) When a court have rejected a plea to the jurisdiction of the court or a plea in bar of trial or have overruled an objection to a charge it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates. If he disapproves the decision of the court to reject the plea or to overrule the objection, he shall withhold confirmation of the finding on the charge to which the plea or objection relates.

**[Subsidiary]**

(4) A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation, where a court have rejected a plea to the jurisdiction or a plea in bar of trial or have overruled an objection to the charge, because he disapproves this decision of the court, he shall when recording his decision under paragraph (1) of this rule state that he has withheld confirmation for this reason.

(5) If the sentence of a court-martial is informally expressed, the confirming officer may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears there is sufficient evidence or a plea of guilty under paragraph (1) or paragraph (2) of rule 40 of these Rules to justify the finding of the court, such finding and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7) (a) When a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be.

(b) The fact of promulgation shall be recorded on the record of the proceedings in the form set out in the Fourth Schedule to these Rules.

(c) If confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

**94. Revision**

(1) The proceedings and decision of a court on revision shall be recorded on the record of the proceedings in the appropriate form set out in the Fourth Schedule to these Rules, and the president shall date and sign such record and decision and return it to the confirming officer after it has been signed by the judge advocate.

(2) When an accused is acquitted on revision the revised finding shall be communicated to the accused in such manner as may be specified by the confirming officer.

**LOSS OF PROCEEDINGS****95. Loss of original record of proceedings before confirmation**

(1) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy exists, such copy may, if the president or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

(2) If before confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and no copy thereof exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming officer to follow the course of the proceedings and to judge the merits of the case, the record as so reconstituted may be accepted and used in lieu of the original if the judge advocate certifies it to be an adequate record:

Provided that where part only of the original record of the proceedings of a court-martial has been lost, and the part which remains is sufficient to enable the confirming officer to follow the course of the proceedings and judge the merits of the case, such remaining part may be accepted and used as if it were the complete record if the judge advocate certifies it to be an adequate record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

[Subsidiary]

(3) If before confirmation the whole or any part of the original record of proceedings of a court-martial is lost and such loss cannot be made good under either paragraph (1) or paragraph (2) of this rule, the confirming officer shall withhold confirmation and shall record his decision in the appropriate form set out in the Fourth Schedule to these Rules.

#### **96. Loss of original record of proceedings after confirmation**

If after confirmation the whole or any part of the original record of the proceedings of a court-martial is lost and a copy thereof is certified by the president or judge advocate to be correct, or a sufficient record of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

#### LENGTH OF CUSTODY OF RECORD OF PROCEEDINGS AND COST OF COPIES OF PROCEEDINGS

#### **97. Custody of record of proceedings after confirmation**

For the purposes of section 114(1) of the Act the prescribed period during which the record of the proceedings of a court-martial shall be kept in the custody of the Commander shall be six years from the conclusion of the trial.

#### **98. Cost of copies of record of proceedings**

The rate at which copies of the record of the proceedings of a court-martial shall be supplied in accordance with section 114(2) and (3) of the Act shall be the estimated cost of the copy required not exceeding two shillings for every folio of one hundred words.

#### PETITIONS

#### **99. Petitions**

(1) If an accused who has been sentenced by a court-martial wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming officer in the appropriate form set out in the Seventh Schedule to these Rules.

(2) (a) If an accused who has been sentenced by a court-martial wishes to petition after confirmation against the finding or sentence or both, he shall present a petition to the reviewing authority in the appropriate form set out in the Seventh Schedule to these Rules.

(b) For the purposes of section 106 of the Act the prescribed time within which a petition may be presented to the reviewing authority after confirmation shall be six months from the date that confirmation of a conviction or sentence is promulgated.

(3) (a) If an accused who has been sentenced by a court-martial wishes to petition at any time after promulgation against the sentence, he shall present a petition to the Commander for the reconsideration of the sentence under section 106 of the Act in the appropriate form set out in the Seventh Schedule to these Rules.

(b) For the purposes of section 112(2) of the Act the prescribed intervals at which a sentence of imprisonment is to be reconsidered shall be intervals of not more than six months, provided that a sentence of less than one year but of or exceeding three months is to be first reconsidered not later than at the completion of half the sentence, excluding any remission due.

(4) In any of the circumstances specified in the first column of Part II of the Seventh Schedule to these Rules a petition under paragraph (2) or paragraph (4) of this rule which is presented to the person specified in relation to those circumstances in the second column of that Schedule shall be treated as having been presented to the authority to whom the petition is addressed.

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[Subsidiary]

## MISCELLANEOUS

**100. Notice requiring oral evidence in place of statutory declaration**

A notice under paragraph (iii) of the proviso to section 93(2) of the Act requiring that oral evidence shall be given in lieu of a statutory declaration shall be in the appropriate form set out in the Fourth Schedule to these Rules.

**101. Exceptions from Rules on account of the exigencies of service**

(1) Where in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in paragraph (4) of this rule impracticable, he may make a declaration to that effect in the appropriate form set out in the Fourth Schedule to these Rules.

(2) A declaration made under paragraph (1) of this rule by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under paragraph (1) of this rule it shall not be necessary to comply with any provision of these Rules which is mentioned in that declaration and these Rules shall be construed accordingly.

(4) The provisions of these Rules in respect of which a declaration may be made under paragraph (1) of this rule are—

- (a) rule 18 in so far as it provides that the documents specified therein must be given to the accused not less than twenty-four hours before the appropriate superior authority investigates and deals summarily with the charge;
- (b) rule 24, paragraphs (2) and (3) and paragraph (4) in so far as it provides that the documents specified therein shall be given to the accused not less than twenty-four hours before his trial.

(5) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority any declaration which has been made in his case under paragraph (1) of this rule shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority as the case may be.

**102. Exceptions from Rules in interests of security**

(1) When in the opinion of the officer who is or would be responsible for convening a court-martial to try the accused, or if he is not available of the senior officer on the spot, a charge-sheet, abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to an enemy, he may make a declaration to that effect in the appropriate form set out in the Fourth Schedule specifying the document concerned.

(2) A declaration made under paragraph (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court-martial to try the accused.

(3) When a declaration has been made under paragraph (1) of this rule it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court-martial or is dealt with summarily by an appropriate superior authority any declaration which has been made in his case under paragraph (1) shall be attached to the record of the proceedings of the court-martial or to the record made by the appropriate superior authority as the case may be.

**103. Procedure in case of illiteracy or incapacity**

(1) In any case where these Rules provide for a person to make, read or sign any written statement or other document, if such person is illiterate, or otherwise incapacitated, then such statement or other document—

- (a) may be written down for him;
- (b) shall be read over to him in a language which he understands;
- (c) shall have his signature, mark or thumbprint affixed to it; and
- (d) shall be endorsed with a certificate by the person assisting him to the effect that this rule has been complied with and that he is satisfied that such illiterate or incapacitated person has understood the contents of that statement or document.

(2) The certificate referred to in paragraph (1) of this rule shall identify the person giving it by name, and number, rank and unit where appropriate, or address, as the case may be.

**104. Deviations from the forms in the Schedules**

A deviation or omission from a form or form of words set out in a Schedule to these Rules shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

**105. Cases not covered by Rules**

In any case not provided for by these Rules, such course shall be adopted as appears best calculated to do justice.

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FIRST SCHEDULE

FORMS FOR COMMANDING OFFICERS

- Part I. Delay Report.
- Part II. Abstract of evidence.
- Part III. Certificate to be attached to an abstract of evidence after it has been handed to the accused.
- Part IV. Summons to a witness to attend the taking of an abstract of evidence.

PART I – DELAY REPORT

(Rule 5)

Unit Address .....

Telephone: .....

To: .....  
 (Convening Officer.) .....

..... EIGHT DAY DELAY REPORT  
 pursuant to the Armed Forces Act, 1968, section 72(2).  
 Number, Rank, Name of accused .....

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Date placed in arrest ....., 20 .....

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Kenya Defence Forces

[Subsidiary]

FIRST SCHEDULE, PART I—continued

Alleged Offence(s)

Date of Alleged Offence(s)

.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

<sup>2</sup>The accused is in close / open arrest.

The reasons for his retention in arrest are .....

.....

<sup>2</sup>The abstract of evidence { was taken on ....., 20 .....  
has not yet been taken because .....

<sup>2</sup>The Attorney-General { was consulted on ....., 20 .....  
has not yet been consulted because .....

<sup>2</sup>The Attorney-General's advice { was received on ....., 20 .....  
has not yet been received.

<sup>2</sup>Action { is being taken / has been taken } { on the Attorney-General's advice / as follows }

.....

<sup>2</sup>Date of trial { has not yet been fixed.  
has been fixed as ....., 20 .....

Reasons for delay since last report .....

.....

Officer commanding accused's unit  
(to be signed personally by the C.O.)

Date ....., 20 .....

NOTES

1. Insert "1st", "2nd", "3rd", "Final" or as the case may be.
2. Strike out words not applicable.

PART II – ABSTRACT OF EVIDENCE

(r. 9(1))

Abstract of evidence in the case of .....  
(number, rank, name, unit) consisting of the .....  
(insert the number of statements) attached statements and .....



FIRST SCHEDULE, PART II—continued

(insert the number of précis) précis of evidence<sup>1</sup> of witnesses for the prosecution and complied by me (the commanding officer of the accused) ( .....<sup>2</sup> on the direction of the commanding officer of the accused).

.....  
(Signature and rank)

(Date) .....

NOTES

- 1 Strike out any reference to statements or précis which are not applicable.
- 2 Insert name and rank of the officer making the abstract.

PART III – CERTIFICATE TO BE ATTACHED TO AN ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

(r. 9(3))

Certified that I .....<sup>1</sup> today handed to the accused .....<sup>2</sup> the abstract of evidence relating to him dated ..... day of ..... 20 ....., and duly cautioned him in accordance with Rule 9(2) and that he (elected to make and sign the statement dated the ..... day of ..... 20 ....., which is marked ..... and attached to this certificate) (did not make a statement).

.....  
(Signature of certifying officer)

(Date) .....

NOTES

- 1 Insert rank, name and unit of officer signing the certificate
- 2 Insert number, rank, name and unit of the accused.

PART IV – SUMMONS TO A WITNESS TO ATTEND THE TAKING OF AN ABSTRACT OF EVIDENCE

(r. 89(3))

To: .....<sup>1</sup>  
WHEREAS a charge has been preferred against .....<sup>2</sup>  
AND WHEREAS I have directed an abstract of the evidence to be taken at .....  
.....<sup>3</sup> on the ..... day of ....., 20 .....  
Pursuant to section 228 of the Armed Forces Act, 1969, and rule 89 of the Armed Forces Rules of Procedure, 1969, made thereunder YOU ARE HEREBY SUMMONED and required to attend, as a witness, the taking of the said abstract of evidence at .....  
.....<sup>3</sup> on the ..... day of ....., 20 .....  
at ..... o'clock in the ..... noon and to bring with you the documents

Kenya Defence Forces

[Subsidiary]

FIRST SCHEDULE, PART IV—continued

hereinafter mentioned, viz:<sup>4</sup> .....  
.....  
.....  
.....  
.....

Whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of .....  
20 .....

.....  
(Signature, rank and unit)  
Commanding officer of the accused

NOTES

- 1 Insert name and address of the person to whom the summons is to be sent.
- 2 Insert the number, rank, name and unit of the accused.
- 3 Insert the place where the abstract of evidence is to be taken.
- 4 Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents, strike out the words relating to the documents.

SECOND SCHEDULE

- Part I. Commencement of a charge-sheet.
- Part II. Statement of offences.
- Part III. Illustrations of charge-sheets.

PART I – COMMENCEMENT OF A CHARGE-SHEET

(r. 13(3))

- 1. The accused ..... (number, rank, name and unit)  
(an officer) (a serviceman) of the Armed Forces being subject to the Armed Forces Act, 1968 under section 7(a) of that Act, is charged with—  
.....  
.....
- 2. The accused ..... (number, rank, name and unit)  
a reservist called out under { section 184  
section 185  
section 186 } of the Armed Forces Act, 1968,  
being subject to that Act under section 7(b) of that Act, is charged with—  
.....  
.....
- 3. The accused ..... (name and unit in which employed) a person serving with the Armed Forces under an engagement whereby he agrees to be subject to the Armed Forces Act, 1968, while so serving, being subject to that Act under section 7(c) of that Act, is charged with—  
.....  
.....

SECOND SCHEDULE, Form I—continued

4. The accused ..... (number, rank and name) a member of the Armed Forces Constabulary, being subject to the Armed Forces Act, 1968, under section 8(1) of that Act, is charged with—

5. The accused ..... (name) a person  
{ employed in the service } { a unit } which is  
{ of accompanying a unit } { a part of a unit }  
{ a member of a unit }

on active service, being subject to the Armed Forces Act 1968, under section 9(1) of that Act, is charged with—

.....  
.....  
.....  
.....

6. The accused ..... (number, rank, name and unit) unit)

{ an officer a } of the { military }  
{ serviceman } { air }  
{ naval }

forces of a country to which

section 11(2) of the Armed Forces Act 1968, { seconded }  
applies, { attached }

to a unit of the Armed Forces being subject to that Act under section 11(1)(b) of that Act, is charged with—

.....  
.....  
.....

7. The accused ..... (name) formerly  
(number, rank and unit if applicable)

{ an officer }  
{ a serviceman } } of the Armed Forces  
{ a reservist }  
{ a person }  
{ a member of the Armed Forces Constabulary }

then subject to the Armed Forces Act 1968, under section

{ 7(a) }  
{ 7(b) }  
{ 7(c) }  
{ 8(1) }  
{ 9(1) }

of that Act, now liable to trial by court-martial under section 141 of that Act, is charged with—

.....  
.....  
.....  
.....  
.....

[Subsidiary]

SECOND SCHEDULE—*continued*

PART II – STATEMENTS OF OFFENCES

TREACHERY, COWARDICE AND OFFENCES ARISING OUT OF SERVICE

(r. 14(4))

*Section 14*

(1) { (a) } With intent to assist the enemy, contrary to section 14(1) to { (a) } of the Armed Forces Act 1968.  
 { (b) }  
 { (c) }  
 { (d) }  
 { (e) }  
 { (f) }  
 { (g) }  
 { (h) }

(2) Knowingly and without lawful excuse doing an act specified in paragraph { (a) } of section 14(1) of the Armed Forces Act, 1968,  
 { (b) } contrary to section 14(2) of the said Act.  
 { (c) }  
 { (d) }  
 { (e) }  
 { (f) }  
 { (g) }

(3) Negligently causing the { capture } by the enemy of aircraft belonging to the armed  
 { destruction } forces, contrary to section 14(3) of the Armed Forces Act, 1968.

*Section 15*

(1) { Communicating with } the enemy contrary { (1) } of the Armed  
 (2) { Giving intelligence to } to section 15 { (2) } Forces Act, 1968.

*Section 16*

(1) Misconduct by a person in command with intent to assist the enemy contrary to section 16(1) { (a) } of the Armed Forces Act, 1968.  
 { (b) }  
 { (c) }  
 { (d) }  
 { (e) }

(2) Misconduct by a person in command otherwise than with intent to assist the enemy contrary to section 16(2) of the Armed Forces Act, 1968.

*Section 17*

Misconduct by a person not in command (with intent to assist the enemy) contrary to section 17 of the Armed Forces Act, 1968.

*Section 18*

(1) Cowardice before the enemy contrary to section 18(1) { (a) } of the Armed Forces Act, 1968.  
 { (b) }  
 { (c) }

(2) Inducing cowardice before the enemy contrary to section 18(2) of the Armed Forces Act, 1968.

## Kenya Defence Forces

[Subsidiary]

SECOND SCHEDULE, PART II—*continued*

## Section 19

Neglecting to perform }  
Negligently performing } a duty contrary to section 19 of the Armed Forces Act, 1968.

## Section 20

- (a) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 20(a) of the Armed Forces Act, 1968.
- (b) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 20(b) of the Armed Forces Act, 1968.

## Section 21

- (1) Being captured through disobedience or wilful neglect contrary to section 21(1) of the Armed Forces Act, 1968.
- (2) { Failing to take }  
{ Preventing } a person from } reasonable steps after capture to rejoin the armed  
{ Discouraging } taking } forces contrary to section 21(2) of the Armed Forces Act, 1968.

## Section 22

- (1) { Sleeping at his post when on guard duty or watch }  
{ Sleeping when on guard duty or watch contrary to } of the Armed Forces Act, 1968.  
{ Drunkenness when on guard duty or watch contrary to }  
{ Leaving his post } when on guard duty or watch }  
{ Absenting himself } contrary to section 22(1)(d) }
- (2) { Striking }  
{ Using force against } a person on guard duty or watch to let a person pass contrary to }  
{ Compelling } section 22(3) of the Armed Forces Act, 1968.

## Section 23

- (a) }  
(b) } Looting contrary to section 23 { (a) }  
(c) } { (b) } of the Armed Forces Act, 1968.  
{ (c) }

## Section 24

Committing an offence against the { person } of a member of a civil population outside  
{ property } Kenya contrary to section 24 of the Armed Forces Act, 1968.

## MUTINY AND INSUBORDINATION

## Section 25

- (1) (a) Mutiny { with violence }  
{ relating to the enemy } contrary to section 25(1)(a) of the Armed Forces Act, 1968.
- (1) (b) Incitement to mutiny { with violence }  
{ relating to the enemy } contrary to section 25(1)(b) of the Armed Forces Act, 1968.
- (2) { Mutiny }  
{ Incitement to mutiny } contrary to section 25(2) of the Armed Forces Act, 1968.

## Section 26

- (a) Failing to suppress or prevent mutiny contrary to section 26(a) of the Armed Forces Act, 1968.
- (b) Failing to report mutiny contrary to section 26(b) of the Armed Forces Act, 1968.

[Subsidiary]

SECOND SCHEDULE, Form II—*continued*

Section 27

- (a) { Striking  
Using violence against  
Offering violence to } his superior officer contrary to section 27(a) of the Armed Forces Act, 1968.
- (b) Using { threatening  
insubordinate } language to his superior officer contrary to section 27(b) of the Armed Forces Act, 1968.

Section 28

- (1) Disobeying a lawful command with wilful defiance of authority contrary to section 28(1) of the Armed Forces Act, 1968.
- (2) Disobeying a lawful command contrary to section 28(2) of the Armed Forces Act, 1968.

Section 29

- (a) Obstructing { a provost officer  
a duty officer  
an officer of the patrol  
a person exercising authority under or on behalf of } { a provost officer  
a duty officer  
an officer of the patrol } } contrary to section 29(a) of the Armed Forces Act, 1968.
- (b) Refusing to assist { a provost officer  
a duty officer  
an officer of the patrol  
a person exercising authority under or on behalf of } { a provost officer  
a duty officer  
an officer of the patrol } } contrary to section 29(b) of the Armed Forces Act, 1968.

Section 30

- (1) Disobedience to standing orders contrary to section 30(1) of the Armed Forces Act, 1968.

DESERTION, ABSENCE WITHOUT LEAVE, ETC.

Section 31

- (1) (a) Desertion contrary to section 31(1)(a) of the Armed Forces Act, 1968.
- (1) (b) { Persuading  
Procuring } a person to desert contrary to section 31(1)(b) of the Armed Forces Act, 1968.

Section 32

- (a) Absence without leave contrary to section 32(a) of the Armed Forces Act, 1968.
- (b) { Persuading  
Procuring } a person to absent himself without leave contrary to section 32(b) of the Armed Forces Act, 1968.

Section 33

- (a) Assisting a person to desert or absent himself contrary to section 33(a) of the Armed Forces Act, 1968.
- (b) Failing to { report without delay  
take steps to cause the apprehension of } { a deserter or absentee  
a person attempting to desert or absent himself } } contrary to section 33(b) of the Armed Forces Act, 1968.

Section 34

- { Failing to attend for a service duty  
Leaving a service duty without permission } } contrary to section 34 of the Armed Forces Act, 1968

SECOND SCHEDULE, Form II—continued

MALINGERING, DRUNKENNESS AND QUARRELLING

Section 35

Malingering contrary to section 35 { (a) (b) (c) (d) } of the Armed Forces Act, 1968.

Section 36

(1) Drunkenness contrary to section 36(1) of the Armed Forces Act, 1968.

Section 37

- (a) { Fighting Quarrelling } with another person contrary to section 37(a) of the Armed Forces Act, 1968.
(b) Using { words behaviour } likely to cause a disturbance contrary to section 37(b) of the Armed Forces Act, 1968.

OFFENCES RELATING TO PROPERTY

Section 38

- (a) { Stealing Fraudulently misapplying Being concerned in } the { stealing of fraudulent misapplication of } public property contrary to section 38(a) of the Armed Forces Act, 1968.
(b) { Receiving Retaining } public property contrary to section 38(b) of the Armed Forces Act, 1968.
(c) { Wilfully damaging Being concerned in the wilful damage of } public property contrary to section 38(c) of the Armed Forces Act, 1968.
(d) By wilful neglect damaging public property by fire contrary to section 38(d) of the Armed Forces Act, 1968.

Section 39

- (a) { Stealing Fraudulently misapplying Being concerned in } the { stealing of fraudulent misapplication of } property contrary to section 39(a) of the Armed Forces Act, 1968.
(b) { Receiving Retaining } property contrary to section 39(b) of the Armed Forces Act, 1968.
(c) { Wilfully damaging Being concerned in the wilful damage of } property contrary to section 39(c) of the Armed Forces Act, 1968.

Section 40

{ Wilfully Negligently } { causing allowing } { an aircraft a ship a vehicle } to be { captured lost destroyed damaged stranded hazarded } contrary to section 40 of the Armed Forces Act, 1968.

[Subsidiary]

SECOND SCHEDULE, Form II—continued

Section 41

- (a) Being concerned in an improper { an aircraft } contrary to { (a) }
- (b) transaction involving the use of { a ship } section 41 { (b) }
- { a vehicle } of the Armed Forces Act, 1968.

Section 42

- (a) { Losing } { public property a } contrary to section 42(a) of the
- { Negligently damaging } { service decoration } Armed Forces Act, 1968.
- { granted to him }
- (b) { Losing } his equipment contrary to section 42(b) of the Armed Forces
- { Negligently damaging } Act, 1968.
- (c) Negligently damaging public property by fire contrary to section 42(c) of the Armed Forces Act,
- 1968.
- (d) Neglect of { an animal } contrary to section 42(d) of the Armed Forces Act, 1968.
- { a bird }
- (e) Making away with { a service decoration } contrary to section 42(e) of the Armed
- { granted to him his } Forces Act, 1968
- { equipment }

Section 43

- (a) Unlawfully { obtaining } a person to obtain { billets contrary to section 43(a) of
- { ordering } the Armed Forces Act, 1968.
- { procuring }
- (b) Corruption in relation to a billeting order contrary to section 43(b) of the Armed Forces Act,
- 1968.
- (c) { Committing an offence against } { a person } in } his billet contrary to section 43(c)
- { Damaging } { property } of the Armed Forces Act, 1968.
- { Damaging property in }

Section 44

- (1) { (a) } Unlawful requisitioning contrary { (a) } of the Armed Forces Act, 1968.
- { (b) } to section 44(1) { (b) }
- (1) (c) Corruption in relation to a requisitioning order contrary to section 44(1)(c) of the Armed
- Forces Act, 1968.

OFFENCES RELATING TO FLYING

Section 45

- { Wilfully } { doing an act } in { flying
- { Negligently } { making an } { the use of
- { } { omission } { aircraft
- { } { } { relation to { aircraft
- { } { } { aircraft
- { } { } { material }
- { causing } { loss of life } to a person contrary to section 45 of the Armed
- { likely to cause loss of } { bodily injury } Forces Act, 1968.
- { life or bodily injury }

Section 46

Unlawful low flying contrary to section 46 of the Armed Forces Act, 1968.



SECOND SCHEDULE, PART II—continued

Section 47

Flying an aircraft in a manner causing or likely to cause unnecessary annoyance to a person contrary to section 47 of the Armed Forces Act, 1968.

OFFENCES RELATING TO AND BY PERSONS IN CUSTODY

Section 48

- (1) (a) Delaying { an investigation } } contrary to section 48(1)(a) of the Armed Forces Act, 1968.
- (1) (a) Delaying { a trial } }
- (1) (b) Failing to release a person in arrest contrary to section 48(1)(a) of the Armed Forces Act, 1968.
- (2) Failing to report the offence for which a person has been placed in custody contrary to section 48(2) of the Armed Forces Act, 1968.
- (3) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 48(3)(b) of the Armed Forces Act, 1968.

Section 49

- (1) Wilfully allowing a person to escape contrary to section 49(1) of the Armed Forces Act, 1968.
- (2) (a) Releasing a person without authority contrary to section 49(2)(a) of the Armed Forces Act, 1968.
- (2) (b) Allowing a person to escape contrary to section 49(2)(b) of the Armed Forces Act, 1968.

Section 50

- (1) { Refusing to obey } } { an officer who orders him into } } of the Armed Forces Act, 1968.
- (1) { Striking } }
- (1) { Using violence against } }
- (1) { Offering violence to } }
- (2) { Striking } } a person { whose duty it is } } contrary to section 50(2) of the Armed Forces Act, 1968.
- (2) { Using violence against } } { to apprehend him } }
- (2) { Offering violence to } } { in whose custody he is } }

Section 51

Escaping from custody contrary to section 51 of the Armed Forces Act, 1968.

OFFENCES RELATING TO COURTS-MARTIAL AND OTHER AUTHORITIES

Section 52

- (1) { (a) } } in contempt of a court- } } of the Armed Forces Act, 1968.
- (1) { (b) } } martial } }
- (1) { (c) } } } } (a) } } of the Armed Forces Act, 1968.
- (1) { (d) } } } } (b) } }
- (1) { (e) } } } } (c) } }
- (1) { (f) } } } } (d) } }
- (1) { (a) } } } } (e) } }
- (1) { (b) } } } } (f) } }
- (1) { (c) } } } } (a) } }
- (1) { (d) } } } } (b) } }
- (1) { (e) } } } } (c) } }
- (1) { (f) } } } } (d) } }
- (1) { (a) } } } } (e) } }
- (1) { (b) } } } } (f) } }
- (1) { (c) } } } } (a) } }
- (1) { (d) } } } } (b) } }
- (1) { (e) } } } } (c) } }
- (1) { (f) } } } } (d) } }

Section 53

- (1) Making a false statement contrary to section 53(1) of the Armed Forces Act, 1968.

Section 54

- (a) { Preventing } } a person in executing a warrant of arrest } } of the Armed Forces Act, 1968.
- (a) { Obstructing } }
- (b) { Preventing } } a person in making a lawful arrest contrary to } } of the Armed Forces Act, 1968.
- (b) { Obstructing } }

[Subsidiary]

SECOND SCHEDULE, PART II—*continued*

PRIZE OFFENCES

Section 55

(a) Being in command of { an aircraft } failing to send to { the High Court }  
 { a ship } { a prize court }  
 all papers found on board { an aircraft } taken as a prize  
 { a ship } contrary to section 55(a) of  
 the Armed Forces Act, 1968.

(b) Being in command of { an aircraft } unlawfully making an { an aircraft }  
 { a ship } agreement for the { a ship }  
 ransoming of { goods }  
 taken as a prize contrary to section 55(b) of the Armed Forces Act, 1968.

(c) Being in command of { an aircraft } { by agreement } { restoring }  
 { a ship } { by collusion } { abandoning }  
 { an aircraft }  
 { a ship }  
 { goods }  
 taken as a prize contrary to section 55(c) of the Armed Forces Act, 1968.

Section 56

(a) { Striking }  
 { Ill-treating } a person on board { an aircraft }  
 { Unlawfully taking a thing } { a ship }  
 { from the possession of }

taken as a prize contrary to section 56(a) of the Armed Forces Act, 1968.

(b) Removing out of { an aircraft } taken as a prize any goods not lawfully adjudged to be a  
 { a ship } prize contrary to section 56(b) of the Armed Forces Act,  
 1968

(c) Fraudulently breaking { an aircraft } { taken as a prize }  
 bulk on board { a ship } { detained by }  
 belligerent right }

contrary to section 56(c) of the Armed Forces Act, 1968.

MISCELLANEOUS OFFENCES

Section 57

(a) { Promoting }  
 { Being a member of } a political association contrary to section 57(a) of the Armed  
 { Taking part in the activities } Forces Act, 1968.  
 { of }

(b) Expressing political views in a public place contrary to section 57(b) of the Armed Forces Act, 1968.

(c) { Addressing a meeting } in support of a  
 { Joining in a demonstration }  
 political { association }  
 { object }  
 candidate for a { national } election { contrary to }  
 { local authority } { of the Armed }  
 Forces Act, 1968.

Section 58

Making a false answer on enlistment contrary to section 58 of the Armed Forces Act, 1968.

SECOND SCHEDULE, PART II—*continued*

## Section 59

Making a false statement to { obtain } leave contrary to section 59 of the Armed Forces Act, 1968.  
 { prolong }

## Section 60

(a) { Making } a certificate relating to { an aircraft }  
 { Signing } { aircraft material }  
 without ensuring its accuracy contrary to section 60(a) of the Armed Forces Act, 1968.

(b) { Making } a certificate relating to { the seagoing }  
 { Signing } { the fighting }  
 efficiency of a ship without ensuring its accuracy contrary to section 70(b) of the Armed Forces Act, 1968.

## Section 61

(a) { Making } a false { service document contrary to section 61(a) of the Armed }  
 { Signing } { Making a false entry in a } Forces Act, 1968.

(b) { Altering } a service document contrary to section 61(b) of the Armed  
 { Altering an entry in } Forces Act, 1968.  
 { Making away with }  
 { Suppressing }  
 { Defacing }

(c) Failing to make an entry in a service document so that it is to his knowledge false contrary to section 61(c) of the Armed Forces Act, 1968.

## Section 62

Scandalous conduct unbecoming the character of an officer contrary to section 62 of the Armed Forces Act, 1968.

## Section 63

{ Striking } a person { of inferior rank } contrary to section 63 of the Armed Forces  
 { Ill-treating } { less seniority } Act, 1968.

## Section 64

Disgraceful conduct of { a cruel } kind contrary to section 64 of the Armed Forces  
 { an indecent } Act, 1968.  
 { an unnatural }

## Section 65

(a) Making a false accusation contrary to section 65(a) of the Armed Forces Act, 1968.

(b) { Making a false statement } in a complaint contrary to section 65(b) of the  
 { Wilfully suppressing a material } Armed Force Act, 1968.  
 { fact }

## Section 66

Attempting to commit a service offence contrary to section 66 of the Armed Forces Act, 1968, that is to say (*set out the offence*).

## Section 67

{ Aiding, abetting, } the commission of a service offence contrary to section 67 of  
 { counselling or } the Armed Forces Act, 1968, that is to say (*set out the*  
 { procuring } *Conniving at* } *offence*).

## Kenya Defence Forces

[Subsidiary]

SECOND SCHEDULE, PART II—*continued*

## Section 68

{ An act  
Conduct } to the prejudice of good order and service discipline contrary to section 68 of the  
Neglect } Armed Forces Act, 1968.

## CIVIL OFFENCES

## Section 69

Committing a civil offence contrary to section 69(1) of the Armed Forces Act, 1968, that is to say (here describe the civil offence in such words as sufficiently describe the offence).

## PART III – ILLUSTRATIONS OF CHARGE-SHEETS

(r. 13(2))

(i) *Charge-Sheet*

The accused, No. 1234567 Lance-Corporal Peter Ohoo of 1st Battalion Kenya Rifles, a serviceman of the Armed Forces, being subject to the Armed Forces Act, 1968 under section 7(a) of that Act, is charged with—

1st Charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 38(a) OF  
THE ARMED FORCES ACT, 1968

in that he

at Nanyuki on 1st January, 1969, stole a pair of binoculars, public property.

2nd Charge

(Alternative  
to 1st charge)RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 38(b) OF  
THE ARMED FORCES ACT, 1968

in that he

at Nanyuki on 1st January, 1969, received a pair of binoculars, public property, knowing or having reason to believe them to be stolen.

Nanyuki,

16th January, 1969.

J. MUTISYA, Lieutenant-Colonel

Commanding 1st Battalion Kenya Rifles,

*Commanding officer of the accused.*

To be tried by court-martial

Nairobi,

21st January, 1969.

A. NGATIA, Brigadier.<sup>1</sup>*Commander Kenya Army.*

## NOTE

1. The order for trial may be signed by a staff officer as "an officer authorized to sign for" the Chief of defence Staff or the Commander Kenya (Air Force) (Army) (Navy) as the case may be—see second illustration Charge Sheet. However, such an officer must be at least of the rank of major or corresponding rank and must have written authority from the Chief of General Staff personally to sign such orders either on behalf of the Chief of General Staff or on behalf of any Commander.

(ii) *Charge-Sheet*

The accused, No. 2345678 Corporal James Munyao, a reservist called out under section 184 of the Armed Forces Act, 1968, being subject to that Act under section 7(b) of that Act and Paul Gachibi

Kenya Defence Forces

[Subsidiary]

SECOND SCHEDULE, Form III—continued

formerly No. 3456789 a Private of the 2nd Battalion Kenya Rifles, a serviceman of the Armed Forces, then subject to the Armed Forces Act, 1968, under section 7(a) of that Act, now liable to trial by court-martial under section 141 of that Act, are charged with—

Both accused jointly:

1st Charge

COMMITTING A CIVIL OFFENCE CONTRARY TO SECTION 69(1) OF THE ARMED FORCES ACT, 1968, THAT IS TO SAY ASSAULT OCCASIONING ACTUAL BODILY HARM CONTRARY TO SECTION 251 OF THE PENAL CODE

in that they

at Nairobi on 1st January, 1969, assaulted Julius Mwenda, thereby occasioning him actual bodily harm.

Corporal Munyao only:

2nd Charge

USING VIOLENCE AGAINST HIS SUPERIOR OFFICER, CONTRARY TO SECTION 27(a) OF THE ARMED FORCES ACT, 1968

in that he

at Nakuru on 2nd January, 1969, used violence against No. 4567890 Sergeant John Kinyoki who had ordered him into arrest by seizing the said sergeant by the jacket and by kicking his legs.

Paul Gachibi only:

3rd Charge

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER, CONTRARY TO SECTION 27(b) OF THE ARMED FORCES ACT, 1968

in that he

at Nakuru on 2nd January, 1969, said to No. 4567890 Sergeant John Kinyoki, who was then his superior officer, when asked by the said Sergeant for his (the accused's) particulars "Push off and find out for yourself" or words to that effect.

J. NDUNDA, Lieutenant-Colonel.

Commanding 2nd Battalion Kenya Rifles,

Commanding officer of both accused.

Nakuru,  
20th January, 1969.

To be tried by Court-martial

A. MACHARIA, Major<sup>1</sup>.

An officer authorized to sign for

the Chief of Defence Staff.

the Commander, Kenya Army.

Nairobi,  
25th January, 1980.

NOTES

1. See note 1 to Charge-Sheet (i) above.

THIRD SCHEDULE

[Rule 19(g).]

RECORD OF PROCEEDINGS, BEFORE AN APPROPRIATE SUPERIOR AUTHORITY

Accused's number, rank and name .....  
unit .....

1. Questions to be put to the accused by the officer dealing with the case before the charge is read.

Q. Have you received a copy of the charge-sheet and abstract of evidence not less than 24 hours ago?

A. ....

[Subsidiary]

THIRD SCHEDULE—continued

- Q. Have you had sufficient time to prepare your defence?  
A. ....
- 2. The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question—  
Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?  
A. ....
- 3. If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.
- 4. After the abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused—  
Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case, with your character and with matters in mitigation of punishment.  
A. ....  
Q. Do you wish to present any other evidence in your defence?  
A. ....
- 5. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then: (i) consider all the evidence and determine whether the accused is guilty of the offence or not, and (ii) if he determines that the accused is guilty, examine and consider the accused's record of service. If he intends to award the punishment of forfeiture of seniority of rank, a fine or stoppages or in the case of a civilian a fine, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award—  
Q. Will you accept my award or do you elect to be tried by court-martial?  
A. ....
- 6. Finding .....  
Award .....

.....  
(Signature, rank and appointment of appropriate superior authority)

(Date) .....

FOURTH SCHEDULE  
COURT-MARTIAL FORMS

- PART I Convening order.
- PART II Declarations under rules 101 and 102.
- PART III Summons to a witness to attend at a Court-martial.
- PART IV Notices requiring oral evidence to be given in lieu of a statutory declaration.
- PART V Record of proceedings of a Court-martial.
- PART VI Findings.
- PART VII Record of reconsideration of finding under rule 78(5).
- PART VIII Serving record of Accused.

FOURTH SCHEDULE—continued

- PART IX Record of proceedings on revision under section 110 of the Act.
- PART X Confirmation.
- PART XI Determination by a confirming officer or reviewing authority of a suspended sentence, and direction that sentences are to run concurrently or consecutively.
- PART XII Restitution order.
- PART XIII Promulgation.

PART I – CONVENING ORDER

CONVENING ORDER FOR A COURT-MARTIAL

(r. 21(a))

ORDERS BY .....<sup>1</sup>  
 Commanding .....  
 (Place and date) .....

The detail of officers as mentioned below will assemble at ..... Name, etc.,  
 ..... at ..... hours on the ..... of accused.  
 ..... day of ..... 20 ..... for .....  
 the purpose of trying by a Court-martial the accused person(s) named .....  
 in the margin. ....

PRESIDENT

MEMBERS<sup>2</sup>

WAITING MEMBER(S)<sup>2</sup>

JUDGE ADVOCATE

The judge advocate has been appointed by the Chief Justice.

An officer of the rank of major or above having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.\*

The record of the proceedings will be forwarded in an envelope marked confidential to .....

..... Signed this ..... day of  
 ..... 20 .....

.....  
 (Signature, rank and appointment  
 of the convening officer)  
 or

.....  
 (Signature, rank and appointment of the  
 appropriate staff officer)  
 An officer authorized to sign for

.....  
 (Appointment held by the  
 convening officer)

\*Strike out if not applicable.

Kenya Defence Forces

[Subsidiary]

FOURTH SCHEDULE, PART I—continued

NOTES

1. Insert rank and name of convening officer.
2. Insert number, rank, name and unit of the accused. These particulars must agree with his description in the charge-sheet.
3. A member or a waiting member should be described by giving his rank, name and unit.

DECLARATIONS UNDER RULES 101 AND 102

(r. 101(1))

In the case of .....<sup>1</sup>  
 I .....<sup>2</sup> (the officer who (is) (would be) responsible for convening a court-martial to try the accused) (the senior officer on the spot) hereby declare that in my opinion the following exigencies of the service, namely .....  
 .....  
 render compliance with the following provisions of the Armed Forces Rules of Procedure—  
 (paragraphs 24(2) and 24(3))\*  
 (rule 18)\*  
 (paragraphs (b), (c) and (d) of rule 24(4))\*  
 impracticable.

Signed at ..... this ..... day of ....., 20 .....  
 .....  
 (Signature)

\*Delete as appropriate.

NOTES

1. Insert number, rank, name and unit of accused.
2. Insert rank, name and appointment of officer making the declaration.

DECLARATIONS UNDER RULES OF PROCEDURE

(r. 102(1))

In the case of .....<sup>1</sup>  
 I .....<sup>2</sup> (the officer who (is) (would be) responsible for convening a court-martial to try the accused) (the senior officer on the spot) hereby declare that in my opinion the<sup>3</sup> .....  
 .....  
 .....  
 contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

Signed at ..... this ..... day of ....., 20 .....  
 .....  
 (Signature)

NOTES

- 1 Insert number, rank, name and unit of the accused.
- 2 Insert rank, name and appointment of officer making the declaration.
- 3 Here indicate the document(s).



FOURTH SCHEDULE—continued

PART III – SUMMONS TO A WITNESS TO ATTEND AT A COURT-MARTIAL

(r. 89(3))

To .....<sup>1</sup>

WHEREAS a court-martial (has been ordered to assemble at ..... ) (has assembled at ..... ) on the ..... day of ..... , 20....., for the trial of<sup>2</sup> .....

Pursuant to section 228 of the Armed Forces Act, 1968 and rule 89 of the Armed Forces Rules of Procedure, 1969 made thereunder YOU ARE HEREBY SUMMONED and required to attend as a witness at the sitting of the said Court at ..... on the ..... day of ..... , 20 ..... , at ..... o'clock in the ..... noon and to bring with you the documents hereinafter mentioned, viz.:<sup>3</sup> .....

.....  
.....  
.....  
.....

and so to attend from day to day until you shall be duly discharged: whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ..... , 20.....

.....  
(Signature, rank, appointment)  
(An officer authorized to convene a court-martial)  
(President of the Court)<sup>1</sup>

.....<sup>4</sup> an officer authorised to sign for  
.....<sup>5</sup> an officer authorized to convene a court-martial.\*

\* Strike out if not applicable.

NOTES

- 1 Insert name and address of the person to whom the summons is to be sent.
- 2 Here enter number, rank, name and unit of the person to be tried.
- 3 Specify the documents which the witness is to bring. The words relating to documents should be deleted if not applicable.
- 4 Insert the appointment of the staff officer.
- 5 Insert appointment of officer for whom the staff officer is signing.

PART IV – NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN IN LIEU OF A STATUTORY DECLARATION

(r. 100)

NOTICE BY A COMMANDING OFFICER

To .....

I .....<sup>3</sup> Commanding .....<sup>3</sup>  
hereby give notice that I require that ..... shall give oral evidence

Kenya Defence Forces

[Subsidiary]

FOURTH SCHEDULE, PART IV—continued

in lieu of (his) (her) statutory declaration dated ..... at your forthcoming trial by Court-martial.

(Signature and rank)
(Commanding Officer of the accused)

(Date) .....

NOTICE BY AN ACCUSED
[Rule 100.]

To ..... 2 Commanding ..... 3

I ..... 1 hereby give notice that I require that ..... 4

shall give oral evidence in lieu of (his) (her) statutory declaration dated ..... at my forthcoming trial by Court-martial.

(Date)

(Signature)

NOTES

- 1 Insert number, rank, name and unit of the accused.
2 Insert rank and name of commanding officer.
3 Insert unit.
4 Insert name of witness.

PART V – RECORD OF PROCEEDINGS OF A COURT-MARTIAL

(r. 90)

(A)
RECORD OF PROCEEDINGS OF A COURT-MARTIAL

Page 1

Proceedings of a Court-martial held at ..... on the ..... day of ..... , 20 ..... , by order of ..... (Chief of Defence Staff) (Commander Kenya (Air Force) (Army) (Navy)) ..... dated the ..... day of ..... , 20 .....

PRESIDENT

MEMBERS

JUDGE ADVOCATE

Trial of .....

The court comply with Rule of Procedure 25.

..... 2 not being available owing to .....

..... the president appoints ..... a qualified waiting member to take his place

FOURTH SCHEDULE, PART V—continued

The accused is brought before the court.

Prosecutor .....

Defending (officer) (counsel) .....

At ..... hours the trial begins.

The convening order is read in the hearing of the accused, marked ..... signed by the president and attached to the record:

The names of the president and members of the Court are read in the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as president, or by any of the officers whose names you have heard read?

A. ....

The proceedings relating to the objection(s) are recorded on pages<sup>2</sup> .....

NOTES

1 Insert number, rank, name and unit of the accused as given in the charge sheet.

2 Strike out if not applicable.

(B) SWEARING

Page 2

The president, members of the Court and judge advocate are duly sworn.

The (following) officers under instruction (listed on page ..... ) are duly sworn.<sup>2</sup>

Q. Do you object to ..... as shorthand writer?<sup>2</sup>

A. ....<sup>1</sup>

..... is duly sworn as shorthand writer.

Q. Do you object to ..... as interpreter?<sup>2</sup>

A. ....

..... is duly sworn as interpreter.

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under Rule of Procedure 35. The proceedings relating to his plea are recorded on page .....<sup>2</sup>

The accused objects to the ..... charge(s) under Rule of Procedure 36. The proceedings relating to his objection(s) are recorded on page .....<sup>2</sup>

The accused offers a plea(s) in bar of trial under Rule of Procedure 37 in respect of the ..... charge(s). The proceedings relating to his plea(s) are recorded on page .....<sup>2</sup>

The accused ..... applies under Rule of Procedure 38 to be tried separately. The proceedings relating to his application are recorded on page .....<sup>2</sup>

The accused applies under Rule of Procedure 39 to have charges ..... and ..... tried separately. The proceedings relating to his application are recorded on page .....<sup>2</sup>

NOTES

1 If there is an objection the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.

2 Strike out if not applicable.

[Subsidiary]

FOURTH SCHEDULE, Form V—continued

(C1)

Page .....

ARRAIGNMENT

The charge-sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the president and inserted in the record immediately before this page, as page(s) .....

Q. Are you guilty or not guilty of the first<sup>1</sup> charge against you, which you have heard read?

A. ....

Q. Are you guilty or not guilty of the second charge against you which you have heard read?<sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the third charge against you, which you have heard read?<sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the fourth charge against you, which you have heard read?<sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the fifth charge against you, which you have heard read?<sup>2</sup>

A. ....

Q. Are you guilty or not guilty of the sixth charge against you, which you have heard read?<sup>2</sup>

A. ....

The accused pleaded guilty to the .....

..... charge(s)

Rule of Procedure 41 is duly complied with in respect of this (these) charge(s).<sup>2</sup>

The accused's pleas to the remaining charges are recorded overleaf.

NOTES

- 1 Strike out "first" if there is only one charge.
- 2 Strike out if not applicable.

(C2)

Page .....

Q. Are you guilty or not guilty of the seventh charge against you, which you have heard read?<sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the eighth charge against you, which you have heard read?<sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the ninth charge against you, which you have heard read?<sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the tenth charge against you, which you have heard read?<sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the eleventh charge against you, which you have heard read?<sup>1</sup>

A. ....

Q. Are you guilty or not guilty of the twelfth charge against you, which you have heard read?<sup>1</sup>

A. ....

NOTE

- 1 Strike out if not applicable.

(D1)

Page .....

PROCEEDING ON PLEA(S) OF NOT GUILTY<sup>1</sup>

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

FOURTH SCHEDULE, Form V—continued

A. The prosecutor (makes an opening address shortly outlining the facts) (makes an opening address which is read, signed by the president, marked ..... and attached to the record).

NOTES

Remove this page if there are no pleas of not guilty.

If the accused asks for an adjournment, the proceedings relating to his application should, if necessary, be recorded on a separate page and a record made here that this has been done.

(D2)

Page .....

The witnesses for the prosecution are called.

(first witness for the prosecution)

being duly sworn<sup>1</sup> says—

(continued on page .....

NOTE

When a witness affirms the words "having duly affirmed" should be substituted for the words "being duly sworn", and when a witness is a child who is too young to give evidence on oath the words "without being sworn" should be substituted for the words "being duly sworn".

(D3)

Page .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY<sup>1</sup>

(continued)

The prosecution is closed.

The accused submits under Rule of Procedure 57 that there is no case for him to answer in respect of the ..... charge(s). The proceedings relating to this submission are recorded on pages .....

DEFENCE

Rule of Procedure 58 is complied with.

Q. Do you apply to give evidence yourself on oath or do you wish to make a statement without being sworn?

A. ....

Q. Do you intend to call any other person as a witness in your defence?

A. ....

Q. Is he a witness as to fact or to character only?

A. ....

(Where the accused intends to call a witness as to fact, other than himself).<sup>2</sup>

Q. Do you wish to make an opening address?<sup>2</sup>

A. ....

The accused<sup>2</sup> (makes an opening address which is summarized below) (hands in a written address which is read, signed by the President, marked ..... and attached to the record).

NOTES

1 Remove this page if there are no pleas of not guilty.

2 Strike out if the accused does not intend to call witness as to fact, other than himself.

(D4)

Page .....

(Where the accused makes a statement without being sworn).<sup>1</sup>

Kenya Defence Forces

[Subsidiary]

FOURTH SCHEDULE, Form V—continued

The accused (makes a statement, which is recorded on page ..... ) (hands in a written statement which is read, marked ..... signed by the president, and attached to the record).

(Where evidence on oath is given for the defence).<sup>1</sup>

The witnesses for the defence (including the accused, if sworn) are called.

.....  
(first witness for the defence)

being duly sworn<sup>2</sup> says—

(continued on page .....)

NOTES

- 1 Strike out this paragraph if not applicable.
- 2 When a witness or the accused affirms, the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath, the words "without being sworn" should be substituted for the words "being duly sworn".

(D.5)

Page .....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY<sup>1</sup>

(continued)

The ..... (makes a closing address which is summarized on page ..... ) (hands in a closing address which is read, marked ....., signed by the presiding officer, and attached to the record).

The ..... (makes a closing address which is summarised on page ..... ) (hands in a closing address which is read, marked ....., signed by the presiding officer, and attached to the record).

The note of the summing-up of the judge advocate is recorded on page .....

FINDING(S)

The court close to deliberate on their finding(s).

The court find that the accused<sup>3</sup> ..... is<sup>4</sup>

ANNOUNCEMENT OF FINDING(S)

The court being re-opened the accused is again brought before them.

The finding(s) (is) (are) read and (with the exception of the finding(s) of "not guilty")<sup>2</sup> (is) (are) announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES<sup>2</sup>

The accused is released.

Signed at ..... this ..... day of ....., 20 .....

.....  
*Judge Advocate*

.....  
*President*

NOTES

- 1 Strike out this page if not applicable.
- 2 Strike out if not applicable.
- 3 Insert number, rank, name and unit of the accused as given on the charge-sheet.
- 4 Set out the finding on each charge in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.

FOURTH SCHEDULE, Form V—continued

(E)

Page .....

PROCEEDINGS ON PLEA(S) OF GUILTY<sup>1</sup>

The accused<sup>2</sup> ..... is found guilty of<sup>3</sup>

The finding(s) (is) (are) read in open Court and (is) (are) announced as being subject to confirmation.

(The abstract of evidence is read to the Court by the prosecutor, marked ....., signed by the president and attached to the record) (the prosecutor informs the Court of the facts contained in the abstract of evidence which is marked ..... signed by the president and attached to the record).<sup>4</sup>

NOTES

- 1 Strike out this page if not applicable.
- 2 Insert the number, name, rank and unit of the accused as given on the charge-sheet.
- 3 Record the finding on each charge of which the accused is found guilty in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.
- 4 Strike out if not applicable. If this paragraph is struck out, Rule of Procedure 44(2) must be complied with.

(F.1)

Page .....

PROCEEDINGS ON CONVICTION

Note.—F.2 should be completed before F.1, if the accused has pleaded not guilty to all charges. F.1 should normally be completed before F.2 if the accused has pleaded guilty to any charge but the president may in his discretion complete F.2 before F.1 if there is no danger of the accused making an inconsistent plea.

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. ....  
The evidence for the defence as to the accused's character and in mitigation of punishment is recorded on pages .....

Q. Do you wish to address the court in mitigation of punishment?

A. ....  
The ..... (makes an address in mitigation of punishment, which is summarized (below)(on page .....)) (hands in an address in mitigation of punishment, which is read marked ....., signed by the president and attached to the record).<sup>1</sup>

The list of offences which the Court have, at the request of the accused, agreed to take into consideration is read to the accused, signed by him, marked ....., signed by the president and attached to the record.<sup>2</sup>

Final question addressed to the accused personally.\*

Q. Is there anything further that you wish to say to the Court?\*

A. ....  
The accused makes a statement which is recorded on page .....  
The Court close to deliberate on sentence.\*

\*Strike out if F.1 completed before F.2.

NOTES

- 1 Strike out this paragraph if not applicable.
- 2 Strike out this paragraph if the accused has not requested other offences to be taken into consideration.

Kenya Defence Forces

[Subsidiary]

FOURTH SCHEDULE, Form V—continued

(F.2)

Page .....

PROCEEDINGS ON CONVICTION

Note.—F.2 should be completed before F.1 if the accused has pleaded not guilty to all charges.

The prosecutor calls evidence as to the accused’s character and record.

..... is duly sworn

Q. Do you produce the Service Record of the accused?

A. I produce .....

Q. Have you compared it with the service books?

A. ....

Q. Do the entries in it correspond with the entries in the service books?

A. ....

The ..... is read, marked ..... signed by the presiding officer and attached to the record.

The accused (declines) (elects) to cross-examine this witness (and the cross-examination is recorded on pages .....).

The prosecutor adduces evidence under Rule of Procedure 69(3) which is recorded on pages ....<sup>1</sup>

Final question addressed to the accused personally.\*

Q. Is there anything further you wish to say to the Court?\*

A. ....

The accused makes a statement which is recorded on page .....

The Court close to deliberate on sentence.\*

\*Strike out if F.2 is completed before F.1.

NOTE

1 Strike out this paragraph if the prosecutor does not adduce evidence under Rule of Procedure 69(3).

(G)

Page .....

SENTENCE<sup>1</sup>

The Court sentence the accused .....  
to<sup>2</sup> .....

ANNOUNCEMENT OF SENTENCE

The Court being re-opened, the accused is again brought before them.

The sentence (and recommendation to mercy)<sup>4</sup> (is) (are) announced in open court; the sentence is announced as being subject to confirmation.

The president announces that the trial is concluded.

Signed at ..... this ..... day of ....., 20 .....

Judge Advocate

President

NOTES

1 Remove this page if not applicable.

2 Insert accused’s rank, name, etc., as given on the charge-sheet.

3 Record the sentence in the appropriate form of words set out in the Fifth Schedule to the Rules of Procedure. Any recommendation to mercy (see Rule of Procedure 72(4)), restitution order (see section 104 of the Armed Forces, 1968), or order determining a suspended sentence and directing whether the sentences are to run concurrently or consecutively (see section 135 of the Armed Forces, 1968) made by the court, should be entered on the record immediately after the sentence.

4 Strike out if not applicable.



FOURTH SCHEDULE, PART V—continued

(H)

Page .....

CONFIRMATION<sup>1</sup>  
NOTE

For minutes of confirmation see Fourth Schedule to Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with Rule of Procedure 93(7)(b).

PART VI – FINDINGS

(r. 65(3))

*Acquittal on all Charges*

Not guilty of (the charge) (all the charges).

Not guilty of (the charge) (all the charges), and honourably acquit him thereof.

*Acquittal on some but not all Charges*

Not guilty of the .....<sup>1</sup> charge(s) but is guilty of the .....<sup>1</sup> charge(s).

Not guilty of the .....<sup>1</sup> charge(s) and honourably acquit him thereof but is guilty of the .....<sup>1</sup> charge(s).

*Conviction on all Charges*

Guilty of (the charge) (all the charges).

*Special Findings*

Guilty of the ..... charge (with the exception of the words .....<sup>2</sup>) (with the exception that .....<sup>2</sup>).

Not guilty of the offence charged but is guilty of .....

*No Finding on Alternative Charge*

Guilty of the ..... charge; the court record no finding on the ..... (alternative charge).

*Where the accused is unfit to stand his trial by reason of insanity.*

By reason of insanity unfit to stand his trial.

*Accused guilty but insane at the time when the offence was committed.*

Guilty but insane.

NOTES

- 1 Insert the number of the charge or charges as numbered in the charge-sheet.
- 2 Specify the exception in detail. This form is appropriate when a special finding is made under Rule of Procedure 64(3).
- 3 State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 96(2), (5) or (6) of the Act.

[Subsidiary]

FOURTH SCHEDULE—continued

PART VII – RECORD OF RECONSIDERATION OF FINDING UNDER RULE 78(5)

(r. 78(5)(c))

The Judge Advocate advises the court that the finding(s) on the .....<sup>1</sup> charge(s) (is) (are) contrary to the law relating to the case, and that in his opinion the following finding(s) (is) (are) open to them—

.....  
.....  
.....  
.....<sup>2</sup>

The Court are closed for reconsideration of finding.  
The Court on reconsideration find that the accused is<sup>3</sup> .....

.....  
.....  
.....

The finding(s) on reconsideration (is) (are) read in open court and (with the exception of the finding(s) of “not guilty”<sup>4</sup>) (is) (are) announced as being subject to confirmation.

NOTES

- 1 Insert the number of charge as numbered in the charge-sheet.
- 2 Insert the advice given by the judge advocate.
- 3 Set out the finding(s) of the court in the appropriate form(s).
- 4 Strike out the words relating to findings of “not guilty” if there is no such finding.

PART VIII – SERVICE RECORD OF ACCUSED

(r. 69(2))

No. .... Rank .....

Name .....

Unit ..... Trade .....

1. The date of his enlistment is ..... and he was commissioned on .....

2. He is serving on a .....  
(Insert nature and length of engagement)

3. His present age is .....

4. He is { married, unmarried, divorced, widowed } and has ..... children under the age of 16 years.

5. His gross basic rate of pay (including additional pay) payable on a continuous basis is ..... but he is .....

(Insert forfeitures, deductions and allotments affecting his pay)

FOURTH SCHEDULE, PART VIII—continued

6. The service which he is allowed to reckon towards discharge or transfer to reserve is .....

7. He is entitled to reckon ..... service for the purpose of determining his pension and/or gratuity, etc.

8. He is entitled to the following decorations or awards .....

and ..... acts of gallantry or distinguished conduct by him are recorded in his conduct sheets.

9. He holds the substantive rank of ..... with seniority from ..... He has continuously since ..... held the acting rank of .....

10. The highest rank for which he is qualified is .....

11. He has been awaiting his trial for ..... days of which ..... days were spent in civil custody. .... days were spent in close arrest. and ..... days were spent in open arrest.

12. He is not under sentence at the present time.

OR

At the present time he is under sentence of ..... beginning on the ..... day of ....., 20 ..... but suspended on the ..... day of ....., 20 ..... and { not yet put into operation again, put into operation again on the } ..... day of ....., 20 .....

13. According to his conduct sheets he has been found guilty by his commanding officer, or by the commandant of a service establishment, of the following offences—

Table with 3 columns: Offence, In last 12 months, Since Enlistment. Rows show times for each category.

OR

There are no entries in his conduct sheets.

Kenya Defence Forces

[Subsidiary]

FOURTH SCHEDULE, PART VIII—continued

14. Schedule of offences of which he has been convicted by a court-martial, of or which he has been found guilty during his service by a civil court, offences taken into consideration by such courts and offences of which he has been found guilty by an appropriate superior authority are set out below—

Description of court appropriate superior authority	Date and place of trial or summary award by appropriate superior authority	Charges upon which found guilty and offences taken into consideration	Sentence of the court award of appropriate superior authority	Punishment remitted (this should not include punishment automatically remitted for good conduct)

I HEREBY CERTIFY that the particulars in this Schedule are true extracts from the service books in my custody.

Signed this ..... day of ....., 20 ..... Signature .....  
 (Name, rank and appointment)

PART IX – RECORD OF PROCEEDINGS ON REVISION UNDER SECTION 110 OF THE ACT

(r. 94(1))

At .....<sup>1</sup> on the ..... day of ....., 20..... at ..... hours the Court reassembled by order of .....<sup>2</sup> the Confirming Officer for the purpose of reconsidering their finding(s) on the .....<sup>3</sup> Charge(s).

Present<sup>4</sup> .....

The order directing the reassembly of the court and giving the reasons therefor is read, marked ... signed by the president and attached to the record.

The Court having considered the observations of the confirming officer and the whole of the record of the proceedings do now revoke their finding(s) on the .....<sup>3</sup> charge(s) and find that the accused<sup>5</sup> ..... is<sup>6</sup> .....

FOURTH SCHEDULE, PART IX—continued

and (adhere to their sentence)(sentence the accused to<sup>7</sup> .....  
.....  
in substitution for the original sentence).

or

The Court having considered the observation of the confirming officer respectfully adhere to their finding(s) on the .....<sup>3</sup> charge(s)(and to their sentence) (but sentence the accused .....<sup>5</sup> to<sup>7</sup> ..... in substitution for the original sentence).

or

The Court having considered the observation of the confirming officer and the whole of the record of the proceedings do now revoke their finding(s) on the .....<sup>3</sup> charge(s) and find the accused .....<sup>5</sup> not guilty of (that)(those) charge(s).

Signed at .....<sup>1</sup> this ..... day of ....., 20 .....

Judge Advocate

Presiding Officer

NOTES

- 1 Insert the name of the place.
- 2 Insert the rank, name appointment, etc., of the confirming officer.
- 3 Specify the number(s) of the charge(s) concerned, e.g., the 5th charge.
- 4 Give the names of the presiding officer and members of the court who are present. If the presiding officer is absent the senior members must report to the confirming officer. If a member is absent and the court is thereby reduced below the legal minimum the presiding officer must report to the confirming officer.
- 5 Insert the accused's number, rank, name and unit as given in the charge-sheet.
- 6 Set out the finding in the appropriate form set out in the Fourth Schedule.
- 7 Set out the new sentence in accordance with the appropriate form set out in the Fifth Schedule.

PART X – CONFIRMATION

(r. 93(1))

Note.—These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.

Confirmed.

I confirm the Court's finding(s), sentence and order under section 104 of the Armed Forces Act, 1968, but (remit .....<sup>1</sup>) (commute .....<sup>2</sup>).

I confirm the Court's finding(s), sentence and order under section 104 of the Armed Forces Act, 1968, but mitigate the sentence so that it shall be as follow—<sup>3</sup>

I vary the sentence so that it shall be as follows ..... and confirm the finding and sentence as so varied.<sup>4</sup>

I confirm the finding(s) and sentence but (postpone the carrying out of the sentence of ..... until .....<sup>5</sup>) (suspend the sentence of .....).

I confirm the finding(s) but substitute the sentence of ..... for the sentence of the Court.<sup>6</sup>

I substitute a finding of ..... for the finding of the court and confirm the sentence but (remit .....<sup>1</sup>) (commute .....<sup>2</sup>).

[Subsidiary]

FOURTH SCHEDULE, PART X—continued

I substitute a finding of ..... for the finding of the Court on the ..... charge and confirm the finding(s) on the other charge(s) and the sentence.

Not confirmed (on the grounds that ..... ).<sup>7</sup>

I confirm the finding(s) of the Court on the ..... charge(s) but do not confirm their finding(s) on the ..... charge(s) (on the grounds that ..... ).<sup>7</sup>

I confirm the sentence but (remit ..... <sup>1</sup>) (commute ..... <sup>3</sup>).

I refer the finding(s) and sentence to ..... <sup>8</sup> for confirmation.

I confirm the finding(s) of the Court on the ..... charge(s) and refer the finding(s) on the ..... charge(s) and the sentence to ..... <sup>8</sup> for confirmation.

I confirm the finding(s) of the court but refer the sentence to ..... <sup>8</sup> for confirmation.

[Rule 95(3)]

(The record)(Part of the record) of the proceedings of the trial by court-martial which tried ..... at ..... on the ..... day of ..... , 20 ..... , having been lost, I do not confirm the finding(s) of the court.

Signed at ..... this ..... day of ..... , 20 .....

(Signature, rank and appointment of Confirming Officer)

NOTES

- 1 State what part of the sentence is remitted.
2 State what the sentence is commuted to.
3 This form of words may be used when it is impracticable to use either "remit" or "commute".
4 This form of words is appropriate when the Court have expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.
5 Insert the date or event to which the carrying out of the sentence is postponed.
6 This form of words is appropriate when the Court have passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.
7 Where a confirming officer withholds confirmation because he disapproves of the decision of the court on a plea to the jurisdiction or in bar of trial or on any confirmation for this reason. In other cases the confirming officer is not bound to give his reasons.
8 Insert the appointment of the higher authority to whom the matter is to be referred.
9 The rank and appointment of the confirming officer should be clearly stated after or under his signature.

PART XI – DETERMINATION BY A REVIEWING AUTHORITY OF A SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE TO RUN CONCURRENTLY OR CONSECUTIVELY UNDER SECTION 135(b) OF THE ACT

s. 135C

I ..... the reviewing authority hereby order the accused to be committed to imprisonment under the sentence passed on him by the court-martial held at ..... on the ..... day of ..... , 20 ..... , and direct that that sentence

FOURTH SCHEDULE, PART XI—continued

and the sentence passed on the accused by (this court-martial) (court-martial held at ..... on ..... day of ..... , 20..... ) shall run (concurrently) (consecutively).

Dated ....., 20 .....

(Signature)

NOTE

When the determination is made by the reviewing authority it should follow the minute of promulgation.

PART XII – RESTITUTION ORDER1 UNDER SECTION 104 OF THE ACT

(s. 104.)

In accordance with subsection ..... of section 104 of the Armed Forces Act, 1968, I ..... hereby order that ..... be (delivered) (paid) to .....

Dated ....., 20 .....

(Signature)
Confirming Officer.
Reviewing Authority.

\* Strike out if not applicable.

NOTES

- 1 (a) When the confirming officer is making the order this form of words should be inserted in the record of the proceedings of the Court-martial in the confirming officer's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.
(b) Where the conditions set out in section 104(10) of the Act are satisfied, the officer or authority making the order may add at the end of the order: "and I direct that this order shall be carried out forthwith".
2 Insert rank, name and appointment of confirming officer or reviewing authority as the case may be.
3 Insert description of article or amount of money, as the case may be.
4 Insert name of person to whom restitution is being made.

PART XIII – PROMULGATION

(r. 93(7)(b))

Promulgated and extracts taken at (place) ..... this ..... day of ....., 20 .....

(Signature, rank and appointment of officer making the promulgation)

[Subsidiary]

FIFTH SCHEDULE

SENTENCES

- Part I. Sentences.
- Part II. Restitution Order.

PART I – SENTENCES

[Rule 72(1)]

Note:— The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court-martial opposite the record of the sentence.

*Officers*

- To suffer death. Death.
- To be imprisoned for ..... Imprisonment.
- To be dismissed from the armed forces. Dismissed.
- To be reduced to the rank of ..... Reduction in rank.  
(rr. 8(9), 19(F) and 72(1))
- To take seniority in the rank of ..... Forfeiture of seniority of rank.  
..... as if his appointment to that rank bore date the ..... day of ....., 20 .....
- To be fined ..... Fine.
- To be (severely reprimanded) (reprimanded). Severe reprimand or reprimand.
- To be admonished. Admonition.
- To be put under stoppages of pay until he has made good the sum of .....  
<sup>1</sup> in respect of .....<sup>2</sup>

*Servicemen*

- To suffer death. Death.
- To be imprisoned for ..... (and to be reduced to the ranks). Imprisonment (and reduction to the ranks).
- To be dismissed from the armed forces. Dismissal.
- To undergo active service punishment for ..... days. Active service punishment.
- To be reduced (to the ranks) (to the rank of .....). Reduction to the ranks. or reduction in rank.
- To take seniority in the rank of ..... Forfeiture of seniority of rank.  
..... as if his appointment to that rank bore date the ..... day of ....., 20 .....
- To be fined ..... Fine.



FIFTH SCHEDULE—continued

- To be (severely reprimanded) (reprimanded) Severe reprimand or reprimand.
- To be admonished. Admonition.
- To be put under stoppages of pay until he has made good the sum of .....  
<sup>1</sup> in respect of .....<sup>2</sup> Stoppages.

NOTES

- 1 Insert the amount which has to be made good by stoppages in respect of the charge or article specified.
- 2 Specify the charge or article in respect of which the stoppages is to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

PART II – RESTITUTION ORDER<sup>1</sup>

(s. 104)

1. *By the Commanding Officer or Appropriate Superior Authority*

In accordance with subsection ..... of section 104 of the Armed Forces Act, 1968, I, .....<sup>2</sup> hereby order that .....<sup>3</sup>  
 be (delivered) (paid) to .....<sup>4</sup>.

.....  
 (Commanding Officer)  
 (Appropriate Superior Authority)

2. *By the Court*

In accordance with subsection ..... of section 104 of the Armed Forces Act 1968, the court hereby order that .....<sup>3</sup>  
 be (delivered) (paid) to .....<sup>4</sup>.

NOTES

- 1 (a) This form of words should be inserted in the record of the proceedings.
- (b) Where the conditions set out in section 104(10) of the Act are satisfied, the commanding officer or the court may add at the end of the order: "and direct that this order shall be carried out forthwith".
- 2 Insert name and rank of commanding officer, or appropriate superior authority.
- 3 Insert the description of the article or the amount of money as the case may be.
- 4 Insert name of person to whom restitution is to be made.
- 5 Delete as required.

SIXTH SCHEDULE

OATHS AND AFFIRMATIONS

- Part I. Oaths at Investigations by Commanding Officers and Appropriate Superior Authorities.
- Part II. Oaths at Courts-martial.
- Part III. Manner of Administering the Oath.
- Part IV. Solemn Affirmations.

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**[Subsidiary]**PART I – OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS AND  
APPROPRIATE SUPERIOR AUTHORITIES

[Rule 33(1.)]

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter being investigated.

*Witness*

I swear by Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

## PART II – OATHS AT COURTS-MARTIAL

[Rule 33(1.)]

*Presiding Officer and Members*

I swear by Almighty God that I will well and truly try the (accused) (accused persons) before the court according to the evidence, and that I will duly administer justice according to the Armed Forces Act, 1968, without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of the presiding officer or any member of this court-martial, unless thereunto required in due course of law.

*Judge Advocate*

I swear by Almighty God that I will to the best of my ability carry out the duties of Judge Advocate in accordance with the Armed Forces Act, 1968, and the rules made thereunder and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the presiding officer or any member of this court-martial, unless thereunto required in due course of law.

*Officer under Instruction*

I swear by Almighty God that I will not on any account, at any time whatsoever disclose or discover the vote or opinion of the presiding officer or any member of this court-martial, unless thereunto required in due course of law.

*Shorthand Writer*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and will, when required, deliver to the Court a true transcript of the same.

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court-martial.

*Witness*

I swear by Almighty God that the evidence which I shall give before this court-martial shall be the truth, the whole truth, and nothing but the truth.

## PART III – MANNER OF ADMINISTERING THE OATH

Persons taking the oath shall say to or repeat after the person administering the oath the words of the oath with such variations in the opening words of the oath as the person taking the oath shall have declared to be effective to make the oath binding on his conscience in accordance with his religious beliefs.

PART IV – SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words "I (name in full), do solemnly, sincerely and truly declare and affirm" and for the word "swear" wherever it occurs, the words "solemnly, sincerely and truly declare and affirm".

SEVENTH SCHEDULE

PETITIONS

Part I. Petitions.

Part II. List of Persons to whom Petitions may be Presented under Rule of Procedure 99.

PART I – PETITIONS

[Rule 99(1).]

*Petition to Confirming Officer (Before Confirmation) Under Section 106 of the Act and Rule 99(1)*

TO THE CONFIRMING OFFICER

I .....<sup>1</sup> having been convicted by court-martial on .....<sup>2</sup> at .....<sup>3</sup> and having been sentenced to ..... hereby petition against the finding(s) on the ..... charge(s)<sup>4</sup> (and the sentence) on the following grounds—

.....  
.....  
.....  
.....

Signed .....<sup>5</sup>

Date .....

*Petition to the Reviewing Authority<sup>5</sup> (after Confirmation and Promulgation), under Section 106 Of the Act and Rule 99(2)*

[Rule 99(2).]

To the Defence Council<sup>6</sup>

I .....<sup>1</sup> having been convicted by court-martial on .....<sup>2</sup> at .....<sup>3</sup> and having had the finding(s) and sentence promulgated to me on .....<sup>7</sup> hereby petition against the finding(s) on the ..... charge(s)<sup>4</sup> (and the sentence) on the following grounds—

.....  
.....  
.....  
.....

Signed .....<sup>8</sup>

Date .....

Kenya Defence Forces

[Subsidiary]

SEVENTH SCHEDULE—continued

*Petition to the Commander<sup>9</sup> (after Confirmation and Promulgation), under Section 112 of the Act and Rule of Procedure 99(3)*

TO THE COMMANDER

I .....<sup>1</sup> having been convicted by court-martial on .....<sup>2</sup> at .....<sup>3</sup> and having been sentenced to ..... and having had the finding(s) and sentence promulgated to me on .....<sup>7</sup> hereby petition for reconsideration of the sentence on the following grounds—

.....  
 .....  
 .....

Signed .....

Date .....

NOTES

- 1 Insert the accused's number, rank, name and unit.
- 2 Insert the date when accused was convicted.
- 3 Insert the place where the trial was held.
- 4 The words "the finding(s) on the ..... charge(s)" should be omitted if the accused is only petitioning against sentence.
- 5 The reviewing authority will be either the Defence Council or any officer superior in command to the confirming officer; see section 111(2) of the Act.
- 6 Here state the reviewing authority whom it is desired to petition.
- 7 Insert the date when the findings and sentence were promulgated.
- 8 Petitions should be signed by the accused personally but may if necessary, be signed on his behalf by his representative.
- 9 Insert Kenya Air Force, Kenya Army or Kenya Navy as the case may be.

PART II – LIST OF PERSONS TO WHOM PETITIONS MAY BE PRESENTED UNDER RULE OF PROCEDURE 99

[Rule 99(3).]

<i>Circumstances</i>	<i>Person to whom a petition may be presented</i>
1. Petitioner serving in or in custody on board a ship of the Kenya Navy.	Captain of the ship.
2. Petitioner in custody on board a ship other than a ship of the Kenya Navy.	Officer commanding forces on board.
3. Petitioner serving with a unit of the Armed Forces.	Officer commanding the unit.
4. Petitioner confined in a civil prison.	Officer in charge of the prison.
5. Petitioner who is a civilian and is outside Kenya.	Officer commanding at the nearest Armed Forces headquarters.

**ARMED FORCES (COURT-MARTIAL APPEALS) RULES, 1969**

ARRANGEMENT OF RULES

*Rule*

1. Citation.
2. Interpretation.
3. Application for leave to appeal.
4. Extension of time.
5. Form of appeal by Attorney-General.
6. Abandonment of appeal.
7. Notices.
8. Court-martial proceedings.
9. Copies of proceedings.
10. Documents and exhibits.
11. Security of documents, etc.
12. Public interest.
13. Witnesses.
14. Register and cause list.
15. Presence of person convicted at hearing.
16. Notifying results of appeals, etc.
17. Restitution order.
18. Right of audience.
19. Non-compliance with Rules.
20. Enforcement of duties.

SCHEDULE

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[Subsidiary]

## ARMED FORCES (COURT-MARTIAL APPEALS) RULES, 1969

[L. N. 255/1969.]

### 1. Citation

These Rules may be cited as the Armed Forces (Court-martial Appeals) Rules, 1969.

### 2. Interpretation

In these Rules, except where the context otherwise requires—

“**the court**” means the High Court;

“**exhibits**” means all documents and things which have been produced and used in evidence at a trial by court-martial, whether they are attached to the proceedings of the court-martial or not;

“**Registrar**” means the Registrar of the High Court, and includes a senior deputy Registrar, a Deputy Registrar, and a District Registrar of the High Court.

### 3. Application for leave to appeal

An application by a person convicted for leave to appeal to the court under section 116 of the Act shall be in form 1 in the Schedule to these Rules, and shall contain answers to the questions and comply with the requirements set forth therein.

### 4. Extension of time

A notice of application to the High Court for an extension of time within which to make application for leave to appeal shall be in form 2 in the Schedule to these Rules, and shall be sent to the Registrar.

### 5. Form of appeal by Attorney-General

An appeal by the Attorney-General under section 115(2) of the Act shall be in form 3 in the Schedule to these Rules.

### 6. Abandonment of appeal

(1) A person convicted, at any time after he has made application for leave to appeal, or the Attorney-General, may abandon his appeal by giving to the Registrar notice of abandonment thereof in form 4 in the Schedule to these Rules.

(2) Where it is contended that the person convicted is insane, a notice of abandonment may be given and signed by his legal representative.

(3) Subject to paragraph (2) of this rule, a notice of abandonment shall be signed by the person convicted himself.

### 7. Notices

(1) An application for leave to appeal and any notice required or authorized to be given to the court under these Rules, other than a notice of abandonment, shall be signed by the person convicted or by his legal representative, or by the Attorney-General, as the case may be.

(2) An application for leave to appeal and any notice required or authorized to be given to the court under these Rules shall be addressed to the Registrar.

[Subsidiary]

(3) Where a person convicted, or any other person required or authorized to make an application or give any notice for the purpose of these Rules, is unable to write, he may affix his mark thereto in the presence of a witness, who shall attest the mark, and thereupon such application or notice shall be deemed to be signed by that person.

**8. Court-martial proceedings**

(1) The Registrar, on receipt of an application for leave to appeal, shall request the Commander to forward to him the proceedings of the court-martial and any petition presented by the person convicted praying that his conviction be quashed.

(2) After an application is finally refused or is withdrawn, or the appeal is determined or abandoned, the proceedings of the court-martial and any petition shall, subject to any order which the court may make, be returned by the Registrar to the Commander.

(3) A copy of any document which is required for the use of the Court shall be made by such person and in such manner as the Registrar may direct.

**9. Copies of proceedings**

(1) At any time after the Registrar has received an application for leave to appeal, the person convicted or the Attorney-General may, subject to these Rules, obtain from the Registrar copies of any document in the possession of the Registrar for the purpose of the appeal.

(2) Copies of any document shall be supplied by the Registrar at the charges following—

(i) for making and certifying a copy of any document or certifying a copy not prepared by court or court-martial—

	<i>Sh.</i>	<i>cts</i>
(a) for first folio or part thereof .....	5	00
(b) for each subsequent folio or part thereof .....	2	50

(ii) for making uncertified copy of any document—

	<i>Sh.</i>	<i>cts.</i>
(a) for first four folios or part thereof .....	3	00
(b) for each subsequent folio or part thereof .....		75

Provided that, if such uncertified copy later requires to be certified, the certifying fees shall be the difference between these fees and the fees under subparagraph (1) of this rule;

(iii) for making copies by Photostat process— Actual cost

**10. Documents and exhibits**

(1) The Registrar may, on application made to him by the person convicted or by the Attorney-General, or where he considers it necessary for the proper determination of any appeal or application, and shall, where so directed by the Court, obtain and keep available for use by the Court any document or exhibit; and, subject to rule 11 of these Rules, pending the determination of the appeal or application such document and exhibit and the proceedings of the court-martial shall be open, as and when the Registrar may arrange, for inspection by the person convicted or by the Attorney-General.

(2) Subject to rule 11 of these Rules, the court may, at any stage of an appeal, whenever it thinks it necessary or expedient in the interests of justice so to do, order any document, exhibit or other thing connected with the proceedings to be produced to the Registrar or before the court by any person having the custody or control thereof.

**[Subsidiary]**

(3) After an application is finally refused or is withdrawn, or the appeal is determined or abandoned, documents and exhibits shall, subject to any order which the court may make, be returned by the Registrar to the person who produced or forwarded them.

(4) Service of any order made under this rule shall be personal service unless the court otherwise orders.

**11. Security of documents, etc.**

If the Minister certifies that, for reasons of security, the whole or part of the proceedings, or any document, exhibit or other thing, ought not to be disclosed otherwise than to the Court, or ought only to be disclosed subject to certain conditions specified by the person who so certifies, the Registrar shall, notwithstanding these Rules, not permit inspection nor supply a copy thereof without an order of the Court, which may direct upon what conditions, if any, inspection shall be permitted or a copy supplied.

**12. Public interest**

Nothing in these Rules shall affect any rule of law which authorizes or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

**13. Witnesses**

(1) An order of the court that a witness shall attend and be examined shall be in Form 5 in the Schedule to these Rules, and shall specify the time and place at which such witness shall attend.

(2) Such an order may be made on the application at any time of the person convicted or of the Attorney-General, but if the person convicted is in custody and is not legally represented the application shall be made by him in form 6 in the Schedule to these Rules.

(3) Service of any order required by this rule to be given to any witness shall be personal service, unless the court otherwise orders.

**14. Register and cause list**

(1) The Registrar shall keep a register of all cases in which he receives an application for leave to appeal under the Act and such register shall be open for public inspection in such place and at such hours as the Registrar determines.

(2) The Registrar shall also publish a list of appeals and applications which the Court may consider on the days on which the Court, as constituted for the hearing and determination of appeals under the Act, shall sit; and shall cause such list to be published at such times and in such places and in such a manner as he, subject to the approval of the Court, thinks convenient for giving due notice to any parties interested therein of the hearing of the cases in such list by the Court.

**15. Presence of person convicted at hearing**

(1) Where the person convicted is in custody and has obtained the leave of the Court to be present at the hearing and determination of his application or appeal, or at any stage thereof, the Registrar shall notify the person convicted, the person in charge of the place where he is confined, and the Commander or the Commissioner of Prisons, as the case may be, of the probable date thereof.

(2) The Court may direct that the person convicted be brought before the court in any case where in the opinion of the court his presence is advisable for the proper determination of the appeal.



**16. Notifying results of appeals, etc.**

(1) On the final determination of any appeal or of any application, the Registrar shall, unless it appears to him unnecessary to do so, give to the person convicted, the Attorney-General and, where the person convicted is in custody, the person in charge of the place where he is confined written notice of the determination.

(2) In the case of an appeal against a conviction involving sentence of death, the Registrar shall, on receiving an application for leave to appeal, send a copy thereof to the President and, where leave to appeal is refused and on the final determination of an appeal, shall forthwith give written notice to the person convicted and to the President and to the person in charge of the place where the person convicted is confined.

**17. Restitution order**

(1) Where any property or money has been ordered to be restored or handed over under section 104 of the Act, and the operation of the order has been suspended under subsection (9) of that section, unless the property is in the custody of the Registrar the authority which made the order shall cause it to be kept in safe custody for the period during which the operation of the order is suspended.

(2) Any person in whose favour or against whom an order has been made under section 104 of this Act, and with the leave of the court any other person, shall, on the final hearing by the Court of the appeal against the conviction on which such order was made be entitled to have any representations that he may make considered by the Court before any order is made under subsection (9)(ii) of that section.

**18. Right of audience**

In any proceedings before the Court, any of the following persons may address the Court—

- (a) an advocate retained by or on behalf of the person convicted;
- (b) the person convicted, if he has the leave of the Court; and
- (c) the Attorney-General or his representative.

**19. Non-compliance with Rules**

(1) Non-compliance with these Rules by a person convicted shall not prevent the further prosecution of his appeal, unless the court otherwise directs.

(2) The Registrar shall forthwith notify the person convicted, or the Attorney-General, as the case may be, of directions given by the Court under this rule, where he was not present at the time when such directions were given.

**20. Enforcement of duties**

The performance of any duty imposed upon any person under Part IX of the Act or these Rules may be enforced by order of the Court.

[Subsidiary]

SCHEDULE

Form 1

(r. 3)

APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION OR SENTENCE

To The Registrar of the High Court,
Nairobi,
Kenya.

Name of person convicted
Number Unit Rank
Convicted by court-martial held at
Offence of which convicted
Sentence
Date when conviction pronounced or finding promulgated
Date when petition presented
Date when notified that petition refused
Name of prison or place of detention (a)

I, the above-named person, hereby apply for leave to appeal to the High Court against my [conviction] [and] [sentence] on the following grounds (b)

(Signed) (c)

Dated the (d) day of , 20

Questions (e)

Answers

- 1. Is any advocate or other person now acting for you?
If so, give his name and address.
2. Do you desire to be present when the High Court considers your appeal?
3. Do you desire to apply for leave to call any witness on your appeal?
If your answer to this question is "Yes", you must fill in form 6 and send it with this form.

NOTES

- (a) If person convicted not in custody, insert his address.
(b) Set out clearly and concisely the reasons why you consider your conviction should be quashed or the sentence varied.
(c) This notice must be signed by the person convicted or his legal representative. If the person convicted cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.
(d) If this form is lodged more than forty days after the person convicted has become entitled to apply for leave to appeal he must also fill in form 2 and send it with this form.
(e) The person convicted must answer these questions.

SCHEDULE—continued

Form 2

(r. 4)

NOTICE OF APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPLY FOR LEAVE TO APPEAL AGAINST CONVICTION AND/OR SENTENCE

To The Registrar of the High Court, Nairobi, Kenya.

I, (a) ... having been convicted of the offence of (b) ... and sentenced to ... by court-martial held at ... on the ..., 20 ..., and being now at (c) ... give you notice that I hereby apply to the High Court for an extension of the time within which I may give notice of application for leave to appeal, on the grounds following (d) ...

Dated the ... day of ..., 20 ...

(Signed) ... (e)

[Form 1 must be filled up and sent with this notice to the Registrar.]

NOTES

- (a) Insert name, number rank and unit.
(b) State shortly the offence or offences.
(c) Set out address in full.
(d) Here set out clearly and con-concisely the reasons for the delay in giving notice, and the grounds on which you submit the High Court should extend the time.
(e) This notice must be signed by the person convicted or his legal representative. If the person convicted cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.

Form 3

(r. 5)

APPEAL BY THE ATTORNEY-GENERAL AGAINST A PERSON'S ACQUITTAL OR SENTENCE

To The Registrar of the High Court, Nairobi, Kenya.

Name of person acquitted or sentenced ...
Number ... Unit ... Rank ...
Tried by court-martial held at ...
Offence for which tried ...
Acquitted [or] sentenced to ...

Kenya Defence Forces

[Subsidiary]

SCHEDULE, Form 3—continued

Date when acquitted or sentenced or finding promulgated .....

Name of prison or place of detention (a) .....

The Attorney-General hereby appeals against the acquittal [or] sentence specified above of the person named above, on the following grounds—

Dated the ..... day of ....., 20 .....

Attorney-General

NOTES

- (a) If person convicted not in custody, insert his address.

Form 4

(r. 6)

NOTICE OF ABANDONMENT OF APPEAL

To The Registrar of the High Court, Nairobi, Kenya.

Name of person convicted .....

Number ..... Unit ..... Rank .....

Convicted by court-martial held at .....

Offence of which convicted .....

Name of prison or place of detention (a) .....

or present address of person convicted .....

I, the above-named person, having been convicted and sentenced and having applied to the Registrar for leave to appeal (b)

I, ....., Attorney-General (b)

HEREBY GIVE NOTICE that I do not intend to proceed with the appeal in this matter, as from the date hereof.

Dated the ..... day of ....., 20 .....

(Signed) .....

This notice was signed by the person convicted on the day above stated in my presence.

Signature of Witness .....

Address of Witness .....

Occupation of Witness .....

NOTES

- (a) If person convicted not in custody, insert his address.
(b) Delete as appropriate.
(c) If this notice is presented by or on behalf of a person convicted it must be signed by him in the presence of a witness.

SCHEDULE—continued

Form 5

(r. 13)

ORDER TO WITNESS TO ATTEND FOR EXAMINATION

To The Registrar of the High Court,
Nairobi,
Kenya.

To (a) .....

WHEREAS, on good cause shown to the High Court of Kenya, you have been ordered to attend and be examined as a witness [before the court upon the appeal of (b) .....] (c) [before the court upon an appeal brought by the Attorney-General following the proceedings at the court-martial of (b) .....] (c)

I NOW give you notice to attend before the court at ..... o'clock in the ..... noon on the ..... day of ....., 20 ....., at (d) .....

I ALSO REQUIRE YOU to have with you at the said time and place the following books, papers and other things relating to the appeal—

.....

Dated the ..... day of ....., 20 .....

Registrar of the High Court

NOTES

- (a) Name and address of witness.
(b) Name, number and rank of person convicted or acquitted as appropriate.
(c) Delete as appropriate.
(d) Insert location of court.

Form 6

(r. 13)

APPLICATION TO CALL FURTHER EVIDENCE MADE BY A PERSON CONVICTED WHILST IN CUSTODY

To The Registrar of the High Court,
Nairobi,
Kenya.

I, (a) .....

having applied for leave to appeal to the High Court, hereby give notice that I desire the Court to order the following witness(es) to attend before the Court and be examined on my behalf.

Dated the ..... day of ....., 20 .....

(Signed) .....

You are requested to complete the following form (b)—

- 1. Name and address of witness .....
2. Was the witness examined at your court-martial? .....

*Kenya Defence Forces*

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[Subsidiary]

SCHEDULE, Form 6—*continued*

- 3. If not, state the reason why he was not examined .....
- 4. State shortly the evidence you think he can give .....

**NOTES**

- (a) Insert name, number, rank.
  - (b) If more than one witness is desired, the information must be given in respect of each witness.
-

**ARMED FORCES (EXECUTION OF SENTENCE OF DEATH)  
REGULATIONS, 1970**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation.
2. Interpretation.
3. Custody of person under sentence.
4. Treatment of person under sentence.
5. Transfer to civil prison.
6. Where sentence may be carried out.
7. Execution in military custody.
8. Execution in civil custody.
9. Death warrant.
10. Death certificate and return of warrant after execution in military custody.
11. Burial after execution in military custody.

SCHEDULES

- FIRST SCHEDULE – ORDER FOR THE TRANSFER TO CIVIL CUSTODY  
OF A PERSON SENTENCED TO DEATH BY A  
COURT-MARTIAL
- SECOND SCHEDULE – DEATH WARRANT
- THIRD SCHEDULE – CERTIFICATE OF MEDICAL OFFICER
-

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[Subsidiary]

**ARMED FORCES (EXECUTION OF SENTENCE OF DEATH) REGULATIONS, 1970**

[L.N. 64/1970.]

**1. Citation**

These Regulations may be cited as the Armed Forces (Execution of Sentence of Death) Regulations, 1970.

**2. Interpretation**

In these Regulations—

“**local commander**” means an officer not below the rank of lieutenant colonel under whom, or in the area of whose command, a person under sentence of death is for the time being;

“**person under sentence**” means a person sentenced to suffer death under the Act whose sentence has not been commuted.

**3. Custody of person under sentence**

(1) A person under sentence shall be detained in accordance with this regulation.

(2) During the whole or any part of the period between the passing and the carrying out of the sentence, a person under such sentence may be detained in—

- (a) civil custody; or
- (b) military custody.

(3) The manner in which a person under sentence who is in civil or military custody and who has appealed to the High Court may be taken to, kept in custody at and brought back from any place at which he is entitled to be present for the purposes of Part IX of the Act, or any place to which the High Court may order him to be taken for the purposes of any proceedings before that court, shall be as follows—

- (a) he may be taken to, kept in custody at and brought back from any such place as aforesaid in civil or military custody;
- (b) he may be kept in such custody at any such place as aforesaid in any manner ordered by the High Court.

(4) No person under sentence who is in military custody shall be transferred to civil custody except in pursuance of an order of the local commander made in the form prescribed in the First Schedule of these Regulations or in a form substantially to the like effect, and every such order shall be duly completed in accordance with the instructions contained in that form.

**4. Treatment of person under sentence**

Where a person under sentence is in military custody—

- (a) he shall be deprived of every article which it might be dangerous or inexpedient to leave in his possession;
- (b) he shall be confined in a separate cell and kept apart from all other persons;
- (c) he shall be kept by day and by night in the constant charge of two persons who are officers, warrant officers or non-commissioned officers;
- (d) he shall be subject to the Armed Forces (Imprisonment) Regulations so far as they are consistent with these Regulations;
- (e) he shall not be required to perform any duties other than to keep clean his person and cell;
- (f) he shall be allowed daily physical exercise;



[Subsidiary]

- (g) he shall be granted facilities to correspond with his relatives, friends and legal advisers;
- (h) he shall be permitted to smoke;
- (i) he shall be visited once daily by an officer of the unit in which he is in custody and once daily by the medical officer of such unit;
- (j) he may be visited at any time by any person authorized to visit him by written order of the local commander;
- (k) he may be visited by such of his relatives, friends and legal advisers as he desires to see and as are authorized to visit him by written order of the local commander;
- (l) he may be visited at any time by a chaplain of his own creed or denomination or, if he so desires a chaplain of another creed or denomination;
- (m) except as hereinbefore provided, he shall not be visited by any person;
- (n) all visits shall take place in the presence and hearing of an officer of the unit in which he is in custody unless permission to the contrary is given by the officer commanding the unit.

#### 5. Transfer to civil prison

Notwithstanding regulations 3, 6 and 9 of these Regulations, no person under sentence shall be transferred to a civil prison, nor shall a sentence of death passed on any such person be carried out in a civil prison, without the consent of the Commissioner of Prisons or the Deputy Commissioner of Prisons.

#### 6. Where sentence may be carried out

(1) If a person under sentence is in Kenya, the sentence shall be carried out in a civil prison.

(2) If a person under sentence is outside Kenya, the sentence shall be carried out in military custody.

#### 7. Execution in military custody

(1) A sentence of death passed under the Act which is to be carried out in military custody shall be executed by hanging or shooting as directed by the local commander.

(2) After promulgation of a sentence of death, the local commander shall, if the sentence is to be carried out in service custody, nominate an officer not below the rank of major to be responsible for the execution of the sentence.

(3) Where a sentence of death is to be carried out in military custody, the following persons in addition to the executioner and his assistants or the firing party, as the case may be, shall be present—

- (a) the officer who is responsible for the due execution of the sentence of death in accordance with these Regulations;
- (b) a medical officer of the armed forces;
- (c) an officer nominated by the local commander who is able to identify the person under sentence as the person described in the death warrant and as the person who was tried and sentenced by the court-martial mentioned therein;

[Subsidiary]

- (d) a chaplain nominated by the local commander;
- (e) such officers, warrant officers and non-commissioned officers as may be detailed for escort and security purposes or to assist at the execution;
- (f) the officer in command of the unit in which the person under sentence is in custody,

and no other person shall be present without the authority of the local commander.

**8. Execution in civil custody**

A sentence of death passed under the Act which is carried out in a civil prison shall be executed in accordance with the Prisons Act (Cap. 90).

**9. Death warrant**

(1) The death warrant shall be issued by the local commander and shall be in the form in the Second Schedule of these Regulations, or in a form substantially to the like effect.

(2) The local commander shall not issue the death warrant until he is satisfied that, having regard to section 111 and section 124(1)(a) of the Act, the sentence of death may be carried into effect.

(3) No sentence of death passed under the Act shall be carried into effect until the death warrant has been received by the military officer nominated under regulation 7(2) of these Regulations or by the superintendent of the prison where the sentence is to be carried out.

**10. Death certificate and return of warrant after execution in military custody**

(1) As soon as practicable after a sentence of death has been carried out in military custody, the medical officer in attendance shall examine the body and ascertain the fact of death and shall sign a certificate to that effect in the form in the Third Schedule of these Regulations.

(2) As soon as the medical officer has certified the fact of death in the manner aforesaid, the officer responsible for carrying the sentence into effect, and the officer mentioned in regulation 7(3)(c) of these Regulations shall complete and sign the portion of the death warrant headed "Return of Warrant" and the officer referred to in regulation 7(2) of these Regulations shall send the death warrant and the medical certificate to the local commander.

**11. Burial after execution in military custody**

The body of a person upon whom a sentence of death under the Act has been carried out in military custody shall be buried without military honours in a military cemetery or other place chosen by the local commander.

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FIRST SCHEDULE

[Regulation 3(4).]

ORDER FOR THE TRANSFER TO CIVIL CUSTODY OF A PERSON SENTENCED TO DEATH BY A COURT-MARTIAL

To the Superintendent or other person in charge of ..... (a)  
 Whereas ..... (b) .....  
 was by a ..... court-martial  
 held at ..... convicted of the

FIRST SCHEDULE—continued

offence(s) of .....  
.....  
.....  
.....  
.....(c)

and by a sentence passed on the ..... day of ..... ,  
20..... was sentenced to suffer death, which sentence has been duly confirmed in accordance  
with the Armed Forces Act, 1968, and has not been commuted:

Now, therefore, in pursuance of the Armed Forces Act, 1968, I hereby order you to receive into  
your custody and to detain the said person until the sentence of death is carried out or until you are  
otherwise ordered by a court or judge of competent jurisdiction or you are given further orders to  
discharge or deliver over the said person in due course of law, and this shall be authority for so  
doing.

Signed at ..... this ..... day of ..... , 20 .....  
..... (d)

Rank and appointment .....

- (a) Insert the name and address of the prison.  
A person under sentence of death must not be committed to a civil prison until consent  
has been obtained pursuant to regulation 5 of the Armed Forces (Execution of Sentence of  
Death) Regulations, 1970.
- (b) Insert the full names of the person under sentence, and his number, rank and unit.
- (c) Set out the statement (but not the particulars) of the offence and the relevant section of the  
Armed Forces Act, 1968. Where there is more than one offence the statement of each  
must be set out.
- (d) The committal order must be signed by the local commander of the person under  
sentence.

SECOND SCHEDULE

[Regulation 9(11).]

DEATH WARRANT

To ..... (a)  
Whereas ..... (b) of the .....  
was by a ..... court-martial held  
at ..... convicted of the  
offence(s) of .....  
.....  
.....  
.....(c),  
and by a sentence passed on the ..... day of ..... ,  
20 ..... , was sentenced to suffer death:

And whereas the finding and sentence of the said court-martial have been confirmed and  
promulgated in accordance with the Armed Forces Act, 1968:

Kenya Defence Forces

[Subsidiary]

SECOND SCHEDULE—continued

And whereas I am satisfied, having regard to regulation 9(2) of the Armed Forces (Execution of Sentence of Death) Regulations, 1970, that the sentence of death may be carried into effect:

Now, therefore, I hereby order you to carry into effect the said sentence on ..... (b) by ..... (d) and for so doing this shall be sufficient authority for your so doing.

When the said sentence has been carried into effect, the return below and the medical certificate shall be completed and the warrant returned to me (e).

Signed at ..... this ..... day of ....., 20 .....

Rank .....

Commanding ..... Local Commander

Deleted if execution to be carried out in civil prison.

Return of Warrant (e)

The above sentence passed on ..... (b) was carried into effect at ..... (f) on the ..... day of ....., 20, ....., at ..... hours.

..... (g)
..... (h)

- (a) Military officer or superintendent of civil prison responsible for carrying the sentence of death into effect.
(b) Insert the full names of the person under sentence, and his number, rank and unit.
(c) Set out the statement (but not the particulars) of the offence and the relevant section of the Armed Forces Act, 1968. Where there is more than one offence the statement of each must be set out.
(d) Insert "hanging" or "shooting".
(e) Only required if sentence carried out in military custody.
(f) Insert the place where the sentence of death was carried into effect.
(g) Signature of military officer responsible for carrying the sentence of death into effect.
(h) Signature of mandatory witness, namely the officer nominated under regulation 7(3)(c) of the Armed Forces (Execution of Sentence of Death) Regulations, 1970.

THIRD SCHEDULE

[Regulation 10(1).]

CERTIFICATE OF MEDICAL OFFICER (a)

I, ..... (b) a medical officer of the Armed Forces, hereby certify that I have this day examined the body of ..... (c) upon whom sentence of death was this day carried into effect at ..... (d), and that on examination I found that the said person was dead.

Dated this ..... day of ....., 20 .....

Rank .....

THIRD SCHEDULE—*continued*

- (a) Only required if sentence carried out in military custody.
  - (b) Full names of the medical officer who attended the execution, stating rank and unit.
  - (c) Full names of the person upon whom the sentence of death has been carried into effect, and his number, rank and unit.
  - (d) Insert the place where the sentence of death was carried into effect.
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**ARMED FORCES (IMPRISONMENT) REGULATIONS, 1970**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation.
2. Interpretation.
3. Service of sentences.
4. Committal.
5. Release from custody.
6. Temporary release from service prison.
7. Period of remission in service prison.
8. Records of remission.
9. Forfeiture of remission.
10. Effect on remission of subsequent sentences of imprisonment.
11. Corporal punishment.
12. Use of force.
13. Requirement of service prisons.
14. Work.
15. Days of rest.
16. Work in association.
17. No work for private benefit.
18. Rations.
19. Tobacco.
20. Correspondence.
21. Parcels.
22. Censorship.
23. Visits.
24. Visit by legal advisers.
25. Medical examination.
26. Appeals.
27. Rights as to appeal to be notified.
28. Searching persons under sentence.
29. Condition of search.
30. Duration of sentence on persons who escape.
31. Deaths.
32. Offence against discipline.
33. Procedure for dealing with offences.
34. Punishment which may be awarded by an officer in charge.
35. Restricted diet.
36. Close confinement.
37. Mechanical restraint.
38. Canvas suit.
39. Religious books and chaplains.
40. Visit by chaplain.

[Subsidiary]

*Regulation*

- 41. Attendance at divine service.
- 42. Educational training.
- 43. Prohibition of liquor, tobacco.
- 44. Communication with prisoners.
- 45. Unauthorized entry of service prison.
- 46. Penalty.

SCHEDULES

- FIRST SCHEDULE – ORDER FOR THE COMMITTAL OF A MEMBER OF THE ARMED FORCES TO A CIVIL PRISON ON AN AWARD OF IMPRISONMENT BY HIS COMMANDING OFFICER
  - SECOND SCHEDULE – ORDER FOR THE COMMITTAL OF A MEMBER OF THE ARMED FORCES TO A CIVIL PRISON ON SENTENCE OF IMPRISONMENT BY A COURT-MARTIAL
  - THIRD SCHEDULE – ORDER FOR THE RELEASE OF A PERSON UNDERGOING SENTENCE OF IMPRISONMENT UNDER THE ARMED FORCES ACT
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**ARMED FORCES (IMPRISONMENT) REGULATIONS, 1970**

[L.N. 14/1971.]

**1. Citation**

These Regulations may be cited as the Armed Forces (Imprisonment) Regulations, 1970.

**2. Interpretation**

In these Regulations, unless the context otherwise requires—

“**the Act**” means the Armed Forces Act, 1968;

“**legal adviser**” means—

- (a) an advocate; or
- (b) if a service prison is outside Kenya, any person who, in the opinion of the officer in charge, has rights and duties in the country concerned similar to those of an advocate;
- (c) any clerk in the full-time service of an advocate or such a person, and authorized in writing by the advocate or person to interview a prisoner;
- (d) any officer representing or assisting a prisoner for the purposes of his defence or in connexion with his petition or appeal;

“**officer in charge**” means the officer for the time being commanding the unit upon whose premises a service prison is situated;

“**prisoner**” means any person who is serving a service sentence of imprisonment in a service prison;

“**service prison**” means—

- (a) any premises set aside by one of the Commanders as a place of imprisonment for persons serving a service sentence of imprisonment;
- (b) any cell, room, hut, tent or other place which is situated within an area or place occupied by a unit normally commanded by an officer not below the rank of major or corresponding rank, and which is used for the confinement of any such persons;

“**staff**” means the persons for the time being charged with the administration of a service prison or with the custody of prisoners therein.

**3. Service of sentences**

(1) A service sentence of imprisonment which does not exceed forty-two days shall be served—

- (a) whenever practicable, in a service prison of the unit to which the person under such sentence belongs, or if such unit has no such prison, in a service prison established by some other unit; or
- (b) if there is no such service prison reasonably available, in a civil prison.

(2) A service sentence of imprisonment which exceeds forty-two days shall be served in a civil prison.

**4. Committal**

(1) An entry in a unit Part II Orders notifying the imposition of a service sentence of imprisonment not exceeding forty-two days upon any person shall be sufficient warrant for the confinement of such person in a service prison.

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**[Subsidiary]**

(2) Where, under regulation 3 of these Regulations, a service sentence of imprisonment is to be served in a civil prison, an order in the form set out in the First or Second Schedule to these Regulations, as may be appropriate, and signed by the commanding officer of the person under sentence, shall be sufficient warrant for such person to be detained in a civil prison.

**5. Release from custody**

Subject to regulation 6 of these Regulations, no person under a service sentence of imprisonment, whether in service custody or in civil custody, shall be released from such custody otherwise than—

- (a) in accordance with an order of a court of competent jurisdiction; or
- (b) in accordance with an order in the form set out in the Third Schedule; or
- (c) on the expiration of his sentence less—
  - (i) in the case of a sentence served in a service prison, remission allowed in accordance with these Regulations; or
  - (ii) in the case of a sentence served in a civil prison, remission as allowed in accordance with any written law relating to remission of the sentence of a convicted criminal prisoner in such prison.

**6. Temporary release from service prison**

(1) The commanding officer of a person serving sentence of imprisonment in a service prison may authorize the temporary release of such person from such prison in any of the following circumstances—

- (a) In the case of the death or dangerous illness of a near relative of the prisoner, and the commanding officer is satisfied that the presence of the prisoner is desirable;
- (b) where damage has been done to any premises occupied by the next-of-kin of the prisoner and the commanding officer is satisfied that the presence of the prisoner is desirable;
- (c) where the prisoner could make arrangements preliminary to or consequent upon the birth of his child, and the commanding officer is satisfied that the presence of the prisoner is desirable;
- (d) where the prisoner has requested facilities to enable him to marry a woman who is expecting a child;
- (e) where there are domestic difficulties concerning the prisoner or his family, and the commanding officer is satisfied that the personal attendance of the prisoner is desirable.

(2) A temporary release under this regulation shall be subject to the following—

- (a) That the prisoner shall comply with any conditions laid down by the commanding officer and to be observed by, or in relation to, the prisoner during the period of his temporary release, including any conditions as to custody during the period of temporary release, and as to the place or places where the prisoner may or may not go during that period;
- (b) that, if the prisoner fails to comply with any such conditions, the period of his temporary release shall thereupon be terminated and it shall be the duty of the prisoner to return forthwith to the service prison.

(3) Any period of temporary release shall not count as part of the service sentence to be served.

**7. Period of remission in service prison**

(1) The periods of remission which can be earned by good conduct by a prisoner shall be—

- (a) if the sentence does not exceed thirty-one days, nil;
- (b) if the sentence exceeds thirty-one days, one-third of the sentence except in a case where this would result in the said person serving less than thirty-one days, in which case the period of remission shall be such period as will reduce the sentence which he is required to serve to thirty-one days.

(2) For the purpose of calculating remission in accordance with paragraph (1) of this regulation, fractions of a day shall be ignored.

(3) A prisoner due to be released on a Sunday, Christmas Day or Good Friday shall be released on the previous day and the uncompleted day shall be deemed to be remitted.

**8. Records of remission**

(1) The officer in charge shall appoint an officer to be responsible for maintaining the record of remissions to which a prisoner may be entitled in accordance with regulation 7.

(2) The record of remission shall show the entitlement to remission earned by each prisoner, and also the details of any loss of remission awarded in accordance with these Regulations.

**9. Forfeiture of remission**

One day's remission of the sentence of a prisoner shall be forfeited in respect of each day on which the prisoner is unable to carry out work or training, which would otherwise be required of him, by reason of—

- (a) his sickness occasioned by his own misconduct; or
- (b) his undergoing a sentence of a civil court; or
- (c) his being in the lawful custody of any civil authority; or
- (d) an award by the officer in charge under regulation 34 for an offence under regulation 33 of these Regulations.

**10. Effect of remission of subsequent sentences of imprisonment**

If, while a person is serving a sentence of imprisonment he is awarded a further sentence of imprisonment, remission shall be calculated under regulation 7 of these Regulations, taking into account the total period to which the said person was actually sentenced and which he would be required to serve.

**11. Corporal punishment**

Corporal punishment shall not be inflicted on prisoners.

**12. Use of force**

Any member of the staff may use such force against a prisoner as is reasonably necessary to make the prisoner obey any lawful order which he refuses to obey or in order to maintain discipline.

**13. Requirement of service prisons**

(1) No room shall be used as, or as part of, a service prison unless a medical officer has certified that its size, lighting, heating, ventilation and fittings are adequate for health,

**[Subsidiary]**

and that it allows any prisoner therein to communicate at any time with a member of the staff, and any certificate granted in relation to a room shall state the maximum number of prisoners who may be confined therein.

(2) The size of rooms intended for occupation by prisoners shall be such as to provide at least six hundred cubic feet capacity for each such prisoner, unless in any particular case, having regard to the exigencies of the service, the officer in charge authorizes temporary accommodation for prisoners in accommodation of smaller capacity.

(3) Two prisoners shall not be confined together in one room, the confinement must be solitary or of at least three prisoners in the room.

(4) A prisoner shall not be accommodated in the same room or place as a person in arrest.

**14. Work**

(1) During the whole of his sentence a prisoner shall be engaged in work or training for not more than nine nor less than six hours a day excluding times for meals.

(2) Nothing in this regulation shall require that a prisoner shall be engaged in work or training at any time when he is—

- (a) in close confinement; or
- (b) undergoing restricted diets as a punishment; or
- (c) excused work or training on medical grounds on the advice of a medical officer; or
- (d) excused work by the officer in charge or engaged in some other activity authorized by or under these Regulations.

**15. Days of rest**

Sunday shall be a day of rest and no prisoner shall be engaged on work or training except work which is necessary for the cleaning of the service prison:

Provided that a prisoner may be required to carry out any type of work or training on a Sunday if, in the opinion of the officer in charge, it is in the interests of the service for him so to do.

**16. Work in association**

(1) Whenever possible a prisoner shall work in association with other prisoners unless it appears to the officer in charge that it is—

- (a) not in the interest of such prisoner;
- (b) not in the interest of good order and discipline.

(2) When a prisoner is not permitted to work in association with other prisoners, the officer in charge may arrange for that prisoner to work in a room or place apart from other prisoners.

(3) In deciding whether a prisoner shall be required to work apart from other prisoners under the provisions of paragraph (1) of this regulation, and whether such a person ought to resume work in association with other prisoners, the officer in charge shall take into consideration any advice which he may be given by a medical officer.

**17. No work for private benefit**

A prisoner shall not be employed directly or indirectly for the private benefit or advantage of any person, nor in any way contrary to these Regulations or the order of the officer in charge.

**18. Rations**

(1) The food provided for prisoners shall be the same as that provided for soldiers in the unit except when the prisoner is undergoing restricted diet as a punishment.

(2) The officer in charge shall ensure that every prisoner receives the rations to which he is entitled.

**19. Tobacco**

A prisoner shall not be permitted to smoke nor to retain in his possession any tobacco, cigarettes, matches or lighter, or any naked light for the purpose of lighting tobacco or cigarettes.

**20. Correspondence**

(1) A prisoner shall be allowed to write letters as follows—

- (a) on first admission, one letter; and
- (b) in every week of his sentence following the week in which he is first admitted, one letter.

(2) Writing paper, envelopes and other materials required to enable prisoners to write letters shall be provided by themselves, and retained by the staff, and a prisoner shall be allowed to use his writing materials during the hours permitted by the officer in charge for leisure.

(3) A prisoner may receive—

- (a) any number of letters;
- (b) books, newspapers, journals and periodicals at the discretion of the officer in charge.

**21. Parcels**

(1) A parcel addressed to a prisoner shall be opened and examined by an officer in the presence of the prisoner and any article which the prisoner is not authorized to receive shall be retained in safe keeping by the officer in charge and handed to the prisoner on final release:

Provided that perishable articles may be disposed of in accordance with the directions of the officer in charge by returning them to the sender or otherwise.

(2) A prisoner may with the consent and at the discretion of the officer in charge receive toilet requirements and other articles.

**22. Censorship**

(1) The officer in charge or any officer deputed by him may scrutinize letters written by or addressed to a prisoner.

(2) The officer in charge may withhold from a prisoner the whole or any part of a letter addressed to him, but he shall communicate to him any part of the letter which is unobjectionable.

(3) The officer in charge may withhold a letter written by a prisoner, but in such case he shall give the prisoner an opportunity of writing in its place another letter which does not contain the material to which the officer in charge objects.

(4) If any letter contains a complaint relating to the service prison or the treatment of the prisoner, the officer in charge shall draw the attention of the prisoner to his rights as to complaints.

**[Subsidiary]**

(5) In any case where the officer in charge withholds a letter written by or addressed to a prisoner he shall record the fact and his reasons for so acting.

**23. Visits**

(1) A prisoner may receive visits from his relatives and friends at the discretion of the officer in charge and the visits shall take place at times and places to be determined by that officer.

(2) Any visit authorized under this regulation shall be within the sight and hearing of a member of the staff not below the rank of sergeant.

**24. Visit by legal advisers**

(1) The officer in charge shall provide reasonable facilities for a prisoner to be visited by his legal adviser.

(2) Any visit authorized under this rule shall be within the sight of the officer in charge or a member of the staff.

**25. Medical examination**

The officer in charge shall ensure that every prisoner who is—

- (a) in close confinement; or
- (b) subject to any form of mechanical restraint; or
- (c) undergoing restricted diet as a punishment; or
- (d) sick or complains of sickness,

shall be seen by a medical officer at least once every day, and the medical officer shall also see daily every prisoner to whom his attention is especially directed by the officer in charge.

**26. Appeals**

The manner in which a prisoner who has appealed, or desires to appeal, against his conviction by court-martial may be taken to, kept in custody at and brought back from any place where he is entitled to be present for the purposes of Part IX of the Act, or any place to which the High Court or a judge may order him to be taken for the purposes of any proceedings of the court, shall be as follows—

- (a) he may be taken to, kept in custody at or brought back from any such place as aforesaid in service or civil custody;
- (b) he may be kept in such custody at any such place in any manner ordered by the High Court or a judge thereof:

Provided that he shall not be kept in a civil prison or in a police station for periods exceeding seven days at any one time.

**27. Rights as to appeal to be notified**

(1) The officer in charge shall bring to the notice of prisoners their rights to petition or appeal.

(2) The officer in charge shall permit a prisoner who intends to petition or appeal, or whose appeal is pending, for the purposes of such petition or appeal, to receive visitors, to be provided with reasonable quantities of writing materials, to write and receive letters and to prepare and hand personally, or to send by post, to his legal adviser confidential written communications as instructions in connexion with the petition or appeal.

(3) For the purpose of a petition or appeal a prisoner may receive a visit from a medical practitioner, selected by him or on his behalf by relatives or friends.

**28. Searching persons under sentence**

(1) On admission to a service prison, a prisoner shall be searched in accordance with regulation 29 of these Regulations.

(2) The officer in charge may order that a prisoner shall be searched at any time while he is serving his sentence.

**29. Condition of search**

The following conditions shall be observed in relation to the search of a prisoner—

- (a) every search shall take place in the presence of at least two members of the staff;
- (b) no other prisoner shall be present at the search.

**30. Duration of sentence on persons who escape**

The officer in charge of the service prison from which a prisoner escapes shall be the prescribed authority for the purposes of the proviso to subsection (1) of section 132 of the Act.

**31. Deaths**

If a prisoner dies the officer in charge shall—

- (a) immediately report the matter to the civil police in whose area the service prison is situated; and
- (b) in the event of an inquiry into the death of such prisoner not being held by any civil authority, arrange for a board of inquiry to be convened in accordance with the Armed Forces (Board of Inquiry) Regulations, 1969.

[*Supra.*]

**32. Offence against discipline**

A prisoner shall be guilty of an offence if he—

- (a) treats with disrespect any member of the staff of a service prison, any visitor thereto, or any person employed therein;
- (b) is idle, careless or negligent;
- (c) behaves irreverently at divine service;
- (d) uses any abusive, insolent, threatening or any other improper language;
- (e) is indecent in any act or gesture;
- (f) communicates with any other prisoner without authority;
- (g) leaves his room or place of work or other appointed place without permission;
- (h) commits any nuisance;
- (i) has in his room or possession any unauthorized articles, or attempts to obtain such articles;
- (j) gives to any person any unauthorized article;
- (k) makes repeated and groundless complaints;
- (l) fails to observe or comply with any conditions as to temporary release;
- (m) attempts to commit any of the offences referred to in this regulation.

[Subsidiary]

**33. Procedure for dealing with offences**

A prisoner who commits an offence under the Act or under these Regulations shall be dealt with—

- (a) by the officer in charge; or
- (b) in accordance with the provisions of section 82 of the Act.

**34. Punishment which may be awarded by an officer in charge**

(1) An officer in charge may award any of the punishments set out in paragraph (2) of this regulation to a prisoner who has been found by him to have committed any offence under these Regulations.

(2) The punishments referred to in of this regulation (1) of this regulation are—

- (a) close confinement for a period not exceeding fourteen consecutive days in any one period;
- (b) restricted diet for a period not exceeding three consecutive days in any one period;
- (c) forfeiture of remission of sentence for a period not exceeding eleven days;
- (d) deprivation of library books and periodicals;
- (e) admonishment;
- (f) extra military instruction not exceeding three periods of forty-five minutes each.

**35. Restricted diet**

(1) Restricted diet shall consist of one-half ration per day with unrestricted water.

(2) On the days on which a prisoner is undergoing restricted diet he shall not attend parades, nor shall he be required to undertake any task of labour, but he may be required to carry out light work in his room.

(3) A prisoner who is undergoing restricted diet shall not be required to undergo any further period on such diet in respect of any other offence until an interval has elapsed equal to the period of restricted diet already undergone.

(4) Every prisoner undergoing restricted diet shall be visited every day by the commanding officer in charge, or by an officer appointed by the officer in charge, and by a medical officer.

**36. Close confinement**

(1) No prisoner shall be placed in close confinement unless he has been certified by a medical officer as fit to undergo such punishment.

(2) A prisoner in close confinement shall not be permitted to attend divine service and, except on the recommendation of a medical officer, shall not be permitted any exercise.

(3) A prisoner in close confinement shall not be deprived of his room furniture, books or periodicals, nor be subjected to any form of discipline which has not been ordered in accordance with these Regulations.

(4) A prisoner in close confinement shall be visited at least once every day by the officer in charge or an officer nominated by him, and by a medical officer, and in addition at least once every three hours by a member of the staff.



**37. Mechanical restraint**

(1) In this regulation—

“**handcuffs**” means handcuffs of figure-of-eight, swivel or curb-chain type, not exceeding, for the pair, seven hundred grams in weight;

“**restraint order**” means an order issued under paragraph (4) of this regulation.

(2) Save as provided by regulation 39 of these Regulations, no prisoner shall be placed in handcuffs or any other form of mechanical restraint, or be in any manner bound, fettered or otherwise restricted in his movements, as a punishment.

(3) An officer in charge may order the use of handcuffs for the purpose of ensuring the safe custody of a prisoner during his removal from one place to another.

(4) If it appears to an officer in charge that the use of handcuffs is necessary on a prisoner in order to prevent him from injuring himself or others, or destroying property, or otherwise creating a disturbance, he may issue a written order that such prisoner be placed in handcuffs.

(5) A restraint order shall—

- (a) specify the date and hour when the handcuffs are to be applied;
- (b) specify the period, not exceeding forty-eight hours, during which the prisoner is to remain in handcuffs;
- (c) state whether the handcuffs are to be applied with the hands of the prisoner placed to the front or to the rear of the body.

(6) Immediately upon making a restraint order the officer in charge shall give a copy thereof to a medical officer who shall thereupon examine the prisoner and inform the officer in charge if, in his opinion, there is any objection on medical grounds to the use of handcuffs on the prisoner or whether the restraint order should be modified in any manner, and the officer in charge shall revoke or modify the restraint order in accordance with the opinion of the medical officer.

(7) Where a restraint order states that handcuffs are to be applied with the hands of the prisoner to the rear of the body, they shall be moved to the front during meals and for sleeping.

(8) Whenever handcuffs are applied to or removed from a prisoner, an officer or senior member of the staff shall be present and a record shall be made of every person present at that time.

**38. Canvas suit**

(1) Where a prisoner destroys or attempts to destroy his clothing, or refuses to wear uniform, the officer in charge may order that the prisoner shall wear a suit, consisting of frock and trousers made of canvas sail-cloth, not exceeding five and one-half kilograms in weight.

(2) The officer in charge shall record every order made under this regulation, the date from which the prisoner is required to wear a canvas suit and the date on which he authorizes its removal.

**39. Religious books and chaplains**

(1) An officer in charge shall, so far as practicable, make available for the use of every prisoner such books of religious observance or instruction as are recognized for the use of the religious denomination of the prisoner.

(2) An officer in charge shall provide a book in which chaplains may record any matters which they wish to bring to his notice.

**[Subsidiary]**

(3) An officer in charge may, at his discretion, afford facilities to chaplains to have access to prisoners for the purpose of giving them religious instruction, at times approved by him.

**40. Visit by chaplain**

(1) A chaplain of the same religious denomination as a prisoner may, at the discretion of the officer in charge, visit the prisoner as soon after his first admission to a service prison as possible, and thereafter from time to time at proper and reasonable times, and again shortly before his release; and where there is no chaplain of the same denomination as the prisoner the officer in charge may arrange for the prisoner to be visited by a minister of his own denomination if the prisoner so wishes and it is practicable to make the arrangements.

(2) A prisoner shall be informed of the provisions of paragraph (1) of this regulation as soon as possible after his first admission to the service prison.

(3) In appropriate cases a chaplain or minister shall officiate at the burial of a prisoner who dies while under sentence.

**41. Attendance at divine service**

A prisoner unless undergoing punishment of close confinement may attend divine service of his religious denomination, if in the opinion of the officer in charge, it is practical for him so to do, having regard to his behaviour and to the location of the place of worship in relation to the location of the service prison.

**42. Educational training**

An officer in charge shall provide educational training for prisoners whenever practicable.

**43. Prohibition of liquor, tobacco**

No person shall without the authority of the officer in charge bring or attempt to bring into a service prison or give or attempt to give to a prisoner, any spirituous or fermented liquor or any tobacco, or place any such liquor or tobacco in any place with intent that it shall come into the possession of a prisoner, nor shall any member of the staff allow any such liquor or tobacco to be sold or used in the service prison.

**44. Communication with prisoners**

No person shall, without lawful authority, convey or attempt to convey any letter or any other thing into or out of a service prison or to a prisoner, or place it anywhere outside the service prison with intent that it shall come into the possession of a prisoner.

**45. Unauthorized entry of service prison**

(1) No unauthorized person shall enter a service prison, or make any sketch, or take any photograph of or communicate with any prisoner, and no person shall remain in a service prison after being requested to leave by the officer in charge or any person acting under his authority.

(2) The officer in charge may grant permission to any person to enter a service prison subject to any condition, which he may consider necessary.

(3) The officer in charge may order the removal from a service prison of any person who, without authority enters therein or contravenes the provisions of paragraphs (1) and (2) of this regulation.

46. Penalty

Any person who, not being a person subject to the Act, contravenes any of the provisions of regulation 43, 44 or 45 of these Regulations shall be guilty of an offence and liable to a fine not exceeding three thousand shillings, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

FIRST SCHEDULE

[Regulation 4(2).]

ORDER FOR THE COMMITTAL OF A MEMBER OF THE ARMED FORCES TO A CIVIL PRISON ON AN AWARD OF IMPRISONMENT BY HIS COMMANDING OFFICER

To the Officer in Charge of ..... (a)

Whereas No. .... Rank .....  
Name ..... of the ..... unit  
was on the ..... day of ....., 20 .....  
awarded imprisonment for a period of ..... days, by his  
commanding officer for the offence(s) of .....  
..... (b)

Now, therefore, in pursuance of the Armed Forces Act, 1968 I hereby order you to receive the said person into your custody and to retain him to undergo his sentence according to law and for so doing this shall be your warrant.

Signed at ..... this ..... day of ....., 20 .....  
(Signature) ..... (c)  
Rank and appointment .....

- (a) Insert the name and address of the prison.
- (b) Set out the statement (not the particulars) of the offence and the relevant sections of the Armed Forces Act, 1968. Where there is more than one offence, the statement of each must be set out.
- (c) This form must be signed by the commanding officer of the person concerned.

SECOND SCHEDULE

[Regulation 4(2).]

ORDER FOR THE COMMITTAL OF A MEMBER OF THE ARMED FORCES TO A CIVIL PRISON ON SENTENCE OF IMPRISONMENT BY A COURT-MARTIAL

To the Officer in Charge of ..... (a)

Whereas No. .... Rank .....  
was convicted by a Court-martial held at .....

Kenya Defence Forces

[Subsidiary]

SECOND SCHEDULE—continued

of the offence(s) of ..... (b)

and, by a sentence passed on the ..... day of ....., 20 ....., sentenced to imprisonment for a term of ..... (c) commencing on the said day, which sentence has been duly confirmed in accordance with the provisions of the Armed Forces Act, 1968. .... (d).

Now, therefore, in pursuance of the Armed Forces Act, 1968 I hereby order you to receive the said person into your custody and to retain him to undergo his sentence according to law and for so doing this shall be your warrant.

Signed at ..... this ..... day of ....., 20 .....

(Signature) .....

Rank and appointment .....

- (a) Insert the name and address of the prison.
(b) Here set out the statement (not the particulars) of the offence and the relevant sections of the Armed Forces Act, 1968.
(c) Where the original sentence was death and has been commuted to imprisonment, for the words in brackets substitute the words "suffer death which sentence has duly been confirmed in accordance with the provisions of the Armed Forces Act, 1968 but has been commuted into imprisonment for a term of ..."
(d) If any part of the sentence has been remitted on confirmation insert "with a remission of ..."
(e) The committal form must be signed by the commanding officer for the time being of the person concerned.

THIRD SCHEDULE

[Regulation 5.]

ORDER FOR THE RELEASE OF A PERSON UNDERGOING SENTENCE OF IMPRISONMENT UNDER THE ARMED FORCES ACT

To the Officer in Charge of ..... (a)

Whereas No. .... Rank ..... (b)

Name ..... of the ..... (b)

Unit is now in your custody undergoing a sentence of imprisonment awarded by his commanding officer

..... (b)

passed by court-martial

THIRD SCHEDULE—*continued*

Now, therefore, in pursuance of the powers conferred by Part VIII of the Armed Forces Act, 1968, I do hereby order you to release the said person from custody.

Signed at ..... this ..... day of ....., 20 .....

(Signature) ..... (c)

Rank and appointment .....

- (a) Insert the name and address of the civil prison or service prison.
- (b) Delete as necessary.
- (c) This form must be signed by the reviewing officer or reconsidering authority. In the case of a person serving a sentence in a service prison this order must be signed by the officer who awarded the original award of imprisonment.

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**ARMED FORCES (PENSIONS AND GRATUITIES)–(OFFICERS AND  
SERVICEMEN) REGULATIONS, 1980**

ARRANGEMENT OF REGULATIONS

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**ARMED FORCES (PENSIONS AND GRATUITIES)–(OFFICERS AND SERVICEMEN) REGULATIONS, 1980**

[L.N 61/1980, L.N. 163/1980, L.N. 29/1983, L.N. 77/1985, L.N. 94/1985, L.N. 305/1986, L.N. 177/1987, Corr. No. 52/1987, L.N. 258/1996, L.N. 314/1996, L.N. 22/2003, L.N. 6/2004.]

## PART I – PRELIMINARY

**1. Citation**

These Regulations may be cited as the Armed Forces (Pensions and Gratuities) (Officers and Servicemen) Regulations, 1980.

**2. Application**

These Regulations shall apply to all claims arising after 1st July, 1978, in respect of all officers and servicemen of the armed forces and the dependants of such officers and servicemen.

**3. Interpretation**

(1) In these Regulations, unless the context otherwise requires—

“**approved institutional treatment**” means approved treatment in hospital or similar institution;

“**approved treatment**” means such medical, surgical or rehabilitative treatment as may be medically certified to be desirable in connexion with any award payable under or by virtue of these Regulations;

“**being on duty**” means any time during any twenty-four hour period that an officer or a serviceman, is in the lawful service of the Armed Forces;

“**Board**” means the Pensions Assessment Board established by regulation 16;

“**child**” means a child of an officer or serviceman under twenty-one years of age who is dependent upon the officer or serviceman for support and includes a posthumous child, a step-child, any legally adopted child; and “**children**” shall be construed accordingly;

“**degree of disablement**” means the percentage of disablement assessed in accordance with regulation 19;

“**dependant**” means a member of the family of an officer or serviceman or retired officer or discharged serviceman who before the death of such officer or serviceman or retirement of the officer or discharge of the serviceman was in receipt from him of regular and substantial support or benefit;

“**disablement**” means a physical or mental injury or damage or the loss of physical or mental capacity;

“**discharge**” means, in the case of a serviceman, being relieved of military duties by a competent service authority;

“**heir**” means a person named by the deceased in his will as heir or joint heir, or if the deceased dies intestate, the person who is accepted as the heir by the community to which the deceased officer or serviceman belonged whether by any law for the time being in force or by the law or custom applicable to that community and includes any two or more persons who are accepted as joint heirs or the person declared as an heir by a competent court;

“**Medical Board**” means a board of medical officers appointed by the Pensions Assessment Board;

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**[Subsidiary]**

“**medical officer**” means any person who is registered as a medical practitioner under the Medical Practitioners and Dentists Act (Cap. 253);

“**medically certified**” means certified by a medical officer or board of medical officers appointed by the Board;

“**military service**” means service with the Kenya Armed Forces and shall include for the period prior to 12th December, 1963, service in any of the British Armed Forces;

“**month**” means a calendar month, and broken periods at the beginning and the end of service shall be totalled and each complete thirty days shall be deemed to be one complete month;

“**officer**” means a person commissioned in any service of the armed forces;

“**pay**” includes the basic salary and any allowances which the Defence Council may, with the concurrence of the Treasury, specifically declare to be pensionable allowances;

“**pensionable emoluments**” means the rate of pay including additional pay in issue to an officer or serviceman at the time of his retirement or discharge;

“**resignation**”, in the case of an officer means leaving service in the Armed Forces in circumstances not amounting to dismissal from the Armed Forces or termination of commission;

“**retirement**”, in the case of an officer, means leaving service while holding a regular commission in the Armed Forces—

- (a) compulsorily after attaining the specified age of his rank as laid down in the terms and conditions of service and being eligible by length of service to a pension in accordance with these Regulations;
- (b) voluntarily after serving for a period that makes him eligible by length of service to a pension in accordance with these Regulations;

“**retired officer**” means an officer who has retired from the armed forces;

“**service**” means, belonging to or connected with the Armed Forces;

“**serviceman**” means any member of a service of the armed forces who is not an officer;

“**termination of commission**” means terminating a commission of an officer pursuant to the provisions of section 171 of the Act;

“**the tribunal**” means the Pensions Appeal Tribunal established under regulation 33;

“**wife**” includes, in the case of an officer or serviceman in whose religion or tribal custom polygamy is lawful, any person to whom the officer or serviceman is lawfully married in accordance with the tenets of the religion or tribal custom; and in that case the amount of any pension, gratuity or other allowance to which a wife is eligible under these Regulations shall be divided equally among all such wives during the period in which there is more than one wife eligible therefor; and “**widow**” shall be construed accordingly.

(2) For the purpose of assessing pension under these Regulations, qualifying service shall be ten years for officers and twelve years reckonable service for servicemen subject to the fulfilment of the requirements of regulation 34 in the case of officers and regulation 35 in the case of servicemen.

## [Subsidiary]

(3) For the purposes of assessing pension and gratuity under these Regulations reckonable service shall be any paid service with the armed forces excluding therefrom—

- (a) all periods during which an officer or serviceman has been absent from duty by reason of imprisonment, desertion or absence without leave for a period exceeding seven days; or
- (b) any periods ordered by a court-martial to be forfeited;
- (c) any period of service while the person was below the age of eighteen years; or
- (d) service preceding a five-year interval in the service unless specifically allowed by the Defence Council at the time service is resumed; except that where during the break in service the officer, or serviceman has been a member of the regular reserve and has been called out for periodical training as provided under Part XIV of the Act, the period during which the officer or serviceman was on the regular reserve shall not be considered as an interval in service for the purposes of deciding whether the previous service is admissible.

(4) Deleted by L.N. 177/1987.

(5) For the purpose of these Regulations, a disablement or death shall be deemed to be due to service if—

- (a) the disablement is due to wound, injury or disease—
  - (i) which is attributable to service; or
  - (ii) which existed before or arose during the service and has been and remains aggravated thereby; and
  - (iii) in both cases the injury or wound shall not have been self-inflicted.
- (b) the death was due to or hastened by—
  - (i) a wound, injury or disease which was attributable to service; or
  - (ii) the aggravation by service of a wound, injury or disease which existed before or arose during service,

in both cases the injury or wound shall not have been self-inflicted.

[L.N. 163/1980, L.N. 305/1986.]

## PART II – POWER TO GRANT AND THE ASSESSMENT OF PENSIONS, GRATUITIES AND ALLOWANCES

### 4. Power to grant pensions, gratuities and other allowances

Pensions, gratuities and other allowances may be granted by the Defence Council with the concurrence of the Treasury in accordance with these Regulations to officers and servicemen of the armed forces, and shall, pursuant to section 112(4) of the Constitution, be a charge on the Consolidated Fund.

### 5. Power to review pensions

The Defence Council may at any time review an award of pension made under these Regulations where it has been made in error or where, in the opinion of the Defence Council, it has been obtained by improper means and may on such review confirm, vary or cancel the award.

[L.N. 305/1986, s. 3.]

### 6. Pensions, etc., not a right

No officer or serviceman shall have an absolute right to compensation for past services or to pension, gratuity or other allowance nor shall anything in these Regulations affect the right of the Defence Council to dismiss any officer or serviceman at any time and without compensation.

[Subsidiary]

**7. Suspension of pension on employment by a foreign power**

If a retired officer or a discharged serviceman enters the service of a foreign power without the consent of the Defence Council, or he continues in such service after the consent previously granted is withdrawn, his service pension or other allowances granted under these Regulations may be suspended or withheld for such period as the Defence Council, with the concurrence of the Treasury, may determine.

**8. Pensions, etc., not assignable**

Subject to section 216 of the Act, a pension, gratuity or allowance granted under these Regulations shall not be assignable or transferable except for the purpose of satisfying an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or minor child, of the officer or serviceman to whom the pension, gratuity or other allowance has been granted, and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim other than a debt due to the Government.

**9. Pensions where promotion, etc., reduces amount of award**

(1) Where a serviceman who has been promoted by being granted a commission retires or resigns and thereby becomes eligible for an award of pension which is smaller than what he would have been entitled to had he not been commissioned he may receive an award assessed as though he had retired or resigned from the service in the rank which he held before being granted the commission.

(2) Where an officer or serviceman has held acting rank for a period of ninety days or more at the date of retirement, the pension granted to him shall be that applicable to such higher rank.

[L.N. 305/1986, s. 4.]

**10. Computation**

(1) (a) Every pension granted to an officer or serviceman in accordance with these Regulations shall be assessed at the annual rate of one-four hundredth of his pay for each completed month of his reckonable service.

(b) A pension payable to an officer or serviceman shall not be less than one thousand two hundred pounds per annum.

Provided that a pension granted to an officer or serviceman under these regulations shall not exceed the highest pensionable emoluments drawn by him at any time in the course of his service in the armed forces.

(2) Any officer or serviceman who is entitled to a pension under these Regulations which does not exceed two hundred and fifty pounds per annum may commute up to one-half of the annual pension at equivalent of twenty times the amount of the annual pension commuted.

(3) Any officer or serviceman who is entitled to a pension under these Regulations which exceeds two hundred and fifty pounds per annum may commute up to one-quarter of that annual pension at the equivalent of twenty times the amount of the annual pension commuted.

(4) The option to commute a pension under paragraphs (2) and (3) shall be exercised not later than the penultimate date of retirement or discharge or such other date as the Defence Council may, in consultation with the Treasury, in any special case approve and once exercised shall be irrevocable.

(5) (a) The annual rate of pension shall be assessed to the nearest five cents, fractions of half or more being rounded up.

[Subsidiary]

(b) Where payment of pension at monthly intervals results in a fraction, each payment shall be similarly rounded to the nearest five cents.

(6) The normal retirement date is the first day of the month following an officer's or serviceman's attainment of retirement age.

[L.N. 29/1983, L.N. 305/1986, s. 5, L.N. 258/1996, L.N. 22/2003, L.N. 6/2004, s. 2(a).]

#### 11. Gratuity where length of service does not qualify for pension

Every officer or serviceman, otherwise qualified for a pension, who has not been in the service of the armed forces for ten years in the case of officers and twelve years in the case of servicemen, may be granted on retirement or discharge, as the case may be, a service gratuity not exceeding five times the annual amount of the pension which would have been granted to him had he served in the armed forces for a period of not less than ten years in the case of officers and twelve years in the case of servicemen worked out at an annual rate of one four hundredth of his pensionable emoluments for each completed month of his reckonable service.

[L.N. 163/1980, s. 3, L.N. 29/1983, s. 2, L.N. 177/1987, s. 3, L.N. 314/1996.]

#### 12. Pension to cease on death

(1) Subject to these Regulations, in the case of the death of an officer or a serviceman or a retired officer or discharged serviceman, there shall continue to be paid a dependants' pension, in addition to the grant made under regulation 13, on the terms and subject to the conditions set out in paragraph (3), to the widow or the children of the officer or serviceman for a period of five years next following the officer's or serviceman's death, at the rate of the officer's or serviceman's pension on the date of his death.

(2) Where a widow to whom a dependant's pension has been granted under this regulation dies or otherwise ceases to be entitled to a dependants' pension, the child or children who are entitled in accordance with the terms and conditions set out in paragraph (3), to a dependants' pension shall be entitled in accordance with those terms and conditions to receive the dependants' pension, for the remainder of the period of five years from the date of the officer's or serviceman's death, which is still outstanding at the date on which the widow dies or otherwise ceases to be entitled to the dependant's pension.

(3) For the purposes of paragraph (1), a dependants' pension under this regulation shall be paid on the following terms and subject to the following conditions—

- (a) where the deceased officer or serviceman leaves a widow, whether or not he also leaves a child, the widow shall, for so long as she is alive and remains unmarried, be entitled to receive the whole of the dependant's pension at the appropriate rate provided for under paragraph (1);
- (b) where the deceased officer or serviceman does not leave a widow, or if within the period of five years during which the dependant's pension is payable under this regulation the deceased officer's or serviceman's widow dies or remarries, any child of the deceased officer or serviceman who is entitled at the appropriate date to receive the dependants' pension shall be entitled to receive, and if more than one child, in equal shares, the dependants' pension at the appropriate rate provided for under paragraph (1);
- (c) a dependants' pension or share thereof shall not be payable to a child who has attained the age of twenty-one years unless, and only during the time, that the child is receiving full time education at a university, college, school or other educational establishment approved by the Board for the purposes of this regulation;
- (d) a dependants' pension or share thereof granted to a female child under this regulation shall cease upon her marriage at any age;

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- (e) in the event of a child ceasing to be entitled to a share of a dependants' pension, his or her share shall, from the date of the cessation, be divided equally between all other children then still entitled to receive the pension and if only one child remains entitled the whole of dependants' pension shall be paid to him;
- (f) where the deceased officer or serviceman leaves more than one widow, then the dependants' pension shall be shared equally among them, and in the event of any one of them dying or otherwise ceasing under any of the provisions of this regulation, to be entitled to a share of the dependants' pension, then the pension shall be paid to the child or shared equally among the children of the dead widow and in case the dead widow leaves no child or children then the pension shall be paid to the remaining widow or shared equally among the remaining widows accordingly;
- (g) no dependants' pension or share thereof shall be payable at any time after the fifth anniversary of the officer's or serviceman's death.

[L.N. 77/1985, L.N. 305/1986.]

**13. Gratuity where officer or serviceman dies in service or after retirement or discharge**

(1) Where an officer or serviceman dies while still serving in the armed forces the Defence Council, in consultation with the Treasury, may grant to his dependants a death gratuity of an amount not exceeding his annual pensionable emoluments or his commuted pension gratuity, whichever is the greater.

(2) Where an officer or serviceman dies after retirement or discharge, as the case may be, from the armed forces having been granted or having become eligible for a pension under these Regulations and the sums payable to him at the date of his death on account of such pension, including any sum awarded by way of gratuity under regulation 11 but excluding any additional disablement pension awarded under regulation 21, is less in total than the amount of his annual pension the Defence Council may grant a gratuity equal to the deficiency to his dependants.

[L.N. 29/1983, L.N. 305/1986, s. 6.]

**14. Pension to cease on bankruptcy**

(1) Subject to paragraph (3), where an officer or serviceman to whom a pension has been granted under these Regulations is adjudicated bankrupt or is declared insolvent by judgment of a competent court the pension shall cease as from the date of adjudication or declaration.

(2) Where an officer or serviceman qualifies for a pension under these Regulations and is adjudicated bankrupt or is declared insolvent by a judgment of a competent court—

- (a) after qualifying, he may be granted a pension or gratuity, but the pension shall cease as at the date of adjudication or declaration, or the gratuity shall not become payable, as the case may be;
- (b) before qualifying and at the date of qualifying he has not obtained his discharge from the bankruptcy or ceased to be insolvent, he may be granted a pension or gratuity, but the pension shall cease from the date of qualifying or the gratuity shall not become payable, as the case may be.

(3) Where by virtue of paragraph (1) pension ceases to be payable or a gratuity fails to become payable to any person the Defence Council may, from time to time, during the remainder of that person's life or such shorter periods either continuous or discontinuous as the Defence Council, with the concurrence of the Treasury, thinks fit, direct that all or any part of the money which the person would have been entitled to by way of pension or

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gratuity had he not become bankrupt or insolvent, shall be paid or applied for the maintenance or benefit of that person and his wife, children or other dependants or any of them in such proportion and manner as it thinks proper or for the discharge of that person's debts and the money shall then be paid or applied accordingly.

(4) Where a person whose pension has ceased or whose gratuity has failed to become payable by virtue of paragraph (2) obtains his discharge from the bankruptcy or ceases to be insolvent the Defence Council may direct that his pension shall be restored from the date of such discharge or that he be paid any unpaid balance of his gratuity which has not been paid or applied, as the case may be, and his pension or gratuity shall then be paid accordingly.

#### **15. Pension may cease for subversive activities, etc.**

Subject to section 112(1) of the Constitution, where the Defence Council is satisfied that an officer or serviceman to whom a pension has been granted under these Regulations—

- (a) has shown himself by act or speech to be disloyal or disaffected towards the Republic of Kenya; or
- (b) has during any war in which the Republic of Kenya is engaged, unlawfully traded or communicated with the enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in the war; or
- (c) has failed to fulfil his commitments concerning the reserve; or
- (d) has committed any criminal offence for which he is convicted and sentenced to a term of imprisonment; or
- (e) has engaged in activities which are subversive within the meaning of Chapter VII of the Penal Code (Cap. 63),

it may direct that the pension granted to the officer or serviceman shall cease from a specified date:

Provided that the Defence Council, with the concurrence of the Treasury, may in its discretion at any time divert the whole or part of the pension to or for the benefit of his wife, children or other dependants and may at any time after his pardon or release from prison restore the pension.

#### **15A. Pension may cease on conviction**

(1) Where an officer or a serviceman to whom a pension, gratuity or other allowance has been granted under these Regulations is sentenced to a term of imprisonment by a competent court for any criminal offence, such pension, gratuity or allowance shall cease if the Defence Council so directs with effect from such date as the Defence Council shall determine.

(2) Where after retirement an officer or serviceman is sentenced to a term of imprisonment by a competent court for any criminal offence and in the circumstances in which he is eligible for a pension, gratuity or some other allowance under these Regulations, but before that pension, gratuity or allowance is granted then—

- (a) paragraph (1) shall apply in respect of any pension, gratuity or allowance which may be granted to him; and
- (b) the Defence Council may direct that any pension, gratuity or allowance which should have been paid to such an officer or serviceman be not paid.

(3) Where pension, gratuity or any other allowance ceases by reason of this regulation, it shall be lawful for the Defence Council to direct all or any part of the money



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to which such officer or serviceman was entitled by way of a pension, gratuity or any other allowance to be paid or applied in the same manner in all respects as provided for in these Regulations and such moneys shall be paid or applied accordingly.

(4) Where an officer or serviceman whose pension, gratuity or other allowance has ceased under this regulation, subsequently receives pardon from the President, his pension, gratuity or other allowance shall be restored to him respectively.

[L.N. 305/1986, s. 7.]

**16. Establishment of the Pensions Assessment Board**

(1) There is hereby established a Board, to be known as the Pensions Assessment Board, which shall consist of three persons appointed by the Defence Council, one of whom shall be a medical officer.

(2) The members of the Board shall hold office for a period of three years from the date of appointment.

(3) All appointments and determination of appointment shall be notified in the *Gazette*.

(4) Deleted by L.N. 163/1908, s. 4(b).

(5) The Defence Council may appoint a public officer to be secretary to the Board.

[L.N. 163/1980, s. 4(a), (b).]

**17. Duties and powers of the Board**

(1) Where an officer or serviceman has suffered disablement as a result of a wound, injury or disease, the Board—

- (a) shall determine whether the wound, injury or disease was due to or hastened by or aggravated by his service;
- (b) in the case of disability, shall assess the degree thereof;
- (c) may award a pension, allowance or gratuity, or any or all of them, to or in respect of the officer or serviceman and in so doing shall not be bound by the advice or recommendation of any other Board.

(2) In the exercise of its powers and duties under these Regulations the Board may—

- (a) appoint a medical officer or board of medical officers—
  - (i) to advise on any claim;
  - (ii) to carry out any medical examination which is required to be carried out by or under these Regulations or which, in the opinion of the Board, should be carried out in order to enable the Board to assess the entitlement or the degree of disablement of any officer or serviceman for any other reason which the Board considers sufficient.

(3) Where in these Regulations a power is conferred upon the Board to review and revise any pension, gratuity or allowance, such power shall include the power to review and revise any pension or allowance awarded under the provisions of any of the Regulations repealed by these Regulations (hereinafter referred to as the “repealed Regulations”) except that the Board shall not revise such award if the effect of such revision would be to decrease the amount previously awarded.

(4) The Board shall keep a record of all the awards made and shall—

- (a) furnish a copy thereof to the appropriate authorities; and
- (b) inform every person in respect of whom an award has been made of the terms of the award and the procedure to be followed in order to obtain payment.

[L.N. 163/1980, s. 5, L.N. 305/1986, s. 8.]



**18. Entitlement to pension**

(1) The disablement of an officer or a serviceman or retired officer or discharged serviceman shall be accepted as due to service for the purpose of this regulation if—

- (i) the disablement is due to a wound, injury or disease which was inflicted or caused while on duty; or
- (ii) it arose during service or has been aggravated by the service.

(2) For the purpose of these Regulations, every officer and serviceman shall unless proved to the contrary, be deemed to have been medically fit and not suffering from any wound, injury or disease at the effective date of his commissioning or enlistment as the case may be.

(3) Where a wound, injury or disease which has led to an officer's or serviceman's retirement or discharge during service was not recorded in any medical report made on the officer or serviceman at the commencement of his service, such wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions set out in paragraph (1) are not fulfilled.

(4) Where after the expiration of the period of seven years beginning with the termination of a retired officer's or discharged serviceman's service a claim is made in respect of his disablement such disablement shall be accepted as due to service if—

- (a) in the case of disablement the Board is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled; and
- (b) in the case of death the retired officer or discharged serviceman was at the time of his death, or at any time previously thereto had been, in receipt of a pension or temporary allowance awarded by the Board in respect of the wound, injury or disease which was the cause of or substantially hastened his death and the Board is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled.

(5) Where upon reliable evidence a reasonable doubt exists whether in respect of a claim under paragraph (3) the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant, and where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

[L.N. 305/1986, s. 9.]

**18A. Entitlement to pension on death**

(1) The death of an officer or a serviceman or a retired officer or a discharged serviceman shall be accepted as due service for purposes of these Regulations if—

- (a) the death was due to hastened by a wound, injury or disease which was attributable to the service;
- (b) the death was due to the aggravation by the service of a wound, injury or disease which existed before or arose during the service.

(2) Where a wound, injury or disease which has led to an officer's or serviceman's death during his service was not recorded in any medical report made at the commencement of his service, the wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions in paragraph (1) are not fulfilled.

(3) Where after the expiration of a period of seven years, beginning with the termination of a retired officer's or discharged serviceman's service a claim is made in respect of his death (being death occurring after the expiration of that period) such death shall be accepted as due service if, at the time of his death, or anytime previously thereto, the officer or serviceman had been in receipt of a pension or temporary allowance

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awarded by the Board in respect of the wound, injury or disease, which was the cause of or substantially hastened his death and the Board is satisfied that the conditions set out in paragraph (1) are applicable and have been fulfilled.

[L.N. 305/1986, s. 10.]

**19. Degrees of disablement**

(1) The degree of disablement to be assessed by the Board shall be the measure of disablement which is considered to be suffered by an officer or serviceman or retired officer or discharged serviceman by comparison of his condition as disabled with the condition of a normal healthy person of the same age without taking into account his earning capacity in his disabled condition in his own or in any other specific trade or occupation and without taking into account the effect of any individual factors or extraneous circumstances.

(2) The degree of disablement shall be expressed as a percentage (100 per cent representing total disablement) in one of the following classifications—

- (a) 100 per cent;
- (b) less than 100 per cent but not less than 80 per cent;
- (c) less than 80 per cent but not less than 60 per cent;
- (d) less than 60 per cent but not less than 40 per cent;
- (e) less than 40 per cent but not less than 20 per cent;
- (f) less than 20 per cent but not less than 11 per cent;
- (g) 10 per cent and under.

(3) In the case of disablement suffered by reason of two or more disabilities attributable to service the degree of disablement shall be determined with reference to the combined disablement from the disabilities together, but it shall not exceed 100 per cent.

(4) The degree of disablement for specified injuries and certain other disabilities shall be assessed in accordance with the Second Schedule.

[L.N. 258/1996.]

**20. Pensions for permanent disablement**

(1) In the case of a permanent disablement of an officer or a serviceman or a retired officer or a discharged serviceman the Board shall award, in addition to the gratuity provided for under these Regulations, pension in accordance with the following table:

MONTHLY RATE OF PENSIONS AND ALLOWANCES FOR DISABLEMENT

<i>Degree of disablement</i>	20%–39%	40%–79%	80%–100%
<i>Rates of pensions and allowances</i>	25% of monthly pay as at the date of injury	35% of monthly pay as at the date of injury	50% of monthly pay as at the date of injury

(2) Where the degree of disablement is less than twenty per cent no pension shall be awarded under this regulation but where the officer's or serviceman's degree of disablement is less than ten per cent, he shall be paid a gratuity equivalent in amount to two months' rate of pay as at the date of his injury and where the degree of his disablement is between ten per cent and nineteen per cent he shall be paid a gratuity equivalent in amount to four months' pay at the date of the injury.

(3) An award of pension under this regulation shall, where temporary allowances have been granted under these Regulations be made to take effect after the cessation of the

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payment of such temporary allowances, and where no temporary allowances have been granted such award shall, except where the Board otherwise directs, be made to take effect—

- (a) in the case of an officer or retired officer or serviceman where the application for the award was made prior to his retirement, from the day following the date of his retirement or discharge; and
- (b) in any other case, from the date on which the application for the award was made or on such other date as the Board may determine.

[L.N. 163/1980, L.N. 305/1986, s. 11.]

### **21. Additional hardship allowance for permanent disablement**

Where a pension has been awarded under these Regulations based on a degree of disablement, and in the opinion of the Board there are conditions of exceptional hardship, the Board may award an additional allowance of an amount not exceeding 50 per cent of the pension, and such allowance may be of either a temporary or permanent nature as the Board may decide and where the allowance is made on a temporary basis, it shall be reviewed and may be varied or terminated, at such time or times as the Board may direct.

### **22. Basis of award for permanent disablement**

Every award under these Regulations shall be made on the degree of disablement assessed by the Board at the time it accepts the disablement as permanent except that the Board may at any time make a final assessment of the degree of disablement and if, at the expiration of seven years from the date of retirement or from the date on which the retired officer or discharged serviceman was first notified of the award, whichever is the later, the Board has not made such final assessment, it shall thereupon do so having regard to all the circumstances of the case, but nothing in this regulation shall be read as precluding a review of such final assessment in accordance with these Regulations.

### **23. Procedure where disablement is not permanent**

(1) Where the Board has reason to believe that the disablement accepted as being due to service may not be permanent, and the degree of disablement is assessed at less than 20 per cent, but the Board considers that the disablement or the degree of disablement accepted as due to service is likely to persist for more than one year from the date of retirement or from the date of application, as the case may be, it may in its discretion award a gratuity equal to one-half of the disablement gratuity appropriate to the degree of disablement then found in accordance with these Regulations which shall be deducted from any award which may be made later should the Board accept the disablement as permanent.

(2) Where the Board has reason to believe that the disablement or the degree of disablement accepted as being due to service may not be permanent, or where in the case of a disablement accepted as permanent, in the opinion of the Board and on the medical evidence there is likely to be a material and early decrease in the degree of disablement, and in either case where the degree of disablement is assessed as 20 per cent or over, the Board may award a temporary allowance which shall be at the appropriate rate set out in these Regulations, to which allowance may be reviewed and reassessed after medical examination at a date to be recorded in the proceedings of the Board and such medical examination shall be carried out at such time and place as the Board may direct.

(3) Where a retired officer has been awarded a temporary allowance under paragraph (2) and there has been no material decrease in the degree of his disablement during the period of two years from the date of his retirement or from the date on which he was notified of the award of such temporary allowance, whichever is the later, during which time he has received adequate medical treatment, the Board may in its discretion

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make an award of a gratuity equal to one-half of the disablement gratuity appropriate to the degree of disablement than that found in accordance with regulation 19 which award shall be deducted from any award of gratuity made later, should the Board accept the disablement as permanent, but the retired officer or discharged serviceman shall be required to make any refund if the amount of the final gratuity is less than the award made by the Board under this paragraph.

(4) Where the Board has reason to believe that an increase in the degree of disablement of a retired officer or discharged serviceman to whom an award of a pension has been made after a final assessment under these Regulations may not be permanent, it may award a temporary allowance, in addition to the pension, of an amount that will bring the combined awards up to the rate appropriate to the increased degree of disablement and such temporary allowance shall be reviewed and reassessed from time to time after medical examination as the Board may direct, and may be reduced, increased, terminated or made permanent as the Board, having regard to the circumstances, may decide.

**24. Award for two or more disabilities**

Where an award is to be made in respect of disablement suffered by reason of two or more disabilities, not all of which are accepted as permanent, and the permanent disability or disabilities is as set out in the Schedule the Board shall, subject to the provisions of these Regulations, award the appropriate gratuity immediately, notwithstanding that the award made in respect of the combined disablement from the disabilities together may be temporary and where the disability or disabilities not accepted as permanent are subsequently so accepted or disappear and when a final assessment is made and a pension awarded then the amount of gratuity appropriate on assessment of the combined disablement may be awarded.

**25. Supply of surgical appliances**

In cases where it is medically certified that the disablement in respect of which an award has been made under these Regulations renders surgical appliances necessary the Board may order that such appliances be supplied free of charge.

**26. Optional medical examination**

Any retired officer or discharged serviceman who has been awarded a pension under these Regulations other than on an interim basis may at his own request be medically examined by a medical officer or a board of medical officers appointed by the Board, not more often than once in every year, at such time and place as the Board may consider appropriate.

**27. Power to reduce award for misconduct**

(1) Where a retired officer or discharged serviceman who has been awarded a pension whether on an interim or other basis, for any reason neglects or refuses to be medically examined as required by the Board under these Regulations, the Board may, if it considers that such neglect or refusal is unreasonable, reduce the pension as it thinks fit, and the amount so reduced shall not be restored until the retired officer or discharged serviceman has been medically examined or until the Board is satisfied that the neglect or refusal was not or is no longer unreasonable.

(2) Where a retired officer or discharged serviceman who has been awarded a temporary allowance neglects or refuses to present himself for medical examination as required under these Regulations the Board may, if it considers the neglect or refusal unreasonable, suspend the award until he so presents himself and so doing it shall be for the Board to determine, having regard to the circumstances, from what date the restoration (if any) of the award shall take effect.

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(3) Where it is medically certified that a retired officer or discharged serviceman should receive approved treatment or approved institutional treatment and such retired officer or discharged serviceman having been so informed refuses or neglects to receive such treatment the Board may, if it considers the refusal or neglect unreasonable, reduce the gratuity, pension or temporary allowance in respect of such retired officer's or discharged serviceman's disablement by such amount, not exceeding one-half, as the Board may think fit.

(4) For the purpose of paragraph (3) any misconduct on the part of a retired officer or discharged serviceman which in the opinion of the Board, prevents the treatment from being given or counteracts its effect may be treated as a refusal by such retired officer or discharged serviceman to receive the treatment.

(5) Where the Board is satisfied that the death or disablement in respect of which a claim is made is attributable to negligence or misconduct on the part of the retired officer or discharged serviceman concerned, it may refuse to award a pension, gratuity or allowance, either in whole or in part.

(6) Where third party compensation is paid by or on behalf of a person alleged to be responsible for any act, omission or circumstances which caused the injury or death of an officer or serviceman or a retired officer or discharged serviceman the Board may reduce any pension, gratuity or allowances to be awarded under these Regulations by such amount as the Board may, in all the circumstances of the case, consider appropriate.

## **28. Power to review awards**

The Board may at any time review an award made under these Regulations where it has been made in error or where, in the opinion of the Board, it has been obtained by improper means and on any such review the Board may confirm, vary or cancel the award or may substitute another award.

### **28A. Review of pensions**

Pensions and gratuities including those awarded to retired personnel shall be kept under review from time to time by the Armed Forces Pay Review Board.

[L.N. 305/1986, s. 12.]

### **28B. Suspension or withholding of pensions**

(1) Subject to the provisions of section 113 of the Constitution, the Defence Council shall have the power to suspend or withhold pensions and gratuities either wholly or in part as the case may be and subject to the conditions of any other regulations.

(2) In exceptional cases payment of part or the whole of the suspended pensions, gratuity or any other allowance, may with the consent of the Treasury be made by the Defence Council to or for the benefit of the wife or other dependant of the officer or serviceman.

[L.N. 305/1986, s. 12.]

## **29. Cost of living allowance**

Every award of a pension or temporary allowance made by the Board under these Regulations shall be subject to such increase by the addition of a cost of living allowance as the Government may from time to time, by order published in the *Gazette*, prescribe.

## **30. Payment of pensions, etc.**

(1) Subject to the provisions of these Regulations the Permanent Secretary to the Treasury shall pay all pensions, allowances, gratuities and other charges payable under or by virtue of these Regulations, including such travelling and other expenses as may be certified under these Regulations.

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(2) Every pension payable under or by virtue of these Regulations shall be payable monthly in arrears.

(3) Every temporary allowance payable under or by virtue of these Regulations shall be payable in arrears, at intervals not less frequent than once in every month for such length of time as may be determined by the Board and such payment shall be made at the office of the District Commissioner of the District in which the pensioner resides.

**30A. Award of pension and gratuity for insanity**

An officer or serviceman who is pronounced by a medical Board to be mentally unfit, and has at least ten years reckonable service in the case of officers, and twelve years of service in the case of servicemen, may be granted a service pension and where he has got less than ten years reckonable service in the case of officers and less than twelve years service in the case of servicemen, he may be granted a gratuity.

[L.N. 305/1986, s. 13.]

**31. Procedure as to claims**

All claims for pensions, allowances or gratuities under these Regulations shall be submitted to the Board, which shall, on receipt thereof, obtain from the appropriate service authorities—

- (a) full particulars of the officer or serviceman in respect of whom the claim is made, including all such particulars regarding his service as may be relevant to the claim;
- (b) the medical history of the officer or serviceman and a copy of the proceedings and findings of the medical board with regard to him;
- (c) a copy of the proceedings of any court of inquiry into the cause of the accident, injury or death giving rise to the claim, and where the claim is based on the death of an officer a declaration of death and, unless unobtainable, a certificate of his death, the declaration to be signed by a responsible service authority and the certificate to be signed by a medical officer; and
- (d) the names, addresses and particulars of—
  - (i) the officer's or serviceman's dependants and the degree of their dependency on him; and
  - (ii) the officer's or serviceman's heir.

**32. Nature of award in respect of death**

(1) In the case of the death of an officer or serviceman or retired officer or discharged serviceman (in this regulation referred to as the "deceased") the Board may, as from the day next following the death of the deceased, award—

- (a) where the deceased leaves a sole widow, a pension to her at the rate not exceeding one-third of the deceased's rate of pay as at the date of his death or retirement and if there is more than one widow, the pension may be divided equally between them;
- (b) if in addition to the widow, the deceased leaves a child or children a pension in respect of each child until such child attains the age of twenty-one years, of an amount not exceeding one-quarter of the pension awarded to the widow:

Provided that—

- (i) a pension to a female child under subparagraph (a) may cease upon the marriage of such child;



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- (ii) where any widow who is in receipt of a pension under subparagraph (a) and who has under her charge a child or children in receipt of a pension under this subparagraph dies or otherwise ceases to be entitled to a pension the Board may in its discretion and after consultation with the District Commissioner of the district in which the widow was residing at the date of her death continue to pay the pension or any part of it to an approved guardian provided that it is applied towards the maintenance and education of the child or children to the satisfaction of the Board;
- (c) where the deceased leaves no widow but leaves a child or children, or if the pension payable to the widow ceases, or if no pension is payable to the widow, the pension payable to each of the children under subparagraph (b) may be doubled from the date following the date of the death of the deceased or from the date on which the pension payable to the widow ceases, as the case may be.

(2) Where any widow to whom a pension has been awarded under this regulation remarries, or cohabits with any person as his wife, the Board may, if there is no child of the deceased under her charge, cease payment of the pension from the date next following such remarriage or cohabitation upon confirmation of the same, but if the widow has under her charge such child or children of the deceased the Board may continue to pay the pension or any part thereof to the widow or in the event of her death to an approved guardian on the conditions set out in paragraph (1)(b).

(3) Where any child is in receipt of a pension under paragraph (1)(b) and is under the charge of the widow of the deceased the pension may be paid to the widow provided that it is applied towards the maintenance and education of the child to the satisfaction of the Board and where there is no widow, or if the widow abandons any child of the deceased the Board may in its discretion and after consultation with the District Commissioner of the district in which the child is residing continue to pay the pension or any part thereof to which the child may be entitled under paragraph (1)(b) to an approved guardian provided it is applied towards the maintenance and education of the child to the satisfaction of the Board.

(4) Where the pension of a childless widow has been terminated in accordance with the provisions of paragraph (2) or has ceased on her death the Board may in its discretion after consultation with the District Commissioner of the district in which the deceased resided award to any needy dependant of the deceased as a gratuity, the total amount of the pension for six months that would be awarded to the widow, such gratuity to be distributed at the discretion of the Board.

(5) Where the deceased leaves neither a widow nor children, the Board may in its discretion, award a gratuity to any surviving parents, brothers and sisters of the deceased of an amount not exceeding the pension for six months that would be awarded to the widow and such gratuity may be distributed at the discretion of the Board.

(6) Where the deceased leaves neither a widow, children nor dependants, the Board may award to the heir of the deceased a gratuity not exceeding the deceased's pay for one month as at the date of his death or retirement.

(7) No widow may be entitled to an award under this regulation unless her marriage to the deceased was recognized by any law for the time being in force or by the law or custom of the community to which the deceased belonged.

(8) A gratuity awarded under paragraph (6) may be in full and final settlement.

[L.N. 77/1985, L.N. 258/1996.]

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[Subsidiary]

### 33. Pensions Appeal Tribunal

(1) There is hereby established a Tribunal to be known as the Pensions Appeal Tribunal which shall consist of—

- (a) a chairman to be appointed by the Defence Council;
- (b) a medical officer to be appointed by the Defence Council on the recommendation of the Director of Medical Services;
- (c) three persons to be appointed by the Defence Council;
- (d) the chairman, the secretary and two other members shall constitute a quorum for any meeting of the Tribunal,

none of whom may also be members of the Pensions Assessment Board established under regulation 16.

(1A) The members of the Tribunal appointed under paragraph (1) shall hold office for a period of three years.

(2) Subject to the provisions of these Regulations and to any direction issued by Defence Council under these Regulations the Tribunal shall regulate its own procedure.

(3) There shall be a secretary who shall be a public officer to be appointed by the Defence Council.

(4) An appeal shall lie to the Tribunal against any decision of the Board established under these Regulations affecting—

- (a) an entitlement to pension, gratuity or allowance under these Regulations;
- (b) the degree of disablement under these Regulations where—
  - (i) final assessment and award of a disablement pension or gratuity or both, has been made; or
  - (ii) a disablement pension awarded on an interim basis, or a temporary allowance, has been terminated by the Board on the ground either that there is now no disablement due to or aggravated by service or that disablement still persisting is under 20 per cent;
- (c) the suspension of a temporary allowance under regulation 21;
- (d) the reduction of or refusal to make an award, under these Regulations, and against any decision of the Board on review.

(5) Every appeal under this regulation shall be brought within twelve months of the date on which the decision of the Board is notified to the claimant except that the Tribunal may allow an appeal to be brought after the expiration of the period limited by this paragraph if in the opinion of the Tribunal there was reasonable excuse for delay.

(6) Notice of the time, date and place of hearing of an appeal shall be given to the appellant provided that where the Tribunal is satisfied that an appellant cannot be traced it shall be sufficient if such notice shall have been sent to him by registered post to his last known address or place at which he was last known to reside.

(7) Every appellant shall have the right of appearing before the Tribunal in person or by a legal representative and should an appellant fail to appear, either in person or by a legal representative, at the time and at the date and place notified to him for the hearing of the appeal, the Tribunal may, in the absence of any satisfactory explanation, proceed to determine the appeal.

(8) The Tribunal shall have power to vary the amount of any award made by the Board, either by increasing or decreasing the award, but except in an appeal against such a decision the Tribunal shall not make an award where no award has been made by the Board.



[Subsidiary]

(9) The Tribunal shall have power to call for any document relating to the appellant's service from the appropriate service authority, and to order the appellant to undergo a medical examination by a medical officer to be appointed by the Tribunal in any particular case and may certify to the Permanent Secretary to the Treasury any reasonable travelling and other expenses which have been incurred by any person appearing, with the permission and in accordance with the instructions of the Tribunal before the Tribunal or before any medical examination of such person under the provisions of this paragraph.

(10) The decision of the Tribunal upon an appeal made under these Regulations shall be final.

[L.N. 94/1985, L.N. 305/1986, s. 14, L.N. 258/1996.]

### PART III – OFFICER'S PENSIONS AND GRATUITIES

#### 34. Officer's service and disablement pensions

(1) An officer who is—

- (a) retired or allowed to retire on or after reaching the normal age of retirement as laid down in the terms and conditions of service of the armed forces drawn under the provisions of the Act; or
- (b) retired compulsorily before reaching the age of retirement because it has been decided that further employment is not available for him,

may, provided that he has completed at least ten years' reckonable service, be granted on retirement a service pension in accordance with these Regulations.

(2) Every officer otherwise eligible for pension who has not completed ten years reckonable service may be granted on retirement a gratuity in accordance with regulation 11.

(3) An officer who is removed from service in the Armed Forces for misconduct or whose services are terminated pursuant to section 171 of the Act, and who has at least ten years' reckonable service may be granted a pension at such rate as the Defence Council may determine but not in any event exceeding 90 per cent of the sum which would have been granted to him under paragraph (1) had he retired in normal circumstances.

(4) An officer who is removed from service in the Armed Forces for misconduct or whose services are terminated pursuant to section 171 of the Act, and who has at least ten years reckonable service may be granted a pension at such rate as the Defence Council may determine but not in any event exceeding 90 per cent of the sum which would have been granted to him under paragraph (1) had he retired in normal circumstances.

(5) An officer who has suffered disablement as a result of a wound, injury or disease may, if his retirement is necessitated or materially accelerated by the wound, injury or disease and he has not completed ten years' reckonable service, be granted in lieu of a gratuity under paragraph (2), a pension under paragraph (1) as if the words "provided he has ten years' reckonable service" were omitted;

(6) A gratuity may be granted in accordance with regulation 11 to an officer who is ineligible for a service pension when retired for following reasons—

- (i) on reduction of establishment; or
- (ii) if for any reasons his services are no longer required.

[L.N. 163/1980, s. 7, L.N. 305/1986, s. 15.]

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[Subsidiary]

PART IV – SERVICEMEN'S PENSIONS AND GRATUITIES

**35. Serviceman's service and disablement pensions**

(1) A serviceman who is—

- (a) discharged on or after the completion of colour service; or
- (b) discharged compulsorily having regard to the usefulness of such serviceman in the armed forces and the circumstances of the case,

may, provided that he has completed twelve years' reckonable service, be granted a service pension in accordance with the provisions of these Regulations.

(2) A serviceman who is discharged for inefficiency, or misconduct or any other cause within his control but not amounting to gross misconduct and who has completed at least twelve years' reckonable service may be granted a service pension at such rate as the Defence Council may determine but not in any event exceeding 90 per cent of the sum which would have been granted under paragraph (1) had he applied for his discharge.

(3) A serviceman who is pronounced by a medical Board to be mentally or physically unfit may be granted a pension provided it is not connected to the service, and provided he has completed at least twelve years' reckonable service and the mental or physical unfitness is not connected to the service.

(4) A serviceman who has suffered disablement as a result of a wound, injury or disease due to, hastened by or aggravated by his service may, if his retirement is necessitated or materially accelerated by his service and has not completed more than twelve years' reckonable service, be granted in lieu of a gratuity a pension under paragraph (1) as if the words "provided he has completed twelve years' reckonable service" were omitted.

[L.N. 163/1980, s. 8.]

**36. Serviceman's service gratuities**

(1) A gratuity in accordance with the provisions of regulation 11 may be granted to—

- (a) a serviceman who is transferred to the reserve or discharged before or after the completion of his colour service without being granted a service pension; or
- (b) a serviceman who is discharged under paragraphs (d), (e), (f) and (g) of section 176 of the Act provided that he has completed at least one year's reckonable service.

(2) A gratuity of 30 per cent of the amount that would have been granted under paragraph (1) may be granted at the discretion of the Defence Council to a serviceman discharged for inefficiency or unsuitability due to causes not within his control.

**37. Pension on discharge or transfer to reserve**

Where a serviceman, having completed his colour service under an engagement with eligibility for pension if he were discharged or transferred to the reserve, remains in service without a break, but reverts to a lower rank on so remaining in service, he may be awarded on his final discharge the pension which would have been admissible in respect of his service up to the time of such reversion, together with an additional sum based on his new rate of pay in accordance with the provisions of these Regulations; except that a gratuity may be paid on re-enlistment or on appointment to a commission or on any other discharge for the purpose of giving further full service in the armed forces.

## PART V – MISCELLANEOUS

**38. Reduction of establishment and services**

(1) An officer or serviceman retired or discharged from the service when eligible for pension, in consequence of the abolition of his office or for the purpose of facilitating improvement in the armed forces by which a greater efficiency or economy may be effected, may be granted an additional pension of one-sixtieth of his annual pension for each period of three years' reckonable service and the additional pension shall not exceed ten-sixtieths.

(2) When an officer or a serviceman who is in receipt of a pension is recalled for service with the Armed Forces, whether under the Armed Forces (Retired Officers) Regulations, 1985 or otherwise, he shall be entitled to his full pension notwithstanding that he is in receipt of any other pay.

(3) When an officer or a serviceman who originally retired or was discharged with a pension is recommissioned or re-enlisted as the case may be, his pension shall cease from the date on which his further service commences and he shall either repay both his pension and gratuity already received or have it deducted from the pension he would finally be entitled to so as to allow for his previous service to count towards his pension when he finally retires.

[L.N. 305/1986, s. 16.]

**39. Administrative directions**

The Defence Council may from time to time issue such directions, not inconsistent with the provisions of these Regulations, as it may consider necessary for the administration of these Regulations, and without prejudice to the generality of the foregoing such direction may make provisions for—

- (a) the registration of pensions, allowances and gratuities awarded;
- (b) the issue of pension certificates;
- (c) the notification to the person entitled thereto of the amounts of the pensions, allowances and gratuities awarded;
- (d) the procedure to be followed in drawing pensions, allowances and gratuities;
- (e) the procedure to be followed in the hearing of any appeal by the Tribunal.

**40. Repeals and savings**

The Kenya Military Forces (Service Pensions and Gratuities) (Soldiers) Regulations, the Military Forces (Former King's African Rifles) Regulations, the Kenya Military Forces (Service Pensions and Gratuities) (General List Officers) Regulations, the Military Forces (Service and Pensions Gratuities) (Officers) Regulations and the Kenya Military Forces (Disability and Death Pensions and Gratuities) (Officers) Regulations are repealed.

[L. N. 240/1964, L. N. 241/1964, L. N. 88/1965, L.N. 163/1980, s. 9, Cap. 198(1962), Cap. 201(1962) (Sub. Leg.)]

(2) Notwithstanding anything to the contrary in these Regulations an officer or serviceman entitled to a pension, gratuity or other allowance under the Regulations repealed under paragraph (1) (hereinafter referred to as the "repealed Regulations") shall have an option exercisable not later than the day immediately preceding the date of his retirement or discharge from the armed forces to be paid the pension, gratuity or other allowance worked out in accordance with the repealed Regulations and the repealed Regulations shall be deemed to be in force for that purpose.

[L.N. 163/1980, s. 9.]

[Subsidiary]

## FIRST SCHEDULE

[Deleted by L.N. 6/2004, Regulation 19(4), L.N. 258/1996, L.N. 6/2004.]

## SECOND SCHEDULE

[Rule 19(4), L.N. 258/1996.]

ASSESSMENT OF DISABLEMENT DUE TO SPECIFIC INJURIES AND CERTAIN  
OTHER DISABLEMENT*Description of Injury Assessment per cent**Amputation Cases-Upper Limbs*

1. Loss of both hands or amputation at higher sites 100
2. Amputation through shoulder joint 90
3. Amputation below shoulder with stump less than eight inches from tip of acromion 80
4. Amputation from eight inches from tip to acromion to less than four and a half inches below tip of olecranon 70
5. Amputation from four and a half inches below tip of olecranon 60
6. Loss of thumb 30
7. Loss of thumb and its metacarpal bone 40
8. Loss of four fingers 50
9. Loss of three fingers 30
10. Loss of two fingers 20
11. Loss of terminal phalanx of thumb 20

*Amputation Cases Lower Limbs*

12. Double amputation through thigh or through thigh on one side and loss of other foot or double amputation below thigh to five inches below knee 100
13. Double amputation through leg lower than five inches below knee 100
14. Amputation of one leg lower than five inches below knee and loss of other foot 100
15. Amputation of both feet resulting in end-bearing stumps 90
16. Amputation through both feet proximal to the metatarso-phalangeal joint 80
17. Loss of all toes of both foot through the metatarso-phalangeal joint 70
18. Loss of all toes of both foot proximal to the proximal interphalangeal joint 30
19. Loss of all toes of both feet distal to the proximal interphalangeal joint 20
20. Amputation through hip joint 90

[Subsidiary]

- 21. Amputation below hip with stump not exceeding five inches in length measured from tip of great trochanter 80
- 22. Amputation below hip with stump exceeding five inches in length measured from tip of great trochanter, but not beyond middle thigh 70
- 23. Amputation below middle thigh to three and a half inches below knee 60
- 24. Amputation below knee with stump exceeding three and a half inches but not exceeding five inches 50
- 25. Amputation below knee with stump exceeding five inches 40
- 26. Amputation of one foot resulting in end-bearing stump 30
- 27. Amputation through one foot proximal to the metatarso-phalangeal joint 20
- 28. Loss of all toes of one foot proximal to the proximal interphalangeal joint, including amputation through the metatarso-phalangeal joint 20

*Other Specific Injuries*

- 29. Loss of a hand and a foot 100
- 30. Loss of one eye, without complications, the other being normal 40
- 31. Loss of vision of one eye, without complications, or disfigurement of the eye-ball the other being normal 30
- 32. Loss of sight 100

*Other Disablement*

- 33. Very severe facial disfigurement 100
- 34. Absolute deafness 100

*Note.*- Where the scheduled assessment for a specified injury involving multiple losses differs from the sum of the assessment for the separate injuries the former shall be the appropriate assessment.

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**ARMED FORCES (RETIRED OFFICERS) REGULATIONS, 1985**

ARRANGEMENT OF REGULATIONS

*Regulation*

1. Citation and commencement.
2. Application.
3. Retired officers grades.
4. Appointments.
5. Eligibility.
6. Administration.
7. Application for employment.
8. Signing of official document.
9. Contract.
10. Retention in service.
11. Termination of contract.
12. Reserve liability.
13. Service gratuity.
14. Death in service.

SCHEDULE

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[Subsidiary]

## ARMED FORCES (RETIRED OFFICERS) REGULATIONS, 1985

[L/N No. 91/1985.]

### 1. Citation and commencement

These Regulations may be cited as the Armed Forces (Retired Officers) Regulations, 1985 and shall be deemed to have come into operation on the 1st July, 1983.

### 2. Application

These Regulations shall apply to commissioned officers who have retired from the armed forces.

### 3. Retired officers grades

There shall be four grades of retired officers as set out in the Schedule.

### 4. Appointments

A retired officer may be appointed as a public officer and employed in the Department of Defence, Service Headquarters or in any other military establishment, in a post in which his military knowledge in the armed forces may be required.

### 5. Eligibility

(1) An officer who has retired from the armed forces shall be eligible for appointment as a retired officer if he is at least forty-four years old (unless he was retired on compassionate grounds) and—

- (a) shall have held a regular commission and retired at the normal retiring age, or compulsorily retired, but not through misconduct or inefficiency;
- (b) shall not be over the age of fifty-five years at the time of the appointment; but where a younger officer is not available and there are exceptional circumstances, the Defence Council may waive this requirement.

(2) An officer who retires from the armed forces while invalid shall be eligible for appointment if he is certified fit for service as a retired officer by a duly qualified medical practitioner.

(3) A Women Service Corps officer shall be eligible for appointment as a retired officer if she retired normally, had regular commission and had at least ten years commissioned service.

### 6. Administration

The Department of Defence Personnel Branch shall be responsible for the promulgation of terms of service, the appointments and the administration of retired officers.

### 7. Application for employment

(1) An application for employment as a retired officer shall be made to the Defence Council—

- (a) by a serving regular officer through his Service Headquarters to the Department of Defence six months before his due date of retirement;



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- (b) by an officer who has already retired from the armed force to the Secretary of the Defence Council.

(2) An officer retiring voluntarily shall not apply for employment as a retired officer until his application for voluntary retirement has been approved by the Defence Council.

#### **8. Signing of official document**

A retired officer employed under these Regulations shall insert the letter (Rtd) after his service rank when signing official papers and documents.

#### **9. Contract**

(1) The engagement of a retired officer shall be on renewable contract terms of thirty-six months; provided that an officer shall not renew his contract after attaining the age of fifty-five years.

(2) The first twelve months from the date of appointment shall be a probation period; but this period may be extended by the Defence Council.

#### **10. Retention in service**

A retired officer employed under these regulations may be retained in service after attaining the age of fifty-five years at the option of the Defence Council for a further period of thirty-six months if in the opinion of the Defence Council the exigencies of service demand it, subject to a duly qualified medical practitioner's certificate to the effect that the officer is physically and mentally fit.

#### **11. Termination of contract**

(1) An appointment under these Regulations shall cease at any time on grounds of ill-health, redundancy or inefficiency or declining efficiency in accordance with the rules and procedures applicable to the armed forces.

(2) The Defence Council may terminate an appointment at any time during the period of probation or for misconduct.

#### **12. Reserve liability**

A retired officer employed under these Regulations shall have reserve liability in accordance with the Armed Force Act (Cap. 199).

#### **13. Service gratuity**

(1) Where the term of contract is completed or where an officer is prematurely retired in accordance with regulation 11(1), except on disciplinary grounds or for misconduct, the officer concerned shall be granted a gratuity equivalent to twenty-five per cent of the total salary received by him during his employment.

(2) Where an officer, is retained for a further period in pursuance of regulation 9(1) or 10, he shall be required to exercise an option either of having his gratuity paid to him at the time or having his gratuity paid to him on his leaving the Department of Defence.

#### **14. Death in service**

Where an officer employed under those regulations dies while still serving the Department of Defence, the Defence Council in consultation with the Treasury may grant to his dependants a gratuity of an amount not exceeding his total annual emoluments of his earned service gratuity, whichever is greater.

*Kenya Defence Forces*

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[Subsidiary]

SCHEDULE

[Rule 3.]

<i>RO Grade</i>	<i>Armed Force Rank at Retirement</i>
RO 1	Brigadier
RO 2	Colonel
RO 3	Lieutenant Colonel
RO 4	Major

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**DISSOLUTION OF THE WOMEN SERVICE CORPS, 1999**

[L.N. 177/1999]

In Exercise of the powers conferred by section 3(3) of the Armed Force Act, I Daniel Toroitich arap Moi, President and Commander-in-Chief of the Armed Force of the Republic of Kenya, dissolve the Women Service Corps of the Kenya Army, with effect from 1st December, 1999 and further order that all serving officers and servicewomen of the said Women Service Corps, be redeployed in the Kenya Army, the Kenya Air Force and the Kenya Navy.

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