

NO. 25 OF 2012

THE KENYA DEFENCE FORCES ACT

SUBSIDIARY LEGISLATION

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THE KENYA DEFENCE FORCES (APPLICATION) ORDER

[Legal Notice 68 of 2014]

1. This Order may be cited as the Kenya Defence Forces(Application) Order.
 2. The Kingdom of Denmark is designated as a country to which Part XVIII of the Kenya Defence Forces Act, 2012, applies.
 3. The application of the Act shall be limited to such activities as are specified in the Agreement between the Government of the Republic of Kenya and the Kingdom of Demark signed by the two countries on the 17th September, 2013.
 4. This Order shall be deemed to have effect from the 17th September, 2013 and shall cease to have effect on the 16th September, 2018.
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THE KENYA DEFENCE FORCES (GENERAL) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

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15. Authorization of investigation
16. Role of military police
17. Deduction of pay
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SCHEDULES

- CERTIFICATE UNDER SECTION 144(1) OF THE KENYA DEFENCE FORCES ACT
- CERTIFICATE UNDER SECTION 144 (2) OF THE KENYA DEFENCE FORCES ACT
- PRESCRIBED DOCUMENTS FOR PURPOSES OF SECTION 206(5) OF THE ACT

THE KENYA DEFENCE FORCES (GENERAL) REGULATIONS

[Legal Notice 234 of 2017, Legal Notice 84 of 2018]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (General) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"civilian employee" means a person who is subject to section 5 of the Act; and

"detachment" means a part of a unit which is so separated from the unit to which it belongs, that the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it, or a ship.

3. Commanding officer

(1) For the purposes of the definition contained in section 2(1) of the Act, the commanding officer in relation to a member of the Kenya Defence forces is the officer who has powers of command over that member and who—

- (a) is in immediate command of the unit to which that member belongs or is attached; or
- (b) where that member is serving with a detachment which has not been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that detachment; or
- (c) where that member is serving with a unit or detachment which has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that other unit or other detachment; or
- (d) in any other case not falling within paragraph (a) or paragraph (b), is by the custom of the service the officer entitled to exercise the powers of a commanding officer in relation to that member (otherwise than by delegated authority).

(2) In paragraph (1), the reference to a member of the Kenya Defence Forces belonging or being attached to or serving with a unit or detachment, includes a reference to a civilian employee being employed in the service of that unit or detachment or of any part or member thereof or accompanying that unit or any part thereof.

4. Powers of an officer appointed to command a unit

(1) An officer appointed to command a unit shall, irrespective of seniority, exercise command over all other officers serving therein.

(2) The powers of punishment vested in a commanding officer by virtue of section 155 (2) and (3) and section 156(2) of the Act shall only be exercised by the commanding officer of an accused or by an officer to whom those powers have been delegated by the commanding officer.

5. Powers of an officer holding authorized appointment

An officer holding an authorized appointment of second in command of a unit shall, irrespective of seniority, exercise command over all other officers serving therein except the officer appointed to command the unit.

[Subsidiary]

6. Absence of appointed officer

In the absence of both the officer in command of a unit and the officer appointed second in command thereof, the senior most officer in that unit shall exercise command over all other officers serving therein.

7. The scope of powers of officers

The powers of command to be exercised by officers shall be over officers junior to them and over all service members.

8. Standing orders on implementation of Kenya Defence Forces Act, governance, organization, discipline, administration of pay, etc.

The Defence Council may make standing orders with respect to the effective and efficacious implementation of the Kenya Defence Forces Act, good government, administration, organization, control, guidance and discipline of the Kenya Defence Forces, administration of pay and allowances, the promotion of personnel and the appointments which may be held by personnel.

9. Role of Chief of Kenya Defence Forces or commander in respect of service

Pursuant to the provisions of section 305A of the Act, the Chief of Kenya Defence Forces or the Service Commander, in respect of his or her Service, may make general, special, routine and standing orders with respect to the following matters—

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

10. Promulgation and publication of matter under the Act

Any matter required by the Act to be promulgated shall be promulgated by being published in the orders of the unit to which the person belongs or is attached.

11. Certificate of arrest or surrender of a deserter or an absentee

(1) The certificate required by section 144 (1) of the Act to be handed over with a person delivered into service custody as illegally absent, shall be in the form and shall contain the particulars set out in the First Schedule to these Regulations.

(2) The certificate required by section 144 (2) of the Act to be handed over with a person delivered into service custody, shall be in the form and contain the particulars set out in the Second Schedule to these Regulations.

12. Documents under section 206(5) of the Act

For the purposes of section 206 (5) of the Act, the prescribed documents are those specified in the Third Schedule to these Regulations.

13. Investigation of damage

Without prejudice to any proceedings under any other section of the Act, the cause and extent of all damage or loss to which section 219 of the Act relates, and the time at which such damage or loss was occasioned, shall be investigated—

- (a) if personnel belonging to more than one unit are concerned, by a board of inquiry convened under the Act; or
- (b) if personnel belonging only to the one unit are concerned—
 - (i) by a board of inquiry convened as aforesaid; or
 - (ii) by the commanding officer of the unit concerned, or by an officer appointed by him both of whom may consider evidence, either written or oral, relating to such damage or loss as aforesaid:

Provided that in every case where the cost and extent of the damage or loss totals ten thousand shillings or more such investigation shall be by a board of inquiry convened as aforesaid.

14. Compensation for damage or loss

The amount which a person may be required to contribute under subsection (1) of section 219 of the Act towards compensation for any damage or loss shall be the amount of the damage or loss divided by the number of persons who could under the said subsection be required to contribute towards compensation for the damage or loss:

Provided that where any part of the amount of the damage or loss has been written off, or is the subject of an application for write-off, as a charge against the public under any regulations for the time being in force relating to write-off, the amount of the damage or loss for the purposes of these Regulations shall be the total amount of the damage or loss less the part which has been so written off or is the subject of such application.

15. Authorization of investigation

(1) Subject to paragraph (2) of this regulation, an investigation for the purpose of section 218 (1) of the Act into the cause of any loss or damage to public property shall be by—

- (a) a board of inquiry convened under section 301 of the Act; or
- (b) an examination by the Service Commander, or by an officer authorized by him, of evidence, whether oral or written relating to any matter.

(2) Where during the course of an examination of evidence under paragraph (1) (b) it appears to the Service Commander or authorized officer that a person may have been responsible for such loss or damage as aforesaid, that person shall be given an opportunity of making a statement, if he or she so desires, for the consideration of the Service Commander or authorized officer:

Provided that, where in any proceedings before a court martial or an appropriate superior authority a person has been convicted in circumstances involving a finding that he or she was guilty of a wrongful act or negligence which occasioned such loss or damage as aforesaid, it shall not be necessary to give him or her an opportunity of making any such statement as aforesaid.

16. Role of military police

The military police shall be responsible for the transfer of accused persons or prisoners as may be authorized by a commanding officer.

17. Deduction of pay

(1) The pay of an officer or service member shall be available to meet any restitution order or deductions which may be awarded or ordered and any forfeiture or fine which may be awarded under service law.

(2) For the purposes of section 215 of the Act, the minimum monthly rate of pay which an officer or service member shall be allowed to remain in receipt of shall be not less than one-half of the net salary payable in any month after all deductions from his or her gross salary have been made in respect of governmental imposts and the recovery of advances.

(3) Notwithstanding paragraph (2), when an officer or service member proceeds on terminal leave any amount authorized to be deducted from the pay will be deducted from any balance (whether or not representing pay) which may be due to him or her.

(4) Without prejudice to the power of remission of forfeitures and deductions by the Service Commander under section 220 of the Act, any deduction of pay imposed under section 218 of the Act may be remitted by any officer superior in command to the officer imposing the deduction.

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[Subsidiary]

18. Computation of days absent

For the purposes of section 216 (3) of the Act, the number of days a person is absent or is in hospital shall be computed as follows—

- (a) the number of days shall be reckoned from the time that the absence, or as the case may be, the time spent in hospital, commences;
(b) every period of twenty-four hours shall be reckoned as one day and save as hereinafter provided a part of a day shall be reckoned as one day; and
(c) when the total period of absence or the time spent in hospital is less than six hours no account shall be taken thereof unless the person was, by reason of his or her being absent or in hospital, prevented from performing a service duty which thereby devolved on some other person.

FIRST SCHEDULE

[r. 11(1)]

CERTIFICATE UNDER SECTION 144(1) OF THE KENYA DEFENCE FORCES ACT

I certify that (full name) whose service particulars are given below appeared before the Magistrate's Court in accordance with section 142 of this Act at on the, 20 alleged to have deserted/to be absent without leave* having surrendered to /been arrested by*at (place) on (date) and was committed to civil custody/delivered into service custody*. The officer/serviceman* admitted/did not admit* that he had illegally absented himself without leave from his unit at (place) on (date).

Service particulars of the officer or service member referred to above

{ No.
.....
{ Rank
.....
{ Name
.....
{ Unit
.....

Dated this day of, 20

Magistrate

* Delete as appropriate.

SECOND SCHEDULE

[r. 11(2)]

CERTIFICATE UNDER SECTION 144 (2) OF THE KENYA DEFENCE FORCES ACT

I certify that (full name) surrendered himself at (place) on the day of 20, as being illegally absent from his unit at (place) on the day of 20, and gave the following particulars—

No.
Rank
Name

Unit

Dated this day of, 20

.....
Police officer who caused the above-named person to be delivered into service custody

THIRD SCHEDULE

[r. 12]

PREScribed DOCUMENTS FOR PURPOSES OF SECTION 206(5) OF THE ACT

1. Unit orders book.
2. Unit orders books, box file.
3. Register of deserters.
4. Registers of public animals-horses and mules, camels.
5. Register of guard dogs.
6. Register of recruits.
7. Unit ammunition state.
8. Ledger for clothing and equipment.
9. Equipment ledger (mechanical transport).
10. Account of rations.
11. Account of forage/guard dogs rations.
12. Postage book.
13. Guard report.
14. Minor offence report.
15. Record of service (officers).
16. Record of service (service members/constabulary).
17. Historical records.
18. Conduct sheets.
19. Educational record.
20. Record of the report of a board of inquiry into the illegal absence of an officer, serviceman or member of the constabulary.
21. Record of leave.
22. Official service accounting documents.
23. Flying log book-pilots.
24. Aircraft and aircraft material servicing forms.
25. Air traffic controller's watch log.
26. Runway controller's log book.
27. Authorization for movement of mechanical transport.
28. Mechanical transport vehicle log book.
29. Ship's log book.

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- 30. Ship's Machinery running hours log.
 - 31. Ship's Navigating Officers handbook.
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**THE KENYA DEFENCE FORCES (ACTIVE
SERVICE PUNISHMENT) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
 2. Interpretation
 3. Places where punishment may be carried out
 4. Nature of punishment
 5. Personal restraint
-

THE KENYA DEFENCE FORCES (ACTIVE SERVICE PUNISHMENT) REGULATIONS

[Legal Notice 228 of 2017]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Active Service Punishment) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199); and

"Constabulary" means a support staff unit established under section 30(1)(b) of the Act.

3. Places where punishment may be carried out

(1) An offender shall undergo active service punishment with the unit to which he or she belongs or to which he or she is for the time being attached.

(2) Where the officer commanding anybody of service members or any command or other area has appointed an officer to supervise the carrying out of active service punishment, the offender may be required to undergo the whole or any part of his punishment elsewhere under the supervision of that officer.

4. Nature of punishment

(1) Active service punishment consists of one or more of the following, in addition to those duties which an offender might be required to perform if he or she were not undergoing punishment—

(a) solitary confinement not exceeding three days in any one week and in such place and such manner as may be directed by the officer commanding the unit in which the offender undergoing the punishment is serving, or by the officer appointed to supervise the carrying out of such punishment;

(b) additional drill not exceeding three separate periods of one hour each in any one day with an interval of not less than one hour between each drill:

Provided that such drill shall not be performed on a day which is set aside for divine service of the religious denomination to which the offender belongs; or

(c) such other duties and loss of privileges as may be directed by the officer commanding the unit in which the offender undergoing the punishment is serving, or by the officer appointed to supervise the carrying out of the punishment; but so that an offender shall not be subjected to any treatment to which he or she could not be subjected if he or she were undergoing a sentence of imprisonment in a service prison.

(2) The punishments enumerated in paragraph (1) shall be performed in accordance with the law.

5. Personal restraint

(1) An offender may not be placed under personal restraint except—

(a) to prevent his escape; or

(b) to protect himself or others from injury.

(2) An offender shall not be placed under personal restraint except in accordance with the following conditions—

(a) the period for which the offender may be kept continuously under personal restraint shall not exceed twenty-four hours:

[Subsidiary]

Provided that the officer superior in command to the officer supervising the personal restraint may authorize such additional period as he may consider necessary so long as the total period of such restraint does not exceed forty-eight hours at any one time; and

- (b) handcuffs shall not be placed with the hands of the offender behind his body unless it is necessary by reason of this violence.

THE KENYA DEFENCE FORCES (BOARD OF INQUIRY) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Convening Authority
4. Order convening a board
5. Constitution of Board
6. Duties of Board
7. Matters for reference to Board
8. Deferring and staying of proceedings
9. Assembly of Board
10. Procedure of Board
11. Adjournment and reassembly
12. Witnesses
13. Persons who may be affected by findings
14. Oaths
15. Exhibits
16. Record of proceedings
17. Record of report

SCHEDULES

RECORD OF REPORT

THE KENYA DEFENCE FORCES (BOARD OF INQUIRY) REGULATIONS

[Legal Notice 233 of 2017, Legal Notice 82 of 2018]

1. Citation

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

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"Board" means a Board of Inquiry convened in accordance with these regulations;

"public property" includes any property of—

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

"represented" means represented by an officer or an advocate.

3. Convening Authority

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

4. Order convening a board

The following provisions shall apply in relation to the order convening a Board—

- (a) the order shall specify the composition of the board and the place and time at which the Board shall assemble;
- (b) the order may, and where the matter referred to the board is that mentioned in regulation 7(1)(a) shall, specify the terms of reference of the Board and be published in service orders;
- (c) the order may direct the board to express their opinion on any question arising out of any matter referred to the Board; and
- (d) the convening authority may at any time revoke, vary or suspend the order.

5. Constitution of Board

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

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

[Subsidiary]

6. Duties of Board

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

7. Matters for reference to Board

(1) Subject to the provisions of these Regulations, a Board shall be convened with reference to—

- (a) the absence of any person subject to the Act who has been continuously absent without leave for a period of not less than twenty-one days and the deficiency, if any, in public property issued to him for his use;
- (b) the capture of any person subject to the Act by the enemy and his conduct in captivity if, on his return from captivity, the convening authority considers that there are reasonable grounds for suspecting—
 - (i) that he was captured through disobedience to orders or wilful neglect of his duty;
 - (ii) that having been captured he failed to take any reasonable steps available to him to rejoin the Defence Forces; or
 - (iii) that having been captured he served with or aided the enemy in the prosecution of hostilities or measures calculated to influence morale or in any other manner whatsoever not authorized by international usage; or
- (c) the death of any person subject to the Act, where an inquiry into the death is not required to be held by any civil authority.

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

8. Deferring and staying of proceedings

(1) Subject to paragraph (2) where any matter is the subject of investigation by any authority of the defence forces or by a civil authority, or of proceedings under service law, or the subject of proceedings in a civil court whether within or outside Kenya, and—

- (a) a Board has not been convened with reference thereto, the convening authority may defer the convening of a Board until the completion of such investigation or proceedings as aforesaid and upon completion thereof shall not be required to convene a Board if satisfied that a Board is not necessary; or
- (b) a Board has already been convened with reference thereto, the convening authority may stay the proceedings of the Board until such investigation or proceedings have been completed and shall then dissolve the Board if satisfied that such a Board is not necessary.

(2) Paragraph (1) shall not apply to the convening of a Board with reference to such absence and such deficiency (if any) as are mentioned in regulation 7 (1)(a) but where the convening authority is satisfied that the absence has terminated, and—

- (a) a Board has not yet been convened with reference to the absence and deficiency (if any), the convening authority shall not be required to convene a Board; and
- (b) a Board has already been convened with reference thereto, the convening authority may forthwith dissolve the Board.

9. Assembly of Board

A Board shall assemble at the time and place stated in the order convening the Board.

10. Procedure of Board

The chairperson shall lay the terms of reference before the Board, and the Board shall proceed to hear and record evidence in accordance with these Regulations.

11. Adjournment and reassembly

(1) The chairperson may from time to time adjourn the Board, which shall sit on such occasions and in such places as he may from time to time direct.

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

12. Witnesses

(1) A Board shall hear the evidence of the witnesses who have been made available by the convening authority, and may hear the evidence of such other person as they think fit.

(2) While a civilian witness is giving evidence before a Board, he may be represented, but subject to regulation 13 his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

(4) The Board may receive any evidence which it considers relevant to the matter referred to it, whether oral or written and whether or not it would be admissible in a civil court.

13. Persons who may be affected by findings

(1) Where it appears to the convening authority, or if a Board has been convened either to the convening authority or to the chairperson, that any witness or other person may be affected by the findings of the Board, the convening authority or, as the case may be, the chairperson shall take such steps as are in his view reasonable and necessary to secure that such witness or other person has notice of the proceedings and, if he so desires, has an opportunity of being present, and represented, at the sittings of the Board, or at such part thereof as the convening authority or, the chairperson, may specify.

(2) Any witness or other person referred to in paragraph (1) may give evidence, question witnesses or call witnesses to give evidence on the matters which may affect him, and, if he is represented, his representative may question witnesses, but a representative shall not address the Board except with the permission of the chairperson.

14. Oaths

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

Provided that, where a child of tender years as defined in the Children Act (No. 8 of 2001) (Repealed) called as a witness does not, in the opinion of the Board, understand the nature of an oath, his evidence may be received notwithstanding that it is not given on oath if the Board members are satisfied that the witness is telling the truth to justify the reception of the evidence.

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

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

15. Exhibits

(1) Subject to paragraph (2), any document or thing produced to a Board by the witness when giving his evidence shall be made an exhibit.

(2) When an original document or book is produced to a Board by a witness, the Board may, at the request of the witness, compare a copy of it or an extract therefrom of the relevant parts with the original, and after they have satisfied themselves that such copy or extract is correct and the chairperson has certified thereon that the Board has compared it with the

[Subsidiary]

original and found it correct, the Board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall—

- (a) be marked with a number or letter and be signed by the chairperson or have a label affixed to it bearing a number or letter and the signature of the chairperson;
- (b) be attached to or kept with a record of the proceedings unless in the opinion of the Board it is not expedient to attach it to or keep it with the record.

(4) When an exhibit is not attached to or kept with the record of the proceedings under paragraph (3)(b), the chairperson shall ensure that proper steps are taken for its safe custody.

16. Record of proceedings

(1) The chairperson shall record or cause to be recorded the proceedings of the Board in writing and in sufficient detail to enable the convening authority to follow the course of the proceedings:

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

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

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

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

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

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

17. Record of report

Where a Board reports that a person subject to the Act has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is a deficiency in any public property issued to him for his use, a record of the report of such deficiency shall, in addition to the record required by section 301 (1) of the Act, be entered in the book maintained for the purpose and in accordance with the form set out in the Schedule to these Regulations; and such entry shall be signed by the commanding officer of the person declared to be absent.

SCHEDULE

[r. 17]

RECORD OF REPORT

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

[number, rank, name and unit]

entered in pursuance of section 301 of the Kenya Defence Forces Act (Cap. 199).

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

Kenya Defence Forces

[Subsidiary]

}

report that[number, rank, name and unit] (died on the day, 20,) (was captured by the enemy on the day, 20,) (has been absent from [unit] at [place] without leave or other sufficient cause for a period beginning on the day of, 20, and is still so absent, and further report* that the said [rank and name] was on the day of, 20, and still is deficient of the public property issued to him for his use particulars of which are set out below: (or any other matter)

* Omit if no such further report is made.

Dated this day of, 20

(Signed)
Commanding Officer of
the person
referred to in the report

**THE KENYA DEFENCE FORCES
(COMMISSIONING OF OFFICERS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

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 6. Procedure of the Board
 7. Person co-opted
 8. Secretary of Board
-

THE KENYA DEFENCE FORCES (COMMISSIONING OF OFFICERS) REGULATIONS

[Legal Notice 227 of 2017]

1. Citation

These Regulations may be cited as the Kenya Defence Force (Commissioning of Officers) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"Act" means the Kenya Defence Forces Act (Cap. 199);

"Board" means the Defence Forces Commissioning Board established under regulation 3; and

"Commissioning" means the conferment of a commission on any member of the Kenya Defence Forces granted in accordance with Section 249 of the Act.

3. Establishment, power of Board

(1) There is hereby established a board, to be known as the Defence Forces Commissioning Board (hereinafter referred to as the Board).

(2) The Board shall have the power to recommend to the President the grant of a commission for service in the Kenya Defence Forces to citizens of Kenya or members of the Kenya Defence Forces.

4. Constitution of Board

The Board shall consist of—

- (a) the Chief of the Kenya Defence Forces, or a person deputed by him in writing for the purposes of these Regulations, who shall be chairperson;
- (b) two or more officers of or above the rank of Brigadier or corresponding rank appointed by the Chief of the Kenya Defence Forces;
- (c) the Principal Secretary in the Office of the President, or a person deputed by him in writing for the purposes of these Regulations;
- (d) the Principal Secretary of the Ministry for the time being responsible for defence, or a person deputed by him in writing for the purposes of these Regulations; and
- (e) the Principal Secretary of the Ministry for the time being responsible for education, or a person deputed by him in writing for the purposes of these Regulations.

5. Board meetings

(1) The Board shall meet at such times as the Chief of the Kenya Defence Forces may decide.

(2) The quorum for the conduct of business at a meeting of the Board shall be the chairperson and not less than three other members.

(3) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of majority of all the members.

(4) Every recommendation of the Board shall be signified under the hand of the chairperson.

6. Procedure of the Board

Subject to the provisions of these Regulations the Board may regulate its own procedure.

[Subsidiary]

7. Person co-opted

(1) The Chairperson of the Board may co-opt to serve on the Board any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Board.

(2) The person co-opted shall neither have a vote nor be considered as part of the quorum of the Board as provided in regulation 5(2) above.

8. Secretary of Board

The Chief of the Kenya Defence Forces shall appoint an officer not below the rank of lieutenant colonel to be secretary to the Board.

THE KENYA DEFENCE FORCES (CONSTABULARY) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Command of constabulary
4. Responsibilities of Commandant
5. Application of the Act
6. Punishment awarded by court martial
7. Arrest of a member of constabulary
8. Commandant of the constabulary
9. Application of sections 209 and 210
10. Exemption from Part XVI
11. Fine to be recoverable as debt due to Government
12. Delegation of power
13. Award of punishment
14. Prohibition to deal summarily with a charge

SCHEDULES

CIVIL OFFENCES WHICH A COMMANDING OFFICER OR COMMANDANT MAY DEAL WITH SUMMARILY

THE KENYA DEFENCE FORCES (CONSTABULARY) REGULATIONS

[Legal Notice 231 of 2017, Legal Notice 83 of 2018]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Constabulary) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"commanding officer" means the commanding officer of the unit to which a member of the constabulary is attached or serving;

"Constabulary" means a support staff unit established under section 30(1)(b) of the Kenya Defence Forces;

"detachment" means any formation of the Constabulary attached to any unit of the Kenya Defence Forces; and

"detachment commander" means a member of the constabulary, not below the rank of the Inspector of Constabulary, who is in immediate command of a detachment.

3. Command of constabulary

The constabulary shall be commanded by a Commandant appointed by the Chief of the Kenya Defence Forces.

4. Responsibilities of Commandant

The Commandant shall, subject to the directions of the Chief of the Kenya Defence Forces, be responsible for the general control, discipline and administration of the constabulary.

5. Application of the Act

The Act and Regulations, Rules or Standing Orders made thereunder shall apply to members of the constabulary as it applies to officers and service members of the regular force, subject to such modifications and limitations specified in these Regulations.

6. Punishment awarded by court martial

(1) The punishments which may be awarded by a court martial to a member of the Constabulary shall include dismissal, imprisonment, reduction in rank, forfeiture, reprimand, admonition, fine and stoppages where the offence has occasioned loss or damage.

(2) The only punishment which may be awarded to a member of the constabulary for an offence where the charge is dealt with summarily shall be dismissal, reduction in rank and a fine not exceeding the equivalent of one month's pay, and stoppages where the offence has occasioned loss or damage.

7. Arrest of a member of constabulary

(1) A member of the constabulary may be arrested by an officer, military police, warrant officer or non-commissioned officer on the order of an officer or by a member of the constabulary who is senior to him in rank.

(2) A member of the constabulary of the rank of inspector or above shall only be arrested by an officer or on the order of an officer.

(3) Section 139(2) and (3) of the Act shall not apply to members of the constabulary.

[Subsidiary]

8. Commandant of the constabulary

For the purposes of the provisions of the Act relating to summary disciplinary proceedings, the trial authority shall be the Commandant of the Constabulary or the commanding officer.

9. Application of sections 209 and 210

(1) References in sections 209 and 210 of the Act to being, continuing to be or ceasing to be subject to the Act shall be construed to mean being, continuing to be or ceasing to be in circumstances in which Parts V to XII apply.

(2) Despite paragraph (1), provisions of section 209(3) of the Act shall not apply.

10. Exemption from Part XVI

The provisions of Part XVI of the Act shall not apply to members of the Constabulary.

11. Fine to be recoverable as debt due to Government

Any fine imposed on a person to whom these Regulations apply whether by a court martial or on a charge being dealt with summarily, shall be recoverable as a debt due to the National Government.

12. Delegation of power

(1) Subject to paragraph (3) the Commandant, may delegate to a detachment commander of any rank the power to deal summarily with charges which he himself may deal.

(2) A delegation shall not include the power to remand the accused for trial by court martial.

(3) A detachment commander to whom the power to deal summarily with charges has been delegated under paragraph (1) may only award the following punishments—

- (a) a fine not exceeding the equivalent of fifteen days pay;
- (b) stoppages up to a maximum of ten thousand shillings.

(4) The commanding officer may not delegate his powers of punishment to any other officer.

13. Award of punishment

(1) The Commandant and the commanding officer shall not award the punishment of stoppages exceeding ten thousand shillings.

(2) The punishment of reduction in rank or dismissal, when awarded by a commanding officer or Commandant, are subject to confirmation by the Chief of Kenya Defence Forces.

(3) The Chief of Kenya Defence Forces may delegate in writing to a Service Commander the power to confirm reduction in rank or dismissal.

(4) A commanding officer of the rank of Major or corresponding rank may only award the following punishments—

- (a) a fine not exceeding the equivalent of fifteen days pay;
- (b) stoppages up to a maximum of five thousand shillings.

(5) A commanding officer of a rank of captain or corresponding rank or below may only award the following punishments—

- (a) a fine not exceeding the equivalent of ten days pay;
- (b) stoppages up to a maximum of three thousand shillings.

14. Prohibition to deal summarily with a charge

The Commandant and the commanding officer shall not deal summarily with a charge under any of the following sections of the Act—

- (a) sections 58, 59, 60, 61, 62, 63, 64, 66(1)(b), 67, 68, 69(c) and (d), 70, 71, 72, 73;
- (b) sections 87(a), (b), 88(a), (b), 91 and 92, where the subject matter exceeds in value ten thousand shillings;
- (c) sections 94, 97, 98, 99, 100, 101, 103(1), 106, 107, 109, 110, 111, 114, 115, 117, 118, 119, 120, 122, 124 and 129; and
- (d) section 131, 132 and 133, where the Commandant and the commanding officer may not deal summarily with the substantive offence; and
- (e) section 133, unless the correspondence civil offence is specified in the Schedule

SCHEDULE

[r. 14]

CIVIL OFFENCES WHICH A COMMANDING OFFICER
OR COMMANDANT MAY DEAL WITH SUMMARILY

1. Theft, contrary to section 275 of the Penal Code, where the value of the thing stolen does not exceed ten thousand shillings.
 2. Common assault, contrary to section 250 of the Penal Code.
 3. Careless driving of a motor vehicle, contrary to section 49 of the Traffic Act.
 4. Taking and driving away a motor vehicle without the consent of the owner or other lawful authority, contrary to section 65 of the Traffic Act.
 5. Reckless or dangerous driving of a bicycle, contrary to section 86 of the Traffic Act.
 6. Careless driving of a bicycle, contrary to section 87 of the Traffic Act.
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**THE KENYA DEFENCE FORCES (EXECUTION
OF SENTENCE OF DEATH) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Detention of a person under sentence
4. Conditions under service custody
5. Prohibition of transfer and execution of a person under sentence
6. Place of sentence
7. Execution of sentence
8. Application of the correctional services law
9. Issuance of death warrant
10. Certification of death
11. Conduct of burial

SCHEDULES

ORDER FOR THE TRANSFER TO CIVIL CUSTODY OF A PERSON SENTENCED
TO DEATH BY A COURT MARTIAL

DEATH WARRANT

CERTIFICATE OF MEDICAL OFFICER

THE KENYA DEFENCE FORCES (EXECUTION OF SENTENCE OF DEATH) REGULATIONS

[Legal Notice 235 of 2017]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Execution of Sentence of Death) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"Chaplain" means a member of the clergy or a religious leader who is either a minister, priest, pastor, imam responsible for the religious administration of Kenya Defence Forces personnel in the three branches of Chaplaincy services of Roman Catholic, Anglican and Muslim;

"local commander" means an officer not below the rank of Lieutenant-Colonel under whom, or in the area of whose command, a person under sentence of death is for the time being; and

"person under sentence" means a person sentenced to suffer death under the Act whose sentence has not been commuted.

3. Detention of a person under sentence

(1) A person under sentence shall be detained in accordance with these regulations.

(2) During the whole or any part of the period between the passing and the carrying out of the sentence, a person under such sentence may be detained in—

- (a) civil custody; or
- (b) service custody.

(3) The manner in which a person under sentence who is in civil or service custody and who has appealed to the High Court may be taken to, kept in custody at and brought back from any place at which he or she is entitled to be present for the purposes of Part X of the Act, or any place at which the High Court may order him to be taken for the purposes of any proceedings before that court, shall be as follows, that person may be—

- (a) taken to, kept in custody at and brought back from any place such as aforesaid in civil or service custody;
- (b) kept in such custody at any such place as aforesaid in any manner ordered by the High Court.

(4) A person under sentence who is in service custody shall not be transferred to civil custody except in pursuance of an order of the local commander made in the form prescribed in the First Schedule or in a form substantially to the like effect, and every such order shall be duly completed in accordance with the instructions contained in the form.

4. Conditions under service custody

(1) Where a person under sentence is in service custody, that person—

- (a) shall be divested of every article which might be dangerous or inexpedient to leave in his possession;
- (b) shall be confined in a separate cell and kept apart from all other persons;
- (c) shall be kept by day and by night in the constant charge of two persons who are officers, warrant officers or non-commissioned officers;
- (d) shall be subject to the Kenya Defence Forces (Imprisonment) Regulations, 2017, so far as they are consistent with these Regulations;

[Subsidiary]

- (e) shall not be required to perform any duties other than to keep clean his person and cell;
- (f) shall be allowed daily physical exercise;
- (g) shall be granted facilities to correspond with his relatives, friends and legal advisors;
- (h) shall be permitted to smoke;
- (i) shall be visited once daily by an officer of the unit in which he is in custody and once daily by the medical officer of such unit;
- (j) may be visited at any time by any person authorised to visit him by written order of the local commander;
- (k) may be visited by such of his relatives, friends and legal advisors as he desires to see and as are authorised to visit him by written order of the local commander;
- (l) may be visited at any time by a chaplain of his own creed or denomination or, if he so desires a chaplain of another creed or denomination.

(2) All visits authorised or made under these Regulations shall take place in the presence and hearing of an officer of the unit in which he is in custody unless permission to the contrary is given by the officer commanding the unit.

5. Prohibition of transfer and execution of a person under sentence

Notwithstanding regulations 3, 6 and 9, a person under sentence shall not be transferred to a civil prison, nor shall a sentence of death passed on any such person be carried out in a civil prison, without the consent of the officer in charge of the correctional facility or his or her deputy.

6. Place of sentence

(1) If a person under sentence is in Kenya, the sentence shall be carried out in a civil prison.

(2) If a person under sentence is outside Kenya, the sentence shall be carried out in service custody.

7. Execution of sentence

(1) A sentence of death passed under the Act which is to be carried out in service custody shall be executed by hanging or shooting as directed in writing by the local commander.

(2) After promulgation of a sentence of death, the local commander shall, if the sentence is to be carried out in service custody, nominate an officer not below the rank of major to be responsible for the execution of the sentence.

(3) Where a sentence of death is to be carried out in service custody, the following persons in addition to the executioner and his assistants or the firing party, as the case may be, shall be present—

- (a) the officer who is responsible for the due execution of the sentence of death in accordance with these Regulations;
- (b) a medical officer of the Kenya Defence Forces;
- (c) an officer nominated by the local commander who is able to identify the person under sentence as the person described in the death warrant and as the person who was tried and sentenced by court martial mentioned therein;
- (d) a chaplain nominated by the local commander;
- (e) such officers, warrant officers and non-commissioned officers as may be detailed for escort and security purpose or to assist at the execution;
- (f) such officers, warrant officers and non-commissioned officers as may be detailed for escort and security purpose or to assist at the execution.

8. Application of the correctional services law

A sentence of death passed under the Act which is carried out in a civil prison shall be executed in accordance with the law relating to the correctional services.

9. Issuance of death warrant

(1) The death warrant shall be issued by the President and shall be in the form in the Second Schedule, or in a form substantially to the like effect.

(2) The President shall not issue the death warrant until he is satisfied that, having regard to section 193 (a) and (b) of the Act, the sentence of the death may be carried into effect.

(3) A sentence of death passed under the Act shall not be carried into effect until the death warrant has been received by the military officer nominated under regulation 7 (2) or by the officer in charge of the correctional facility where the sentence is to be carried out.

10. Certification of death

(1) As soon as practicable after a sentence of death has been carried out in service custody, the medical officer in attendance shall examine the body and ascertain the fact of death and shall sign a certificate to that effect in the form in the Third Schedule.

(2) As soon as the medical officer has certified the fact of death in the manner aforesaid, the officer responsible for carrying the sentence into effect, and the officer mentioned in regulation 7 (3)(c), shall complete and sign the portion of the death warrant headed "Return of Warrant" and the officer referred to in regulation 7 (2) shall send the death warrant and the medical certificate to the President through the Chief of the Kenya Defence Forces.

11. Conduct of burial

(1) The body of a person upon whom a sentence of death under the Act has been carried out in service custody shall be buried without military honours in a military cemetery or other place chosen by the local commander.

(2) Notwithstanding paragraph (1), a next of kin may apply to the Chief of the Kenya Defence Forces for authorization for the release of the body of a person to whom a sentence of death has been issued under the Act or these Regulations for purposes of burying.

FIRST SCHEDULE

[r. 3(4)]

ORDER FOR THE TRANSFER TO CIVIL CUSTODY OF A
PERSON SENTENCED TO DEATH BY A COURT MARTIAL

To the Superintendent or other person in charge of

(a) Whereas (b) was by a court martial held at convicted of the offence(s) of (c) and by a sentence passed on the day of, 20 was sentenced to suffer death in accordance with the Kenya Defence Forces Act, and the sentence has not been commuted:

Now, therefore, in pursuance of the Kenya Defence Forces Act, I hereby order you to receive into your custody and to detain the said person until the sentence of death is carried out or until you are otherwise ordered by a court or judge of competent jurisdiction or you are given further orders to discharge or deliver over the said person in due course of law, and this shall be authority for so doing.

Signed at this day of, 20

.....(d)

Rank and appointment

Kenya Defence Forces

[Subsidiary]

(a) Insert the name and address of the correctional facility.

A person under sentence of death must not be committed to a civil prison until consent has been obtained pursuant to regulation 5 of the Kenya Defence Forces (Execution of Sentence of Death) Regulations, 2017.

(b) Insert the full names of the person under sentence, and his number, rank and unit.

(c) Set out the statement (but not the particulars) of the offence and the relevant section of the Kenya Defence Forces Act. Where there is more than one offence the statement of each must be set out.

(d) The committal order must be signed by the Commanding Officer.

SECOND SCHEDULE

[r. 9(1)]

DEATH WARRANT

To (a)

Whereas (b) of the was by a court martial held at convicted of the offence(s) of (c), and by a sentence passed on the day of, 20 was sentenced to suffer death:

And whereas the finding and sentence of the said court martial have been promulgated in accordance with the Kenya Defence Forces Act:

And whereas I am satisfied, having regard to regulation 9 (2) of the Kenya Defence Forces (Execution of Sentence of Death) Regulations, 2017 that the sentence of death may be carried into effect:

Now, therefore, I hereby order you to carry into effect the said sentence on

(d) by (e) and for so doing this shall be sufficient authority for your so doing.

When the said sentence has been carried into effect, the return below and the medical certificate shall be completed and the warrant returned to me (f).

Signed at this day of, 20

.....

President

RETURN OF WARRANT

[r. 10(2)]

The above sentence passed on (a) was carried into effect at (b) on theday of, 20, athours.

..... (c)

..... (d)

(a) Military officer or superintendent of civil correctional facility responsible for carrying the sentence of death into effect.

(b) Insert the full names of the person under sentence, and his number, rank and unit.

(c) Set out the statement (but not the particulars) of the offence and the relevant section of the Kenya Defence Forces Act. Where there is more than one offence the statement of each must be set out.

- (d) Insert "hanging" or "shooting".
- (e) Only required if sentence carried out in service custody.
- (f) Insert the place where the sentence of death was carried into effect.
- (g) Signature of military officer responsible for carrying the sentence of death into effect.
- (h) Signature of mandatory witness, namely the officer nominated under regulation 7(3)(c) of the Kenya Defence Forces (Execution of Sentence of Death) Regulations, 2017.

THIRD SCHEDULE

[r. 10(1)]

CERTIFICATE OF MEDICAL OFFICER

I, (a) a medical officer of the Kenya Defence Forces, hereby certify that I have this day examined the body of (b) upon whom sentence of death was this day carried into effect at (c), and that on examination I found that the said person was dead.

Dated this day of 20

..... Rank

- (a) Only required if sentence carried out in service custody.
- (b) Full names of medical officer who attended the execution, stating rank and unit.
- (c) Full names of the person upon whom the sentence of death has been carried out into effect, and his number, rank and unit.
- (d) Insert the place where the sentence of death was carried into effect.

THE KENYA DEFENCE FORCES (IMPRISONMENT) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Service of sentences
4. Warrant for confinement
5. Conditions for release from custody
6. Temporary release from Service prison
7. Period of remission in service prison
8. Records of remission
9. Forfeiture of remission
10. Effect on remission of subsequent sentences of imprisonment
11. Corporal punishment
12. Use of force
13. Requirement of service prison
14. Work
15. Days of rest
16. Work in association
17. No work for private benefit
18. Rations
19. Possession of tobacco etc.
20. Correspondence
21. Parcels
22. Censorship
23. Visits
24. Legal advisers
25. Medical examination
26. Appeals
27. Right to appeal to be notified
28. Search of persons under sentence
29. Conditions of search
30. Duration of sentence of person who escapes
31. Death
32. Offences against discipline
33. Procedure for dealing with offences
34. Punishment which may be awarded by the officer in charge
35. Close confinement
36. Mechanical restraints
37. Canvas suits
38. Religious books and chaplains
39. Visits by chaplain
40. Attendance at divine service
41. Educational training
42. Prohibition of liquor, tobacco etc.
43. Communication with prisoners
44. Unauthorized entry of service prison

[Subsidiary]

SCHEDULES

FIRST SCHEDULE —

FORMS

ORDER FOR THE RELEASE OF A PERSON UNDERGOING SENTENCE OF
IMPRISONMENT UNDER THE KENYA DEFENCE FORCES ACT

THE KENYA DEFENCE FORCES (IMPRISONMENT) REGULATIONS

[Legal Notice 236 of 2017]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Imprisonment) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"civil prison" means a prison established under the Prisons Act (Cap. 90);

"contraband" includes unauthorized items, goods, articles or merchandise brought in or out of the prison facilities;

"handcuffs" means handcuffs of figure-of-eight, swivel or curb-chain type, not exceeding, for the pair, seven hundred grams in weight;

"legal adviser" means—

- (a) an advocate;
- (b) a lawyer; or
- (c) if a service prison is outside Kenya, any person who, in the opinion of the officer in charge, has rights and duties in the country concerned similar to those of an advocate;
- (d) any clerk in the full-time service of an advocate or such a person, and authorized in writing by the advocate to interview a prisoner; or
- (e) any officer representing or assisting a prisoner for the purposes of his defence or in connection with his appeal.

"officer in charge" means the officer for the time being commanding the unit upon whose premises a service prison is situated;

"prisoner" means any person who is serving a service sentence of imprisonment in a service prison;

"restraint order" means an order issued under regulation 31 paragraph 3;

"Service Commander" means a commander of a service of the Kenya Defence Forces;

"service prison" means—

- (a) any premises set aside by a Service Commander as a place of imprisonment for persons serving a service sentence of imprisonment;
- (b) any cell, room, hut, tent or other place which is situated within an area or place occupied by a unit normally commanded by an officer not below the rank of major or corresponding rank, and which is used for the confinement of any such persons;

"staff" means the persons for the time being charged with the administration of a Service prison or with the custody of prisoners therein.

3. Service of sentences

(1) A service sentence of imprisonment which does not exceed forty-two days shall be served—

- (a) whenever practicable, in a service prison of the unit to which the person under such sentence belongs or if such unit has no such prison, in a service prison established by some other unit; or

[Subsidiary]

(b) if there is no such service prison reasonably available, in a civil prison.

(2) A service sentence of imprisonment which exceeds forty-two days shall be served in a civil prison.

4. Warrant for confinement

(1) An entry in a unit Part II Orders notifying the imposition of a service sentence of imprisonment not exceeding forty-two days upon any person shall be sufficient warrant for the confinement of such person in a service prison.

(2) Where, under regulation 3, a service sentence of imprisonment is to be served in a civil prison, an order in the form set out in Forms I and II in the First Schedule, as may be appropriate, and signed by the commanding officer of the person under sentence, shall be sufficient warrant for such person to be detained in a civil prison.

5. Conditions for release from custody

Subject to regulation 6, no person under a service sentence of imprisonment, whether in service custody or in civil custody, shall be released from such custody otherwise than—

- (a) in accordance with an order of a court of competent jurisdiction;
- (b) in accordance with an order in the form set out in the Third Schedule; or
- (c) on the expiration of his sentence less—
 - (i) in the case of a sentence served in a service prison, remission allowed in accordance with these Regulations; or
 - (ii) in the case of a sentence served in a civil prison, remission as allowed in accordance with any written law relating to remission of the sentence of a convicted criminal prisoner in such prison.

6. Temporary release from Service prison

(1) The commanding officer of a person serving sentence of imprisonment in a service prison may authorize the temporary release of such person from such prison in any of the following circumstances—

- (a) in the case of the death or dangerous illness of a near relative of the prisoner, and the commanding officer is satisfied that the presence of the prisoner is desirable;
- (b) where damage has been done to any premises occupied by the next-of-kin of the prisoner and the commanding officer is satisfied that the presence of the prisoner is desirable;
- (c) where the prisoner could make arrangements preliminary to or consequent upon the birth of his child, and the commanding officer is satisfied that the presence of the prisoner is desirable;
- (d) where the prisoner has requested facilities to enable him to marry a woman who is expecting a child or to birth in the case of a female officer or service member; or
- (e) where there are domestic difficulties concerning the prisoner or his family, and the commanding officer is satisfied that the personal attendance of the prisoner is desirable.

(2) Upon request, a commanding officer may approve temporary release from service custody.

(3) A temporary release under this regulation shall be subject to the following—

- (a) that the prisoner shall comply with any conditions determined by the commanding officer and communicated to the prisoner or as may be provided for in Standing Orders to be observed by, or in relation to, the prisoner during the period of his or her temporary release, including any conditions as to custody during the period of temporary release, and as to the place or places where the prisoner may or may not go during that period;

- (b) that, if the prisoner fails to comply with any such conditions, the period of his temporary release shall thereupon be terminated and it shall be the duty of the prisoner to return forthwith to the service prison.

(4) Any period of temporary release shall not count as part of the service sentence to be served.

7. Period of remission in service prison

(1) The periods of remission which may be earned on good conduct by a prisoner shall be one-third of the sentence if the sentence does not exceed thirty-one days.

(2) Where a sentence does not exceed thirty-one days, no remission shall be earned in service remission.

(3) If a remission under paragraph (1) would result in a prisoner serving less than thirty-one days, the period of remission shall be such period as will reduce the sentence to thirty-one days.

(4) For the purpose of calculating remission in accordance with paragraphs (1) and (2) above, a fraction of a day shall not be reckoned in the number of days.

(5) A prisoner due to be released on a public holiday shall be released on the day prior to the public holiday and the uncompleted day shall be deemed to be remitted.

8. Records of remission

(1) The officer in charge shall appoint an officer to be responsible for maintaining the record of remissions to which a prisoner may be entitled in accordance with regulation 7.

(2) The record of remission shall show the entitlement to remission earned by each prisoner, and also the details of any loss of remission awarded in accordance with these Regulations.

9. Forfeiture of remission

One day's remission of the sentence of a prisoner shall be forfeited in respect of each day on which the prisoner is unable to carry out work or training, which would otherwise be required of him, by reason of—

- (a) his sickness occasioned by his own misconduct;
- (b) his undergoing a sentence of a civil court;
- (c) his being in the lawful custody of any civil authority; or
- (d) an award by the officer in charge under regulation 34 for an offence under regulation 33.

10. Effect on remission of subsequent sentences of imprisonment

If, while a person is serving a sentence of imprisonment he is awarded a further sentence of imprisonment, remission shall be calculated under regulation 7, taking into account the total period to which the said person was actually sentenced and which he would be required to serve.

11. Corporal punishment

Corporal punishment shall not be inflicted on prisoners.

12. Use of force

Any member of the staff may use such force against a prisoner as is reasonably necessary to make the prisoner obey any lawful order which he refuses to obey or in order to maintain discipline.

13. Requirement of service prison

(1) No room shall be used as, or as part of, a service prison unless a medical officer has certified that its size, lighting, heating, ventilation and fittings are adequate for health, and that it allows any prisoner therein to communicate at any time with a member of the

[Subsidiary]

staff, and any certificate granted in relation to a room shall state the maximum number of prisoners who may be confined therein.

(2) The size of rooms intended for occupation by prisoners shall be such as to provide at least six hundred cubic feet capacity for each such prisoner, unless in any particular case, having regard to the exigencies of the service, the officer in charge authorizes temporary accommodation for prisoners in accommodation of smaller capacity.

(3) The confinement of a prisoner shall be solitary or at least three prisoners in a room.

(4) A prisoner shall not be accommodated in the same room or place as a person in arrest.

14. Work

(1) During the whole of his sentence a prisoner shall be engaged in work or training for not more than nine nor less than six hours a day excluding times for meals.

(2) Nothing in this regulation shall require that a prisoner shall be engaged in work or training at any time when he is—

- (a) in close confinement;
- (b) undergoing restricted diets;
- (c) excused work or training on medical grounds on the advice of a medical officer; or
- (d) excused work by the officer in charge or engaged in some other activity authorized by or under these Regulations.

15. Days of rest

(1) A prisoner shall have only one day of rest in a week in accordance with his or her faith and on this day, no prisoner shall be engaged on work or training except work which is necessary for the cleaning of the service prison.

(2) In exceptional circumstances owing to exigencies of active service, a prisoner may be required to carry out some duties, work or training on a day of rest.

16. Work in association

(1) Whenever possible a prisoner shall work in association with other prisoners unless it appears to the officer in charge that it is—

- (a) for good cause not desirable for a prisoner to work with others;
- (b) not in the interest of such prisoner; or
- (c) not in the interest of good order and discipline.

(2) When a prisoner is not permitted to work in association with other prisoners, the officer in charge may arrange for that prisoner to work in a room or place apart from other prisoners.

(3) In deciding whether a prisoner shall be required to work apart from other prisoners under the provisions of paragraph (1), and whether such a person ought to resume work in association with other prisoners, the officer in charge shall take into consideration any advice which he may be given by a medical officer.

17. No work for private benefit

A prisoner shall not be employed directly or indirectly for the private benefit or advantage of any person, nor in any way contrary to these Regulations or the order of the officer in charge.

18. Rations

(1) The food provided for prisoners shall be the same as that provided for soldiers in the unit except when the prisoner is undergoing restricted diet.

(2) The officer in charge shall ensure that every prisoner receives the rations to which the prisoner is entitled.

19. Possession of tobacco etc.

A prisoner shall neither be permitted to smoke nor to retain in his or her possession any tobacco, cigarettes, matches or lighter, or any naked light for the purpose of lighting tobacco or cigarettes.

20. Correspondence

(1) A prisoner shall be allowed to write letters as follows—

- (a) on first admission, one letter; and
- (b) in every week of his or her sentence following the week in which he or she is first admitted, one letter.

(2) Writing paper, envelopes and other materials required to enable prisoners to write letters shall be provided by themselves, and retained by the staff, and a prisoner shall be allowed to use his or her writing materials during the hours permitted by the officer in charge for leisure.

(3) A prisoner may receive—

- (a) any number of letters; and
- (b) books, newspapers, journals and periodicals at the discretion of the officer in charge.

(4) A prisoner may use the telephone upon approval by the officer in charge and subject to such conditions as the officer in charge may impose.

21. Parcels

(1) A parcel addressed to a prisoner shall be opened and examined by an officer in the presence of the prisoner and any contraband or article which the prisoner is not authorized to receive shall be retained in safe keeping by the officer in charge and handed to the prisoner on final release:

Provided that perishable articles may be disposed of in accordance with the directions of the officer in charge by returning them to the sender or otherwise.

(2) Contrabands are prohibited and shall be liable to confiscation by the officer in charge or any other person authorised by him.

(3) A prisoner may with the consent of the officer in charge and within reasonable circumstances receive toilet requirements and other articles as requested by the prisoner. Such request shall be driven by the immediate and priority needs of the prisoner.

22. Censorship

(1) Subject to section 43(2) of the Act, the officer in charge or any officer deputed by him or her may scrutinize letters, short messaging service, social media communications, emails and all forms of correspondences offered on technological platforms written by or addressed to a prisoner.

(2) The officer in charge may withhold from a prisoner the whole or any part of a letter addressed to him or her or seek technical intervention to censor communication on any information technology platform but he or she shall communicate to him or her any part of the letter or communication on information technology platform which is unobjectionable.

(3) The officer in charge may withhold a letter written by a prisoner or any communication on information technology platform, but in such case he or she shall give the prisoner an opportunity of writing in its place another letter or compiling another short messaging service, social media communications, emails or any other form of correspondence offered on information technology platform which does not contain the material to which the officer in charge objects.

(4) If any letter or short messaging service, social media communications, emails and any other form of correspondence offered on technological platforms contains a complaint relating to the service prison or the treatment of the prisoner, the officer in charge shall draw the attention of the prisoner to his rights as to complaints.

[Subsidiary]

(5) In any case where the officer in charge withholds a letter or short messaging service, social media communication, emails or any other form of correspondence offered on information technology platform written or composed by or addressed to a prisoner he shall record the fact and his reasons for so acting.

23. Visits

(1) A prisoner may receive visits from his or her relatives and friends with the consent of the officer in charge and the visits shall take place at times and places to be determined by that officer.

(2) Any visit authorized under this regulation shall be within the sight and hearing of a member of the staff not below the rank of sergeant.

24. Legal advisers

(1) The officer in charge shall provide reasonable facilities for a prisoner to be visited by his legal advisor.

(2) Any visit authorized under this rule shall be within the sight of the officer in charge or a member of the staff.

25. Medical examination

The officer in charge shall ensure that every prisoner who is—

- (a) in close confinement;
- (b) subject to any form of physical restraint;
- (c) undergoing restricted diet; or
- (d) sick or complains of sickness,

shall be seen by a medical officer at least once every day, and the medical officer shall also see daily every prisoner to whom his attention is especially directed by the officer in charge.

26. Appeals

The place in which a prisoner who has appealed, or desires to appeal, against his conviction by court martial may be taken to, kept in custody at and brought back from any place where he is entitled to be present for the purposes of Part X of the Act, or any place to which the High Court or a judge may order him to be taken for the purposes of any proceedings of the Court, shall be as follows—

- (a) he may be taken to, kept in custody at or brought back from any such place in service or civil custody;
- (b) he may be kept in such custody at any such place in any manner ordered by the High Court or a judge thereof.

27. Right to appeal to be notified

(1) The officer in charge shall bring to the notice of prisoners their rights to appeal.

(2) The officer in charge shall permit a prisoner who intends to appeal, or whose appeal is pending, for the purposes of such appeal, to receive visitors, to be provided with reasonable quantity of writing materials, to write and receive letters and to prepare and hand personally, or to send by post, to his legal advisor confidential written communications as instructions in connection with the appeal.

(3) For the purpose of appeal a prisoner may receive a visit from a medical practitioner selected by him or on his behalf by relatives or friends.

28. Search of persons under sentence

(1) On admission to a service prison, a prisoner shall be searched in accordance with these Regulations.

(2) The officer in charge may order that a prisoner shall be searched at any time while he or she is serving his or her sentence.

29. Conditions of search

(1) The following conditions shall be observed in relation to the search of a prisoner—

- (a) every search shall take place in the presence of at least two other members of the Kenya Defence Forces of the same gender;
- (b) no other prisoner shall be present at the search.

(2) A person carrying out a search under this regulation shall respect and uphold the personal dignity of the prisoner.

30. Duration of sentence of person who escapes

The officer in charge of the service prison from which a prisoner escapes shall be the prescribed authority for the purposes of section 201(1)(b) of the Act.

31. Death

(1) If a prisoner dies, the officer in charge shall—

- (a) immediately report the matter to the civil police in whose area the service prison is situated; and
- (b) in the event of an inquiry into the death of such prisoner not being held by any civil authority, arrange for a board of inquiry to be convened in accordance with the Kenya Defence Forces (Board of Inquiry) Regulations (sub. leg).

(2) The law relating to investigation of deaths shall apply to the extent necessary to the death of a prisoner.

32. Offences against discipline

A prisoner who—

- (a) treats with disrespect any member of the staff of a service prison, any visitor thereto, or any person employed therein;
- (b) is careless or negligent;
- (c) behaves irreverently at divine service;
- (d) uses any abusive, insolent, threatening or any other improper language;
- (e) is indecent in any act or gesture;
- (f) communicates with any other prisoner without authority;
- (g) leaves his room or place of work or other appointed place without permission;
- (h) commits any nuisance;
- (i) has in his room or possession any unauthorized articles or contraband, or attempts to obtain such articles or contraband;
- (j) gives to any person any unauthorized article;
- (k) makes repeated and groundless complaints;
- (l) fails to observe or comply with any conditions as to temporary release;
- (m) attempts to commit any of the offences referred to in this regulation, commits an offence.

33. Procedure for dealing with offences

A prisoner who commits an offence under the Act or under these Regulations shall be dealt with—

- (a) by the officer in charge; or
- (b) in accordance with the provisions of section 155 or 156 of the Act.

[Subsidiary]

34. Punishment which may be awarded by the officer in charge

(1) An officer in charge may award any of the punishments set out in paragraph (2) of this regulation to a prisoner who has been found by him to have committed any offence under these Regulations.

(2) The punishments referred to in paragraph (1) are—

- (a) close confinement for a period not exceeding fourteen consecutive days in any one period;
- (b) forfeiture of remission of sentence for a period not exceeding fourteen days;
- (c) deprivation of library books and periodicals;
- (d) admonishment; or
- (e) extra military instruction not exceeding three periods of forty-five minutes each.

35. Close confinement

(1) No prisoner shall be placed in close confinement unless he has been certified by a medical officer as fit to undergo such punishment.

(2) A prisoner in close confinement shall not be permitted to attend divine service and, except on the recommendation of a medical officer, shall not be permitted any exercise.

(3) A prisoner in close confinement shall not be deprived of his room furniture, books or periodicals, nor be subjected to any form of discipline which has not been ordered in accordance with these Regulations.

(4) A prisoner in close confinement shall be visited at least once every day by the officer in charge or an officer nominated by him or her, and by a medical officer, and in addition at least once every three hours by a member of the staff.

36. Mechanical restraints

(1) Except as otherwise provided for by this regulation, a prisoner shall not be placed in handcuffs or any other form of mechanical restraint, or be in any manner bound, fettered or otherwise restricted in his movements, as a punishment.

(2) An officer in charge may order the use of handcuffs for the purpose of ensuring the safe custody of a prisoner during his removal from one place to another.

(3) If it appears to an officer in charge that the use of handcuffs is necessary on a prisoner in order to prevent him from injuring himself or others, or destroying property, or otherwise creating a disturbance, he may issue a written order that such prisoner be placed in handcuffs.

(4) A restraint order shall—

- (a) specify the date and hour when the handcuffs are to be applied;
- (b) specify the period, not exceeding twenty four hours, during which the prisoner is to remain in handcuffs; and
- (c) state whether the handcuffs are to be applied with the hands of the prisoner placed to the front or to the rear of the body.

(5) Immediately upon making a restraint order the officer in charge shall give a copy thereof to a medical officer who shall thereupon examine the prisoner and inform the officer in charge if, in his opinion, there is any objection on medical grounds to the use of handcuffs on the prisoner or whether the restraint order should be modified in any manner, and the officer in charge shall revoke or modify the restraint order in accordance with the opinion of the medical officer.

(6) Where a restraint order states that handcuffs are to be applied with the hands of the prisoner to the rear of the body, they shall be moved to the front during meals and for sleeping.

(7) Whenever handcuffs are applied to or removed from a prisoner, an officer or senior member of the staff shall be present and a record shall be made of every person present at that time.

37. Canvas suits

(1) Where a prisoner destroys or attempts to destroy his clothing, or refuses to wear uniform, the officer in charge may order that the prisoner shall wear a suit, consisting of frock and trousers made of canvas sail-cloth, not exceeding five and one-half kilograms in weight.

(2) The officer in charge shall record every order made under this regulation, the date from which the prisoner is required to wear a canvas suit and the date on which he authorizes its removal.

38. Religious books and chaplains

(1) An officer in charge shall, so far as practicable, make available for the use of every prisoner such books of religious observance or instruction as are recognized for the use of the religious denomination of the prisoner.

(2) An officer in charge shall provide a book in which chaplains may record any matters which they wish to bring to his notice.

(3) An officer in charge may, at his discretion, afford facilities to chaplains to have access to prisoners for the purpose of giving them religious instruction, at times approved by him.

39. Visits by chaplain

(1) A chaplain or equivalent of the same religious denomination as a prisoner may, at the discretion of the officer in charge, visit the prisoner as soon after his first admission to a service prison as possible, and thereafter from time to time at proper and reasonable times, and again shortly before his release; and where there is no chaplain or equivalent of the same denomination as the prisoner the officer in charge may arrange for the prisoner to be visited by a minister of his own denomination if the prisoner so wishes and it is practicable to make the arrangements.

(2) A prisoner shall be informed of the provisions of paragraph (1) as soon as possible after his first admission to the service prison.

(3) In appropriate cases a chaplain or equivalent shall officiate at the burial of a prisoner who dies while under sentence.

40. Attendance at divine service

A prisoner unless undergoing punishment of close confinement may attend divine service of his religious denomination if in the opinion of the officer in charge it is practical for him so to do, having regard to his behaviour and to the location of the place of worship in relation to the location of the service prison.

41. Educational training

(1) An officer in charge shall provide educational training for prisoners whenever practicable.

(2) Imprisonment or other disciplinary action shall not in itself constitute a ground for failure of the officer in charge not to facilitate training of a prisoner.

42. Prohibition of liquor, tobacco etc.

A person shall not bring or attempt to bring into a service prison or give or attempt to give to a prisoner, any spirituous or fermented liquor or any tobacco, or place any such liquor or tobacco in any place with intent that it shall come into the possession of a prisoner, nor shall any member of the staff allow any such liquor or tobacco to be sold or used in the service prison.

[Subsidiary]

43. Communication with prisoners

No person shall, without lawful authority, convey or attempt to convey any letter or any other thing into or out of a service prison or to a prisoner, or place it anywhere outside the service prison with intent that it shall come into the possession of a prisoner.

44. Unauthorized entry of service prison

(1) No unauthorized person shall enter a service prison, or make any sketch, or take any photograph of or communicate with any prisoner, and no person shall remain in a service prison after being requested to leave by the officer in charge or any person acting under his authority.

(2) The officer in charge may grant permission to any person to enter a service prison subject to any condition, which he may consider necessary.

(3) The officer in charge may order the removal from a service prison of any person who, without authority enters therein or contravenes the provisions of paragraphs (1) and (2).

FIRST SCHEDULE

FORMS

(r. 4 (2))

FORM I

ORDER FOR THE COMMITTAL OF A MEMBER OF THE KENYA DEFENCE FORCES TO A CIVIL PRISON ON AN AWARD OF IMPRISONMENT BY HIS COMMANDING OFFICER

To the Officer in Charge of.....(a).

Whereas No. Rank Name of the Unit was on the day of 20....., awarded imprisonment for a period of..... days, by his commanding officer for the offence(s) of b).

Now, therefore, in pursuance of the Kenya Defence Forces Act I hereby order you to receive the said person into your custody and to retain him to undergo his sentence according to law and for so doing this shall be your warrant.

Signed at..... this day of, 20.....

(Signature

.....(c).

Rank and appointment

.....

(a) Insert the name and address of the prison.

(b) Set out the statement (not the particulars) of the offence and the relevant sections of the Kenya Defence Forces Act. Where there is more than one offence, the statement of each must be set out.

(c) This form must be signed by the commanding officer of the person concerned.

FORM II

(r. 4 (2))

ORDER FOR THE COMMITTAL OF A MEMBER OF THE KENYA DEFENCE FORCES TO A CIVIL PRISON ON SENTENCE OF IMPRISONMENT BY A COURT MARTIAL

To the Officer in Charge of

.....

Kenya Defence Forces

[Subsidiary]

Whereas No. Rank..... was convicted by a Court Martial held at of the offence(s) of.....(b) and, by a sentence passed on the..... day20..... sentenced to imprisonment for a term ofcommencing on the said day, in accordance with the provisions of the Kenya Defence Forces Act.

Now, therefore, in pursuance of the Kenya Defence Forces Act I hereby order you to receive the said person into your custody and to retain him to undergo his sentence according to law and for so doing this shall be your warrant.

Signed at..... this day of, 20.....

(Signature)(c).

Rank and appointment

- (a) Insert the name and address of the prison.
(b) Here set out the statement (not the particulars) of the offence and the relevant sections of the Kenya Defence Forces Act. Where there is more than one offence the statement of each must be set out.
(c) The committal form must be signed by the commanding officer for the time being of the person concerned.

SECOND SCHEDULE

[r. 5(b)]

ORDER FOR THE RELEASE OF A PERSON UNDERGOING SENTENCE OF IMPRISONMENT UNDER THE KENYA DEFENCE FORCES ACT

To the Officer in Charge of (a) Whereas No. Rank (b). Name..... of the (b).

Unit is now in your custody undergoing a sentence of imprisonment awarded by his commanding officer Now, therefore, in pursuance of the powers conferred by Part IX of the Kenya Defence Forces Act, I do hereby order you to release the said person from custody.

Signed at this day of 20.....

(Signature) (c).

.....

Rank and appointment

- (a) Insert the name and address of the civil prison or service prison.
(b) Delete as necessary.
(c) This form must be signed by the reviewing officer. In the case of a person serving a sentence in a service prison this order must be signed by the officer who awarded the original award of imprisonment.

**THE KENYA DEFENCE FORCES (INTERNAL
GRIEVANCES MECHANISM) RULES**

ARRANGEMENT OF RULES

Rule

1. Citation
 2. Interpretation
 3. Complaint by an officer
 4. Record of all complaints
 5. Where complaint is to be forwarded to Chief of Defence Forces
 6. Action by the Chief of Defence Forces on receiving complaint under rule 3 or 4
 7. Complaint by cadets, service members and Constabulary
 8. Complaint by civilian
 9. Action of Chief of Defence Forces on receiving a complaint from a civilian
 10. Representations of a person against whom complaint is made
 11. Limitation of time
 12. Command Responsibility
 13. Chief of Defence Forces to be final authority
-

THE KENYA DEFENCE FORCES (INTERNAL GRIEVANCES MECHANISM) RULES

[Legal Notice 229 of 2017, Legal Notice 85 of 2018]

1. Citation

These Rules may be cited as the Kenya Defence Forces (Internal Grievances Mechanism) Rules.

2. Interpretation

In these Rules, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"Board of Inquiry" means the Board of Inquiry referred to under section 301(1) of the Act and established under the Kenya Defence Forces (Board of Inquiry) Regulations;

"civilian" means a person who is not an officer, service member, cadet or a member of the constabulary;

"Constabulary" means a support staff unit established under Section 30(1)(b) of the Act;

"higher commander" means an officer superior in command than a Commanding Officer but subordinate to the Service Commander;

"register" means a register of complaint kept and maintained under regulation 4; and

"Service Commander" means a commander of a service of the Kenya Defence Forces.

3. Complaint by an officer

(1) Where an officer considers himself aggrieved by a superior officer or an officer of equivalent rank, the officer may complain in writing to the Commanding Officer if the superior officer or other officer is of junior rank to the Commanding Officer, or in any other case to the Chief of the Kenya Defence Forces through the Commanding Officer, Higher Commander and the Service Commander.

(2) The Commanding Officer shall—

- (a) refer the complaint received under paragraph (1) to the military police for investigation if the complaint, on the face of it, discloses an offence;
- (b) convene a Board of Inquiry to investigate the complaint and report to him in accordance with section 301 of the Act;
- (c) investigate the complaint and grant any redress which appears to be necessary; or
- (d) refer the complaint to the Chief of the Kenya Defence Forces through the Service Commander and Higher Commander.

(3) While forwarding a complaint to the Chief of the Kenya Defence Forces, the Commanding Officer, the higher commander and the Service Commander shall make recommendations on the manner in which the complaint should be dealt with and any possible remedies if the complaint so merits.

(4) Where a complaint has been forwarded to the Chief of the Kenya Defence Forces in accordance with these Rules, the Commanding Officer shall await the directions and decision of the Chief of the Kenya Defence Forces.

(5) The Service Commander or the higher commander may convene a Board of inquiry to investigate the complaint and report to him in accordance with section 301 of the Act.

4. Record of all complaints

(1) The Commanding Officer to whom a complaint is lodged shall enter a record and maintain a register of all complaint received under these Rules.

[Subsidiary]

(2) Upon finding of the Board of Inquiry, the Commanding Officer shall enter the finding of the Board in the register referred to under paragraph (1).

(3) The Commanding Officer shall enter in the register the decision or recommendations made under regulation 3.

5. Where complaint is to be forwarded to Chief of Defence Forces

(1) Where an officer does not obtain the redress which he or she considers he or she is entitled to, the officer may forward the complaint to the Chief of the Kenya Defence Forces through the Commanding Officer, Higher Commander and the Service Commander.

(2) Despite paragraph (1), the higher commander or the Service Commander may grant any redress which appears necessary provided that the officer by reason of his or her redress not being granted to his or her satisfaction may request in writing that the complaint be forwarded to the Chief of the Kenya Defence Forces and the complaint shall be forwarded to the Chief of the Kenya Defence Forces.

6. Action by the Chief of Defence Forces on receiving complaint under rule 3 or 4

On receiving a complaint under rule 3 or 5, the Chief of the Kenya Defence Forces may—

- (a) cause investigation of the complaint by a Board of Inquiry or military police and grant redress as appears necessary;
- (b) refer the complaint to the relevant Service Commander other than the Service Commander through whom the complaint was forwarded to deal with it; or
- (c) dismiss the complaint if he or she considers the same to be frivolous or without merit.

7. Complaint by cadets, service members and Constabulary

Rules 3, 4, 5 and 6 shall apply with necessary modification to complaints by cadets, service members and constabulary.

8. Complaint by civilian

Where a civilian considers himself wronged in any matter by a person subject to the Act, the civilian may complain in writing to the Chief of the Kenya Defence Forces.

9. Action of Chief of Defence Forces on receiving a complaint from a civilian

On receiving a complaint under rule 8, the Chief of the Kenya Defence Forces may—

- (a) refer the complaint to the relevant Service Commander for investigation;
- (b) cause investigation of the complaint by a Board of Inquiry or military police and award any appropriate redress; or
- (c) dismiss the complaint if he considers the same to be frivolous or without merit.

10. Representations of a person against whom complaint is made

The Commanding Officer, Higher Commander, Service Commander or the Chief of the Kenya Defence Forces shall afford the person against whom the complaint is made an opportunity to make representations either orally or in writing.

11. Limitation of time

(1) All complaints under these Rules shall be dealt with within thirty days from the date of receipt of such complaint unless the Chief of the Kenya Defence Forces or the Service Commander in writing extends the time within which the complaint shall be dealt with.

(2) The extension of time referred to under paragraph (1) shall not exceed ninety days.

12. Command Responsibility

Any officer or person expected to handle the complaint under these regulations shall do so expeditiously and within the limits provided in rule 11 above.

13. Chief of Defence Forces to be final authority

(1) The Chief of the Kenya Defence Forces shall be the final authority in the internal grievance mechanism.

(2) Paragraph (1) does not preclude any person from seeking justice through other means provided for in the Constitution or an Act of Parliament.

THE KENYA DEFENCE FORCES (MISSING PERSONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Missing person
4. Record of missing persons
5. Notification of a missing person
6. Certificate and report of inquiry
7. Processing of death benefits
8. List of missing persons
9. Presumption of death
10. Entitlement of a missing person
11. Liability of a missing person
12. Circumstances under which a name may be struck off
13. Reckonable service
14. Power of court of competent jurisdiction

SCHEDULES

LIST OF MISSING PERSONS

THE KENYA DEFENCE FORCES (MISSING PERSONS) REGULATIONS

[Legal Notice 232 of 2017, Legal Notice 86 of 2018]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Missing Persons) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"beneficiary" means a person designated as such under section 245(3) of the Act;

"duty" means routine duty, active service duty and training in the Defence Forces; and

"Board" means a Board of Inquiry referred to under section 301(1) of the Act.

3. Missing person

A person is considered missing under these Regulations if that person—

- (a) is an officer, a service member or a person to whom the Act applies; and
- (b) is declared missing following the findings and opinion of a Board of Inquiry under these Regulations.

4. Record of missing persons

The Chief of the Kenya Defence Forces shall cause to be kept and maintained a record of all missing persons.

5. Notification of a missing person

(1) As soon as a Commanding Officer becomes aware that any person subject to the Act is missing, the Commanding Officer shall, in writing, forthwith notify the respective Service Commander.

(2) The Commanding Officer shall after making the notification convene a Board to investigate the circumstances under which the person went missing.

(3) The findings and opinion of the Board in original form shall be forwarded to the Service Commander who may—

- (a) where the findings reveal that the person is deemed missing under circumstances arising out of sections 62, 68, 74 or 75 of the Act, direct that efforts be made to recover or apprehend the person with a view to take appropriate disciplinary action;
- (b) where the findings raise a presumption of death beyond reasonable doubt in respect of the missing person, issue a certificate in accordance with section 298(3) of the Act; or
- (c) where the findings do not establish the fact in either (a) or (b) above, declare the person missing.

6. Certificate and report of inquiry

Where the Service Commander issues a certificate under regulation 5(3)(b), the Commanding Officer shall forward the certificate together with the report of the Board and the personal record of the missing person to the Chief of the Kenya Defence Forces for processing of death benefits.

7. Processing of death benefits

Where a person is either declared missing under regulation 5(3)(c) or is presumed dead by a Court of competent jurisdiction, the Service Commander shall upon receipt of the Court

[Subsidiary]

Order forward the same together with the report of inquiry and his personal record to Chief of the Kenya Defence Forces for processing of his or her death benefits.

8. List of missing persons

(1) The full names, particulars of next of kin and dependants of a person who is declared missing under Regulation 5(3)(c), the date and place where he went missing shall be entered on a list to be called the list of missing persons maintained at the Kenya Defence Forces headquarters which shall be in the form prescribed in the Schedule to these Regulations.

(2) A missing person's name shall remain in the list of missing persons until—

- (a) the person reappears; or
- (b) it is ascertained that that person has been captured by and is in the custody and power of the enemy voluntarily; or
- (c) the Service Commander makes a presumption of death in respect of the person.

(3) A person who is under the power or custody of the enemy shall remain in the list of missing persons unless the Service Commander is satisfied that circumstances under sections 62 and 68 of the Act exist against the person.

9. Presumption of death

Where upon the expiry of seven years from the date a person who went missing, has neither been found nor heard of by the Kenya Defence Forces or by any other person who would ordinarily be expected to hear of him or her if the person were alive, including his next of kin or dependants, nor ascertained to be dead, that person shall thereupon by an Order of a Court of competent jurisdiction be presumed dead, and the Service Commander shall upon receipt of the Order forward the same together with the report of inquiry and his or her personal record to Kenya Defence Forces Headquarters for processing of death benefits.

10. Entitlement of a missing person

Subject to Regulations 11 and 12, a missing person whose name is on the list of missing persons shall—

- (a) be entitled to the pay to which that person was entitled as at the date the person went missing or to which that person would have been entitled subsequently but for the fact that he or she went missing;
- (b) be eligible for promotion according to any current existing relevant regulations, taking into account his or her seniority in his or her rank as at the date he or she went missing and working on the presumption that he or she has been on duty for the whole period he or she has been missing; and
- (c) be entitled to any medals, awards or decorations that could have been awarded to him or her had he or she been physically in the service during the period he or she has been missing.

11. Liability of a missing person

(1) Where a missing person has incurred liability or service debts which he is liable to pay in respect of any charges relating to quartering, mess bills, light, water or any other government liability, the Defence Council shall in the first instance settle the liability, debts or charges against the pay of the missing person before complying with the provisions of regulation 10.

(2) Despite paragraph (1) the Defence Council shall to the greatest extent possible write off debts owed to the Government by a missing person.

12. Circumstances under which a name may be struck off

(1) Upon sufficient and credible information being received by the Service Commander

- (a) that a missing person is dead, whether at the hands of the enemy or otherwise, the Service Commander shall thereupon cause the name of the missing person to be struck off from the list of missing persons; or
- (b) that the missing person is in the hands of the enemy voluntarily or that there are reasonable grounds for suspecting him or her of being guilty, by words, act or conduct, of any of the conditions stated in regulation 7(1)(b)(i), (ii) or (iii) of the Kenya Defence Forces (Board of Inquiry) Regulations (sub. leg) or that he or she has defected to the enemy, then the Service Commander shall thereupon cause the name of the missing person to be struck off from the list of missing persons.

(2) Upon a missing person's release and return to duty or, if he or she dies in enemy custody and the fact of his or her death has been ascertained by the Service Commander, in either case, the payment of his or her emoluments aforesaid to his or her beneficiary shall cease.

13. Reckonable service

The period during which a persons' name remains in the list of missing persons shall, where applicable, be deemed as reckonable service for the purposes of pension or death gratuity under the relevant regulations relating to the defence forces pensions and gratuity.

14. Power of court of competent jurisdiction

Nothing contained in these Regulations shall be construed to invalidate or limit the power of any Court of competent jurisdiction to find or declare a person dead under the provisions of any other existing laws.

SCHEDULE

[r. 8(1)]

LIST OF MISSING PERSONS

S. No.	Svc No.	Rank	Name	Unit	Date Declared Missing	Circumstances the person went missing	Place	Next of Kin	Dependants
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**THE KENYA DEFENCE FORCES (PENSIONS AND GRATUITIES)
(OFFICERS AND SERVICE MEMBERS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Application
3. Interpretation

PART II – POWER TO GRANT AND THE ASSESSMENT
OF PENSIONS, GRATUITIES AND ALLOWANCES

4. Power to grant pensions etc.
5. Power to review pensions
6. Pensions, etc., not a right
7. Suspension of pension on employment by a foreign power
8. Pensions. etc., not assignable
9. Pensions where promotion, etc., reduces amount of award
10. Computation of pension
11. Gratuity where length of service does not qualify for pension
12. Pension to dependants of an officer or a service member
13. Gratuity where officer or service member dies in service or after retirement or discharge
14. Death and Indemnity Benefit
15. Pension to cease on bankruptcy
16. Pension may cease for subversive activities, etc.
17. Pension may cease on conviction
18. Establishment of the Pensions Assessment Board
19. Duties and powers of the Board
20. Entitlement to disability pension
21. Degrees of disablement
22. Pensions for permanent disablement
23. Additional hardship allowance for permanent disablement
24. Basis of award for permanent disablement
25. Procedure where disablement is not permanent
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SCHEDULES

Assessment of Disablement Due to Specific Injuries and Certain Other Disablement

**THE KENYA DEFENCE FORCES (PENSIONS AND GRATUITIES)
(OFFICERS AND SERVICE MEMBERS) REGULATIONS**

[Legal Notice 237 of 2017]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations.

2. Application

These Regulations shall apply to all claims arising after the 1st July, 1978, in respect of all officers and service members of the Kenya Defence Forces and the dependants of such officers and service members.

3. Interpretation

(1) In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"approved institutional treatment" means approved treatment in hospital or similar institution;

"approved treatment" means such medical, surgical or rehabilitative treatment as may be medically certified to be desirable in connection with any award payable under or by virtue of these Regulations;

"being on duty" means anytime during any twenty-four hour period that an officer or a service member is in the lawful service of the Kenya Defence Forces;

"Board" means the Pensions Assessment Board established by regulation 16;

"child" means a child of an officer or service member who is under the age of twenty-one years and who is a dependant and includes a posthumous child, a stepchild and an adopted child, and children shall be construed accordingly;

"death" includes presumption of death under section 245(3) of the Act or by an order of a court of competent jurisdiction;

"degree of disablement" means the percentage of disablement assessed in accordance with regulations 19 and 20;

"dependant" means a member of the family of an officer or service member or retired officer or discharged service members who before the death of such officer or service member or retirement of the officer or discharge of the service member was in receipt from him of regular and substantial support or benefit;

"disablement" means a physical or mental injury or damage, or the loss of physical or mental capacity;

"discharge" means, in the case of a service member, being relieved of military duties by the Commander or an officer authorized by him in that behalf;

"heir" means a person named by the deceased in his will as heir or joint heir, or if the deceased dies intestate, the person who is accepted as the heir by the community to which the deceased officer or service member belonged whether by any law for the time being in force or by the law or custom applicable to that community and includes any two or more persons who are accepted as joint heirs or the person declared as an heir by a competent court;

"Medical Board" means a board of medical officers appointed by the Pensions Assessment Board;

"medical officer" means any person who is registered as a medical practitioner under the Medical Practitioners and Dentists Act;

"medically certified" means certified by a medical officer or a medical board;

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"military service" means service with the Armed Forces and Kenya Defence Forces and shall include for the period prior to 12th December, 1963, service in any of the British Armed Forces "month" means a calendar month, and broken periods at the beginning and the end of service shall be totalled and each complete thirty days shall be deemed to be one complete month;

"officer" means a person commissioned in any service of the Kenya Defence Forces;

"pay" includes the basic salary, additional pay and any entitlements which the Defence Council may, with the concurrence of the Treasury, specifically declare to be pensionable entitlements;

"pensionable emoluments" means the rate of pay including additional pay in issue to an officer or service member at the time of his retirement or discharge;

"resignation", in the case of an officer, means leaving service in the Kenya Defence Forces in circumstances not amounting to dismissal from the Kenya Defence Forces or termination of commission;

"retirement", in the case of an officer, means leaving service while holding a regular commission in the Kenya Defence Forces—

compulsorily after attaining the specified age of his rank as laid down in the terms and conditions of service and being eligible by length of service to a pension in accordance with these Regulations;

- (a) voluntarily after serving for a period that makes him eligible by length of service to a pension in accordance with these Regulations;

"retired officer" means an officer who has retired from the Kenya Defence Forces;

"service member" means any member of a service of the Kenya Defence Forces who is not an officer;

"termination of commission" means terminating the commission of an officer pursuant to the provisions of section 251 of the Act;

"the Appeal Board" means the Pensions Appeal Board established under regulation 37;

"widow" includes a widower; and

"wife" includes, in the case of an officer or service member in whose religion or customs, polygamy is lawful, any person to whom the officer or service member is lawfully married in accordance with the tenets of the religion or customs, and in that case the amount of the pension, gratuity or other allowance to which a wife is eligible under these Regulations shall be divided equally among all the wives during the period in which there is more than one wife eligible therefore; and "widow" shall be construed accordingly.

(2) For the purposes of assessing pension under these Regulations, qualifying service shall be ten years for officers and twelve years reckonable service for service members subject to the fulfilment of the requirements of regulation 38 in the case of officers and regulation 39 in the case of service members.

(3) For the purposes of assessing pension and gratuity under these Regulations reckonable service shall be any paid service with the Kenya Defence Forces excluding therefrom—

- (a) all periods during which an officer or service member has been absent from duty by reason of imprisonment, desertion or absence without leave for a period exceeding seven days;
- (b) any period of service while the person was below the age of eighteen years; or
- (c) any periods ordered by a court-martial to be forfeited;
- (d) service preceding a five-year interval in the service unless specifically allowed by the Defence Council at the time service is resumed; except that where during the break in service the officer, or service member has been a member of the regular reserve and has been called out for periodical training as provided under Part XVI of, the period during which the officer or service member was on the regular reserve shall not be considered as an interval

in the service for the purposes of deciding whether the previous service is admissible.

(4) For the purpose of these Regulations, a disablement or death shall be deemed to be due to service if—

- (a) the disablement is due to wound, injury or disease—
 - (i) which is attributable to service; or
 - (ii) which existed before or arose during the service and has been and remains aggravated thereby;
 - (iii) in both cases the injury or wound shall not have been self-inflicted; and
- (b) the death was due to or hastened by—
 - (i) a wound, injury or disease which was attributable to service; or
 - (ii) the aggravation by service of a wound, injury or disease which existed before or arose during service.

(5) For the purpose of these Regulations, where a commander issues a certificate of presumption of death in respect of any officer or service member or where declaration of presumption of death is made by a court of competent jurisdiction, the date on which the officer or service member is deemed to have died shall be the date stated in the certificate of presumption of death or declaration of presumption of death by the Court.

PART II – POWER TO GRANT AND THE ASSESSMENT OF PENSIONS, GRATUITIES AND ALLOWANCES

4. Power to grant pensions etc.

Pensions, gratuities and other allowances may be granted by the Defence Council with the concurrence of the National Treasury in accordance with these Regulations to officers and service members of the Kenya Defence Forces and shall be a charge on the Consolidated Fund.

5. Power to review pensions

The Defence Council may at any time review an award of pension made under these Regulations where it has been made in error or where, in the opinion of the Defence Council, it has been obtained by improper means and may on such review confirm, vary or cancel the award.

6. Pensions, etc., not a right

No officer or service member shall have an absolute right to compensation for past services or to pension, gratuity or other allowance nor shall anything in these Regulations affect the right of the Defence Council to terminate the commission of any officer or the Commander to discharge or dismiss a service member at any time and without compensation. An officer or service member sentenced to dismissal by Court Martial or Commanding Officer shall not be entitled to pension, gratuity or other allowance.

7. Suspension of pension on employment by a foreign power

If a retired officer or a discharged service member enters the service of a foreign power without the consent of the Defence Council, or he continues in such service after the consent previously granted is withdrawn, his service pension or other allowances granted under these Regulations may be suspended or withheld for such period as the Defence Council, with the concurrence of the National Treasury, may determine.

8. Pensions, etc., not assignable

A pension, gratuity or allowance granted under these Regulations shall not be assignable or transferable except for the purpose of satisfying an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or child, of the officer or service member to whom the pension, gratuity or other allowance has been

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granted, and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim other than a debt due to the Government.

9. Pensions where promotion, etc., reduces amount of award

(1) Where a service member who has been promoted by being granted a commission retires or resigns and thereby becomes eligible for an award of pension which is smaller than what he would have been entitled to had he not been commissioned he may receive an award assessed as though he had retired or resigned from the service in the rank which he held before being granted the commission.

(2) Where an officer or service member has held acting rank for a period of 90 days or more at the date of retirement, the pension granted to him shall be that applicable to such higher rank.

(3) Where an officer or service member on promotion earns less pay than he earned in the previous rank, on retirement, computation for his pension will have regard to the higher pay earned in the previous rank.

10. Computation of pension

(1) Every pension granted to an officer or service member in accordance with these Regulations shall be assessed at the annual rate of one-four hundredth of his pay for each completed month of his reckonable service.

(2) A pension payable to an officer or service member shall not be less than five thousand shillings per month:

Provided that a pension granted to an officer or service member under these regulations shall not exceed the highest pensionable emoluments drawn by him at any time in the course of his service in the Kenya Defence Forces.

(3) Any officer or service member who is entitled to a pension under these Regulations which does not exceed two hundred and fifty pounds per annum may commute up to one-half of the annual pension at equivalent of twenty times the amount of the annual pension commuted.

(4) Any officer or service member who is entitled to a pension under these Regulations which exceeds two hundred and fifty pounds per annum may commute up to one-quarter of that annual pension at the equivalent of twenty times the amount of the annual pension commuted.

(5) The normal retirement date is the date when an officer or service member attains retirement age.

11. Gratuity where length of service does not qualify for pension

Every officer or service member, otherwise qualified for a pension, who has not been in the service of the Kenya Defence Forces for ten years in the case of officers and twelve years in the case of service members, may be granted on retirement or discharge, as the case may be, a service gratuity not exceeding five times the annual amount of the pension which would have been granted to him had he served in the defence forces for a period of not less than ten years in the case of officers and twelve years in the case of service members worked out at an annual rate of one-four-hundredth of his pensionable emoluments for each completed month of his reckonable service.

12. Pension to dependants of an officer or a service member

(1) Subject to these regulations, in the case of the death of an officer or a service member or a retired officer or discharged service member there shall be continued to be paid a dependant's pension, in addition to the grant made under regulation 13, on the terms and subject to the conditions set out in paragraph (3), to the widow or widower or the children of the officer or service member for a period of five years next following the officer's or service member's death at the rate of the officer's or service member's pension on the date of his death.

(2) Where a widow or a widower to whom a dependant's pension has been granted under this regulation dies or otherwise ceases to be entitled to a dependant's pension, the child or children who are entitled in accordance with the terms and conditions set out in paragraph (3), to a dependant's pension shall be entitled in accordance with these terms and conditions to receive the dependants' pension for the remainder of the period of 5 years from the date of the officer's or service member's death, which is still outstanding at the date when the widow or widower dies or otherwise ceases to be entitled to the dependants' pension.

(3) For the purposes of paragraph (1) a dependant's pension under these regulations shall be paid on the following terms and subject to the following conditions—

- (a) where the deceased officer or service member leaves a widow or a widower whether or not he or she also leaves a child, for so long as he or she is alive and remains unmarried, be entitled to receive the whole of the dependants' pension at the appropriate rate provided for under paragraph (1);
- (b) where the deceased officer or service member does not leave a widow or a widower, or within the period of five years during which the dependants' pension is payable under this regulation the deceased officer's or service member's widow or widower dies or remarries, any child of the deceased officer or service member who is entitled at the appropriate date to receive the dependants' pension shall be entitled to receive, and if more than one child, in equal shares, the dependants' pension at the appropriate rate provided for under paragraph (1);
- (c) a dependant's pension or a share thereof shall not be payable to a child who has attained the age of 21 years unless, and only during the time that the child is receiving full time education at university, college, school or other educational institution approved by the Board for the purposes of this regulation;
- (d) a dependant's pension or a share thereof granted to a female child under this regulation shall cease upon her marriage at any age;
- (e) in the event of a child ceasing to be entitled to a share of a dependant's pension, his or her share shall, from the date of the cessation, be divided equally between all other children then still entitled to receive the pension and if only one child remains entitled, the whole of dependants' pension shall be paid to him;
- (f) where the deceased officer or service member leaves more than one widow then the dependants' pension shall be shared equally among them and in the event of any one of them dying or otherwise ceasing under any of the provisions of this regulation to be entitled to a share of the dependants' pension, then the pension shall be paid to the child or shared equally among the children of the dead widow and in the case the dead widow leaves no child or children then the pension shall be paid to the remaining widow or shared equally among the remaining widows accordingly;
- (g) no dependants' pension or share thereof shall be payable at any time after the fifth anniversary of the officer's or service member's death;
- (h) the dependant's pension shall be paid irrespective of the cause or circumstances of the officer's or service member's death.

13. Gratuity where officer or service member dies in service or after retirement or discharge

(1) Where an officer or service member dies while still serving in the Kenya Defence Forces, the Defence Council, in consultation with the National Treasury, may grant to his dependants a death gratuity of an amount not exceeding twice his annual pensionable emoluments or his commuted pension or gratuity, whichever is the greater.

(2) Where an officer or service member dies after his retirement or discharge, as the case may be, from the Kenya Defence Forces having been granted or having become eligible

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for a pension under these Regulations and the amount payable to him at the date of his death on account of such pension including any amount awarded by way of gratuity under regulation 11, but excluding any additional disablement pension awarded under regulation 21, is less in total than twice the amount of his annual pension, the Defence Council may grant a gratuity equal to the deficiency to his dependants.

(3) The death gratuity payable to dependants under paragraphs (1) and (2) shall be paid irrespective of circumstances or cause of the officer's or service member's death.

14. Death and Indemnity Benefit

(1) Where an officer or service member dies while still serving in the Kenya Defence Forces, the Defence Council shall pay a death and indemnity benefit to a beneficiary to the widow or widower recorded in the officer's or service member's records or the designated next of kin where the officer or service member is unmarried, for a period of three consecutive months following the death of the officer or service member.

(2) The death and indemnity benefit shall be equivalent to the officers or service member's salary net after statutory deductions.

(3) The death and indemnity benefit shall not be deemed to be part of the estate of the deceased officer or service member.

15. Pension to cease on bankruptcy

(1) Subject to paragraph (3), where an officer or service member to whom a pension has been granted under these Regulations is adjudicated bankrupt or is declared insolvent by judgement of a competent court the pension shall cease as from the date of adjudication or declaration.

(2) Where an officer or service member qualifies for a pension under these Regulations and is adjudicated bankrupt or is declared insolvent by a judgement of a competent court:

- (a) after qualifying, he may be granted a pension or gratuity, but the pension shall cease as at the date of adjudication or declaration, or the gratuity shall not become payable, as the case may be; or
- (b) before qualifying and at the date of qualifying he has not obtained his discharge from the bankruptcy or ceased to be insolvent, he may be granted a pension or gratuity, but the pension shall cease from the date of qualifying or the gratuity shall not become payable, as the case may be.

(3) Where by virtue of paragraph (1) pension ceases to be payable or a gratuity fails to become payable to any person the Defence Council may, from time to time, during the remainder of that person's life or such shorter periods either continuous or discontinuous as the Defence Council, with the concurrence of the Treasury, thinks fit direct that all or any part of the money which the person would have been entitled to by way of pension or gratuity had he not become bankrupt or insolvent shall be paid or applied for the maintenance or benefit of that person and his wife, children or other dependants or any of them in such proportion and manner as it thinks proper or for the discharge of that person's debts and the money shall then be paid or applied accordingly.

(4) Where a person whose pension has ceased or whose gratuity has failed to become payable by virtue of paragraph (2) obtains his discharge from the bankruptcy or ceases to be insolvent the Defence Council may direct that his pension shall be restored from the date of such discharge or that he be paid any unpaid balance of his gratuity which has not been paid or applied, as the case may be, and his pension or gratuity shall then be paid accordingly.

16. Pension may cease for subversive activities, etc.

Where the Defence Council is satisfied that an officer or service member to whom a pension has been granted under these Regulations—

- (a) has shown himself by act or speech to be disloyal or disaffected towards the Republic of Kenya;

- (b) has during any war in which the Republic of Kenya is engaged, unlawfully traded or communicated with the enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy during war;
- (c) has failed to fulfil his commitments concerning the reserve;
- (d) has committed any criminal offence for which he is convicted and sentenced to a term of imprisonment; or
- (e) has engaged in activities which are subversive within the meaning of Chapter VII of the Penal Code (Cap. 63),

it may direct that the pension granted to the officer or service member shall cease from a specified date:

Provided that the Defence Council, with the concurrence of the National Treasury, may in its discretion at any time divert the whole or part of the pension to or for the benefit of his wife or husband, children or other dependants and may at any time after his pardon or release from prison restore the pension.

17. Pension may cease on conviction

(1) Where an officer or service member to whom pension, gratuity or other allowance has been granted under these regulations is sentenced to a term of imprisonment by a competent court for any criminal offence, such pension, gratuity or allowance shall cease if the Defence Council so directs with effect from such date as the Defence Council shall determine.

(2) Where after retirement an officer or service member is sentenced to a term of imprisonment by a competent court for any criminal offence and in the circumstances in which he is eligible for pension, gratuity or some other allowance under these regulations, but before that pension, gratuity or some other allowance is granted then—

- (a) paragraph (1) shall apply in respect of any pension, gratuity or allowance which may be granted to him; and
- (b) the Defence Council may direct that any pension, gratuity or allowance which should have been paid to such an officer be not paid.

(3) Where pension, gratuity or any other allowance ceases by reason of this regulation, it shall be lawful for the Defence Council to direct all or any part of the money to which such officer or service member was entitled by way of pension, gratuity or any other allowance to be paid or applied in the same manner in all respects as provided for in these regulations and such money shall be paid and applied accordingly.

(4) Where an officer or service member whose pension, gratuity or any other allowance has ceased under this regulation, subsequently receives pardon from the President his pension, gratuity or other allowance shall be restored to him retrospectively.

18. Establishment of the Pensions Assessment Board

(1) There is hereby established a Board, to be known as the Pensions Assessment Board, which shall consist of—

- (a) two retired senior military officers one of whom shall be the chairperson, appointed by the Defence Council;
- (b) a civilian public officer qualified on matters relating to human resources appointed by the Defence Council;
- (c) a legal officer appointed by the Defence Council; and
- (d) a civilian medical practitioner appointed by the Defence Council on the recommendation of the Director of Medical Services.

(2) The members of the Board shall hold office for a period of three years renewal from the date of appointment.

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(3) The Defence Council shall on the recommendation of the Director of Pensions appoint a public officer to be the secretary to the Board.

(4) The Chairperson shall preside over all meetings of the Board and in the absence of the Chairperson, the other members present at the meeting shall appoint one of the members to act as Chairperson for the purpose of that meeting.

(5) The quorum for a meeting of the Board shall be three members and the Secretary.

(6) Subject to the provisions of these Regulations and to any direction issued by the Defence Council under these Regulations, the Tribunal shall regulate its own procedure.

19. Duties and powers of the Board

(1) Where an officer or service member suffers disablement as a result of a wound, injury or disease, the Board shall—

- (a) shall determine whether the wound, injury or disease was due to, hastened by or aggravated by his service; or
- (b) in the case of disability, assess the degree thereof,

and may award pension for permanent disablement and additional hardship allowance in accordance with regulations 21 and 22.

(2) In the exercise of its powers and duties under these Regulations the Board may appoint a service medical officer or board of service medical officers—

- (a) to advise on any claim; or
- (b) to carry out any medical examination which is required to be carried out by or under these Regulations or which, in the opinion of the Board, should be carried out in order to enable the Board to assess the entitlement or the degree of disablement of any officer or service member for any other reason which the Board considers sufficient.

(3) Where in these Regulations a power is conferred upon the Board to review and revise any pension, gratuity or allowance, such power shall include the power to review and revise any pension or allowance awarded under the provisions of any of the regulations repealed by these Regulations (hereinafter referred to as the "repealed Regulations") except that the Board shall not revise such award if the effect of such revision would be to decrease the amount previously awarded.

(4) The Board shall keep a record of all the awards made and shall—

- (a) furnish a copy thereof to the Chief of the Kenya Defence Forces; and
- (b) inform every person in respect of whom an award has been made of the terms of the award and the procedure to be followed in order to obtain payment.

20. Entitlement to disability pension

(1) The disablement of an officer or service member or retired officer or discharged service member shall be accepted as due to service for the purpose of these Regulations if—

- (a) the disablement is due to a wound, injury or disease which was inflicted or caused while on duty; or
- (b) it arose during service or has been aggravated by service.

(2) For the purpose of these regulations every officer and service member shall, unless the contrary is proved, be deemed to have been medically fit and not suffering from any wound, injury or disease at the effective date of his commissioning or enlistment, as the case may be.

(3) Where a wound, injury or disease which has led to an officer's or service member's retirement or discharge during service was not recorded in any medical report made on the officer or service member at the commencement of his service, such wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions set out in paragraph (1) are not fulfilled.

(4) Where after the expiration of the period of seven years from the retirement of an officer or discharge of a service member, a claim is made in respect of his disablement, such disablement shall be accepted as due to service if—

- (a) in the case of disablement the Board is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled; and
- (b) in the case of death the retired officer or discharged service member was at the time of his death, or had at any time previously thereto been, in receipt of a pension or temporary allowance awarded by the Board in respect of the wound, injury or disease which was the cause of or substantially hastened his death and the Board is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled.

(5) Where upon reliable evidence a reasonable doubt exists as to whether in respect of a claim under paragraph (3) the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant, and where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

(6) Where a wound, injury or disease which has led to an officer's or service member's death during his service was not recorded in any medical report made at the commencement of his service, the wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions in paragraph (1)(a) and (b) are not fulfilled.

(7) Where after the expiration of a period of seven years from the retirement of an officer or discharge of a service member, a claim is made in respect of his death (being death occurring after the expiration of that period), such death shall be accepted as being due to service if at the time of his death or anytime previous thereto the officer or service member had been in receipt of a pension or temporary allowance awarded by the Board in respect of the wound, injury or disease which was the cause of or substantially hastened his death and the Board is satisfied that the death is due to service.

21. Degrees of disablement

(1) The degree of disablement to be assessed by the Board shall be the measure of disablement which is considered to have been suffered by an officer or service member or retired officer or discharged service member by a comparison of his current condition with the condition of a healthy able-bodied person of the same age without taking into account—

- (a) his earning capacity in his disabled condition in his own or in any other specific trade or occupation, and
- (b) the effect of any individual factors or extraneous circumstances.

(2) The degree of disablement shall be expressed as a percentage (100 per cent representing total disablement) in any one of the following classifications:

- (a) 100 per cent;
- (b) less than 100 per cent but not less than 80 per cent;
- (c) less than 80 per cent but not less than 60 per cent;
- (d) less than 60 per cent but not less than 40 per cent;
- (e) less than 40 per cent but not less than 20 per cent;
- (f) less than 20 per cent but not less than 11 per cent;
- (g) 10 per cent and under.

(3) In the case of disablement suffered by reason of two or more disabilities attributable to service the degrees of disablement shall be determined with reference to the combined disablement from the disabilities together, but it shall not exceed 100 per cent.

(4) The degree of disablement for specified injuries and certain other disabilities shall be assessed in accordance with the Schedule.

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22. Pensions for permanent disablement

(1) Subject to the provisions of regulation 20, in the case of the permanent disablement of a retired officer or discharged service member the Board shall award, in addition to the gratuity or pension provided for under these Regulation, pension in accordance with the following table—

MONTHLY RATES OF PENSIONS AND ALLOWANCES FOR DISABLEMENT					
Degree of disablement	1%-9%	10% -19%	20% -39%	40%-79%	80%-100%
Rates of pensions and allowances	"lump sum" 2 months' pay	"lump sum" months' pay	25% of monthly pay as at the date of retirement	35% of monthly Pay as at the date of retirement	50% of monthly pay as at the date of retirement

(2) An award of pension under this regulation shall, where temporary allowances have been granted under these Regulations, be made to take effect after the cessation of the payment of such temporary allowances, and where no temporary allowances has been granted such award shall, except where the Board otherwise directs, be made to take effect —

- (a) in the case of a retired officer or discharged service member, where the application for the award was made prior to his retirement or discharge, from the day following the date of his retirement or discharge; or
- (b) in any other case, from the date on which the application for the award was made or on such other date as the Board may determine.

23. Additional hardship allowance for permanent disablement

(1) Where a pension has been awarded under these Regulations based on a degree of disablement, and in the opinion of the Board there are conditions of exceptional hardship, the Board may award an additional allowance of an amount not exceeding fifty per cent of the pension.

(2) An additional pension allowance under paragraph (1) may be of either a temporary or permanent nature as the Board may determine.

(3) Where the allowance is made on a temporary basis, it shall be reviewed and may be varied or terminated, at such time or times as the Board may direct.

24. Basis of award for permanent disablement

(1) Every award under these Regulations shall be made on the degree of disablement assessed by the Board at the time it accepts the disablement as permanent, except that the Board may at any time make a final assessment of the degree of disablement and if, at the expiration of seven years from the date of retirement or from the date on which the retired officer or discharged service member was first notified of the award, whichever is the later, the Board has not made such final assessment, it shall thereupon do so having regard to all the circumstances of the case.

(2) Nothing in this regulation shall be read as precluding a review of a final assessment in accordance with these Regulations.

25. Procedure where disablement is not permanent

(1) Where the Board has reason to believe that the disablement accepted as being due to service may not be permanent, and the degree of disablement is assessed at less than 20 per cent, but the Board considers that the disablement or the degree of disablement accepted as due to service is likely to persist for more than one year from the date of retirement or from the date of application, as the case may be, it may in its discretion award a gratuity equal to one-half of the disablement gratuity appropriate to the degree of disablement then found in accordance with these Regulations which shall be deducted from any award which may be made later should the Board accept the disablement as permanent.

(2) Where—

- (a) the Board has reason to believe that the disablement or the degree of disablement accepted as being due to service may not be permanent;
- (b) in the case of a disablement accepted as permanent, in the opinion of the Board and on the medical evidence there is likely to be a material and early decrease in the degree of disablement; or
- (c) in either case, the degree of disablement is assessed as 20 per cent or over,

the Board may award a temporary allowance which shall be at the appropriate rate set out in these Regulations, which allowance may be reviewed and reassessed after medical examination at a date to be recorded in the proceedings of the Board and which medical examination shall be carried out at such time and place as the Board may direct.

(3) The Board shall have power to direct that the medical examination referred to in sub regulation (2) be done by service medical officers.

(4) Where a retired officer has been awarded a temporary allowance under paragraph (2) and there has been no material decrease in the degree of his disablement during the period of two years from the date of his retirement or from the date on which he was notified of the award of such temporary allowance, whichever is the later, during which time he has received adequate medical treatment, the Board may in its discretion make an award of a gratuity equal to one-half of the disablement gratuity appropriate to the degree of disablement than that found in accordance with regulation 19, which award shall be deducted from any award of gratuity made thereafter, should the Board accept the disablement as permanent, but the retired officer or discharged service member shall be required to make any refund if the amount of the final gratuity is less than the award made by the Board under this paragraph.

(5) Where the Board has reason to believe that an increase in the degree of disablement of a retired officer or discharged service member to whom an award of a pension has been made after a final assessment under these regulations may not be permanent, it may award a temporary allowance, in addition to the pension, of an amount that will bring the combined awards up to the rate appropriate to the increased degree of disablement, and such temporary allowance shall be reviewed and reassessed from time to time after medical examination as the Board may direct, and may be reduced, increased, terminated or made permanent as the Board, having regard to the circumstances may decide.

26. Award for two or more disabilities

(1) Where an award is to be made in respect of disablement suffered by reason of two or more disabilities, not all of which are accepted as permanent, and the permanent disability or disabilities is as set out in the Schedule, the Board shall, subject to the provisions of these Regulations, award the appropriate gratuity immediately, notwithstanding that the award made in respect of the combined disablement from the disabilities together may be temporary.

(2) Where the disability or disabilities referred to in subregulation (1) and which are not accepted as permanent are subsequently so accepted or disappear, and when a final assessment is made and a pension awarded, then the amount of gratuity appropriate on assessment of the combined disablement may be awarded.

27. Supply of surgical appliances

In cases where it is medically certified that the disablement in respect of which an award has been made under these Regulations renders surgical appliances necessary the Board may order that such appliances be supplied free of charge.

28. Optional medical examination

Any retired officer or discharged service member who has been awarded a pension under these Regulations other than on an interim basis may at his own request be medically examined by a service medical officer or a board of service medical officers appointed by the Board, once in every year, at such time and place as the Board may consider appropriate.

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29. Power to reduce award for misconduct

(1) Where a retired officer or discharged service member who has been awarded a pension whether on an interim or other basis, for any reason neglects or refuses to be medically examined as required by the Board under these Regulations, the Board may, if it considers that such neglect or refusal is unreasonable, reduce the pension as it thinks fit, and the amount so reduced shall not be restored until the retired officer or discharged service member has been medically examined or until the Board is satisfied that the neglect or refusal was not or is no longer unreasonable.

(2) Where a retired officer or discharged service member who has been awarded a temporary allowance neglects or refuses to present himself for medical examination as required under these Regulations, the Board may, if it considers the neglect or refusal unreasonable, suspend the award until he so presents himself, and in so doing it shall be for the Board to determine, having regard to the circumstances, from what date the restoration (if any) of the award shall take effect.

(3) Where it is medically certified that a retired officer or discharged service member should receive approved treatment or approved institutional treatment, and such retired officer or discharged service member, having been so informed, refuses or neglects to receive such treatment, the Board may, if it considers the refusal or neglect unreasonable, reduce the gratuity, pension or temporary allowance in respect of such retired officer's or discharged service member's disablement by such amount, not exceeding one-half, as the Board may think fit.

(4) For the purpose of paragraph (3), any misconduct on the part of a retired officer or discharged service member which in the opinion of the Board, prevents the treatment from being given or counteracts its effects may be considered as a refusal by such retired officer or discharged service member to receive the treatment.

(5) Where the Board is satisfied that the death or disablement in respect of which a claim is made is attributable to negligence or misconduct on the part of the retired officer or discharged service member concerned, it may refuse to award a pension, gratuity or allowance, either in whole or in part.

(6) Where third party compensation is paid by or on behalf of a person alleged to be responsible for any act, omission or circumstances which caused the injury or death of an officer or service member or a retired officer or discharged service member the Board may reduce any pension, gratuity or allowances to be awarded under these Regulations by such amount as the Board may, in all the circumstances of the case, consider appropriate.

30. Power to review awards

The Board may at any time review an award made under these Regulations where it has been made in error or where, in the opinion of the Board, it has been obtained by improper means, and on any such review the Board may confirm, vary or cancel the award or may substitute another award.

31. Review of pensions

Pensions and gratuities shall be kept under review from time to time but in any event within a maximum interval of four years by the Defence Council in consultation with the National Treasury and on the advice of the Salaries and Remuneration Commission.

32. Suspension or withholding of pensions

(1) The Defence Council shall have the power to suspend or withhold pensions or gratuities either wholly or in part as the case may be, and subject to any other regulations made under this Act or generally relating to pensions.

(2) In exceptional cases payment of part or the whole of suspended pensions, gratuity or any other allowance, may with the consent of the Treasury be made by the Defence Council to or for the benefit of the wife or other dependant of the officer or service member.

33. Cost of living allowance

Every award of a pension or temporary allowance made by the Board under these Regulations shall be subject to such increase by the addition of a cost of living allowance as the Government may from time to time, by order published in the *Gazette*, provide.

34. Payment of pensions, etc.

(1) Subject to the provisions of these Regulations the Principal Secretary to the Treasury shall pay all pensions, allowances, gratuities and other charges payable under or by virtue of these Regulations, including such travelling and other expenses as may be certified under these Regulations.

(2) Every pension payable under or by virtue of these Regulations shall be payable monthly in arrears.

(3) Every temporary allowance payable under or by virtue of these Regulations shall be payable in arrears, at intervals not less frequent than once in every month for such length of time as may be determined by the Board.

35. Award of pension or gratuity for insanity

An officer or service member who is pronounced by a medical board to be mentally unfit and has at least ten years' service in the case of officers and twelve years of reckonable service in the case of service members, may be granted a service pension and where the remaining period is less than ten years in the case of officers and less than twelve years' reckonable service in the case of service members, he may be granted a gratuity.

36. Procedure as to claims

All claims for pensions, allowances or gratuities under these Regulations shall be submitted to the Board, which shall, on receipt thereof, obtain from the appropriate service authorities—

- (a) full particulars of the officer or service member in respect of whom the claim is made, including all such particulars regarding his service as may be relevant to the claim;
- (b) the medical history of the officer or service member and a copy of the proceedings and findings of the medical board with regard to him;
- (c) a copy of the proceedings of any court of inquiry into the cause of the accident, injury or death giving rise to the claim, and where the claim is based on the death of an officer or service member—
 - (i) a certificate of death signed by a medical officer; and
 - (ii) unless unobtainable a declaration of death, signed by a responsible service authority; or
 - (iii) where the claim is based on presumed death, a certificate of presumption of death or a declaration of presumption of death made by a court of competent jurisdiction, as the case may be; and
- (d) the names, addresses and particulars of—
 - (i) the officer's or service member's dependants and the degree of their dependency on him; and
 - (ii) the officer's or service member's heir; or
 - (iii) where there is a will, particulars of the executor named in the will.

37. Nature of award in respect of death

(1) In the case of the death of an officer or service member or retired officer or discharged service member (in this regulation referred to as the "deceased") the Board may, as from the day next following the death of the deceased, award—

- (a) where the deceased leaves a widow or widower, a pension to him or her at the rate not exceeding one-third of the deceased's rate of pay as at the date

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of his death or retirement and if there is more than one widow, the pension shall be divided equally between them;

- (b) if in addition to the widow or widower, the deceased leaves a child or children, a pension in respect of each child until such child attains the age of twenty-one years, of an amount not exceeding one quarter of the pension awarded to the widow;
- (c) where the deceased leaves no widow or widower but leaves a child or children, or if the pension payable to the widow or widower ceases, or if no pension is payable to the widow or widower, the pension payable to each of the children under subparagraph (b) shall be doubled from the date following the date of the death of the deceased or from the date on which the pension payable to the widow or widower ceases, as the case may be,

Provided that—

- (i) a pension to a child under subparagraph (b) shall cease upon the marriage of such child;
- (ii) where any widow who is in receipt of a pension under subparagraph (a) and who has under her charge a child or children in receipt of a pension under this subparagraph dies or otherwise ceases to be entitled to a pension the Board may in its discretion continue to pay the pension or any part of it to an approved guardian, provided that it is applied towards the maintenance and education of the child or children to the satisfaction of the Board.

(2) Where any widow or widower to whom a pension has been awarded under this regulation remarries, or cohabits with any person as his wife or as her husband, the Board shall, if there is no child of the deceased under his or her charge, cease payment of the pension from the date next following such remarriage or cohabitation upon confirmation of the same, but if the widow or widower has under his or her charge such child or children of the deceased the Board may continue to pay the pension or any part thereof to the widow or widower or in the event of his or her death to an approved guardian on the conditions set out in paragraph (1)(b).

(3) Where any child is in receipt of a pension under paragraph (1)(b) and is under the charge of the widow or widower of the deceased the pension shall be paid to the widow or widower provided that it is applied towards the maintenance and education of the child to the satisfaction of the Board.

(4) Where there is no widow or widower, or if the widow or widower abandons any child of the deceased, the Board may in its discretion continue to pay the pension or any part thereof to which the child may be entitled under paragraph (1) (b) to an approved guardian provided it is applied towards the maintenance and education of the child to the satisfaction of the Board.

(5) Where the pension of a childless widow or widower has been terminated in accordance with the provisions of paragraph (2) or has ceased on her death the Board may in its discretion after consultation with the County Commissioner of the County in which the deceased resided award to any needy dependant of the deceased as a gratuity, the total amount of the pension for six months that would be awarded to the widow, and such gratuity shall be distributed at the discretion of the Board.

(6) Where the deceased leaves neither a widow or widower nor children, the Board may in its discretion, award a gratuity to any surviving parents, brothers and sisters of the deceased of an amount not exceeding the pension for six months that would be awarded to the widow or widower and such gratuity shall be distributed at the discretion of the Board.

(7) Where the deceased leaves neither a widow or widower, children nor dependants, the Board shall award to the heir of the deceased a gratuity not exceeding the deceased's pay for one month as at the date of his death or retirement.

(8) No widow or widower shall be entitled to an award under this regulation unless his or her marriage to the deceased was recognized by any law for the time being in force or by the law or custom of the community to which the deceased belonged.

(9) A gratuity awarded under paragraph (7) shall be in full and final settlement.

38. Pensions Appeal Board

(1) There is hereby established an Appeals Board to be known as the Pensions Appeal Board which shall consist of—

- (a) a chairperson who shall be a retired general officer appointed by the Defence Council;
- (b) a medical officer appointed by the Defence Council on the recommendations of the Director of Medical Services; and
- (c) three other persons appointed by the Defence Council, one of whom shall be a legal officer,

and none of whom may also be a member of the Pensions Assessment Board established under regulation 18.

(2) The chairperson, the secretary and two other members shall constitute quorum for any meeting of the Appeals Board.

(3) The members of the Appeals Board appointed under paragraph (1) shall hold office for a period of three years.

(4) Subject to the provisions of these Regulations and to any direction issued by the Defence Council under these Regulations, the Appeals Board shall regulate its own procedure.

(5) There shall be a secretary who shall be a public officer to be appointed by the Defence Council on the recommendation of the Director of Pensions.

(6) An appeal shall lie to the Appeals Board against any decision of the Board established under these Regulations affecting—

- (a) an entitlement to pension, gratuity or allowance under these Regulations;
- (b) the degree of disablement under these Regulations where—
 - (i) final assessment and award of a disablement pension or gratuity or both, has been made; or
 - (ii) a disablement pension awarded on an interim basis, or a temporary allowance, has been terminated by the Appeals Board on the ground either that there is now no disablement due to or aggravated by service or that disablement still persisting is under 20 per cent;
- (c) the suspension of a temporary allowance under regulation 32; or
- (d) the reduction of or refusal to make an award, under these regulations, and against any decision of the Board on review.

(7) Every appeal under this regulation shall be brought within twelve months from the date on which the decision of the Board is notified to the claimant except that the Appeals Board may allow an appeal to be brought after the expiration of the period limited by this paragraph if in the opinion of the Board there was reasonable excuse for delay.

(8) Notice of the time, date and place of hearing of an appeal shall be given to the appellant provided that where the Appeals Board is satisfied that an appellant cannot be traced it shall be sufficient if such notice shall have been sent to him by registered post to his last known address or place at which he was last known to reside.

(9) Every appellant shall have the right of appearing before the Appeals Board in person or by a legal representative and should an appellant fail to appear, either in person or by a legal representative, at the time and at the date and place notified to him for the hearing of the appeal, the Appeals Board may, in the absence of any satisfactory explanation, proceed to determine the appeal.

(10) The Appeals Board shall have power to vary the amount of any award made by the Board, either by increasing or decreasing the award, but except in an appeal against such a decision the Appeals Board shall not make an award where no award has been made by the Board.

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(11) The Appeals Board shall have power to call for any document relating to the appellant's service from the appropriate service authority, and to order the appellant to undergo a medical examination by a medical officer to be appointed by the Appeals Board in any particular case and may certify to the Principal Secretary to the National Treasury any reasonable travelling and other expenses which have been incurred by any person appearing, with the permission and in accordance with the instructions of the Appeals Board or before any medical examination of such person under the provisions of this paragraph.

(12) The decision of the Appeals Board upon an appeal made under this Regulation shall be final.

PART III – OFFICER'S PENSIONS AND GRATUITIES

39. Officer's service and disablement pensions

(1) An officer who is—

- (a) retired or allowed to retire on or after reaching the normal age of retirement as laid down in the terms and conditions of service in the Defence Forces drawn under the provisions of the Act; or
- (b) retired compulsorily before reaching the age of retirement because it has been decided that further employment is not available for him, may, provided that he has completed at least ten years reckonable service, be granted on retirement a service pension in accordance with these Regulations.

(2) Every officer otherwise eligible for pension who has not completed ten years' reckonable service may be granted on retirement a gratuity in accordance with regulation 11;

(3) An officer who is removed from service in the Defence Forces for misconduct or whose services are terminated pursuant to section 251 of the Act, and who has at least ten years reckonable service may be granted a pension at such rate as the Defence Council may determine, not exceeding ninety per cent of the sum which would have been granted to him under paragraph (1) had he retired in normal circumstances.

(4) Notwithstanding any other regulation, an officer who has suffered disablement as a result of a wound, injury or disease may, if his retirement is necessitated or materially accelerated by the wound, injury or disease before completing ten years' reckonable service, be granted, in lieu of a gratuity under paragraph (2), a pension under paragraph (1).

(5) A gratuity may be granted in accordance with regulation 11 to an officer who is ineligible for a service pension when retired for the following reasons—

- (a) on reduction of the establishment; or
- (b) if for any reason his services are no longer required.

PART IV – SERVICE MEMBER'S PENSIONS AND GRATUITIES

40. Service member's service and disablement pensions

(1) A service member who is—

- (a) discharged on or after the completion of colour service; or
- (b) discharged compulsorily having regard to the usefulness of such service member in the Kenya Defence Forces and the circumstances of the case,

may, provided that he has completed twenty one year's reckonable service, be granted a service pension in accordance with the provisions of these Regulations.

(2) A service member who is discharged for inefficiency, or misconduct or any other cause within his control but not amounting to gross misconduct and who has completed at least twelve years' reckonable service may be granted a service pension at such rate as the Defence Council may determine, not exceeding ninety per cent of the sum which would have been granted under paragraph (1) had he applied for his discharge.

(3) A service member who is pronounced by a medical board to be mentally or physically unfit may be granted a pension provided it is not connected to the service, and provided he

has completed at least twelve years' reckonable service and the mental or physical unfitness is not connected to the service.

(4) Notwithstanding any other regulation, a service member who has suffered disablement as a result of a wound, injury or disease due to, hastened by or aggravated by his service may, if his retirement is necessitated or materially accelerated by his service and has not completed more than twelve years' reckonable service, be granted in lieu of a gratuity, a pension under paragraph (1).

41. Service member's service gratuities

(1) A gratuity in accordance with the provisions of regulation 11 may be granted to—

- (a) a service member who is transferred to the reserve or discharged before or after the completion of his colour service without being granted a service pension; or
- (b) a service member who is discharged under paragraphs (d), (e), (f) and (g) of section 255 of the Act, provided that he has completed at least one year's reckonable service.

(2) A gratuity of thirty per cent of the amount that would have been granted under subregulation (1) may be granted at the discretion of the Defence Council to a service member discharged for inefficiency or unsuitability due to causes not within his control.

PART V – MISCELLANEOUS

42. Reduction of establishment and services

An officer or service member retired or discharged from the service when eligible for pension in consequence of the abolition of his office or for the purpose of facilitating improvement in the Defence Forces by which a greater efficiency or economy may be effected, may be granted an additional pension of one-sixtieth of his annual pension for each period of three years' reckonable service:

Provided that such additional pension shall not exceed ten sixtieth of such annual pension.

(2) When an officer or a service member who is in receipt of a pension is recalled for service with the Defence Forces, he shall be entitled to his full pension notwithstanding that he is in receipt of any other pay.

(3) When an officer or service member who was previously retired or discharged with a pension is re-commissioned or re-enlisted, as the case may be, his pension shall cease from the date on which his further service commences, and he shall either repay both his pension and gratuity already received or have it deducted from the pension he would finally be entitled to so as to allow his previous service to count towards his pension when he finally retires.

43. Administrative directions

The Defence Council may from time to time issue such directions, not inconsistent with the provisions of these Regulations, as it may consider necessary for the administration of these Regulations, and without prejudice to the generality of the foregoing such direction may make provisions for—

- (a) the registration of pensions, allowances and gratuities awarded;
- (b) the issue of pension certificates;
- (c) the notification to the person entitled thereto of the amounts of the pensions, allowances and gratuities awarded;
- (d) the procedure to be followed in drawing pensions, allowances and gratuities;
- (e) the procedure to be followed in the hearing of an appeal by the Appeals Board.

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44. Presumption of Death

A declaration of presumption of death by a Service Commander shall be done in accordance with regulations 5 and 6 of Kenya Defence Forces (Missing Persons) Regulations, 2017.

45. Military pensions liaison officer

The Defence Council shall appoint an officer to serve as the Military Pensions Liaison Officer, who shall liaise with the National Treasury on pension matters.

46. Payment of pension and gratuity within 90 days

Any pension or gratuity awarded under these Regulations shall be paid within 90 days from the date of retirement or 90 days from the date of the death of an officer or service member except where such payment is delayed by legal proceedings.

47. Revocation of L.N. No. 61 of 1980.

The Armed Forces (Pensions and Gratuities) (Officers and Service Members) Regulations (L.N. 61/1980) are revoked.

48. Savings

Notwithstanding regulation 47, an officer or service member or retired officer or discharged service member entitled to a pension, gratuity or allowance under the Armed Forces (Pensions and Gratuities) (Officers & Service members) Regulations, 1980 (now revoked) shall be deemed to be entitled to pension, gratuity or allowance under these Regulations.

SCHEDULE

[r. 20(4)]

Assessment of Disablement Due to Specific Injuries and Certain Other Disablement

Part - A

Amputation

Description of Injury	Upper Limbs Assessment per cent
1. Loss of both hands or amputation at higher sites	100
2. Amputation through shoulder joint	90
3. Amputation below shoulder with stump less than eight inches from tip of acromion	80
4. Amputation from eight inches from tip to acromion to less than four and a half inches below tip of olecranon	70
5. Amputation from four and a half inches below tip of olecranon	60
6. Loss of thumb	30
7. Loss of thumb and its metacarpal bone	40
8. Loss of four fingers	50

9. Loss of three fingers	30
10. Loss of two fingers	20
11. Loss of terminal phalanx of thumb	20
<i>Amputation Cases - Lower Limbs</i>	
12. Double amputation through thigh or through thigh on one side and loss of other foot or double amputation below thigh to five inches below knee	100
13. Double amputation through leg lower than five inches below knee	100
14. Amputation of one leg lower than five inches below knee and loss of other foot	100
15. Amputation of both feet resulting in end-bearing stumps	90
16. Amputation through both feet proximal to the metatarso-phalangeal joint	80
17. Loss of all toes of both foot through the metatarso-phalangeal joint	70
18. Loss of all toes of both foot proximal to the proximal interphalangeal joint	30
19. Loss of all toes of both feet distal to the proximal interphalangeal joint	20
20. Amputation through hip joint	90
21. Amputation below hip with stump not exceeding five inches in length measured from tip of great trochanter	80
22. Amputation below hip with stump exceeding five inches in length measured from tip of great trochanter, but not beyond middle thigh	70
23. Amputation below middle thigh to three and a half inches below knee	60
24. Amputation below knee with stump exceeding three and a half inches but not exceeding five inches	50
26. Amputation of one foot resulting in end-bearing stump	30
27. Amputation through one foot proximal to the metatarso-phalangeal joint	30
28. Loss of all toes of one foot proximal to the proximal interphalangeal joint, including amputation through the metatarso-phalangeal joint	20

Part - B***Other Specific Injuries***

29. Loss of a hand and a foot	100
30. Loss of one eye, without complications, the other being normal	40

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31. Loss of vision of one eye, without complications. or disfigurement of the eye-ball the other being normal	30
32. Loss of sight	100
33. Accidental loss of natural teeth, without prior replacement thereof at public expense	1% for loss of each natural tooth up to a maximum of 32%.
34. Loss of natural teeth (not being less than 10 teeth) due to natural disease(s) and not replaced already at public expenses	10% for the loss of the first 10 teeth, 10% for the next 10 and 12% for the remainder, whether the losses have occurred simultaneously or over a period of time.
35. Loss or impairment of one testes or an ovary	25
36. Loss or impairment of both testes or both ovaries.	50
37. Loss or impairment of penis	upto...100
38. loss of one Lip	upto...40
39. Loss of both lips	upto...80
40. Loss of the tongue	upto...100
41. Loss of the external part of the nose	upto...60
42. Loss of a Pinna	upto...30
43. Loss of both pinnae	upto...60
44. Permanent loss of sense of smell	50
45. Permanent loss of taste	50
46. Severe disfiguring soft tissue injuries to any part of the body (excluding severe facial disfigurement), extensive scarring or loss of skin or hair due to an accident in the nature of severe scalding, burning by fire, corrosion by acid and the like	upto... 40
47. Loss of or severe damage to any other organ (not otherwise specified in this schedule and where the loss or damage does not amount to end-organ failure)....	upto... 50

The losses or damage caused to or suffered by the organs falling under this part are those which are total and permanent in relation to the normal functioning of the organ concerned.

Part - C

Other Disablement

48. Very severe facial disfigurement	100
49. Absolute deafness	100
50. Ankylosis of any joint...,25-100% depending on the degree of incapacity suffered for loss of use of the joint or part thereof according to whether the joint is ankylosed in a favourable or unfavourable position.	

Note.- Where the scheduled assessment for a specified injury involving multiple losses differs from the sum of the assessment for the separate injuries the former shall be the appropriate assessment.

Part - D

Disablement due to Diseases and Surgical Conditions.

51. A confirmed chronic medical or surgical condition or conditions only e.g diabetes (as opposed to the condition itself or the conditions which, additionally, has or have a complication(s) and further to the complication itself or complications themselves which result from the condition or conditions in question)..... 10% for each specific condition subject to a maximum of 50% where two or more such conditions exist. A chronic condition is one requiring a life-time management.

52. Two or more confirmed chronic medical or surgical conditions with a complication or complications e.g. diabetes with hypertension 20% for the conditions, whatever their number, plus 10% for each specific complication involved upto a maximum of 80% for both. This provision does not apply to a situation of end-organ failure.

53. Terminal illness, end-organ failure or removal of an internal organ (e.g. brain, heart, lung, liver, kidney or part thereof) 50-100%.

Part - E

Psychiatric Conditions

54. Chronic neurotic condition 50% The condition must be chronic and persistently relapsing in nature.

55. Chronic psychotic condition 51% to 100%.

Part - F

Inclusion Of The "X" Factor In Certain Composite Injuries Other Than Injuries To The Hand And Feet.

56. Injuries to a, b etc a+b+ X%. The X% is the "X" factor. It represents the percentage by which the sum of the schedule percentages of the two or more injuries shall be increased.

57. The "X" factor shall be taken into account in certain cases where there are several injuries suffered are especially disabling or disadvantageous to the claimant e.g. loss of hand and a foot both on one side of the body. The injuries must in all cases where the "X" factor is applied be composite.

58. The "X" factor shall be added to the sum of the schedule percentages of the two or more injuries suffered by the claimant (subject to a maximum of 100%) save where these regulations have expressly made provision for such cases (e.g as in paragraphs 12,13 and 29 of part A).

59. The "X" factor shall be 20% of the sum of the several injuries involved.

Part - G

Composite Injuries Involving The Hand And Feet

60. Injuries involving the hand or the feet:

- (i) Where 2 digits are lost D 1 +D2 + "X" factor of 20%
- (ii) Where 3 digits are lost D1+D2+D3+ "X" factor of 30%
- (iii) Where 4 digits are lost D1+D2+D3+D4+"X" factor of 40%
- (iv) Where the big toe or the big thumb has been lost in addition to the other
- (v) 4 digits on one foot or hand.....D1+D2+D3+D4+Big toe/thumb+ such an "X" factor as to render the assessment 100%.

• "D" means a digit of the hand or foot and the figure following it represents the number of digits lost by the claimant.

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61. In each of the first four of the mentioned cases in this part, the sum total assessment for the lost digits shall be increased by 20%, 30% or 40% as the case may be according to the number of digits lost. In the last case of this part the assessment shall amount to 100% where the big toe or thumb, as the case may be, and whether on one foot or one hand or on all the said limbs has been lost in addition to all the other digits on the same foot or hand or on all the said limbs.

**THE KENYA DEFENCE FORCES (RETIRED
OFFICERS AND SERVICE MEMBERS) REGULATIONS**

ARRANGEMENT OF REGULATIONS

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SCHEDULES

GRADES OF RETIRED RE-EMPLOYED OFFICERS

GRADES OF RETIRED RE-EMPLOYED SERVICE MEMBERS

THE KENYA DEFENCE FORCES (RETIRED OFFICERS AND SERVICE MEMBERS) REGULATIONS

[Legal Notice 230 of 2017, Legal Notice 87 of 2018]

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Retired Officers and Service Members) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"retired re-employed officer" means a retired officer of the Kenya Defence Forces employed to serve under a contract;

"retired re-employed service member" means a retired warrant officer or senior non-commissioned officer of the Kenya Defence Forces re-employed to serve under a contract; and

"retired re-employed senior non-commissioned officer" means a service member who retired while holding the rank of sergeant or senior sergeant or corresponding rank and is re-employed to serve under a contract.

3. Application

These Regulations shall apply to re-employed Officers or Service members who have retired from the Kenya Defence Forces.

4. Appointing Authority

The appointing authority for retired re-employed officers and retired re-employed service members shall be the Defence Council.

5. Terms and Conditions of Service

The Defence Council shall be responsible for the promulgation of terms and conditions of service, the appointments and the administration of retired re-employed officers and retired re-employed service members.

6. Grades of Service

(1) There shall be four grades of retired re-employed officers as set out in the First Schedule

(2) There shall be four grades of retired re-employed service members as set out in the Grades in the Second Schedule.

7. Place of Service

A retired re-employed officer and a retired re-employed service member may be appointed as a public officer and employed in the Defence Headquarters, Service Headquarters or in any other military establishment, in a post in which his military knowledge in the Defence Forces may be required.

8. Minimum Requirements for re-employment

(1) Subject to regulation 9, retired officers may be employed as Retired Re-employed Officers if such officers—

- (a) are aged between 39 and 56 years;
- (b) have held a Regular Commission;
- (c) have retired or resigned on grounds other than disciplinary or misconduct;
- (d) are medically fit for service;

[Subsidiary]

- (e) have no criminal record;
- (f) do not hold dual citizenship; and
- (g) are not engaged in elective politics.

(2) Subject to regulation 9, retired Service members may be employed as Retired Re-employed Service members if such retired service members—

- (a) are aged between 39 and 56 years;
- (b) have held the rank of Sergeant and above on retirement;
- (c) have retired or resigned on grounds other than disciplinary or misconduct;
- (d) are medically fit for service;
- (e) have no criminal record;
- (f) do not hold dual citizenship; and
- (g) are not engaged in elective politics.

9. Application for re-employment

An application for employment as a retired officer or retired service member shall be made to the Defence Council—

- (a) by a serving officer or service member through his Service Headquarters to the Defence Council six months before his due date of retirement; or
- (b) by an officer or service member who has already retired from the Defence forces through his former Service Headquarters to the Defence Council.

10. Use of former rank

A retired officer employed under these Regulations shall insert the letters (Rtd) after his service rank when signing official papers and documents.

11. Engagement on contract

The engagement of a retired re-employed officer or service member shall be on contract as may be prescribed in the terms and conditions of service.

12. Termination of contract

An appointment under these Regulations may be terminated by the Defence Council at any time on such grounds as may be prescribed in the terms and conditions of service.

13. Gratuity

Where the term of contract is completed or where the contract is terminated pursuant to regulation 12 other than on disciplinary grounds, the retired re-employed officer or service member concerned shall be entitled to service gratuity as provided in the terms and conditions of service.

14. Death in service

Where a retired re-employed officer or service member employed under these Regulations dies while still serving, the Defence Council in consultation with Treasury may grant to his dependants a gratuity of an amount not exceeding his total annual emoluments or his earned service gratuity, whichever is greater.

FIRST SCHEDULE

[r. 6(1)]

GRADES OF RETIRED RE-EMPLOYED OFFICERS

RO Grade

Defence Forces Rank at Retirement

Kenya Defence Forces

[Subsidiary]

RO1	Brigadier
RO2	Colonel
RO3	Lieutenant Colonel
RO4	Major

SECOND SCHEDULE

[r. 6(2)]

GRADES OF RETIRED RE-EMPLOYED SERVICE MEMBERS

RSVC Grade	Equivalent
RSVC1	WOI
RSVC2	WOII
RSVC3	SSGT
RSVC4	SGT

THE KENYA DEFENCE FORCES RULES OF PROCEDURE

ARRANGEMENT OF RULES

PART I – PRELIMINARY

Rule

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2. Interpretation
3. Commanding officer
4. Delegation of power

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31. Action by appropriate superior authority
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33. Referral to the Defence Martial Administrator or Service Court Martial

SCHEDULES

[Subsidiary]

DEALY REPORT

FORMS

RECORD OF PROCEEDINGS

APPROPRIATE SUPERIOR AUTHORITY

THE KENYA DEFENCE FORCES RULES OF PROCEDURE

[Legal Notice 238 of 2017, Legal Notice 88 of 2018]

PART I – PRELIMINARY**1. Citation**

These Rules may be cited as the Kenya Defence Forces Rules of Procedure.

2. Interpretation

In these Rules, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act (Cap. 199);

"convening officer" means the Defence Court Martial Administrator or the Service Court Martial Administrator as the case maybe;

"civilian employee" means a person subject to section 5 of the Act;

"Director of Military Prosecutions" means the same as stipulated under section 213 of the Act;

"detachment" means a part of a unit which is so separated from the unit to which it belongs, that the commanding officer of that unit cannot effectively exercise his disciplinary powers as commanding officer over it, or a ship;

"Service Commander" means the commander of a service of the Kenya Defence Forces";

"sexual offence" means an offence under section 120 of the Act where the corresponding civil offence is an offence under the Sexual Offences Act (Cap. 63A) or an attempt to commit such an offence, and shall include any offence of an indecent or unnatural kind under section 120 of the Act, or any attempt to commit such offence under section 131 of the Act, or an offence of an indecent kind under section 120 of the Act; and

"subordinate commander" means an officer appointed as such by the commanding officer of the accused.

3. Commanding officer

(1) For the purposes of these Rules, the commanding officer of an accused is the officer who has powers of command over the accused and who—

- (a) is in immediate command of the unit to which the accused belongs or is attached;
- (b) where the accused is serving with a detachment which has not been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that detachment;
- (c) where the accused is serving with a unit or detachment which has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that other unit or other detachment; or
- (d) in any case not falling within paragraphs (a), (b) or (c), is by the custom of the service the officer entitled to exercise the powers of a commanding officer in relation to the accused otherwise than by delegated authority.

(2) In paragraph (1) the reference to the accused belonging or being attached to or serving with a unit or detachment includes a reference to a civilian employee being employed in the service of that unit or detachment or of any part or member thereof or accompanying that unit or any part thereof.

[Subsidiary]

4. Delegation of power

(1) Subject to rule 27, a commanding officer may delegate command and power to a subordinate commander of any rank who is directly responsible to him in disciplinary matters the power to deal summarily with charges with which he himself may so deal.

(2) Despite the restrictions placed upon the powers of a subordinate commander by virtue of rule 27, where a unit or detachment is serving with and has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, that commanding officer may appoint a subordinate commander and delegate to him the full powers of a commanding officer.

(3) A delegation under paragraph (1) or paragraph (2) shall not include the power to remand the accused for trial by court martial.

(4) When a commanding officer delegates the power to deal summarily with charges under this rule, he may impose such restrictions as he considers proper upon the exercise of that power by the officer to whom it is delegated, in addition to the restrictions imposed by rule 27.

PART II – ARREST AND AVOIDANCE OF DELAY

5. Avoidance of delay after arrest by commanding officer

(1) When a person is detained in arrest, the arresting authority shall immediately—

- (a) inform the arrested person the reasons for the arrest; and
- (b) as soon as practicable report this fact and the grounds thereof to the arrested person's Avoidance of delay after arrest by commanding officer.

(2) The commanding officer shall consider the report referred to in paragraph (1)(a) within a period of twenty four hours of its receipt and may—

- (a) after evaluating the report dismiss the matter and direct that the arrested person be released from service custody;
- (b) direct that the arrested person be released from service custody subject to such conditions as he may stipulate and refer the matter to military police for investigations; or
- (c) subject to section 140 of the Act, direct that the arrested person continue to remain in service custody and refer the matter to military police for investigation.

6. Report to higher authority where no investigation commenced

Every case of a person being detained in arrest beyond the period of twenty four hours referred to in rule 5(2) without any action being taken, the reason thereof shall be reported by his commanding officer to the Service Commander.

7. Eight-day delay report

The report required by section 140 (2) of the Act with regard to the need for more time in bringing an accused to trial shall be in Form I set out in the First Schedule and shall be signed by his commanding officer and the report shall be sent to the Service Commander.

8. Arrest not to exceed 42 days

Subject to section 140 (2) of the Act, an accused shall not be held in close arrest for more than forty-two days in aggregate for an offence or offences committed within the same transaction without summary proceedings being commenced against him.

PART III – INVESTIGATION OF OFFENCES

9. Methods of investigating charge

(1) Where the military police investigates a complaint in accordance with section 150 of the Act, they shall cause the evidence to be reduced into writing in the form of an abstract of evidence made in accordance with rule 10 and forward the same to the commanding officer.

(2) Where the evidence taken in accordance with paragraph (1) discloses an offence other than the offence of which is the subject of the investigation, a charge alleging that offence may be preferred against the accused.

[L.N. 88/2018, r. 2.]

10. Abstract of evidence

(1) An abstract of evidence shall be in Form I set out in the Second Schedule and shall be made as follows—

- (a) it shall be made by the military police;
- (b) the accused shall not be present while the abstract of evidence is being prepared;
- (c) it shall consist of documents, list of exhibits and signed statements by such witnesses as are necessary to prove the charge:

Provided that if, in the case of any witness, a signed statement is not readily procurable, a summary of the evidence to be given by that witness may be included instead of a signed statement;

- (d) charge, if any; and
- (e) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements which are already in existence.

(2) When an abstract of evidence has been made in accordance with paragraph (1) a copy of it shall be handed to the accused by the investigator on the direction of the commanding officer, and shall then caution him or her in the following terms—

"This is a copy of the abstract of evidence in your case. You are not obliged to say anything with regard to it unless you wish to do so, but you should read it and when you have read it, if you wish to say anything, what you say will be taken down in writing and may be given in evidence."

(3) Any statement made by the accused after reading the abstract of evidence shall be taken down in writing and signed by the accused.

(4) The accused's statement, and a certificate in Form II set out in the Second Schedule by the person who recorded the statement stating that the accused was duly cautioned in accordance with this rule shall be attached to the abstract of evidence and shall thereafter form part of it.

(5) In the course of any investigations, no person shall be subjected to torture, cruel, inhuman or degrading treatment.

PART IV – PREPARATION OF CHARGE SHEETS AND FRAMING OF CHARGES

11. Charge-sheet

(1) A charge sheet shall contain the whole of the issue or issues to be tried at one time, and may contain more than one charge if the charges are founded on the same facts or form or are part of a series of offences of the same or similar character:

Provided that charges under section 74 (1)(a), 75(a), section 96 (a) and (b) (where the charge is connected with a charge under either of the before-mentioned paragraphs) or section 105 of the Act may be included in any charge-sheet, notwithstanding that other charges in that charge-sheet are not founded on the same facts and do not form or are not part of a series of offences of the same or similar character.

[Subsidiary]

(2) Every charge-sheet shall in its layout follow the appropriate illustration given in Form III set out in the Second Schedule.

(3) The commencement of each charge-sheet shall be in the appropriate paragraph of Form IV set out in the Second Schedule, and shall state the number, rank, name and unit of the accused and show by the description of the accused or directly by an express averment that he is subject to the Act or otherwise liable to trial by court martial.

12. Charges

(1) Each charge shall state one offence only.

(2) Offences may be charged in the alternative in separate charges, but in no case shall they be charged in the alternative in the same charge, and when charges are laid in the alternative they shall be set out in order of gravity commencing with the most serious.

(3) Each charge shall consist of two parts, namely—

- (a) the statement of the offence; and
- (b) the particulars of the act, neglect or omission constituting the offence.

(4) The statement of an offence, if it is not a civil offence, shall be as set out in the appropriate paragraph of Form V in the Second schedule and if it is a civil offence in such words as sufficiently describe that offence.

(5) The particulars shall state—

- (a) such circumstances respecting the alleged offence as shall enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;
- (b) when the offence charged is one which can be committed either in circumstances involving a higher degree of punishment or in circumstances involving a less degree of punishment, facts which it is intended to prove as rendering the accused liable to the higher degree of punishment if convicted; and
- (c) any additional facts which it is intended to prove as rendering the accused liable to the punishment of stoppages if convicted.

(6) A charge sheet may be signed by the investigator, Commanding Officer, appropriate superior authority or the Director of Military Prosecution.

13. Joint charges

(1) Any number of accused may be charged in the same charge-sheet with offences alleged to have been committed by them separately if the acts on which the charges are founded are so connected that it is in the interests of justice that they be tried together.

(2) Any number of accused may be charged jointly in one charge for an offence committed by them jointly, and where so charged any one or more accused may at the same time be charged in the same charge-sheet with any other offence alleged to have been committed by him or them individually or jointly, provided such charges could, if the accused to whom they relate had been tried separately, have been included under rule 11 (1) in the same charge-sheet as the other charges against him.

14. Construction of charge sheet and charges

In the construction of a charge-sheet or charge, the statement of the offence and the particulars of the offence shall be read and construed together.

PART V – SUMMARY DISCIPLINARY PROCEEDINGS

15. Points to consider before trial

(1) A commanding officer or appropriate superior authority shall ensure before dealing summarily with a charge—

- (a) that the accused is given not less than twenty-four hours before the charge is so dealt with, a copy of the abstract of evidence including the charge sheet indicating which charge or charges he or she is being charged with;
- (b) that the accused is within the prescribed ranks he is authorized to deal with;
- (c) that having regard to the gravity of the offence he considers that his powers of punishment are adequate;
- (d) that the accused person has not elected to be tried by court martial;
- (e) that the offence is not one that according to these Rules, he is not precluded from trying; and
- (f) that he does not have reasonable grounds to believe that the accused is unfit to stand trial or was suffering from a mental disorder at the time of commission of the offence.

(2) Despite paragraph (1), a commanding officer may direct that a charge be dealt with summarily by a subordinate commander if he is satisfied that—

- (a) the accused is within the prescribed ranks the subordinate commander is authorized to deal with; and
- (b) that having regard to the gravity of the offence he considers that powers of punishment of the subordinate commander are adequate.

16. Summary dealing by commanding officer

When a commanding officer or a subordinate commander deals summarily with a charge

- (a) he shall first read the charge to the accused;
- (b) ask the accused whether he is guilty or not; and
- (c) record the answer or plea given by the accused.

17. Plea of not guilty

Where the accused pleads not guilty—

- (a) all prosecution witnesses shall be called to give evidence orally in his presence and the accused shall proceed to cross examine the witnesses:
Provided that the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing,
- (b) if the witnesses against the accused do not give their evidence orally the commanding officer shall read the abstract of evidence to the accused if he so requires;
- (c) after all the prosecution witnesses have testified, the accused in his defence may adduce evidence on oath or make a statement without being sworn or hand in a written statement as to the facts of the case and may if he so desires call witnesses who shall give their evidence orally and in his presence in support of his case;
- (d) the Commanding officer shall consider the evidence tendered against and for the accused person and shall make a determination as to the accused's guilt or innocence.
- (e) where the Commanding Officer finds the accused guilty, he shall record a finding of not guilty and shall dismiss the charge;
- (f) where the Commanding Officer finds the accused guilty, he shall record a finding of guilty and shall afford the accused an opportunity to mitigate before pronouncement of the punishment.

[Subsidiary]

18. Plea of guilty

Where the accused pleads guilty, the Commanding Officer shall record a finding of guilty and shall afford the accused an opportunity to mitigate before pronouncement of the punishment.

19. Record of the proceedings

A record shall be made of the proceedings in accordance with Form set out in the Third Schedule and in addition, the commanding officer shall record or cause the proceedings to be recorded in writing in sufficient detail and to the extent possible, in Hansard form.

20. Dismissal of a charge

(1) A commanding officer may dismiss a charge at any time if he is of the opinion that it ought not to be proceeded with further.

(2) If in the course of dealing summarily with a charge a commanding officer determines that it is desirable that the charge should be tried by court martial, he shall refer the charge to the Director of Military Prosecutions.

(3) After a commanding officer has referred a charge to the director of military prosecutions, he shall not otherwise deal with it unless it has been referred back to him with a direction that it shall be dealt with summarily.

21. Reference of charge to appropriate superior authority or Director of Military Prosecutions

Where a commanding officer refers a charge to the appropriate superior authority or Director of Military Prosecutions, he shall forward the following documents—

- (a) the abstract of evidence;
- (b) a statement of the character and service record of the accused; and
- (c) written reasons for his action and a recommendation as to how the charge should be proceeded with.

22. Procedure of proceedings before appropriate superior authority or subordinate commander

In all proceedings before a subordinate commander or appropriate superior authority the procedure provided in proceedings before a commanding officer shall be adopted and followed:

Provided that a subordinate commander shall not refer a charge to the appropriate superior authority or Director of Military Prosecutions.

23. Limitation to summary charges

A commanding officer shall not deal summarily with a charge under any of the following provisions of the Act—

- (a) sections 58, 59, 60, 61, 62, 63, 64, 66(1) (b) 67, 68, 69(c) and (d), 70, 71, 72, 73;
- (b) sections 87 (a),(b) 88 (a), (b), 91 and 92 where the subject matter exceeds in value ten thousand shillings;
- (c) sections 94, 97, 98, 99, 100, 101, 103 (1), 106, 107, 109, 110,111, 114,115,117, 118,119,120,122, 124and 129;
- (d) sections 131,132 and 133, where the commanding officer may not deal summarily with the substantive offence; or
- (e) any offence under the Second Schedule to the Act.

24. Limitation of punishment

A commanding officer shall not award the punishment of stoppages exceeding ten thousand shillings.

25. Punishments awarded by commanding officer

A commanding officer shall award such punishments as are prescribed in sections 155 and 156 of the Act.

26. Restrictions on a commanding officer

Where the commanding officer is in office by virtue of rule 3(l)(b)—

- (a) the commanding officer of the unit to which the sub-unit or detachment belongs may restrict him in the exercise of his powers having regard to his rank or experience;
- (b) and where he has been restricted in the exercise of his powers, he may nevertheless exercise his full powers as a commanding officer if he considers it necessary for him to do so for the maintenance of discipline, but if he does so he shall immediately report his action to the commanding officer who restricted him in the exercise of his powers.

27. Punishment awarded under delegated powers

A subordinate commander to whom the power to deal summarily with charges has been delegated under rule 4 may only award the following punishments—

- (a) if he is of the rank of major or corresponding rank or above to a non-commissioned officer—
 - (i) a fine not exceeding fifteen days pay;
 - (ii) severe reprimand;
 - (iii) reprimand; or
 - (iv) admonition;
- (b) if he is of the rank of major or corresponding rank or above to a service member, other than a warrant officer or non-commissioned officer—
 - (i) imprisonment for a period not exceeding twenty-eight days;
 - (ii) a fine not exceeding fifteen days pay;
 - (iii) the minor punishments specified in rule 30; or
 - (iv) admonition;
- (c) if he is of the rank of captain or corresponding rank or below to a senior sergeant or sergeant—
 - (i) reprimand; or
 - (ii) admonition;
- (d) if he is of the rank of captain or corresponding rank or below to a corporal or lance corporal—
 - (i) a fine not exceeding ten days pay;
 - (ii) severe reprimand;
 - (iii) reprimand; or
 - (iv) admonition; or
- (e) if he is of the rank of captain or corresponding rank or below to a private—
 - (i) imprisonment for a period not exceeding fourteen days;
 - (ii) a fine not exceeding ten days pay;
 - (iii) the minor punishments specified in rule 30; or
 - (iv) admonition.

[Subsidiary]

28. Appropriate superior authority

Any officer of or above the rank of lieutenant-colonel or corresponding rank who is appointed appropriate superior authority by the Service Commander shall be the appropriate superior authority for the purposes of section 149 of the Act, in addition to the Service Commander and the Chief of the Defence Forces:

Provided that an officer of the rank specified in the first column in the Fourth Schedule shall not be the appropriate superior authority for the purposes of a case in which the accused is above the rank specified in the second column or corresponding rank.

29. Limitation of powers of appropriate superior authority

The appropriate superior authority shall not deal summarily with a charge against an officer under any of the following provisions of the Act—

- (a) sections 58, 59, 60, 61, 62, 63, 64, 66(1) (b), 67, 68, 69(c) and (d), 70, 71, 72, and 73;
- (b) sections 87 (a), (b) 88 (a), (b), 91 and 92 where the subject matter exceeds in value ten thousand shillings;
- (c) sections 94, 97, 98, 99, 100, 101, 103(1), 106, 107, 109, 110, 111, 114, 115, 117, 118, 119, 120, 122, 124 and 129;
- (d) sections 131, 132 and 133, where the appropriate superior authority may not deal summarily with the substantive offence; or
- (e) any offence under the Second Schedule to the Act.

30. Minor punishments

(1) The minor punishments which a commanding officer may impose under sections 155 (3)(e), 156 (2)(a) (vii) and (b) (iv) of the Act are—

- (a) up to twenty-eight days' confinement to barracks or stoppage of short leave, with or without extra duties;
- (b) up to twenty-eight days' loss of privileges; and
- (c) extra guards or duty:

Provided that a commanding officer of the rank of captain or corresponding rank or below shall not award minor punishments for a period exceeding twenty-one days.

(2) The minor punishments which a subordinate commander may award are—

- (a) up to twenty-one days' confinement to barracks or stoppage of short leave, with or without extra duties;
- (b) up to twenty-one days' loss of privileges; or
- (c) extra guards or duty:

Provided that a subordinate commander of the rank of captain or corresponding rank or below, shall not award minor punishments for a period exceeding fourteen days.

(3) The periods specified in this rule are the maximum periods which may be awarded in the course of any one hearing.

31. Action by appropriate superior authority

(1) An appropriate superior authority may dismiss a charge at any time if he is of the opinion that it ought not to be proceeded with further.

(2) If in the course of dealing summarily with a charge an appropriate superior authority determines that it is desirable that the charge should be tried by court martial, he shall refer the charge to the Director of Service Prosecutions or Director of Military Prosecutions, as the case may be.

(3) After an appropriate superior authority has referred a charge to the Director of Military Prosecutions, as the case may be, he shall not otherwise deal with it unless it has been referred back to him with a direction that it shall be dealt with summarily.

32. Action by the Director of Military Prosecutions on receipt of abstract evidence

(1) When the Director of Military Prosecutions or his representative at the Service Headquarters as the case may be, receives an abstract of evidence against an accused he shall, if he does not refer it back to the commanding officer or appropriate superior authority, refer it to the Defence Court Martial Administrator or the Service Court Martial Administrator, as the case may be, who shall take appropriate steps to convene a court martial.

(2) Where the Director of Military Prosecutions or his representative at Service headquarters refers an abstract of evidence back to the commanding officer or appropriate superior authority he shall do so together with his own recommendations as to how the case should be proceeded with.

33. Referral to the Defence Martial Administrator or Service Court Martial

Before the Director of Military Prosecutions or his representative at the Service Headquarters refers an abstract of evidence to the Defence Court Martial Administrator or the Service Court Martial Administrator, as the case may be he shall—

- (a) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by court martial upon those charges either by his commanding officer or by the appropriate superior authority;
- (b) if he is of the opinion that charges should be put in separate charge-sheets, do so and direct the order in which they are to be tried;
- (c) direct, if there is more than one accused, whether the accused are to be tried separately or jointly;
- (d) assign a prosecutor duly appointed by the Defence Council; and
- (e) direct the Defence Court Martial Administrator or the Service Court Martial Administrator as the case may be, to convene a Court Martial.

FIRST SCHEDULE

[r. 7]

DEALY REPORT

FORM 1

DELAY REPORT

Unit
Address
Telephone:

TO:
(Convening Officer)

¹..... EIGHT DAY DELAY REPORT

pursuant to the Kenya Defence Forces Act (Cap. 199), section 140(2).

Number, Rank, Name of accused

Date placed in arrest, 20

<i>Alleged Offence(s)</i>	<i>Date of Alleged offence(s)</i>
.....
.....
.....

[Subsidiary]

² The accused is in close/open arrest.
The reasons for his retention in arrest are

.....

² The abstract of evidence { was taken
on,
20
has not yet
been consulted
because

² The Director of Military Prosecution { was consulted
on, 20
has not yet
been consulted
because

² The Director of Military Prosecution's advice { was received
on,
20
has not yet been received.

² Action { is being taken
has been taken) (on
the Director of Military
Prosecution's advice as
follows)
.....
.....

² Date of trial { has not yet been fixed.
has been fixed
as,
20

Reasons for delay since last report

.....
*Officer commanding
accused's unit*
(to be signed personally
by the Commanding
Officer)

Date 20

² Strike out words not applicable

NOTES

¹ Insert "1st", "2nd", "3rd", "Final" or as the case may be

² Strike out words not applicable

SECOND SCHEDULE

[r. 10]

FORMS

Form I. Abstract of evidence

Form II. Certificate to be attached to an abstract of evidence after it has been handed to the accused.

Form III. Illustrations of charge-sheets.

Form IV. Commencement of a charge-sheet.

Form V. Statement of offences.

FORM I _____ (r. 10(1))
ABSTRACT OF EVIDENCE

Abstract of evidence in the case of
(number, rank, name, unit) consisting of the
(insert the number of statements) attached statements and

(insert the number of précis) précis of evidence³ of witnesses for the prosecution and compiled by me (the Investigating Officer) (.....⁴ on the instructions of the commanding officer of the accused).

.....
(Signature and rank)

(Date) 20

FORM II _____ (r. 10(4))
CERTIFICATE TO BE ATTACHED TO AN ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Certified that I⁵ today handed to the accused.....⁶ the abstract of evidence relating to him dated day of, 20, and duly cautioned him in accordance with rule 9(2) and that he (elected to make and sign the statement dated the day of 20, which is marked and attached to this certificate) (did not make a statement).

.....
(Signature of Certifying Officer)

(Date) 20

NOTES

³strike out any reference to statements or précis which are not applicable.

⁴Insert rank, name of the officer making the abstract

⁵Insert rank, name and unit of officer signing the certificate.

⁶Insert number, rank, name and unit of the accused certificate.

FORM III _____ (r. 11(2))
ILLUSTRATIONS OF CHARGE-SHEETS
(i) Charge-Sheet

Kenya Defence Forces

[Subsidiary]

The accused, (Svc No., Rank, Name) of 1st Battalion Kenya Rifles, a service member of the Defence Forces, being subject to the Kenya Defence Forces Act (Cap. 199) under section 4(a) of that Act, is charged with—

1st. Charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 87 (a) OF THE KENYA DEFENCE FORCES ACT

in that he

at Nanyuki on 1st January, 2013, stole a pair of binoculars, public property.

2nd. Charge

(Alternative to

1st charge)

RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 87(b) OF THE KENYA DEFENCE FORCES ACT

in that he

at Nanyuki on 1st January, 2013, received a pair of binoculars, public property, knowing or having reason to believe them to be stolen.

Dated at (Nanyuki) this day of..... 20

Signature

(NAME),

(RANK, SVC NO)

Investigating Officer,

SUBORDINATE COMMANDER (NAME, RANK, SVC NO. APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

COMMANDING OFFICER (NAME, RANK, SVC NO, APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

APPROPRIATE SUPERIOR AUTHORITY (NAME, RANK, SVC NO, APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

CONFIRMED BY: (SERVICE COMMANDER ARMY, AIRFORCE, NAVY)

DATE: SIGNATURE:

(ii) *Charge-Sheet*

The accused, (Svc No., Rank, Name), a reservist called out under section (261,262,263)⁷ of the Kenya Defence Forces Act (Cap. 199), being subject to that Act under section 4 (b) of that Act and (Name) formerly No. 3456789 a Private of the 2nd Battalion Kenya Rifles, a service member of the Defence Forces, then subject to the Kenya Defence Forces Act, under section 4 (a) of that Act, are charged with—

Both charged jointly

1st Charge

USING VIOLENCE AGAINST THEIR SUPERIOR OFFICER, CONTRARY TO SECTION 82 (1) (a) OF THE KENYA DEFENCE FORCES ACT

in that they at Nakuru on 2nd January, 2013, used violence against No. 4567890 Sergeant John Kinyoki who had ordered them into arrest by seizing the said sergeant by the jacket and by kicking his legs.

For 2nd Accused only:

2nd Charge

7 Delete as appropriate

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER, CONTRARY TO SECTION 82 (1)(b) OF THE KENYA DEFENCE FORCES ACT in that he

at Nakuru on 2nd January, 2013 said to (Svc No., rank, name), who was then his superior officer, when asked by the said Sergeant for his (the accused's) particulars "afande ulikuwa unanitafuta na leo utaniona" or words to that effect.

Dated at (Nanyuki) this day of..... 20

Signature..... (NAME, RANK, SVC NO). Investigating Officer

SUBORDINATE COMMANDER (NAME, RANK, SVC NO, APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

COMMANDING OFFICER (NAME, RANK, SVC NO, APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

APPROPRIATE SUPERIOR AUTHORITY (NAME, RANK, SVC NO, APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

CONFIRMED BY: (SERVICE COMMANDER ARMY, AIRFORCE, NAVY)

DATE: SIGNATURE:

(iii) Charge-Sheet

The accused, (Rank, Name, Svc No.) of 1st Battalion Kenya Rifles, an officer of the Defence Forces, being subject to the Kenya Defence Forces Act under section 4 (a) of that Act, is charged with—

1st Charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 87 (a) OF THE KENYA DEFENCE FORCES ACT

in that he

at Nanyuki on 1st January, 2013, stole a pair of binoculars, public property.

2nd Charge

(Alternative to

1st charge)

RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 87 (b) OF THE KENYA DEFENCE FORCES ACT

in that he

at Nanyuki on 1st January, 2013, received a pair of binoculars, public property, knowing or having reason to believe them to be stolen.

Dated at (Nanyuki) this day of..... 20

Signature..... (NAME, RANK, SVC NO). Investigating Officer

Kenya Defence Forces

[Subsidiary]

COMMANDING OFFICER (NAME, RANK, SIV.C NO, APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

APPROPRIATE SUPERIOR AUTHORITY (NAME, RANK, SVC NO. APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

APPROPRIATE SUPERIOR AUTHORITY (NAME, RANK, SVC NO, APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

CONFIRMED BY: (SERVICE COMMANDER ARMY, AIRFORCE, NAVY)

DATE: SIGNATURE:

(iv) Charge-Sheet

The accused, (Svc No., Rank, Name) of DHQ CAU, a constable in the Defence Forces Constabulary, being subject to the Kenya Defence Forces Act under section 30 (1) (b) of that Act, is charged with—

1st Charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 87 (a) OF THE KENYA DEFENCE FORCES ACT

in that he

at Nanyuki on 1st January, 2013, stole a pair of binoculars, public property.

2nd Charge

(Alternative to

1st charge)

RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 87 (b) OF THE KENYA DEFENCE FORCES ACT

in that he

at Nanyuki on 1st January, 2013, received a pair of binoculars, public property, knowing or having reason to believe them to be stolen.

Dated at (Nanyuki) this day of..... 20

Signature

(Name)

RANK, SVC NO).

Investigating Officer

SUBORDINATE COMMANDER/INSPECTOR (NAME, RANK, SVC NO. APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

COMMANDING OFFICER/COMMANDANT (NAME, RANK, SVC NO. APPOINTMENT)

Finding:

Award:

DATE: SIGNATURE:

CONFIRMED BY: (SERVICE COMMANDER ARMY, AIR FORCE, NAVY)

DATE: SIGNATURE:

Kenya Defence Forces

[Subsidiary]

CONFIRMED BY: (SERVICE COMMANDER ARMY, AIR FORCE, NAVY)

DATE :SIGNATURE:.....

FORM IV

(r. 10 (3))

COMMENCEMENT OF A CHARGE-SHEET

1. The accused(number, rank, name and unit) (an officer) (a service member) of the Defence Forces being subject to the Kenya Defence Forces Act, under section 4 (a) of that Act, is charged with-

.....
.....

2. The accused.....(number, rank and name) a member of the Defence Forces Constabulary , being subject to the Kenya Defence Forces Act, under section 30 (1) (b) of that Act, is charged with-

.....
.....

3. The accused.....(number, rank, name and unit)
A reservist called out under

- { section 261 }
- { section 262 }
- { section 263 }

of the Kenya Defence Forces Act, being subject to that Act under section 4(b) of that Act, is charged with-

4. The accused(name and unit in which employed) a person serving with the Defence Forces under an engagement whereby he agrees to be subject to the Kenya Defence Forces Act, while so serving, being subject to that Act under section 4 (d) of that Act, is charged with-

.....
.....

5. The accused..... (name) a person

- { employed in the service of
- { accompanying a unit
- { a unit
- { a part of a unit
- { a member of a unit
- { which is

on active service, being subject to the Kenya Defence Forces Act, under section 4 (i) of that Act, is charged with-

Kenya Defence Forces

[Subsidiary]

.....
.....

6. The accused..... (number, rank, name and unit) (a cadet) of the Defence Forces being subject to the Kenya Defence Forces Act, under section 4 (e) of that Act, is charged with-

.....
.....

7. The accused..... (a spy) being subject to the Kenya Defence Forces Act, under section 4 (f) of that Act, is charged with-

.....
.....

8. The accused..... (a person) being subject to the Kenya Defence Forces Act, under section 4 (g) of that Act, is charged with-

.....
.....

9. The accused (number, rank, name and unit)

{ an officer a service member }	of the	{ military air naval }	forces of a country	{ seconded attached }
			to which section 4 (h) of the Kenya Defence Forces Act, applies,	

to a unit of the Defence Forces being subject to that Act under section 4 (h) of that Act, is charged with-

.....
.....

10. The accused(name) formerly (number, rank and unit if applicable)

{ an officer a service member a reservist a person Constabulary }	of the Defence Forces	}	

then subject to the Kenya Defence Forces Act, under section

- 4 (a)
- 4 (a)
- 4(b)
- 4(g)(h)(i)(j)
- 30(1)(b)

of that Act, now liable to summary disciplinary proceedings under section 209 of that Act, is charged with-

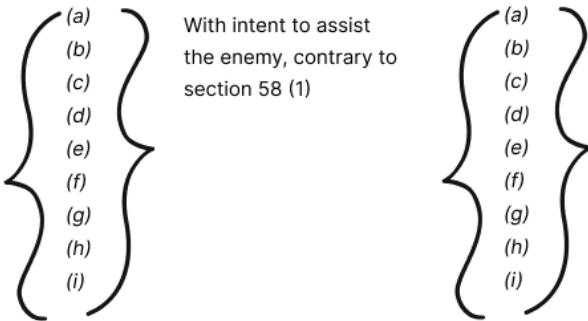
Form V

(r. 11 (3))

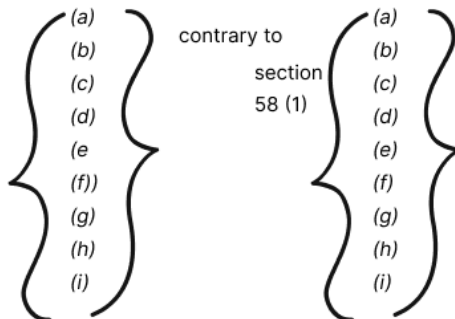
STATEMENTS OF OFFENCES

TREACHERY, COWARDICE AND OFFENCES ARISING OUT OF SERVICE

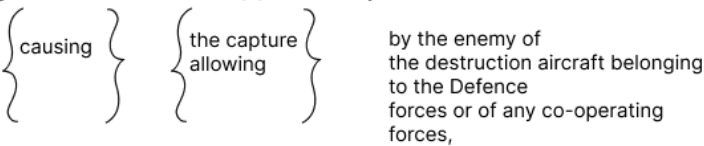
section 58

- (1)  With intent to assist the enemy, contrary to section 58 (1)

as read together with section 58(3) (a) of the Kenya Defence Forces Act.

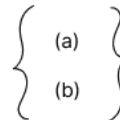
- (2) Knowingly and without lawful excuse doing an act specified in paragraph  contrary to section 58 (1)

as read together with section 58(3) (b) of the Kenya Defence Forces Act.

- (3) Negligently  by the enemy of the destruction aircraft belonging to the Defence forces or of any co-operating forces,

contrary to section 58 (2) as read together with section 58(3)

of the Kenya Defence Forces Act.

- 
- (a)
 - (b)

Kenya Defence Forces

[Subsidiary]

Section 59

{ Communicating with } the enemy contrary to section 59(1) to { (a) } of
{ Giving intelligence to }

the Kenya Defence Forces Act

Section 60

Spying contrary to section 60 (1) of the Kenya Defence Forces Act

Section 61

(1) Failing to obey orders contrary to section 61(a) as read together with (a)

section 61(2) { (a) } of the Kenya Defence Forces Act
{ (b) }
{ (c) }

(2) Failing to engage the enemy contrary to section 61(a) as read together section 61(2)

{ (a) } of the Kenya Defence Forces Act
{ (b) }
{ (c) }

(3) Improperly withdrawing from action contrary to section 61(b) as read together section 61(2)

{ (a) } of the Kenya Defence Forces Act
{ (b) }
{ (c) }

(4) Improperly failing to pursue the enemy contrary to section 61(c) as read together section 61(2)

{ (a) } of the Kenya Defence Forces Act
{ (b) }
{ (c) }

(5) Improperly failing to consolidate position gained contrary to section 61(c) as read together with section 61(2)

{ (a) } of the Kenya Defence Forces Act
{ (b) }
{ (c) }

(6) Improperly failing to

{ relieve } friendly forces
{ assist }

contrary to section 61(d) as read as read together with section 61(2)

{ (a) } of the Kenya Defence Forces Act
{ (b) }
{ (c) }

(7) Improperly forsaking a station contrary to section 61(c) as read together with section 61(2) of the Kenya Defence Forces Act

- (a)
- (b)
- (c)

Section 62 (1)

(1) Misconduct by a person in command contrary to to section 62 (1) as read together with

- (a)
- (b)
- (c)

section 62(2) of the Kenya Defence Forces Act

- (a)
- (b)

Section 63

Misconduct by a person not in command contrary to section 63

- (a)
- (b)

of

the Kenya Defence Forces Act

Section 64 (1)

Cowardice before the enemy contrary to section 64(1)

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)

as

read together with section 64(2) of the Kenya Defence Forces Act.

Neglecting to perform a duty Negligently performing

}

Section 65
contrary to section 65
of the Kenya Defence Forces Act.

Section 66

(a) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 66 (1)(a) as read together with section 66(2)of the Kenya Defence Forces Act.

(b) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 66 (1) (b) as read together with section 66(2) of the Kenya Defence Forces Act.

Kenya Defence Forces

[Subsidiary]

Section 67

Advocating governmental change by force contrary to Section 67 $\left. \begin{matrix} (a) \\ (b) \end{matrix} \right\}$ of the Kenya Defence Forces Act

Section 68

(1) Being captured through disobedience or wilful neglect contrary to section 68 (1) (a) as read together with section 68(2) of the Kenya Defence Forces Act

(2) Failing to take reasonable steps after capture to rejoin the Defence Forces section 68 (1)(b)(i) as read together with section 68(2) of the Kenya Defence Forces Act.

(3) Preventing Discouraging $\left. \begin{matrix} \\ \end{matrix} \right\}$ a person from taking reasonable steps after capture to rejoin the Defence Forces

contrary to section 68 (1)(b)(ii) as read together with section 68(2) of the Kenya Defence Forces Act

Section 69

(1) Sleeping at post when on guard duty or watch contrary to section 69 (1) (a) (i) as read together with section 69 (4) $\left. \begin{matrix} (a) \\ (b) \end{matrix} \right\}$ of the Kenya Defence Forces Act

(2) Drunkenness when on guard duty or watch contrary to section 69 (1) (a) (ii) as read together with section 69 (4) $\left. \begin{matrix} (a) \\ (b) \end{matrix} \right\}$ of the Kenya Defence Forces Act

(3) Leaving his post when on guard duty or watch contrary to section 69 (1) (a) (iii) as read together with section 69 (4) $\left. \begin{matrix} (a) \\ (b) \end{matrix} \right\}$ of the Kenya Defence Forces Act

(4) Sleeping when not allowed to be asleep contrary to section 69 (1) (b) as read together with section 69 (4) $\left. \begin{matrix} (a) \\ (b) \end{matrix} \right\}$ of the Kenya Defence Forces Act

(5) Striking Using force against $\left. \begin{matrix} \\ \end{matrix} \right\}$ a person on guard duty or watch contrary to section 69 (1)(c) as read together with

Section 69 (4) $\left. \begin{matrix} (a) \\ (b) \end{matrix} \right\}$ of the Kenya Defence Forces Act. (

(6) Compelling a person on guard duty or watch to let a person pass contrary to section 69(1)(d) as read together with

section 69 (4) $\left. \begin{matrix} (a) \\ (b) \end{matrix} \right\}$ of the Kenya Defence Forces Act.

(1) Looting contrary to section $\left. \begin{array}{l} 70 (1) \left\{ \begin{array}{l} (a) \\ (b) \\ (c) \end{array} \right\} \\ 70(2)(a) \end{array} \right\}$ Section 70 as read together with section 70(4) of the Kenya Defence Forces Act

(2) Searching with intent to loot contrary to section $\left\{ 70(1) (d) \right\}$

70(2)(b) as read together with section 70(4) of the Kenya Defence Forces Act.

Committing a wrongful act against the $\left\{ \begin{array}{l} \text{person} \\ \text{property} \end{array} \right\}$ Section 71 of a member of a civil population

contrary to section 71(1) as read together with section 71(2) of the Kenya Defence Forces Act.

Section 72

(1) (a) Mutiny with violence contrary to section 72 (1) (a) as read together with section 72(3) $\left\{ \begin{array}{l} (a) \\ (b) \end{array} \right\}$ of the Kenya Defence Forces Act.

(2) Mutiny relating to the enemy contrary to section 72(1)(b) $\left\{ \begin{array}{l} (i) \\ (ii) \end{array} \right\}$ as read together with section 72(3) $\left\{ \begin{array}{l} (a) \\ (b) \end{array} \right\}$ of the Kenya Defence Forces Act.

(3) Incitement to mutiny contrary to section 72 (1)(c) as read together with section 72(3) $\left\{ \begin{array}{l} (a) \\ (b) \end{array} \right\}$ of the Kenya Defence Forces Act.

Section 73

(1) Failing to suppress or prevent mutiny contrary to section 73 (1) (a) as read together with section 73(2)(a) or (b) of the Kenya Defence Forces Act.

(2) Failing to report mutiny contrary to section 73 (1) (b) as read together with section 73(2)(a) or (b) of the Kenya Defence Forces Act.

[Subsidiary]

DESERTION, ABSENCE WITHOUT LEAVE, ETC.*Section 74*

(1) Desertion contrary to section 74 (1) (a) as read together with section 74(3) (a) (i) or (b) of the Kenya Defence Forces Act.

(2) $\left. \begin{array}{l} \text{Persuading} \\ \text{Procuring} \end{array} \right\}$ a person to desert contrary to section 74 (1) (b) as read together with section 74(3)(a) (ii) or (b) of the Kenya Defence Forces Act.

Section 75

(1) Absence without leave contrary to section 75(1) (a) as read together with section 75(2) of the Kenya Defence Forces Act.

(2) $\left. \begin{array}{l} \text{Persuading} \\ \text{Procuring} \end{array} \right\}$ a person to absent himself contrary to section 75 (1) (b) as read together with section 75(2) of the Kenya Defence Forces Act.

Section 76

(1) Assisting a person to desert or absent himself contrary to section 76(1) (a) as read together with section 76(2) of the Kenya Defence Forces Act.

(2) Failing to $\left. \begin{array}{l} \text{report without delay} \\ \text{take steps to cause} \\ \text{the apprehension of} \end{array} \right\} \left. \begin{array}{l} \text{a deserter or absentee} \\ \text{a person attempting to desert or} \\ \text{absent himself} \end{array} \right\}$

contrary to section 76 (1) (b) as read together with section 76 (2) of the Kenya Defence Forces Act

OFFENCES RELATING TO DISOBEDIENCE OF ORDERS*Section 77*

Disobedience to standing orders contrary to section 77 (1) of the Kenya Defence Forces Act.

*Section 78**Section 79*

Disobeying a lawful command contrary to section 79 of the Kenya Defence Forces Act

Section 80

Issuing a manifestly unlawful order contrary to section 80 of the Kenya Defence Forces Act

Section 81

{ Failing to attend a service duty
Leaving a service duty without permission } contrary to section 81(1)

as read together with section 81 (2) of the Kenya Defence Forces

INSUBORDINATION

Section 82

(1) { Striking
Using violence against
Offering violence to } a superior officer contrary to section 82(1)
(a) as read together with section 82(2)(a)
or (b) of the Kenya Defence Forces Act.

{ threatening
Insubordinate } language to a superior officer contrary to
section 82(1)(b) as read together with
section 82(2)(a) or (b) of the Kenya Defence Forces Act.

Section 83

(1) Obstructing { an officer
Refusing to assist { a service member
a duty officer
an officer of the patrol } } contrary to section 83(a)
as read together with
section 83(2) of the
Kenya Defence Forces Act

(2) { Obstructing
Refusing to assist } a person exercising authority under or on behalf of { military police
duty officer
officer of the patrol }

contrary to section 83 (b) as read together with section 83(2) of the Kenya Defence Forces Act.

MALINGERING, DRUNKENNESS AND QUARRELLING

Section 84(1)

Malingering contrary to section 84 (1) { (a)
(b)
(c)
(d) } as read together with section
84(2) of the Kenya Defence
Forces Act

Kenya Defence Forces

[Subsidiary]

Section 85

- (1) Unfitness to perform duty due to the influence of alcohol or drugs contrary to section 85(1)(a) as read together with section 85(4) of the Kenya Defence Forces Act.
- (2) Disorderly behavior due to the influence of alcohol or drugs contrary to section 85(1)(a) as read together with section 85(4) of the Kenya Defence Forces Act.

Section 86

- (1) { Fighting with
Quarrelling with
Threatening } another person contrary to section 86(1)(a) of the Kenya Defence Forces Act.
- (2) Using { threatening
abusive
insulting
provocative } { words
behaviour } { with intent to provoke
cause a disturbance }

contrary to section 86 (1)(b) of the Kenya Defence Forces Act.

OFFENCES RELATING TO PROPERTY

Section 87(1)

- (1) { Stealing
Fraudulently misapplying
Misappropriating
Being concerned in
stealing of
Conniving at } the { stealing of
fraudulent misapplication of }

public or non-public property contrary to section 87(1) (a) as read together with section 87(2) of the Kenya Defence Forces Act

- (2) { Retaining
Receiving } { public property
non-public property } contrary to section 87(1)(b) as read together with section 87(2) of the Kenya Defence Forces Act.
- (3) { Wilfully damaging
Being involved in the wilful damage of } { public property
non-public property }

contrary to section 87(1)(c) as read together with section 87(2) of the Kenya Defence Forces Act.

- (4) By wilful neglect damaging { public property
non-public property } by fire

contrary to section 87 (1) (d) as read together with section 87 (2) of the Kenya Defence Forces Act.

Section 88

(1) { Stealing
Fraudulently misapplying
Being concerned in
Conniving at } the { the stealing of
fraudulent misapplication of }

property contrary section 88 (1) (a) as read together with section 88(2) of the Kenya Defence Forces Act.

(2) { Receiving } property contrary to section 88(1) (b) as read together with section 88(2) of the Kenya Defence Forces Act.
{ Retaining }

(3) { Wilfully damaging
Being concerned in
the wilful damage of } property contrary to section 88(1) (c) as read together with section 88(2) of the Kenya Defence Forces Act.

Section 89

(1) { Losing } { public property
non-public property
property of a person
subject to the Kenya
Defence Forces Act } contrary to
{ Damaging }

section 89(1)(a) as read together with sections 89(1)(b) (i) or (ii) and section 89(4) of the Kenya Defence Forces Act

(2) { Negligently losing
Negligently damaging } { public property
non-public property } contrary to

section 89(2) (a) as read together with section 89(4) of the Kenya Defence Forces Act.

(3) Doing an act likely to cause { damage } to { public property
non-public property }
loss

contrary to section 89 (2)(b) (i) or (ii) and as read together with section 89(4) of the Kenya Defence Forces Act.

Kenya Defence Forces

[Subsidiary]

Section 90

(1) { Wilfully
Negligently } causing fire through { an act
an omission } contrary to

section 90 (a) or (b) of the Kenya Defence Forces Act.

(2) { By neglect of
Contrary to } { orders
regulations
instructions } causes fire contrary to section 90(a) or (b) of the Kenya Defence Forces Act

Section 91

Stealing contrary to Section 91(1) (a) or (b) of the Kenya Defence Forces Act

{ Receiving
Retaining } property contrary to section 92 of the Kenya Defence Forces Act

Section 92

Section 93

(a) { Wilfully destroying
Improperly selling
Wastefully expending } { public property
non-public property
property of a
co-operating force } contrary to section 93(a) of the Kenya Defence Forces Act

(b) { Wilfully destroying
Improperly selling } property belonging to a person subject to the Kenya Defence Forces Act contrary to section 93(b) of the Kenya Defence Forces Act.

(c) { Selling
Pawning
Disposing } a { cross
medal
insignia
decoration } of the Kenya Defence Forces contrary to section 93(c) of the Kenya Defence Forces Act.

Section 94

{ Wilfully
Negligently } { causing
allowing } { an aircraft
a ship
a vehicle } of the Kenya Defence Forces to be to be

{ captured
 lost
 destroyed
 damaged
 stranded
 hazarded }

contrary to section 94(a) or (b) of the Kenya Defence Forces Act.

Being concerned in an improper transaction involving the use of

Section 95

{ an aircraft
 a ship
 a vehicle }

contrary to section 95(a) or (b) of the Kenya Defence Forces Act.

(1)(a) { Losing
 Negligently damaging }

Section 96

{ public property
 non-public property
 service decoration }

contrary to section 96 (1) (a) as read together with section 96 (2) of the Kenya Defence Forces Act.

(b) { Losing
 Negligently damaging }

equipment contrary to section 96(1)(b) as read together with section 96(2) of the Kenya Defence Forces Act

(c) Negligently damaging public property by fire contrary to section 96(1) (c) as read together with section 96(2) of the Kenya Defence Forces Act.

(d) Neglect of { an animal
 a bird }

contrary to section 96 (1) (d) as read together with section 96(2)of the Kenya Defence Forces Act.

(e) { Pawning
 Selling
 Destroying
 Making away with }

{ a service decoration
 granted to him
 his equipment }

contrary to

section 96 (1) (e) as read together with section 96(2) of the Kenya Defence Forces Act.

[Subsidiary]

OFFENCES RELATING TO BILLETING AND REQUISITIONING OF VEHICLES

Section 97

(a) Unlawfully { obtaining }
 { ordering } a person to obtain { billets }
 { procuring } { contrary to }
 section 97 (a) as

read together with section 97(2) of the Kenya Defence Forces Act.

(b) Corruption in relation to a billeting order contrary to section 97 (1) (b) as read together with section 97(2) of the Kenya Defence Forces Act

(c) { Committing an offence against } { a person } { in his }
 { Damaging } { property }
 { Damaging of property }

Billet contrary to section 97(1) (c) as read together with section 97(2) of the Kenya Defence Forces Act

Section 98

Unlawful requisitioning contrary to section 98(1) (a) or (b) as read together with section 98(3) of the Kenya Defence Forces Act.

Corruption in relation to a requisition order contrary to section 98 (1)(c) as read together with section 98(3) of the Kenya Defence Forces Act.

OFFENCES RELATING TO FLYING

Section 99

{ Wilfully } { doing an act } { flying }
 { Negligently } { making an } { the use of aircraft }
 { } { omission } { in } { }
 { } { } { } { relation to } { aircraft }
 { } { } { } { } { aircraft }
 { } { } { } { } { material }

{ causing } { loss of life } { to a person contrary to section }
 { likely to cause loss of } { bodily injury } { 99 (a) or (b) of the Kenya }
 { life or bodily injury } { } { Defence Forces Act }

Section 100

Unlawful low flying contrary to section 100 of the Kenya Defence Forces Act.

Section 101

Flying an aircraft in a manner causing or likely to cause unnecessary annoyance to a person contrary to section 101 of the Kenya Defence Forces Act.

OFFENCES RELATING TO AND BY PERSONS IN CUSTODY

Section 102

(1) (a)(i) Delaying $\left\{ \begin{array}{l} \text{an investigation} \\ \text{a trial} \end{array} \right\}$ contrary to section 102 (1) (a)
(i) as read together with section

102(2) of the Kenya Defence Forces Act.

(ii) Failing to release a person in arrest contrary to section 102 (1) (a) (ii) as read together with section 102(2) of the Kenya Defence Forces Act.

b) Failing to report the offence for which a person has been placed in custody contrary to section 102(1)(b) as read together with section 102(2) of the Kenya Defence Forces Act.

(1)(c) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 102 (1) (c) as read together with section 102(2) of the Kenya Defence Forces Act.

Section 103

(1) (a) Wilfully allowing a person to escape contrary to section 103 (1)(a) as read together with section 103(2) (a) or (b) of the Kenya Defence Forces Act.

(1)(b) Releasing a person without authority contrary to section 103(1) (b) as read together with section 103(2)(a) or (b) of the Kenya Defence Forces Act.

(1) (c) Allowing a person to escape contrary to section 103(1) (c) as read together with section 103(2)(a) or (b) of the Kenya Defence Forces Act.

Section 104

(1)(a) Refusing to obey an officer who orders him/her into arrest contrary to section 104

(1)(a) as read together with section 104(2) of the Kenya Defence Forces Act.

(b) $\left\{ \begin{array}{l} \text{Striking} \\ \text{Using violence against} \\ \text{Offering violence to} \end{array} \right\}$ $\left\{ \begin{array}{l} \text{any officer who orders him into arrest} \\ \text{a person whose duty it is to apprehend him} \\ \text{a person who has custody of the person} \end{array} \right\}$

contrary to section 104(1) (b) (i) or (ii) as read together with section 104(2) of the Kenya Defence Forces Act

[Subsidiary]

Section 105

Escaping from custody contrary to section 105 of the Kenya Defence Forces Act.

OFFENCES CONCERNING COURTS MARTIAL AND OTHER AUTHORITIES

Section 106

- | | | | |
|-----|--|-----------------------------|--|
| (1) | {
(a)
(b)
(c)
(d)
(e)
(f)
} | Contempt of a court martial | {
(a)
(b)
(c)
(d)
(e)
(f)
} |
|-----|--|-----------------------------|--|

contrary to section 106 Act as read together with section 106(2) or (3) of the Kenya Defence Forces Act.

Section 107

(1) Making a false statement contrary to section 107 (1) of the Kenya Defence Forces Act.

Section 108

- | | | |
|--------|-------------------------------------|---|
| (1)(a) | {
Preventing
Obstructing
} | a person in executing a warrant of arrest contrary to section 108 (1) (a) as read together with section 108(2) of the Kenya Defence Forces Act. |
| (1)(b) | {
Preventing
Obstructing
} | a person in executing a warrant of arrest contrary to section 108 (1) (b) as read together with section 108(2) of the Kenya Defence Forces Act. |

PRIZE OFFENCES

Section 109

- | | | | | |
|--------|---------------------------|---------------------------------|------------------|---|
| (1)(a) | Being in command of | {
an aircraft
a ship
} | fails to send to | {
the High Court
a prize court
} |
| | all papers found on board | {
an aircraft
a ship
} | taken as a prize | |

contrary to section 109(1)(a) as read together with section 109(2) of the Kenya Defence Forces Act.

(b) Being in command of { an aircraft } unlawfully makes an agreement for the ransoming of { an aircraft }
 { a ship } { agreement for the ransoming of } { a ship }
 { goods }

taken as a prize contrary to section 109 (1) (b) as read together with section 109(2) of the Kenya Defence Forces Act.

(c) Being in command of { an aircraft } { by agreement } { restoring }
 { a ship } { by collusion } { abandoning }
 { an aircraft }
 { a ship }
 { goods }

taken as a prize contrary to section 109 (1) (c) as read together with section 109(2) of the Kenya Defence Forces Act.

Section 110

(1) (a) { Striking }
 { Ill-treating } a person on board { an aircraft }
 { Unlawfully taking a thing } { a ship }
 { from the possession of }

taken as a prize contrary to section 110 (1) (a) as read together with section 110(2) of the Kenya Defence Forces Act.

(b) Removing out of { an aircraft } taken as a prize any goods not lawfully adjudged to
 { a ship } be a prize

contrary to section 110 (1) (b) as read together with section 110(2) of the Kenya Defence Forces Act.

(c) Fraudulently breaking { an aircraft } { taken as a prize }
 bulk on board { a ship } { detained by }
 { belligerent right }

contrary to section 110 (1) (c) as read together with section 110(2) of the Kenya Defence Forces Act.

[Subsidiary]

MISCELLANEOUS OFFENCES

Section 111

- (a) { Promoting
Being a member of
Taking part in the activities of } a political association contrary to section 111 (a) of the Kenya Defence Forces Act.
- (b) Expressing political views in a public place contrary to section 111 (b) of the Kenya Defence Forces Act.
- (c) { Addressing a meeting
Joining in a demonstration } in support of a political candidate for a { association
object } { national
county } election cause in a referendum { contrary to section 111 (c) of the Kenya Defence Forces Act.

Section 112

- { Giving a false answer on enlistment } contrary to section 112 of the Kenya Defence Forces Act Making a false statement

Section 113

- (a) { Giving a false answer } { in relation to the enrolment } { contrary to section 113(a) of the Kenya Defence Forces Act
- (b) { Furnishing false information
Furnishing a false document } contrary to section 113(b) of the Kenya Defence Forces Act

Section 114

- (1) (a) { Making
Signing } a false { Making a false entry in a } service document contrary to section 114 (1) (a) of the Kenya Defence Forces Act.

(1)(b) { Altering
Altering an entry in
Making away with
Suppressing
Defacing } a service document contrary to section 114(1)(b) of the Kenya Defence Forces Act.

(1)(c) Failing to make an entry in a service document contrary to section 114(1)(c) of the Kenya Defence Forces Act.

Section 115

(a) { wilfully
negligently } { Making
Signing
Making a false entry in a
Ordering the signing of
Ordering the making of } a false { a document contrary to section 115 (a) of the Kenya Defence Forces Act.

(b) Signing a document in blank contrary to section 115 (b) of the Kenya Defence Forces Act.

(c) { With intent to injure
With intent to deceive } { suppresses
defaces
alters
makes away with } a document or file contrary to section 115 (c) of the Kenya Defence Forces Act.

Section 116

Falsely { obtaining
prolonging } leave contrary to section 116 the Kenya Defence Forces Act.

Section 117

(a) { Making
Signing } a certificate relating to { an aircraft
aircraft material }

without ensuring its accuracy contrary to section 117 (a) of the Kenya Defence Forces Act.

(b) { Making
Signing } a certificate relating to { seagoing ship
fighting efficiency of a ship }

without ensuring its accuracy contrary to section 117 (b) of the Kenya Defence Forces Act.

Kenya Defence Forces

[Subsidiary]

Section 118

Scandalous conduct unbecoming the character of an officer contrary to section 118 of the Kenya Defence Forces Act.

Section 119

Striking } a person of { inferior rank } contrary to section 119 of the Kenya
 Ill-treating } { less seniority } Defence Forces Act.

Section 120

Disgraceful conduct of { a cruel } kind contrary to section 120
 { an indecent } of the Kenya Defence Forces Act.
 { an unnatural }

Section 121

{ An act } to the prejudice of good order and service discipline contrary
 { Conduct } to section 121 of the Kenya Defence Forces Act.
 { Neglect }

Section 122

(1)(a) Making a false accusation contrary to section 122(1)(a) of the Kenya Defence Forces Act.

(1)(b)(i) Making a false statement in a complaint contrary to section 122(1)(b)(i) of the Kenya Defence Forces Act.

(1)(b)(ii) Wilfully suppressing a material fact contrary to section 122(1)(b)(ii) of the Kenya Defence Forces Act.

Section 123

{ Negligently } discharging ammunition contrary to section 123 of the Kenya Defence
 { Deliberately } Forces Act.

Section 124

(1) (a) Engaging in { corruption } for selfish { purpose } contrary to section
 { malpractice } { gain } 124(1)(a) of the Kenya
 { an act } { } Defence Forces Act
 { an omission }

(1)(b) Causing loss by dereliction of duty contrary to section 124(1)(b) of the Kenya Defence Forces Act.

Section 125

(1) (a) Failure to take reasonable {precautionary measure } to safeguard { the life } of a { security } { health }

{ animal } { person } contrary to section 125(1)(a) of the Kenya Defence Forces Act.

(1)(b) Failure to { maintain good order } of { depot } { ensure safety } { installation } { work } { resources } { object } contrary to section 125(1)(b) of the Kenya Defence Forces Act

Section 126

Abuse of military authority contrary to section 126 { [(1) } { (2) } of the Kenya Defence Forces Act

Section 127

{ Exceeding } { Abusing } { Improperly assuming } authority contrary to section 127 of the Kenya Defence Forces Act.

Section 128

Fraternization contrary to section 128 of the Kenya Defence Forces Act.

Section 129

(1)(a) Failing to disclose on { enlistment } { commissioning } dual citizenship contrary to section 129(1)(a) of the Kenya Defence Forces Act

(1)(b) Acquiring dual citizenship while in service contrary to section 129(1)(b) of the Kenya Defence Forces Act.

Kenya Defence Forces

[Subsidiary]

Section 130

Cheating in examination contrary to section 130 of the Kenya Defence Forces Act that is to say (set out the offence)

Section 131

Attempting to commit a service offence contrary to section 131 of the Kenya Defence Forces Act.

Section 132

(1) { Aiding, Abetting, Counseling, Procuring } the commission of a service offence contrary to section 132(1) of the Kenya Defence Forces Act, that is to say (ser out the offence).

(3) { Aiding, Abetting, Counseling, Procuring, Conniving at } the commission of a service offence contrary to section 132(3) of the Kenya Defence Forces Act, that is to say (ser out the offence).

Section 133

Committing a civil offence contrary to section 133 (1) of the Kenya Defence Forces Act, that is to say (here describe the civil offence in such words as sufficiently describe the offence).

Section 134

Failing to disclose circumstances for release from the Defence Forces contrary to section 134 of the Kenya Defence Forces Act.

Section 135

Being concerned in the enrolment of person who commits an offence by en rolling into the Defence Forces contrary to section 135 of the Kenya Defence Forces Act.

Section 136

Failing to submit to { inoculation, re-inoculation, vaccination, immunization procedure, immunity test, blood examination, treatment against infectious disease } contrary to section 136 of the Kenya Defence Forces Act

THIRD SCHEDULE

[r. 19]

RECORD OF PROCEEDINGS

Accused's number, rank and name unit

1. The Officer dealing with the case shall inform the accused of his right to elect to be tried by Court Martial under Section 91 of this Act and shall ask the accused

Q. Do you wish to be tried summarily or elect to be tried by Court Martial?

A.

2. Questions to be put to the accused by the officer dealing with the case before the charge is read.

Q. Have you been served with a copy of the charge sheet and the abstract of evidence not less than 24 hours before this trial?

A.

Q. Have you had sufficient time to prepare your defence?

A.

3. The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question

Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?

A.

4. If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

5. After the abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused.

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn?

Your evidence or statement may deal with the facts of the case.

A.

Q. Do you wish to present any other evidence in your defence?

A.

6. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defence including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then:

- (i) consider all the evidence and determine whether the accused is guilty of the offence or not, and
- (ii) if he determines that the accused is guilty, make such a finding.

7. Finding

8. Where a finding of guilty has been entered, the Officer dealing with the case shall ask the accused the following question Q. Do you wish to adduce evidence or give a statement dealing with your character and matters in mitigation of punishment?

A.

9. The Officer dealing with the charge shall examine and consider the accused's record of service and mitigation, if any, before giving an award.

Award.....

.....

Kenya Defence Forces

[Subsidiary]

(Signature of the accused)

(Signature, rank and appointment of Commanding Officer/ appropriate superior authority)

(Date)

(Date)

Dated the, 20

FOURTH SCHEDULE

[r. 28]

APPROPRIATE SUPERIOR AUTHORITY

Lieutenant-colonel

Captain

Colonel

Major

Brigadier.....

Lieutenant-general

Major General

Colonel

Lieutenant-general.....

Brigadier

General

Major General

**THE KENYA DEFENCE FORCES (PENSIONS AND GRATUITIES)
(OFFICERS AND SERVICE MEMBERS) REGULATIONS**

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**THE KENYA DEFENCE FORCES (PENSIONS AND GRATUITIES)
(OFFICERS AND SERVICE MEMBERS) REGULATIONS**

[Legal Notice 194 of 2021]

PART I – PRELIMINARY

1. Citation

These Regulations may be cited as the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations.

2. Application

These Regulations shall apply to all claims arising after the 1st July, 1978, in respect of all officers and service members of the Kenya Defence Forces and the dependants of such Officers and Service Members provided that no additional benefits shall accrue to service personnel by virtue of the amendments herein.

3. Interpretation

(1) In these Regulations, unless the context otherwise requires—

"approved institutional treatment" means approved treatment in hospital or similar institution;

"approved treatment" means such medical, surgical or rehabilitative treatment as may be medically certified to be desirable in connection with any award payable under or by virtue of these Regulations;

"Assisted Living Allowance" means allowances payable to Officers or Service Members who have extra care needs or mobility needs as a result of a disability and is payable in accordance with regulation 40;

"being on duty" means anytime during any twenty-four hour period that an officer or a service member is in the lawful service of the Kenya Defence Forces;

"child" means a child of an officer or service member who is under the age of twenty-one years and who is a dependant and includes a posthumous child, a stepchild and an adopted child, and children shall be construed accordingly;

"Committee" means the Pensions Assessment Committee established by regulation 18;

"debt due to government" includes non-public funds;

"death" includes presumption of death under section 298(3) of the Act or by an order of a court of competent jurisdiction;

"degree of disablement" means the percentage of disablement assessed in accordance with Regulations 19 and 21;

"dependant" means a member of the family of an officer or service member or retired officer or discharged service members who before the death of such officer or service member or retirement of the officer or discharge of the service member was in receipt from him or her of regular and substantial support or benefit;

"disability or disablement" means a physical, sensory, mental or other impairment, injury or damage including any visual, hearing, learning or physical incapability which impacts adversely on social, economic or environmental participation;

"discharge" means, in the case of a service member, being relieved of military duties by the Commander or an officer authorized by him or her in that behalf;

"heir" means a person named by the deceased in his or her will as heir or joint heir, or if the deceased dies intestate, the person who is accepted as the heir by the community to which the deceased officer or service member belonged whether by any law for the time being in force or by the law or custom applicable to that community and includes any two or more persons who are accepted as joint heirs or the person declared as an heir by a competent court;

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[Subsidiary]

"legal officer" means an officer who is qualified in accordance with the Advocates Act (Cap. 18);

"Medical Board" means a board of medical officers appointed by the Pensions Assessment Committee;

"medical officer" means any person who is registered as a medical practitioner under the Medical Practitioners and Dentists Act;

"medically certified" means certified by a medical officer or a medical board;

"military service" means service with the Armed Forces and Kenya Defence Forces or service in any of the British Armed Forces and shall include for the period prior to the 12th December, 1963;

"month" means a calendar month, including broken periods at the beginning and the end of service;

"officer" has the meaning assigned to it under section 2 of the Act;

"pay" includes the basic salary, additional pay and any entitlements which the Defence Council or the Salaries Remuneration Commission may, with the concurrence of the National Treasury, specifically declare to be pensionable entitlements;

"pensionable emoluments" means the rate of pay including additional pay in issue to an officer or service member at the time of his retirement or discharge;

"resignation", in the case of an officer, means leaving service in the Kenya Defence Forces in circumstances not amounting to dismissal from the Kenya Defence Forces or termination of commission;

"retirement", in the case of an officer, means leaving service while holding a regular commission in the Kenya Defence Force—

- (a) compulsorily after attaining the specified age of his or her rank as laid down in the terms and conditions of service and being eligible by length of service to a pension in accordance with these Regulations;
- (b) voluntarily after serving for a period that makes him or her eligible by length of service to a pension in accordance with these Regulations;

"retired officer" means an officer who has retired from the Kenya Defence Forces;

"service member" has the meaning assigned to it under section 2 of the Act;

"termination of commission" means terminating the commission of an officer pursuant to the provisions of section 251 of the Act;

"third party compensation" means compensation received arising from a claim of bodily injury or death caused by the faulty party responsible for any act, omission or circumstances in accordance with regulation 29(7);

"Appeals Committee" means the Pensions Appeals Committee established under regulation 38;

"widow" includes a widower; and

"wife" includes, in the case of an officer or service member in whose religion or customs, polygamy is lawful, any person to whom the officer or service member is lawfully married in accordance with the tenets of the religion or customs, and in that case the amount of the pension, gratuity or other allowance to which a wife is eligible under these Regulations shall be divided equally among all the wives during the period in which there is more than one wife eligible therefore; and "widow" shall be construed accordingly.

(2) For the purposes of assessing pension under these Regulations, qualifying service shall be ten years' for officers and twelve years reckonable service for service members subject to the fulfilment of the requirements of regulation 37 in the case of officers and regulation 38 in the case of service members.

(3) For the purposes of assessing pension and gratuity under these Regulations, reckonable service shall be any paid service with the Kenya Defence Forces excluding therefrom—

- (a) all periods during which an officer or service member has been absent from duty by reason of imprisonment, desertion or absence without leave for a period exceeding seven days;
- (b) any period of service while the person was below the age of eighteen years;
- (c) any periods ordered by a court-martial to be forfeited; or
- (d) service preceding a five-year interval in the service unless specifically allowed by the Defence Council at the time service is resumed; except that where during the break in service, the officer, or service member has been a member of the regular reserve and has been called out for periodical training as provided under Part XVI of the Act, and the period during which the officer or service member was on the regular reserve shall not be considered as an interval in the service for the purposes of deciding whether the previous service is admissible.

(4) For the purpose of these Regulations, a disablement or death shall be deemed to be due to service if—

- (a) the disablement is due to wound, injury or disease—
 - (i) which is attributable to service; or
 - (ii) which existed before or arose during the service and has been and remains aggravated thereby;
 - (iii) in both cases the injury or wound shall not have been self-inflicted; and
- (b) the death was due to or hastened by—
 - (i) a wound, injury or disease which was attributable to service; or
 - (ii) the aggravation by service of a wound, injury or disease which existed before or arose during service.

(5) For the purpose of these Regulations, where a commander issues a certificate of presumption of death in respect of any officer or service member or where declaration of presumption of death is made by a court of competent jurisdiction, the date on which the officer or service member is deemed to have died shall be the date stated in the certificate of presumption of death or declaration of presumption of death by the Court.

PART II – POWER TO GRANT AND THE ASSESSMENT OF PENSIONS, GRATUITIES AND ALLOWANCES

4. Power to grant pensions, gratuities and allowances

Pensions, gratuities and other allowances may be granted by the Defence Council with the concurrence of the National Treasury in accordance with these Regulations to officers and service members of the Kenya Defence Forces.

5. Power to review pensions

The Defence Council may at any time review an award of pension made under these Regulations where it has been made in error or where, in the opinion of the Defence Council, it has been obtained by improper means and may on such review confirm, vary or cancel the award.

6. Pensions gratuities and allowances not a right

(1) No officer or service member shall have an absolute right to compensation for past services or to pension, gratuity or other allowance nor shall anything in these Regulations affect the right of the Defence Council to terminate the commission of any officer or the Commander to discharge or dismiss a service member at any time and without compensation except disability pension, where applicable.

(2) An officer or service member sentenced to dismissal by Court Martial or Commanding Officer shall not be entitled to pension, gratuity or other allowance except disability pension, where applicable.

[Subsidiary]

7. Suspension of pension on employment by a foreign power

If a retired officer or a discharged service member enters the service of a foreign power without the consent of the Council, or he or she continues in such service after the consent previously granted is withdrawn, his or her service pension or other allowances granted under these Regulations may be suspended or withheld for such period as the Defence Council, with the concurrence of the National Treasury, may determine.

8. Pension, gratuity and allowance not assignable

A pension, gratuity or allowance granted under these Regulations shall not be assignable or transferable except for the purpose of satisfying an order of any court for the payment of periodical sums of money towards the maintenance of the wife or former wife or child of the officer or service member to whom the pension, gratuity or other allowance has been granted, and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim other than a debt due to the Government.

9. Pension where appointed to acting position

Where an officer or service member has held an acting position for a period of 90 days or more at the date of retirement, the pension granted to him or her shall be that applicable to such higher rank.

10. Computation of pension

(1) Every pension granted to an officer or service member in accordance with these Regulations shall be assessed at the annual rate of one four hundredth of the pay for each completed month of his or her reckonable service.

(2) A pension payable to an officer or service member shall not be less than fifteen thousand shillings per month:

Provided that a pension granted to an officer or service member under these Regulations shall not exceed the highest pensionable emoluments drawn at any time in the course of service in the Kenya Defence Forces.

(3) Any officer or service member who is entitled to a pension under these Regulations shall commute up to one-quarter of that annual pension at the equivalent of twenty times the amount of the annual pension commuted.

(4) The normal retirement date is the date when an officer or service member attains retirement age.

11. Gratuity where length of service does not qualify for pension

Every officer or service member, otherwise qualified for a pension, who has not been in the service of the Kenya Defence Forces for ten years in the case of officers and twelve years in the case of service members, may be granted, on retirement or discharge, as the case may be, a service gratuity not exceeding five times the annual amount of the pension which would have been granted to him or her had he or she served in the Defence Forces for a period of not less than ten years in the case of officers and twelve years in the case of service members worked out at an annual rate of one-four-hundredth of the pensionable emoluments for each completed month of the reckonable service.

12. Pension to dependants of an officer or service member

(1) Subject to these Regulations, in the case of the death of an officer or a service member or a retired officer or discharged service member there shall be continued to be paid a dependant's pension, in addition to the grant made under regulation 13, on the terms and subject to the conditions set out in paragraph (3), to the widow or widower or the children of the officer or service member for a period of five years next following the officer's or service member's death at the rate of the officer's or service member's pension on the date of his death.

(2) Where a widow or a widower to whom a dependant's pension has been granted under this regulation dies or otherwise ceases to be entitled to a dependant's pension, the

child or children who are entitled in accordance with the terms and conditions set out in paragraph (3), to a dependant's pension shall be entitled in accordance with these terms and conditions to receive the dependants' pension for the remainder of the period of 5 years from the date of the officer's or service member's death, which is still outstanding at the date when the widow or widower dies.

(3) For the purposes of paragraph (1), a dependant's pension under these Regulations shall be paid on the following terms and subject to the following conditions—

- (a) where the deceased officer or service member leaves a widow or a widower whether or not he or she also leaves a child, for so long as he or she is alive shall be entitled to receive the whole of the dependants pension at the appropriate rate provided for under paragraph (1);
- (b) where the deceased officer or service member does not leave a widow or a widower, or within the period of five years during which the dependants' pension is payable under this regulation the deceased officer's or service member's widow or widower dies, any child of the deceased officer or service member who is entitled at the appropriate date to receive the dependants' pension shall be entitled to receive, and if more than one child, in equal shares, the dependants' pension at the appropriate rate provided for under paragraph (1);
- (c) a dependant's pension or a share thereof shall only be payable to a child up to the age of 24 years including during the time that the child is receiving full time education at university, college, school or other educational institution approved by the Committee for the purposes of this regulation;
- (d) where the deceased officer or service member leaves more than one widow then the dependants' pension shall be shared equally among them and in the event of any one of them dying or otherwise ceasing under any of the provisions of this regulation to be entitled to a share of the dependants' pension, then the pension shall be paid to the child or shared equally among the children of the dead widow and in the case the dead widow leaves no child or children then the pension shall be paid to the remaining widow or shared equally among the remaining widows accordingly;
- (e) no dependants' pension or share thereof shall be payable at any time after the fifth anniversary of the officer's or service member's death;
- (f) the dependant's pension shall be paid irrespective of the cause of the circumstances of the officer's or service member's death.

13. Gratuity where officer or service member dies in service or after retirement or discharge

(1) Where an officer or service member dies while still serving in the Kenya Defence Forces, the Defence Council, in consultation with the National Treasury, may grant to his or her dependants a death gratuity of an amount not exceeding twice his or her annual pensionable emoluments or his or her commuted pension or gratuity, whichever is the greater.

(2) The death gratuity payable to dependants under paragraphs (1) shall be paid irrespective of circumstances or cause of the officer's or service member's death.

14. Death and Indemnity Benefit

(1) Where an officer or service member dies while still serving in the Kenya Defence Forces, the Defence Council shall pay a death and indemnity benefit to a beneficiary or the widow or widower recorded in the officer's or service member's records or the designated next of kin where the officer or service member is unmarried, for a period of three consecutive months following the death of the officer or service member.

(2) The death and indemnity benefit shall be equivalent to the officers or service member's salary net after statutory deductions.

[Subsidiary]

(3) The death and indemnity benefit shall not be deemed to be part of the estate of the deceased officer or service member.

15. Pension to cease on bankruptcy

(1) Subject to paragraph (3), where an officer or service member to whom a pension has been granted under these Regulations is adjudicated bankrupt by a judgement of a competent court the pension shall cease as from the date of adjudication or declaration.

(2) Where an officer or service member qualifies for a pension under these Regulations and is adjudicated bankrupt by a judgement of a competent court—

- (a) after qualifying, he or she may be granted a pension or gratuity, but the pension shall cease as at the date of adjudication or declaration, or the gratuity shall not become payable, as the case may be; or
- (b) before qualifying and at the date of qualifying he or she has not obtained his or her discharge from the bankruptcy, he or she may be granted a pension or gratuity, but the pension shall cease from the date of qualifying or the gratuity shall not become payable, as the case may be.

(3) Where by virtue of paragraph (1) pension ceases to be payable or a gratuity fails to become payable to any person, the Defence Council may, from time to time, during the remainder of that person's life or such shorter periods either continuous or discontinuous as the Defence Council, with the concurrence of the National Treasury, thinks fit, direct that all or any part of the money which the person would have been entitled to by way of pension or gratuity had he or she not become bankrupt shall be paid or applied for the maintenance or benefit of that person and his wife or her husband, children or other dependants or any of them in such proportion and manner as it thinks proper or for the discharge of that person's debts and the money shall then be paid or applied accordingly.

(4) Where a person whose pension has ceased or whose gratuity has failed to become payable by virtue of paragraph (2) obtains his or her discharge from the bankruptcy, the Defence Council may direct that his pension shall be restored from the date of such discharge or that he be paid any unpaid balance of his gratuity which has not been paid or applied, as the case may be, and his pension or gratuity shall then be paid accordingly.

16. Pension may cease for subversive activities, etc.

Where the Defence Council is satisfied that an officer or service member to whom a pension has been granted under these Regulations—

- (a) has shown himself or herself by act or speech to be disloyal or disaffected towards the Republic of Kenya;
- (b) has during any war in which the Republic of Kenya is engaged, unlawfully traded or communicated with the enemy or been engaged in or associated with any business that was to his or her knowledge carried on in such manner as to assist an enemy during war;
- (c) has failed to fulfil his or her commitments concerning the reserve;
- (d) has committed any criminal offence for which he or she is convicted and sentenced to a term of imprisonment; or
- (e) has engaged in activities which are subversive within the meaning of Chapter VII of the Penal Code,

it may direct that the pension granted to the officer or service member shall cease from a specified date:

Provided that the Defence Council, with the concurrence of the National Treasury, may in its discretion at any time divert the whole or part of the pension to or for the benefit of his wife or her husband, children or other dependants and may at any time after his pardon or release from prison restore the pension.

17. Pension may cease on conviction

(1) Where an officer or service member to whom pension, gratuity or other allowance has been granted under these Regulations is sentenced to a term of imprisonment by a competent court for any criminal offence, such pension, gratuity or allowance shall cease if the Defence Council so directs with effect from such date as the Defence Council shall determine.

(2) Where after retirement an officer or service member is sentenced to a term of imprisonment by a competent court for any criminal offence and in the circumstances in which he or she is eligible for pension, gratuity or some other allowance under these Regulations, but before that pension, gratuity or some other allowance is granted then—

- (a) paragraph (1) shall apply in respect of any pension, gratuity or allowance which may be granted to him or her ; and
- (b) the Defence Council may direct that any pension, gratuity or allowance which should have been paid to such an officer may not be paid.

(3) Where pension, gratuity or any other allowance ceases by reason of this regulation, it shall be lawful for the Defence Council to direct all or any part of the money to which such officer or service member was entitled by way of pension, gratuity or any other allowance to be paid to or for the benefit of his wife or her husband, children or other dependants as provided for in these Regulations and such money shall be paid and applied accordingly.

(4) Where an officer or service member whose pension, gratuity or any other allowance has ceased under this regulation, subsequently receives pardon from the President his or her pension, gratuity or other allowance shall be restored to him or her from the date of the pardon.

18. Establishment of the Pensions Assessment Committee

(1) There is established a committee, to be known as the Pensions Assessment Committee, which shall consist of—

- (a) two retired senior military officers, one of whom shall be the chairperson appointed by the Defence Council;
- (b) a civilian public officer qualified on matters relating to human resources appointed by the Defence Council;
- (c) a legal officer appointed by the Defence Council; and
- (d) a civilian medical practitioner appointed by the Defence Council on the recommendation of the Director of Medical Services.

(2) The members of the Committee shall hold office for a period of three years renewable once from the date of appointment.

(3) The Defence Council shall on the recommendation of the Director of Pensions appoint a public officer to be the secretary to the Committee.

(4) The Defence Council shall authorize the payment of adequate compensation to members of the Pension Assessment Committee.

(5) The Chairperson shall preside over all meetings of the Committee and in the absence of the Chairperson, the other members present at the meeting shall appoint one of the members to act as Chairperson for the purpose of that meeting.

(6) The quorum for a meeting of the Committee shall be three members and the Secretary.

(7) Subject to the provisions of these Regulations and to any direction issued by the Defence Council under these Regulations, the Committee shall regulate its own procedure.

19. Duties and powers of the Committee

(1) Where an officer or service member suffers disablement as a result of a wound, injury or disease, the Committee shall—

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- (a) determine whether the wound, injury or disease was due to, hastened by or aggravated by his or her service; and
- (b) in the case of disability, assess the degree thereof, and may, where it is satisfied that the wound, injury or disease was due to, hastened by or aggravated by his or her service, proceed to award pension for permanent disablement and additional hardship allowance in accordance with Regulations 22 and 23;
- (c) award pension on insanity;
- (d) award Assisted Living Allowance in accordance with regulation 40;
- (e) receive, revise, hear and determine any claim for review and assessment of pension or gratuity. .

(2) In the exercise of its powers and duties under these Regulations the Committee may appoint a service medical officer or board of service medical officers—

- (a) to advise on any claim; or
- (b) to carry out any medical examination which is required to be carried out by or under these Regulations or which, in the opinion of the Committee, should be carried out in order to enable the Committee to assess the entitlement or the degree of disablement of any officer or service member for any other reason which the Committee considers sufficient.

(3) Where in these Regulations a power is conferred upon the Committee to review and revise any pension, gratuity or allowance, such power shall include the power to review and revise any pension or allowance awarded under the provisions of any of the Regulations repealed by these Regulations except that the Committee shall not revise such award if the effect of such revision would be to decrease the amount previously awarded.

(4) The Committee shall keep a record of all the awards made and shall—

- (a) furnish a copy thereof to the Chief of the Kenya Defence Forces and the Military Pensions Liaison Officer; and
- (b) inform every person in respect of whom an award has been made of the terms of the award and the procedure to be followed in order to obtain payment.

20. Entitlement to disability pension

(1) The disablement of an officer or service member or retired officer or discharged service member shall be accepted as due to service for the purpose of these Regulations if—

- (a) the disablement is due to a wound, injury or disease which was inflicted or caused while on duty; or
- (b) it arose during service or has been aggravated by service.

(2) For the purpose of these Regulations, every officer and service member shall, unless the contrary is proved, be deemed to have been medically fit and not suffering from any wound, injury or disease at the effective date of his or her commissioning or enlistment, as the case maybe.

(3) Where a wound, injury or disease which has led to an officer's or service member's retirement or discharge during service was not recorded in any medical report made on the officer or service member at the commencement of his or her service, such wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions set out in paragraph (1) are not fulfilled.

(4) Where after the expiration of the period of seven years from the retirement of an officer or discharge of a service member, a claim is made in respect of his or her disablement, such disablement shall be accepted as due to service if—

- (a) in the case of disablement, the Committee is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled; and
- (b) in the case of death, the retired officer or discharged service member was at the time of his death, or had at any time previously thereto been, in receipt of

a pension or temporary allowance awarded by the Committee in respect of the wound, injury or disease which was the cause of or substantially hastened his or her death and the Committee is satisfied that the conditions set out in paragraph (1) are applicable and fulfilled.

(5) Where upon reliable evidence a reasonable doubt exists as to whether in respect of a claim under paragraph (3) the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant, and where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted.

(6) Where a wound, injury or disease which has led to an officer's or service member's death during his or her service was not recorded in any medical report made at the commencement of his or her service, the wound, injury or disease shall be accepted as being due to service unless the evidence shows that the conditions in paragraph (1)(a) and (b) are not fulfilled.

(7) Where after the expiration of a period of seven years from the retirement of an officer or discharge of a service member, a claim is made in respect of his or her death (being death occurring after the expiration of that period), such death shall be accepted as being due to service if at the time of his or her death or anytime previous thereto the officer or service member had been in receipt of a pension or temporary allowance awarded by the Board in respect of the wound, injury or disease which was the cause of or substantially hastened his or her death and the Board is satisfied that the death is due to service.

21. Degrees of disablement

(1) The degree of disablement to be assessed by the Committee shall be the measure of disablement which is considered to have been suffered by an officer or service member or retired officer or discharged service member by a comparison of his or her current condition with the condition of a healthy able-bodied person of the same age without taking into account—

- (a) his or her earning capacity, in his or her disabled condition, in his or her own or in any other specific trade or occupation, and
- (b) the effect of any individual factors or extraneous circumstances.

(2) The degree of disablement shall be expressed as a percentage (100 per cent representing total disablement) in any one of the following classifications—

- (a) 100 per cent;
- (b) less than 100 per cent but not less than 80 per cent;
- (c) less than 80 per cent but not less than 60 per cent;
- (d) less than 60 per cent but not less than 40 per cent;
- (e) less than 40 per cent but not less than 20 per cent;
- (f) less than 20 per cent but not less than 11 per cent;
- (g) 10 per cent and under.

(3) In the case of disablement suffered by reason of two or more disabilities attributable to service, the degrees of disablement shall be determined with reference to the combined disablement from the disabilities together, but it shall not exceed 100 per cent.

(4) The degree of disablement for specified injuries and certain other disabilities shall be assessed in accordance with the Schedule to these Regulations.

22. Pensions for Permanent disablement

(1) Subject to the provisions of regulation 20, in the case of the permanent disablement of a retired officer or discharged service member, the Committee shall award, in addition to the gratuity or pension provided for under these Regulations, pension in accordance with the following table—

MONTHLY RATES OF PENSIONS AND ALLOWANCES FOR DISABLEMENT

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Degree of disablement	1%-9%	10%- 19%	20%-39%	40%-79%	80%-100%
<i>Rates of pensions and allowance pay</i>	<i>"Lumpsum" 2 months</i>	<i>lumpsum "4 months" pay</i>	<i>25% of the average of monthly pay as at the date of injury and date of retirement</i>	<i>35 % of the average of monthly pay as at the date of injury and date of retirement</i>	<i>50% of the average of monthly pay as at the date of injury and date of retirement</i>

(2) An award of pension under this regulation shall, where temporary allowances have been granted under these Regulations, be made to take effect after the cessation of the payment of such temporary allowances, and where no temporary allowances has been granted such award shall, except where the Committee otherwise directs, be made to take effect—

- (a) in the case of a retired officer or discharged service member, where the application for the award was made prior to his or her retirement or discharge, from the day following the date of his or her retirement or discharge; or
- (b) in any other case, from the date on which the application for the award was made or on such other date as the Committee may determine.

(3) Disability pension shall be payable to an officer or a service member who qualifies for the award of disability pension notwithstanding that he or she has not qualified for the award of pension.

23. Additional pension allowance for permanent disablement

(1) Where a pension has been awarded under these Regulations based on a degree of disablement, and in the opinion of the Committee there are conditions of exceptional hardship, the Committee may award an additional allowance of an amount not exceeding fifty per cent of the disability pension.

(2) An additional pension allowance under paragraph (1) may be of either a temporary or permanent nature as the Committee may determine.

(3) Where the allowance is made on a temporary basis, it shall be reviewed and may be varied or terminated, at such time or times as the Committee may direct.

24. Basis of award for permanent disablement

(1) Every award under these Regulations shall be made on the degree of disablement assessed by the Committee at the time it accepts the disablement as permanent, except that the Committee may at any time make a final assessment of the degree of disablement and if, at the expiration of seven years from the date of retirement or from the date on which the retired officer or discharged service member was first notified of the award. whichever is the later, the Committee has not made such final assessment, it shall thereupon do so having regard to all the circumstances of the case.

(2) Nothing in this regulation shall preclude a review of a final assessment in accordance with these Regulations.

25. Procedure where disablement is not permanent

(1) Where the Committee has reason to believe that the disablement accepted as being due to service may not be permanent, and the degree of disablement is assessed at less than 20 per cent, but the Committee considers that the disablement or the degree of disablement accepted as due to service is likely to persist for more than one year from the date of retirement or from the date of application, as the case may be, it may award a gratuity equal to one-half of the disablement pension payable in twelve months appropriate to the degree of disablement then found in accordance with these Regulations.

(2) The retired officer or discharged service member shall appear for re-assessment of the disability within one year following the initial assessment and the Committee shall inform retired officer or discharged service member of the re-boarding requirement.

(3) Where—

- (a) the Committee has reason to believe that the disablement or the degree of disablement accepted as being due to service may not be permanent;
- (b) in the case of a disablement accepted as permanent, in the opinion of the Committee and on the medical evidence there is likely to be a material and early decrease in the degree of disablement; or
- (c) in either case, the degree of disablement is assessed as 20 percent or over,

the Committee may award a temporary disability allowance which shall be at the appropriate rate set out in these Regulations, which allowance may be reviewed and reassessed after medical examination at a date to be recorded in the proceedings of the Committee and which medical examination shall be carried out at such, time and place as the Committee may direct.

(4) The Committee shall have power to direct that the medical examination referred to in paragraph (3) be done by service medical officers.

(5) Where a retired officer or a discharged service member has been awarded a temporary disability allowance under paragraph (3) and there has been no material decrease in the degree of his or her disablement during the period of two years from the date of his or her retirement or from the date on which he or she was notified of the award of such temporary disability allowance, whichever is the latter, during which time he or she has received adequate medical treatment, the Committee may in its discretion make an award of a gratuity equal to one-half of the disablement pension payable in twelve months and appropriate to the degree of disablement than that found in accordance with regulation 19, which award shall be deducted from any award of gratuity made thereafter, and should the Committee accept the disablement as permanent, the retired officer or discharged service member shall be required to make any refund if the amount of the final gratuity is less than the award made by the Committee under this paragraph.

(6) Where the Committee has reason to believe that an increase in the degree of disablement of a retired officer or discharged service member to whom an award of a pension has been made after a final assessment under these Regulations may not be permanent, it may award a temporary disability allowance, in addition to the pension, of an amount that will bring the combined awards up to the rate appropriate to the increased degree of disablement, and such temporary disability allowance shall be reviewed and reassessed from time to time after medical examination as the Committee may direct, and may be reduced, increased, terminated or made permanent as the Committee having regard to the circumstances, may decide.

26. Award for two or more disabilities

(1) Where an award is to be made in respect of disablement suffered by reason of two or more disabilities, not all of which are accepted as permanent, and the permanent disability or disabilities is as set out in the Schedule to these Regulations, the Committee shall, subject to the provisions of these Regulations, award the appropriate gratuity immediately, notwithstanding that the award made in respect of the combined disablement from the disabilities together may be temporary.

(2) Where the disability or disabilities referred to in paragraph (1) and which are not accepted as permanent are subsequently so accepted or disappear, and when a final assessment is made and a pension awarded, then the amount of gratuity appropriate on assessment of the combined disablement may be awarded.

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27. Supply of surgical appliances

In cases where it is medically certified that the disablement in respect of which an award has been made under these Regulations renders surgical appliances necessary the Committee may order that such appliances be supplied free of charge.

28. Optional medical examination

Any retired officer or discharged service member who has been awarded a pension under these Regulations other than on an interim basis may at his or her own request be medically examined by a service medical officer or a board of service medical officers appointed by the Committee, once in every year, at such time and place as the Committee may consider appropriate.

29. Power to reduce disability award for misconduct

(1) Where a retired officer or discharged service member who has been awarded a pension whether on an interim or other basis, for any reason neglects or refuses to be medically examined as required by the Committee under these Regulations, the Committee may, if it considers that such neglect or refusal is unreasonable, reduce the pension as it thinks fit, and the amount so reduced shall not be restored until the retired officer or discharged service member has been medically examined or unless the Committee is satisfied that the neglect or refusal was not or is no longer unreasonable.

(2) Where a retired officer or discharged service member who has been awarded a temporary disability allowance neglects or refuses to present himself or herself for medical examination as required under these Regulations, the Committee may, if it considers the neglect or refusal unreasonable, suspend the award until he or she so presents himself.

(3) The Committee may restore a suspended award after a retired officer or discharged service member presents himself or herself for medical examination.

(4) Where it is medically certified that a retired officer or discharged service member should receive approved treatment or approved institutional treatment, and such retired officer or discharged service member, having been so informed, refuses or neglects to receive such treatment, the Committee may, if it considers the refusal or neglect unreasonable, reduce the gratuity, disability pension or temporary disability pension in respect of such retired officer's or discharged service member's disablement by such amount, not exceeding one-half, as the Committee may deem fit.

(5) For the purpose of paragraph (4), any misconduct on the part of a retired officer or discharged service member which, in the opinion of the Committee, prevents the treatment from being given or counteracts its effects may be considered as a refusal by such retired officer or discharged service member to receive the treatment.

(6) Where the Committee is satisfied that the disablement in respect of which a claim is made is attributable to negligence or misconduct on the part of the retired officer or discharged service member concerned, it may refuse to award a disability pension, gratuity or temporary disability allowance, either in whole or in part.

(7) Where third party compensation is paid by or on behalf of a person alleged to be responsible for any act, omission or circumstances which caused the injury or death of an officer or service member or a retired officer or discharged service member the Committee may reduce any pension, gratuity or allowances to be awarded under these Regulations by such amount as the Committee may, in all the circumstances of the case, consider appropriate.

30. Power to review awards

The Committee may at any time review an award made under these Regulations where it has been made in error or where, in the opinion of the Committee, it has been obtained by improper means, and on any such review the Committee may confirm, vary or cancel the award or may substitute another award.

31. Suspension or withholding of pension

(1) The Defence Council shall have the power to suspend or withhold pensions or gratuities either wholly or in part as the case may be, and subject to any other Regulations made under the Act or generally relating to pensions.

(2) In exceptional cases payment of part or the whole of suspended pensions, gratuity or any other allowance, may with the consent of the National Treasury be made by the Defence Council to or for the benefit of the wife or husband or other dependant of the officer or service member.

32. Payment of pensions, etc.

(1) Subject to the provisions of these Regulations, the Principal Secretary to the National Treasury shall pay all pensions, allowances, gratuities and other charges payable under or by virtue of these Regulations, including such travelling and other expenses as may be certified under these Regulations.

(2) Every pension payable under or by virtue of these Regulations shall be payable monthly in arrears.

(3) Every temporary allowance payable under or by virtue of these Regulations shall be payable in arrears, at intervals not less frequent than once in every month for such length of time as may be determined by the Committee.

33. Award of pension on insanity

An officer or service member who is pronounced by a medical board to be mentally unfit shall be granted a service pension provided that it is determined that the illness arose during the period of service and, notwithstanding that the period of reckonable service is less than ten years in the case of officers and less than twelve years' reckonable service in the case of service members.

34. Procedure as to claims

All claims for pensions, allowances or gratuities under these Regulations shall be submitted to the Committee, which shall, on receipt thereof, obtain from the appropriate service authorities—

- (a) full particulars of the officer or service member in respect of whom the claim is made, including all such particulars regarding his or her service as may be relevant to the claim;
- (b) the medical history of the officer or service member and a copy of the proceedings and findings of the medical board with regard to him or her;
- (c) a copy of the proceedings of any court of inquiry into the cause of the accident, injury or death giving rise to the claim, and where the claim is based on the death of an officer or service member—
 - (i) a certificate of death signed by a medical officer; and
 - (ii) unless unobtainable, a declaration of death signed by a responsible service authority; or
 - (iii) where the claim is based on presumed death, a certificate of presumption of death or a declaration of presumption of death made by a court of competent jurisdiction, as the case may be; and
- (d) the names, addresses and particulars of—
 - (i) the officer's or service member's dependants and the degree of their dependency on him or her; and
 - (ii) the officer's or service member's heir; or
 - (iii) where there is a will, particulars of the executor named in the will.

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35. Nature of award in respect of death

(1) In the case of the death of an officer or service member or retired officer or discharged service member (in this regulation referred to as the "deceased") the Committee may, as from the day next following the death of the deceased, award—

- (a) where the deceased leaves a widow or widower, a pension to him or her at the rate not exceeding one-third of the deceased's rate of pay as at the date of his or her death or retirement and if there is more than one widow, the pension shall be divided equally between them;
- (b) if in addition to the widow or widower, the deceased leaves a child or children, a pension in respect of each child until such child attains the age of twenty-four years, the age of 24 years of an amount not exceeding one quarter of the pension awarded to the widow;
- (c) where the deceased leaves no widow or widower but leaves a child or children, or if the pension payable to the widow or widower ceases, or if no pension is payable to the widow or widower, the pension payable to each of the children under subparagraph (b) shall be doubled from the date following the date of the death of the deceased or from the date on which the pension payable to the widow or widower ceases, as the case may be,

Provided that—

- (i) a pension to a child under subparagraph (b) shall cease upon the marriage of such child;
- (ii) where any widow who is in receipt of a pension under subparagraph (a) and who has under her charge a child or children in receipt of a pension under this subparagraph dies or otherwise ceases to be entitled to a pension, the Committee may in its discretion continue to pay the pension or any part of it to an approved guardian, provided that it is applied towards the maintenance and education of the child or children to the satisfaction of the Committee.

(2) Where any widow or widower to whom a pension has been awarded under this regulation remarries, or cohabits with any person as his wife or as her husband, the Board shall, if there is no child of the deceased under his or her charge, cease payment of the pension from the date next following such remarriage or cohabitation upon confirmation of the same, but if the widow or widower has under his or her charge such child or children of the deceased the Board may continue to pay the pension or any part thereof to the widow or widower or in the event of his or her death to an approved guardian on the conditions set out in paragraph (1)(b).

(3) Where any child is in receipt of a pension under paragraph (1)(b) and is under the charge of the widow or widower of the deceased, the pension shall be paid to the widow or widower provided that it is applied towards the maintenance and education of the child to the satisfaction of the Committee.

(4) Where there is no widow or widower, or if the widow or widower abandons any child of the deceased, the Committee may in its discretion continue to pay the pension or any part thereof to which the child may be entitled under paragraph (1)(b) to an approved guardian provided it is applied towards the maintenance and education of the child to the satisfaction of the Committee.

(5) Where the deceased leaves neither a widow or widower nor children, the Committee may in its discretion, award a gratuity to any surviving parents, brothers and sisters of the deceased of an amount not exceeding the pension for six months that would be awarded to the widow or widower and such gratuity shall be distributed at the discretion of the Committee.

(6) Where the deceased leaves neither a widow or widower, children nor dependants, the Committee shall award to the heir of the deceased a gratuity not exceeding the deceased's pay for one month as at the date of his or her death or retirement.

(7) No widow or widower shall be entitled to an award under this regulation unless his or her marriage to the deceased was recognized by any law for the time being in force or by the law or custom of the community to which the deceased belonged.

(8) A gratuity awarded under paragraph (7) shall be in full and final settlement.

36. Establishment of Pensions Appeals Committee

(1) There is established an appeals committee to be known as the Pensions Appeals Committee which shall consist of—

- (a) a chairperson who shall be a retired general officer appointed by the Defence Council;
- (b) a medical officer appointed by the Defence Council on the recommendations of the Director of Medical Services; and
- (c) three other persons appointed by the Defence Council, one of whom shall be a legal officer, and one of whom may also be a member of the Pensions Assessment Committee established under regulation 18.

(2) The Chairperson, the secretary and two other members shall constitute quorum for any meeting of the Appeals Committee.

(3) The members of the Appeals Committee appointed under paragraph (1) shall hold office for a period of three years renewable for a further term of three years.

(4) Subject to the provisions of these Regulations and to any direction issued by the Defence Council under these Regulations, the Appeals Committee shall regulate its own procedure.

(5) There shall be a secretary who shall be a public officer to be appointed by the Defence Council on the recommendation of the Director of Pensions.

(6) The Defence Council shall authorize the payment of adequate compensation to members of the Pension Appeals Committees.

(7) An appeal shall lie to the Appeals Committee against any decision of the Committee established under these Regulations affecting—

- (a) an entitlement to pension, gratuity or allowance under these Regulations;
- (b) the degree of disablement under these Regulations where—
 - (i) final assessment and award of a disablement pension or gratuity or both, has been made; or
 - (ii) a disablement pension awarded on an interim basis, or a temporary allowance, has been terminated by the Appeals Committee on the ground either that there is now no disablement due to or aggravated by service or that disablement still persisting is under 20 per cent;
- (c) the suspension of a temporary disability allowance under regulation 31; or
- (d) the reduction of or refusal to make an award, under these Regulations, and against any decision of the Committee on review.

(8) Every appeal under this regulation shall be brought within twelve months from the date on which the decision of the Appeals Committee is notified to the claimant except that the Appeals Committee may allow an appeal to be brought after the expiration of the period limited by this paragraph if in the opinion of the Appeals Committee there was reasonable excuse for delay.

(9) Notice of the time, date and place of hearing of an appeal shall be given to the appellant provided that where the Appeals Committee is satisfied that an appellant cannot be traced it shall be sufficient if such notice shall have been sent to him or her by registered post or email or electronic means to his or her last known address or place at which he or she was last known to reside.

(10) Every appellant shall have the right of appearing before the Appeals Committee in person or by a legal representative and should an appellant fail to appear, either in person or by a legal representative, at the time and at the date and place notified to him or her for

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the hearing of the appeal, the Appeals Committee may, in the absence of any satisfactory explanation, proceed to determine the appeal.

(11) The Appeals Committee shall have power to vary the amount of any award made by the Committee, either by increasing or decreasing the award, but except in an appeal against such a decision, the Appeals Committee shall not make an award where no award has been made by the Committee.

(12) The Appeals Committee shall have power to call for any document relating to the appellant's service from the appropriate service authority, and to order the appellant to undergo a medical examination by a medical officer to be appointed by the Appeals Committee in any particular case and may certify to the Principal Secretary to the National Treasury any reasonable travelling and other expenses which have been incurred by any person appearing, with the permission and in accordance with the instructions of the Appeals Committee or before any medical examination of such person under the provisions of this paragraph.

(13) The decision of the Appeals Committee upon an appeal made under this Regulation shall be final.

PART III – OFFICER'S PENSIONS AND GRATUITIES

37. Officer's services and disablement pension

(1) An officer who is—

- (a) retired or allowed to retire on or after reaching the normal age of retirement as laid down in the terms and conditions of service in the Defence Forces drawn under the provisions of the Act; or
- (b) retired compulsorily before reaching the age of retirement because it has been decided that further employment is not available,

may, provided that he or she has completed at least ten years reckonable service, be granted on retirement a service pension in accordance with these Regulations.

(2) Every officer otherwise eligible for pension who has not completed ten years' reckonable service may be granted on retirement a gratuity in accordance with regulation 11.

(3) An officer who is removed from service in the Defence Forces for misconduct or whose services are terminated pursuant to section 251 of the Act, and who has at least ten years reckonable service may be granted a pension at such rate as the Defence Council may determine, not exceeding ninety per cent of the sum which would have been granted to him or her under paragraph (1) had the officer retired in normal circumstances.

(4) Notwithstanding any other regulation, an officer who has suffered disablement as a result of a wound, injury or disease may, if the retirement is necessitated or materially accelerated by the wound, injury or disease before completing ten years' reckonable service, be granted, in lieu of a gratuity under paragraph (2), a pension under paragraph (1).

PART IV – SERVICE MEMBER'S PENSIONS AND GRATUITIES

38. Service member's service and disablement pensions

(1) A service member who is—

- (a) discharged on or after the completion of colour service; or
- (b) discharged compulsorily having regard to the usefulness of such service member in the Kenya Defence Forces and the circumstances of the case,

may, provided that he or she has completed twenty one year's reckonable service, be granted a service pension in accordance with the provisions of these Regulations.

(2) A service member who is discharged for inefficiency, or misconduct or any other cause within his control but not amounting to gross misconduct and who has completed at least twelve years' reckonable service may be granted a service pension at such rate as the Defence Council may determine, not exceeding ninety per cent of the sum which would have been granted under paragraph (1) had he or she applied for his discharge.

(3) A service member who is pronounced by a medical board to be mentally or physically unfit may be granted a pension provided it is not connected to the service, and provided he or she has completed at least twelve years' reckonable service and the mental or physical unfitness is not connected to the service.

(4) Notwithstanding any other regulation, a service member who has suffered disablement as a result of a wound, injury or disease due to, hastened by or aggravated by his or her service may, if his or her retirement is necessitated or materially accelerated by his or her service and has not completed more than twelve years' reckonable service, be granted in lieu of a gratuity, a pension under paragraph (1).

39. Service member's service gratuities

(1) A gratuity in accordance with the provisions of regulation 11 may be granted to—

- (a) a service member who is transferred to the reserve or discharged before or after the completion of his or her colour service without being granted a service pension; or
- (b) a service member who is discharged under section 255(d), (e), (f) and (g) of the Act, provided that he or she has completed at least one year's reckonable service.

(2) A gratuity of thirty per cent of the amount that would have been granted under paragraph (1) may be granted at the discretion of the Defence Council to a service member discharged for inefficiency or unsuitability due to causes not within his or her control.

PART V – ASSISTED LIVING ALLOWANCE

40. Assisted Living Allowance

(1) An officer or service member who is deaf or blind or physically disabled and uses a wheel chair or has suffered disablement due to diseases or surgical conditions or psychiatric conditions contemplated in Part D and E of the Schedule to these Regulations shall be entitled to award of Assisted Living Allowance in the sum of Kenya shillings twenty thousand (Kshs. 20,000.00) payable on a monthly basis to cater for expenses of assisted living.

(2) The Defence Council with the concurrence of the National Treasury may every 4 years adjust the award of Assisted Living Allowance payable in accordance with these Regulations to officers and service members of the Kenya Defence Forces.

PART VI – MISCELLANEOUS

41. Reduction of establishment and services

(1) An officer or service member retired or discharged from the service when eligible for pension in consequence of the abolition of his or her office or for the purpose of facilitating improvement in the Defence Forces by which a greater efficiency or economy may be effected, may be granted an additional pension of one-sixtieth of his or her annual pension for each period of three years' reckonable service:

Provided that such additional pension shall not exceed ten sixtieth of such annual pension.

(2) When an officer or a service member who is in receipt of a pension is recalled for service with the Defence Forces, he or she shall be entitled to his or her full pension notwithstanding that he or she is in receipt of any other pay.

(3) When an officer or service member who was previously retired or discharged with a pension is re-commissioned or re-enlisted, as the case may be, his or her pension shall cease from the date on which his or her further service commences, and he or she shall either repay his or her pension or gratuity already received or have it deducted from the pension he or she would finally be entitled to so as to allow his or her previous service to count towards his or her pension when he or she finally retires,

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42. Administrative directions

The Defence Council may from time to time issue such directions, not inconsistent with the provisions of these Regulations, as it may consider necessary for the administration of these Regulations, and without prejudice to the generality of the foregoing such direction may make provisions for—

- (a) the registration of pensions, allowances and gratuities awarded;
- (b) the issue of pension certificates;
- (c) the notification to the person entitled thereto of the amounts of the pensions, allowances and gratuities awarded;
- (d) the procedure to be followed in drawing pensions, allowances and gratuities;
- (e) the procedure to be followed in the hearing of an appeal by the Appeals Committee;
- (f) the payment of adequate compensation to members of the Pension Assessment and Pension Appeals Committees;
- (g) the procedures and processes to achieve efficiency and effectiveness in the administration of claims.

43. Presumption of Death

A declaration of presumption of death by a Service Commander shall be done in accordance with Regulations 5 and 6 of Kenya Defence Forces (Missing Persons) Regulations (Sub. Leg).

44. Military pensions liaison officer

(1) The Defence Council shall appoint an officer to serve as the Military Pensions Liaison Officer, who shall liaise with the National Treasury on pension matters.

(2) The Military Pensions Liaison Officer shall be logistically supported with adequate manpower, office space and equipment to enhance effectiveness and efficiency.

46. Payment of pension and gratuity within 90 days

Any pension or gratuity awarded under these Regulations shall be paid within 90 days from the date of retirement or 90 days from the date of the death of an officer or service member except where such payment is delayed by legal proceedings.

47. Revocation of L.N. No. 61/1980

The Armed Forces (Pensions and Gratuities) (Officers and Service members) Regulations, 1980 are revoked.

48. Savings and review

(1) Despite regulation 46, an officer or service member or retired officer or discharged service member entitled to a pension, gratuity or allowance under the revoked Regulations shall be deemed to be entitled to pension, gratuity or allowance under these Regulations provided that no additional benefits shall accrue to service personnel by virtue of the amendments herein.

(2) These Regulations shall be reviewed after every 10 years upon commencement.

(3) Notwithstanding the above, these Regulations may be reviewed before the period of 10 years as may be considered necessary.

(4) The operation of these Regulations beyond 10 years may only be extended once and for a maximum period of 12 months.

SCHEDULE

[r. 21(4)]

ASSESSMENT OF DISABLEMENT DUE TO SPECIFIC
INJURIES AND CERTAIN OTHER DISABLEMENT**Part-A****Amputation****Description of Injury/Assessment per cent****Amputation Cases-Upper Limbs**

1. Loss of both hands or amputation at higher site 100
2. Amputation through shoulder joint..... 90
3. Amputation below shoulder with stump less than eight inches from tip of acromion 80
4. Amputation from eight inches from tip to acromion to less than four and a half inches below tip of olecranon 70
5. Amputation from four and a half inches below tip of olecranon 60
6. Loss of thumb 30
7. Loss of thumb and its metacarpal bone 40
8. Loss of four fingers 50
9. Loss of three fingers 30
10. Loss of two fingers 20
11. Loss of terminal phalanx of thumb 20

Amputation Cases-Lower Limbs

12. Double amputation through thigh or through thigh on one side and loss of other foot or double amputation below thigh to five inches below knee 100
13. Double amputation through leg lower than five inches below knee 100
14. Amputation of one leg lower than five inches below knee and loss of other foot 100
15. Amputation of both feet resulting in end-bearing stumps 90
16. Amputation through both feet proximal to the metatarso-phalangeal joint 80
17. Loss of all toes of both foot through the metatarso-phalangeal joint 70
18. Loss of all toes of both foot proximal to the proximal interphalangeal joint 30
19. Loss of all toes of both feet distal to the proximal interphalangeal joint 20
20. Amputation through hip joint 90
21. Amputation below hip with stump not exceeding five inches in length measured from tip of great trochanter 80
22. Amputation below hip with stump exceeding five inches in length measured from tip of great trochanter, but not beyond middle thigh 70
23. Amputation below middle thigh to three and a half inches below knee 60
24. Amputation below knee with stump exceeding three and a half inches but not exceeding five inches 50
25. Amputation below knee with stump exceeding five inches 40

[Subsidiary]

26. Amputation of one foot resulting in end-bearing stump 30
27. Amputation through one foot proximal to the metatarso-phalangeal joint 20
28. Loss of all toes of one foot proximal to the proximal interphalangeal joint, including amputation through the metatarso-phalangeal joint 20

Part-B**Other Specific Injuries**

29. Loss of a hand and a foot 100
30. Loss of one eye, without complications, the other being normal 40
31. Loss of vision of one eye, without complications, or disfigurement of the eye-ball the other being normal 30
32. Loss of sight 100
33. Accidental loss of natural teeth, without prior replacement thereof at public expense 1 % for loss of each natural tooth up to a maximum of 32%.
34. Loss of natural teeth (not being less than 10 teeth) due to natural disease(s) and not replaced already at public expenses 10% for the loss of the first 10 teeth, 10% for the next 10 and 12% for the remainder, whether the losses have occurred simultaneously or over a period of time.
35. Loss or impairment of one testes or an ovary 25
36. Loss or impairment of both testes or both ovaries 50
37. Loss or impairment of penis upto 100
38. Loss of one lip upto 40
39. Loss of both lips upto 80
40. Loss of the tongue upto 100
41. Loss of the external part of the nose upto 60
42. Loss of a Pinna upto 30
43. Loss of both pinnae upto 60
44. Permanent loss of sense of smell 50
45. Permanent loss of taste 50
46. Severe disfiguring soft tissue injuries to any part of the body (excluding severe facial disfigurement), extensive scarring or loss of skin or hair due to an accident in the nature of severe scalding, burning by fire, corrosion by acid and the like upto 40
47. Loss of or severe damage to any other organ (not otherwise specified in this Schedule and where the loss or damage does not amount to end-organ failure) upto 50

The losses or damage caused to or suffered by the organs falling under this part are those which are total and permanent in relation to the normal functioning of the organ concerned.

Part-C**Other Disablement**

48. Very severe facial disfigurement 100
49. Absolute deafness 100

50. Ankylosis of any joint 25-100% depending on the degree of incapacity suffered for loss of use of the joint or part thereof according to whether the joint is ankylosed in a favourable or unfavourable position.

Note.- Where the scheduled assessment for a specified injury involving multiple losses differs from the sum of the assessment for the separate injuries the former shall be the appropriate assessment.

Part-D

Disablement due to Diseases and Surgical Conditions

51. A confirmed chronic medical or surgical condition or conditions only e.g diabetes (as opposed to the condition itself or the conditions which, additionally, has or have complication(s) and further to the complication itself or complications themselves which result from the condition or conditions in question) 10% for each specific condition subject to a maximum 50% where two or more such conditions exist. A chronic condition is one requiring a life-time management.

52. Two or more confirmed chronic medical or surgical conditions with a complication or complications e.g. diabetes with hypertension 20% for the conditions, whatever their number, plus 10% for each specific complication involved upto a maximum of 80% for both. This provision does not apply to a situation of endorgan failure.

53. Terminal illness, end-organ failure or removal of an internal organ (e.g. brain, heart, lung, liver, kidney or part thereof)50-100%.

Part-E

Psychiatric Conditions

54. Chronic neurotic condition including Post traumatic stress disorder. 50%. The condition must be chronic and persistently relapsing in nature.

55. Chronic psychotic condition 51 % to 100%.

Part-F

Inclusion Of The "X" Factor In Certain Composite Injuries Other Than Injuries To The Hand And Feet

56. Injuries to a,b etc. a + b + X%. The X% is the "X" factor. It represents the percentage by which the sum of the schedule percentages of the two or more injuries shall be increased.

57. The "X" factor shall be taken into account in certain cases where there are several injuries suffered are especially disabling or disadvantageous to the claimant e.g. loss of hand and a foot both on one side of the body. The injuries must in all cases where the "X" factor is applied be composite.

58. The "X" factor shall be added to the sum of the schedule percentages of the two or more injuries suffered by the claimant (subject to a maximum of 100%) save where these regulations have expressly made provision for such cases (e.g as in paragraphs 12,13 and 29 of part A).

59. The "X" factor shall be 20% of the sum of the several injuries involved.

60. Injuries involving the hand or the feet:

- (a) Where 2 digits are lost D1+ D2 + "X" factor of 20%;
- (b) Where 3 digits are lost D1 + D2 + D3+ "X" factor of 30%;
- (c) Where 4 digits are lost D1 + D2 + D3 + D4 + "X" factor of 40%;
- (d) Where the big toe or the big thumb has been lost in addition to the other;
- (e) 4 digits on one foot or hand D1+ D2 + D3 + D4 + Big toe/thumb+ such an "X" factor as to render the assessment 100%.

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"D" means a digit of the hand or foot and the figure following it represents the number of digits lost by the claimant.

61. In each of the first four of the mentioned cases in this part, the sum total assessment for the lost digits shall be increased by 20%, 30% or 40% as the case may be according to the number of digits lost. In the last case of this part the assessment shall amount to 100% where the big toe or thumb, as the case may be, and whether on one foot or one hand or on all the said limbs has been lost in addition to all the other digits on the same foot or hand or on all the said limbs.
