SCHEDULE

LIST OF MISSING PERSONS

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Svc No.</th>
<th>Rank</th>
<th>Name</th>
<th>Unit</th>
<th>Date Declared Missing</th>
<th>Circumstances the person went missing</th>
<th>Place</th>
<th>Next of Kin</th>
<th>Dependants</th>
</tr>
</thead>
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SAITOTI TOROME,
Principal Secretary and Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and Chairperson to the Defence Council.

LEGAL NOTICE NO. 233

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304 (1) (i) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:—

1. These Regulations may be cited as the Kenya Defence Forces (Board of Inquiry) Regulations.

2. In these Regulations, unless the context otherwise requires—

   “Act” means the Kenya Defence Forces Act, 2012;
   “Board” means a Board of Inquiry convened in accordance with these regulations;
   “public property” includes any property of—
   (a) the national or a county government;
   (b) a public body;
   (c) allied forces; or
   (d) public fund authorized 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; and

   “represented” means represented by an officer or an advocate.

3. A Board of Inquiry may be convened for the purposes of section 301 of the Act by order of the Defence Council, the Chief of
the Kenya Defence Forces, Commander or any officer commanding a
formation or body of officers and service members or any officer
commanding a unit or detachment of the Defence Forces, hereinafter
referred to as the convening authority.

4. 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 regulation 7 (1) (a) 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. (1) A Board convened to investigate any matter shall consist of
not less than three persons subject to the Act, of whom one shall be of
or above the rank of lieutenant or corresponding rank who shall be the
chairperson of the Board and not more than one of whom may be a
service member of or above the rank of Warrant Officer Class II or
 correponding rank.

(2) The convening authority shall appoint the chairperson and
members of a Board by name.

6. A Board shall investigate and report on the facts relating to
any matter referred to them and, if directed to do so, to express their
opinion on any question arising out of any such matter.

7. (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;

(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;

(ii) that having been captured he failed to take any
reasonable steps available to him to rejoin the Defence
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; or

(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 to paragraph (1) a Board may be convened with reference to any matter which the convening authority decides to refer to a Board.

8. (1) Subject to paragraph (2) where any matter is the subject of investigation by any authority of the defence forces or by a civil authority, or of proceedings under service law, or the subject 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 such a Board is not necessary.

(2) Paragraph (1) shall 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) 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. A Board shall assemble at the time and place stated in the order convening the Board.

10. The chairperson 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. (1) The chairperson 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.

(2) Without prejudice to paragraph (1), the convening authority may at any time direct the Board to reassemble for such purpose as may be specified by the convening authority.

12. (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 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. (1) Where it appears to the convening authority, or if a Board has been convened either to the convening authority or to the chairperson, 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 chairperson 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, the chairperson, may specify.

(2) Any witness or other person referred to in paragraph (1) 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 chairperson.

14. (1) The convening authority shall have power to direct that, subject to paragraph (3) every witness before a Board shall be examined on oath:

Provided that, where a child of tender years as defined in the Children Act called as a witness does not, in the opinion of the Board, understand the nature of an oath, his evidence may be received notwithstanding that it is not given on oath if the Board members are satisfied that the witness is telling the truth to justify the reception of the evidence.

(2) Subject to paragraph (3), an oath shall be administered to any person in attendance before the Board as an interpreter.

(3) An oath shall be administered before the Board in the form and manner prescribed by the Kenya Defence Forces Rules of Procedure.

15. (1) Subject to paragraph (2), 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 extract is correct and the chairperson has certified thereon that the Board has 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 chairperson or have a label affixed to it bearing a number or letter and the signature of the chairperson;

(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), the chairperson shall ensure that proper steps are taken for its safe custody.

16. (1) The chairperson 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:

Provided that the chairperson shall to the extent possible ensure that the proceedings are voice - recorded in the Hansard form.

(2) The evidence of each witness shall be recorded in narrative form recording as nearly as possible as the words used:

Provided that the chairperson shall to the extent possible ensure that any particular question and answer is voice - recorded in the Hansard form.

(3) If the Board considers it necessary, any particular question and answer shall be taken down verbatim.

(4) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2) or (3), shall be read over to him and shall be signed by him.

(5) A record of the proceedings shall be signed by the chairperson and such other members of the Board as there may be and forwarded to the convening authority.

17. 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 301 (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.
SCHEDULE (r.17)

Record of a report of a Board of Inquiry into the absence of/capture of/death of/any other matter

[number, rank, name and unit]

entered in pursuance of section 301 of the Kenya Defence Forces Act.

The Board of Inquiry sitting at .............................................. on the ...............day of ........................................................., 20......................, and consisting of .........................................................[rank, name and unit] chairman, and .........................................................[rank, name and unit] .........................................................[rank, name and unit] members

report that.......................................................... [number, rank, name and unit] (died on the........ day .............., 20........,) (was captured by the enemy on the........ day ......................, 20.....,) (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:

.......................................................... ..........................................................
.......................................................... ..........................................................
.......................................................... ..........................................................(or any other matter)

*Omit if no such further report is made.

Dated this ..................... day of ....................., 20..........

(Signed) .........................................................

Commanding Officer of the person referred to in the report


SAITOTI TOROME,
Principal Secretary and Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and Chairperson to the Defence Council.