



THE REPUBLIC OF KENYA

LAWS OF KENYA

THE KENYA DEFENCE FORCES ACT

CHAPTER 199

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CHAPTER 199

KENYA DEFENCE FORCES ACT

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CHAPTER 199**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

*[Act No. 25 of 2012, Act No. 44 of 2016, Act No. 18 of 2018.]***PART I – PRELIMINARY****1. Short title**

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

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 cooperation 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;

"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;

"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;

"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 the 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 afflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

"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.

[Act No. 44 of 2016, s. 2.]

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) Deleted by Act No. 44 of 2016, s. 3.

(4) Deleted by Act No. 44 of 2016, s. 3.

[Act No. 44 of 2016, s. 3.]

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 as may be delegated by the President and National Assembly;
- (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 in defence matters and report thereon to the President and the National Assembly;
- (h) submit an annual report, in writing, to the President and National Assembly which shall include—
 - (i) the work and accomplishment of the Ministry, the Services and the Defence Council during the period covered by the Report;
 - (ii) the expenditure of the Ministry and the Services by the Principal Secretary in the Ministry; and

- (iii) such other recommendations as he or she may consider appropriate.
- (i) any other lawful function as may be assigned to the Cabinet Secretary by the President or any other written law.

[Act No. 44 of 2016, s. 4.]

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 an employee of the Ministry.

(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.

[Act No. 44 of 2016, s. 5.]

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, instructions or directives issued to Service Commanders; 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.

[Act No. 44 of 2016, s. 6.]

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, in line with the chain of command.
- (b) *deleted by Act No. 44 of 2016, s. 7(b).*

(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.

[Act No. 44 of 2016, s. 7.]

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

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.

[Act No. 44 of 2016, s. 8.]

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 in line with the chain of command; 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.

[Act No. 44 of 2016, s. 9(a).]

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;
- (ga) shall direct and oversee the deployment of the Defence Forces as authorised under this Act;
- (gb) shall develop the criteria for the recruitment, promotion and transfer of members of 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.

[Act No. 44 of 2016, s. 10.]

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

(1) 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.

(2) Notwithstanding subsection (1), the President may on the recommendation of the Defence Council extend the term of office of the Chief of the Defence Forces, the Vice Chief of the Defence Forces or the Service Commanders for a period not exceeding one year in times of war or emergency.

[Act No. 44 of 2016, s. 11.]

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 (Cap. 412D).

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 designated recruitment centres for all the counties 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.

[Act No. 44 of 2016, s. 12.]

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

(1) 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.

(2) Where the Defence Forces are deployed for any purpose contemplated in subsection (1) (a) or (b), 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) period for which the Defence Forces is expected to be deployed;
- (d) expenditure incurred or expected to be incurred.

(3) If the National Assembly is not in session during the first seven days after the deployment of the Defence Forces as contemplated in subsection (2), the Cabinet Secretary shall provide the information required under subsection (2) to the Speaker of the National Assembly.

[Act No. 44 of 2016, s. 13.]

32. Deployment of Defence Forces to restore peace in Kenya

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

(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.

[Act No. 44 of 2016, s. 14.]

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 and other authorities in situations of emergency or disaster.

(2) *Deleted by Act No. 44 of 2016, s. 15(b).*

(3) Whenever the Defence Forces are deployed pursuant to subsection (1), the Inspector-General of the National Police Service shall be responsible for the control and overall superintendence of the operation.

[Act No. 44 of 2016, s. 15.]

34. Regulation of support operation, etc

(1) In the event of the Defence Forces being deployed in support of the National Police Service and other authorities, 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 and other authorities 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 and other authorities as contemplated under Article 241(3)(b) of the Constitution—

- (a) may only be performed in such area or at such place as the National Security Council or the President may determine;
- (b) shall be discontinued as National Security Council or the President 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.

[Act No. 44 of 2016, s. 16.]

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 (Cap. 63A) 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 or any other lesser punishment provided for in this Act;
- (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.

[Act No. 18 of 2018, Sch.]

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.

(1) 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 "behaviour" includes acts, signals or anything said by that person.

Offences relating to property

87. Offences concerning public or non-public property

(1) 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-public 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.

[Act No. 44 of 2016, s. 17.]

Offences relating to Billeting and Requisitioning of Vehicles

97. Billeting offences

(1) 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

(1) 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, and shall be liable on conviction by a court martial to imprisonment for a term not exceeding two years.

[Act No. 44 of 2016, s. 18.]

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 by court martial is liable to imprisonment for a term of less than two years or to lesser punishment.

[Act No. 44 of 2016, s. 19.]

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 by court martial is liable to imprisonment for a term not exceeding three years or to lesser punishment.

[Act No. 44 of 2016, s. 20.]

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

(1) 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, 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 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.

[Act No. 44 of 2016, s. 21.]

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 (Cap. 65), 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 years 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 be liable to imprisonment for a term not exceeding ten years or to a lesser punishment provided for in this Act.

[Act No. 44 of 2016, s. 22.]

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 or any other lesser punishment provided for in this Act; 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.

[Act No. 18 of 2018, Sch.]

133A. 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, cruel, inhuman or degrading treatment 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 to both.

(3) A member of the Defence Forces who subjects a person to cruel, inhuman and 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 to both.

[Act No. 44 of 2016, s. 23.]

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 Magistrate's 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 Magistrate's Court as contemplated in subsection (1) is simultaneously in custody for some other cause, the Magistrate's Court may act in accordance with subsection (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 Magistrate's 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 Code (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.

[Act No. 44 of 2016, s. 24.]

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 section 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 Magistrate's 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

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 who shall be the final authority in deciding whether the charges should be dealt with by court martial or be referred back to summary trial.

(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.

[Act No. 44 of 2016, s. 25.]

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 who is available at the time 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.

[Act No. 44 of 2016, s. 26.]

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 (Sub. Leg).

(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 and make subsequent appeals to any other superior 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 and make subsequent appeals to any other superior court against the acquittal.

[Act No. 44 of 2016, s. 26A.]

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 martial, with a record of the proceedings of the court-martial.

[Act No. 44 of 2016, s. 27.]

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 Code (Cap. 75) relating to the hearing of appeals from subordinate courts shall apply to the hearing and determination of appeals under this Part.

[Act No. 44 of 2016, s. 28.]

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) *Deleted by Act No. 44 of 2016, s. 29(a).*

(2) *Deleted by Act No. 44 of 2016, s. 29(a).*

(3) *Deleted by Act No. 44 of 2016, s. 29(a).*

(4) A person shall not be tried by a court-martial for an offence under Part VI, other than an offence under section 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 which may be tried summarily or by court martial.

(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.

[Act No. 44 of 2016, s. 29.]

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 not below the rank of Lieutenant Colonel; 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;

- (ba) notwithstanding the provisions of section 157, have power to decide whether to prosecute or not to prosecute in relation to any offence under this Act wherein the accused person elects to be tried by court martial, or a commanding officer, or an appropriate superior authority remands the case for trial by court martial;
- (bb) amend or substitute a charge referred to him or her by the Commanding Officer or appropriate superior authority at any time before a Court Martial is convened;
- (bc) refer a charge or substituted charge to the Commanding Officer or appropriate superior authority with direction that the same be tried summarily or be dismissed;
- (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 an independent office within the Defence Forces.

[Act No. 44 of 2016, s. 30.]

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 section 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 section 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 four 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.

[Act No. 44 of 2016, s. 31.]

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 National 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 duty

(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 by the Defence Council, entitled to be provided with medical, dental and psychological or other necessary treatment for such wound, injury or illness, with the consent of the Defence Council, notwithstanding that the duration of such treatment may extend beyond that member's service contract.

(9) A member of the regular forces 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 of the Defence Forces who lose their lives or suffer disabilities while undertaking military service or training.

(11) The compensation referred to under subsection (10) may be facilitated through insurance schemes or compensation agreements or arrangements as may be approved by the Defence Council from time to time.

[Act No. 44 of 2016, s. 32, Act No. 18 of 2018, Sch.]

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 President as the Commander-in-Chief of the Kenya Defence Forces, the Republic of Kenya 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 or service member may by notice in writing to the Service Commander or Defence Council as applicable request to be discharged from service or resign his or her commission and the Service Commander or Defence Council, as the case may be, shall determine the request and communicate the decision within ninety days.

(8) Where the Defence Council or the Service Commander declines to approve resignation request under subsection (7), the Defence Council or the Service Commander, shall within fourteen days 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.

[Act No. 44 of 2016, s. 33, Act No. 18 of 2018, Sch.]

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

(1) 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.

(2) A person who enlists into the Defence Forces as a service member or a member of the constabulary shall make and subscribe to the oath of allegiance set out in the Fourth Schedule.

[Act No. 18 of 2018, Sch.]

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 section 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 and assist the National Police Service and other authorities in situations of emergency, disaster, insurrection, hostilities, unrest or instability for a period not exceeding sixty 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.

[Act No. 44 of 2016, s. 34.]

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 section 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.

[Repealed by Act No. 44 of 2016, s. 35.]

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.

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

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 National 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(Cap. 412B).

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—

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- (a) the commissioning and appointment of officers, and their terms of service, retirement, resignation and precedence, and similar matters;
- (aa) the establishment of a pensions assessment committee and a pensions appeals committee, including their composition and functions;
- (b) the enlistment of recruits;
- (ba) the protection, preservation and use of land and installations used or occupied by the Kenya Defence Forces;
- (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.

[Act No. 44 of 2016, s. 36, Act No. 18 of 2018, Sch.]

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.

305A. Standing Orders

(1) The Chief of the Defence Forces or the Commander of a Service of the Defence forces or the Commandant of the Constabulary may make general, special, routine and standing orders with respect to all or any of the following matters in respect of the Forces, Service or Constabulary, as the case may be—

- (a) discipline, control, good order and guidance;
- (b) organization, administration and duties;
- (c) distribution, posting, transfer, attachment and inspection of personnel;
- (d) administration, control and command of the reserves.

(2) The Standing Orders shall not be inconsistent with this Act.

[Act No. 44 of 2016, s. 37.]

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.

[Spent]

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.

Kenya Defence Forces

FIRST SCHEDULE

[s. 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)

SECOND SCHEDULE

[s. 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

[s. 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

Kenya Defence Forces

FOURTH SCHEDULE

[s. 249(3)]

OATH OF ALLEGIANCE

[Act No. 18 of 2018, Sch.]

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, the Republic of Kenya and the Constitution.
(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

[s. 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;

Kenya Defence Forces

I (Service Commander KA/KAF/KN)
HEREBY DECLARE that the said (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)
