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LAWS OF KENYA

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**THE NATIONAL YOUTH SERVICE ACT**

CHAPTER 208

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**CHAPTER 208**

**NATIONAL YOUTH SERVICE ACT**

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**CHAPTER 208**

**NATIONAL YOUTH SERVICE ACT**

[Date of assent: 31st December, 2018.]

[Date of commencement: 1st February, 2019.]

**An Act of Parliament to establish the National Youth Service; to provide for its functions, discipline, organisation and administration; and for connected purposes**

[Act No. 17 of 2018, Legal Notice 5 of 2019.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the National Youth Service Act.

**2. Interpretation**

In this Act, unless the context otherwise requires—

"Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to the youth;

"Chairperson" means the Chairperson of the Council of the Service appointed under section 9;

"confidential information" means information whose unauthorised disclosure is likely to be prejudicial to national interests;

"Council" means the Council of the Service established by section 9;

"Director-General" means the Director-General of the Service appointed under section 16;

"disciplined service" includes the Kenya Defence Forces, the National Police Service, the Kenya Prison Service, the National Intelligence Service, the Kenya Wildlife Service, the Kenya Coast Guard Service, the Kenya Forest Service, the National Youth Service and the National Government Administration;

"financial year" means the period of twelve months ending on the 30th June;

"Kenya Defence Forces" means the Kenya Defence Forces established by Article 241 of the Constitution;

"member of the Service" means uniformed and disciplined officers listed under the First Schedule;

"member of the Council" means the Chairperson and members of the Council appointed under section 9;

"narcotic drugs" has the meaning assigned to it under the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245);

"national security organ" means a national security organ established by Article 239(1) of the Constitution;

"National Security Council" means the National Security Council established by Article 240 of the Constitution;

"officer" means a member of the Service who holds any of the ranks prescribed in Part I of the First Schedule or a member of any of the disciplined service, where applicable;

"psychotropic substances" has the meaning assigned to it under the Narcotic Drugs and Psychotropic Substances (Control) Act (Cap. 245);

"restricted information" means information which requires security protection other than information that is deemed to be top secret, secret or confidential;

"Service" means the National Youth Service established by section 5;

"Service stores" means—

- (a) any chattels or goods of any description belonging to the Service which have been issued to members of the Service for the purposes of the Service or are held in store for the purpose of being so issued to members of the Service; or
- (b) any chattels or goods which had belonged to the Service, had been issued to members of the Service or had been held for the purposes of the Service at some past time;

"staff" means a person employed, deployed or seconded to the Service whether on temporary or permanent terms;

"top secret information" means information whose unauthorised disclosure would cause especially grave damage to national security;

"uniform" includes apparel, kit, badge, decoration, insignia, wound stripe, emblem, brooch, costume or any other distinctive item as the Council may determine; and

"youth" has the meaning assigned to it under Article 260 of the Constitution.

### **3. Object of the Act**

The object of this Act is to establish the National Youth Service.

### **4. Guiding principles**

The Service shall observe and uphold the national values and principles of governance set out in Article 6(3), Article 10, the Bill of Rights enshrined in Chapter Four, the values and principles of Public Service set out in Article 232(1) of the Constitution and for the avoidance of doubt, shall—

- (a) strive for the highest standards of professionalism and discipline;
- (b) ensure reasonable access to its services in all parts of the Republic;
- (c) promote and practice transparency;
- (d) comply with constitutional standards of human rights and fundamental freedoms;
- (e) reflect the diversity of Kenya; and
- (f) ensure that not more than two-thirds of the members of the Service are of the same gender.

## **PART II – ESTABLISHMENT AND FUNCTIONS OF THE SERVICE**

### **5. Establishment of the National Youth Service**

(1) There is established a uniformed and disciplined service to be known as the National Youth Service.



(2) The National Youth Service shall be a body corporate with perpetual succession and a common seal and shall in its corporate name—

- (a) have the power to sue and be sued;
- (b) acquire, hold and dispose of movable and immovable properties for the purposes of this Act; and
- (c) do or perform all such other things or acts for the proper discharge of its functions under the Constitution, this Act or any written law, as may be lawfully done or performed by a body corporate.

#### **6. Determination of the numbers of the Members of the Service**

(1) The Service shall consist of such number of officers as shall be determined from time to time by the Council with the approval of the Cabinet Secretary.

(2) The members of the Service shall consist of officers of the ranks specified in the First Schedule.

(3) The Council may from time to time amend the ranks specified in the First Schedule by a notice in the *Gazette*.

(4) The Service shall establish such branches, operational units, support units and formations as the Council may from time to time, determine.

#### **7. Functions of the Service**

(1) The functions of the Service shall be to—

- (a) undertake paramilitary training of members of the Service;
- (b) instill in members of the Service, a tradition of patriotism, loyalty, integrity, duty and service to the nation;
- (c) provide vocational training, professional and personal development programmes and activities for members of the Service;
- (d) undertake such enterprises and commercial activities pursuant to the provisions of the Fourth Schedule of the Constitution as the Council may from time to time, determine;
- (e) collaborate with stakeholders for the furtherance of its functions;
- (f) initiate, plan, organize, fund, manage and administer programmes and activities for the development of members of the Service;
- (g) develop leadership skills in members of the Service;
- (h) develop cross cultural integration among members of the Service; and
- (i) perform any other function that may be conferred by this Act or any other written law.

(2) The Service shall co-operate with and assist the Kenya Defence Forces, the National Police Service Commission and other public authorities during emergencies, disasters, war or insurrection or in the execution of the mandates of the public authorities as the Council may determine.

(3) The Council may in consultation with the National Security Council, deploy the members of the Service to support the Kenya Defence Forces in times of war, insurrection, hostilities or public emergency in accordance with the Kenya Defence Forces Act (Cap. 199).

(4) Where any part of the Service is, in pursuance of an order made under subsection (3), serving with the Kenya Defence Forces, or otherwise in the defence of the nation whether within or without Kenya, such part of the Service shall for

all purposes be deemed to be part of the Kenya Defence Forces, and it shall be governed by and subject to all the laws relating to and governing the Kenya Defence Forces.

(5) Where any part of the Service is, in pursuance of an order made under subsection (3), serving with and as part of the Kenya Defence Forces, the National Security Council shall make rules declaring which ranks of the Service shall correspond to which ranks of the defence forces, and shall make rules relating to the command of such part of the Service by members of the Kenya Defence Forces.

(6) If it appears expedient in the interests of public order and safety, the Inspector-General may with the approval of the National Security Council, request the National Police Service Commission to appoint members of the Service to be special police officers for such period and within such area as may be considered necessary in accordance with the National Police Service Act (Cap. 84).

(7) An officer appointed under sub section (6) shall, during the period of service as a special police officer, be deemed to be a police officer for the purposes of the National Police Service Act (Cap. 84).

### **8. Powers of the Service**

(1) The Service shall have the power to do all the things necessary for the performance of its functions under this Act or any other written law.

(2) Despite the generality of subsection (1), the Service shall have the power to—

- (a) partner with the public and private sector in the financing, construction, development, operation, or maintenance of infrastructure or development projects of the Service through concession or other contractual arrangements pursuant to the provisions of the Public Private Partnership Act (Cap. 430);
- (b) enter into partnership arrangements with public and private bodies as it deems fit with regard to the establishment, implementation, monitoring and financing of training or employment programmes;
- (c) receive or administer funds donated or entrusted to the Council by any agency or organization for any purpose relating to the training or employment of persons;
- (d) invest any surplus or profit for the performance of its functions; and
- (e) undertake any task or enter into any transaction which, in the opinion of the Council, is necessary to ensure the proper performance of its functions.

### **9. Establishment of the Council of the National Youth Service**

(1) There is established the Council of the National Youth Service.

(2) The Council shall consist of—

- (a) a non-executive Chairperson who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to the youth or a representative nominated in writing;
- (c) the Principal Secretary responsible for matters relating to finance or a representative nominated in writing;
- (d) the Principal Secretary responsible for matters relating to internal security or a representative nominated in writing;

- (e) the Attorney-General or a representative nominated in writing;
- (f) the Chief of the Kenya Defence Forces or a representative nominated in writing;
- (g) five other members to be appointed by the Cabinet Secretary two of whom shall be youth, one of either gender; and
- (h) the Director-General who shall be an *ex-officio* member and Secretary to the Council.

(3) In appointing the members under section 9(2)(g) the Cabinet Secretary shall

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) observe the principle of regional and ethnic balance; and
- (c) have due regard to the principle of fair representation for persons with disabilities.

(4) A member of the Council shall be paid such allowances as the Cabinet Secretary may in consultation with the Salaries and Remuneration Commission determine.

(5) A member of the Council shall serve on a part-time basis.

(6) A member of the Council appointed under subsection (2) (a) and (g) shall serve for a term of three years, renewable once and upon satisfactory performance of his or her duties.

(7) A member of the Council, member of the Service or staff shall not trade directly or indirectly with the Service.

(8) A person is eligible for appointment under section 9 (2) (a) and (g) if that person—

- (a) has knowledge and experience of not less than ten years in any relevant field;
- (b) has had a distinguished career in his or her respective field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(9) Despite the requirement under subsection (8)(a), a representative of the youth shall have at least five years' experience in his or her respective field.

#### **10. Vacancy of member of the Council**

The office of the Chairperson or a member of the Council shall become vacant if the holder—

- (a) dies;
- (b) resigns from office by notice in writing addressed to the President;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) term of office expires;
- (e) is absent from three consecutive meetings of the Council without good cause; or
- (f) is removed from office for any of the following grounds—
  - (i) violation of the Constitution or any other written law;
  - (ii) gross misconduct or misbehaviour;

- (iii) inability to perform functions of the office arising out of physical or mental infirmity;
- (iv) incompetence or neglect of duty; or
- (v) bankruptcy.

#### **11. Committees of the Council**

(1) The Council may from time to time establish committees for the better carrying out of its functions.

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

(3) The Council may by resolution either generally or in any particular case delegate to any Committee of the Council or to any member, officer, employee or agent of the Council the exercise of any of the powers, functions or duties of the Council.

#### **12. Functions of the Council**

(1) The Council shall—

- (a) be responsible for the formulation of policy, control, oversight and supervision of the Service;
- (b) receive and act on reports submitted to the Council by the Cabinet Secretary and the Director-General;
- (c) monitor implementation of the policies of the Service;
- (d) direct and oversee the deployment of the members of the Service as authorised under this Act;
- (e) upon application, review penalties imposed on members of the Service after undergoing disciplinary proceedings in accordance with this Act;
- (f) receive and consider the budget estimates of the Service;
- (g) recruit members of the Service;
- (h) promote members of the Service and staff upon recommendation of the Director-General;
- (i) develop the criteria for appointments, posting or promotions of senior officers of the Service;
- (j) commission research related to the functions of the Service;
- (k) advise the President and the Cabinet Secretary on any matter relating to and affecting the Service;
- (l) in consultation with the disciplined services, develop a criteria for the absorption of the trained members of the Service in the disciplined services and in other government institutions; and
- (m) perform any other functions conferred by this Act or any other written law.

(2) The Council may, in writing, delegate to the Director-General the power to promote, transfer or retire subordinate officers.

(3) A delegation by the Council under subsection (2)—

- (a) shall be subject to any conditions the Council may impose;

- (b) shall not divest the Council of its responsibility concerning the exercise of the delegated power; and
- (c) may be withdrawn at any time and, if a delegated power is withdrawn, any decision made by the Director-General in relation to the delegated power may be withdrawn or varied by the Council.

(4) The Council shall be responsible to the Cabinet Secretary in the performance of its functions under this Act.

### **13. Terms and conditions of members of the Service**

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

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

### **14. Conduct of the business and affairs of the Council**

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

(2) Except as provided for in this Act, the Council shall regulate its own procedure.

(3) The Council may permit any other person to attend its meetings and participate in its deliberations but that person shall not participate in the making of any of its decisions.

### **15. Protection from liability**

(1) No matter or thing done by a member of the Council or by any member of the Service, or staff or agent of the Council, shall, if the matter or thing is done bonafides for executing the functions, powers or duties of the Council under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any actions, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation to any persons for any injury to him, his property or to any of its interest caused by the exercise of any power conferred by this Act, or by the failure, whether wholly or partially, of any works.

### **16. Appointment of Director-General**

(1) There shall be a Director-General of the Service who shall be appointed by the President on recommendation of the Council.

(2) A person is qualified to be appointed as the Director-General if that person—

- (a) is a Kenyan citizen by birth;
- (b) has served at a senior rank in the Service or in any other disciplined service and has not attained retirement age;
- (c) has at least ten years post qualification experience, five of which have been at senior management level;
- (d) has not been convicted of any criminal offence;
- (e) has not been dishonourably discharged from a national security organ;
- (f) has not been otherwise dismissed from an office in the public service; and
- (g) is not an undischarged bankrupt.

(3) For purposes of this section disciplined service means the Kenya Defence Forces, the National Police Service, the National Intelligence Service, the Kenya Forest Service, the Kenya Prisons Service, the Kenya Wildlife Service, the Kenya Coast Guard Service and the National Government Administration.

#### **17. Functions of the Director-General**

(1) The Director-General shall be the Chief Executive and accounting officer of the Service and shall ensure that the resources of the Service are used in a way that is lawful, authorized, effective, efficient, economical and transparent.

(2) The Director-General shall—

- (a) subject to the general directions of the Council, be responsible for the day to day administration, control and management of the Service;
- (b) advise the Council and the Cabinet Secretary on any military, operational and administrative matters within the competence of the Director-General;
- (c) lawfully administer, control and manage the Service as a paramilitary force;
- (d) comply with any lawful direction issued by the Council;
- (e) implement the Service policy and strategy;
- (f) execute commands by issuing lawful orders, directives or instructions to members of the Service;
- (g) be responsible for the training, education and deployment of the members of the Service;
- (h) prepare and submit to the Council an annual report on the activities undertaken by the Service;
- (i) ensure that the Service keeps financial and accounting records that comply with the Public Finance Management Act (Cap. 412A);
- (j) ensure that all financial and accounting records of the Service are kept in any form, including in electronic form are adequately protected and backed up;
- (k) ensure that all contracts entered into by the Service are lawful and are complied with;
- (l) ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance;
- (m) bring any matter to the attention of the Cabinet Secretary responsible for the Service, through the Council, if, in their opinion, a decision or policy or proposed decision or policy of the Service may result in resources being used in a way that is contrary to subsection (1);
- (n) prepare a strategic plan for the Service in conformity with the medium term fiscal framework and fiscal policy objectives of the national government;
- (o) prepare estimates of expenditure and revenues of the Service in conformity with the strategic plan referred to in paragraph (n);
- (p) submit the estimates of the Service to the Council who, after approving it, shall forward it to the Cabinet Secretary;

- (q) prepare annual financial statements for each financial year within three months after the end of the financial year, and submit them to the Controller of Budget and the Auditor-General for audit, and forward a copy to the National Treasury;
- (r) take appropriate measures to resolve any issues arising from audit which may remain outstanding;
- (s) provide the National Treasury and any other office, where relevant, with any information it may require to fulfil its functions under the Public Finance Management Act (Cap. 412A);
- (t) be the custodian of all the assets of the Service; and
- (u) perform any other functions conferred by this Act or any other written law.

#### **18. Director-General may delegate powers or functions**

(1) The Director-General may, in writing, delegate the performance of any function or exercise of a power conferred on him or her by this Act or any other written law to a member of the Service.

(2) A delegation under this section—

- (a) shall be subject to any conditions the Director-General may impose;
- (b) shall not relieve the Director-General of responsibility concerning the exercise of the delegated function or performance of the delegated power; and
- (c) may be withdrawn or varied by the Director-General at any time.

(3) The Director-General shall not assign the performance of a function or exercise of a power that is exercisable by an officer of a specific rank, seniority or qualification to an officer who does not hold a rank, seniority or qualification that is not contemplated by this Act or any other written law.

#### **19. Term of office of Director-General**

A person appointed as the Director-General shall serve for a single and non-renewable term of six years.

#### **20. Vacancy in the office of Director-General**

(1) The office of the Director-General shall become vacant if the holder—

- (a) dies;
- (b) resigns from office in writing to the President;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment; or
- (d) is removed or retired from office by the President on the following grounds—
  - (i) violation of the Constitution or any other written law including a contravention of Chapter Six;
  - (ii) gross misconduct in the performance of the functions of the office of the Director-General;
  - (iii) physical or mental incapacity to perform the functions of the office of the Director-General;
  - (iv) incompetence; or
  - (v) bankruptcy.

(2) Where a vacancy occurs in the office of Director-General, the President shall fill the vacancy in accordance with the provisions of section 16.

#### **21. Retirement or redeployment of Director-General**

Despite the provisions of section 20, the President may in consultation with the Council remove, retire or redeploy the Director-General at any time before the expiry of his or her term of office.

#### **22. Oath of office by Director-General**

A person appointed as Director-General shall, on his or her appointment, take and subscribe to the oath of office set out in the Third Schedule.

#### **23. Enlistment to the Service**

A person is eligible to be enlisted as a member of the Service if he or she is a youth as defined under this Act.

#### **24. Termination of service**

(1) The Council may at any time during the period of secondment of a member of the Service terminate such secondment if, for any reason, the services of such member are no longer required.

(2) The appointment of a member of the Service may be terminated if his or her services are no longer, required in the manner prescribed.

(3) The Director-General may, at any time during the period of enlistment or re-enlistment of a member of the Service, terminate such enlistment or re-enlistment if for any reason the services of the member are no longer required.

#### **25. Resignation from the Service**

(1) A member of the Service may be permitted to resign from the Service before the expiration of his or her period of enlistment or re-enlistment on personal or compassionate grounds.

(2) A member of the Service may be permitted to resign from the Service in the manner prescribed.

#### **26. Extension of Service during times of emergency**

Notwithstanding the provisions of this Act, any member of the Service whose engagement or secondment expires, or who wishes to resign, during a state of war, insurrection, hostilities, disasters or emergency may be retained in the Service and his or her period of engagement or secondment extended for such further period, not being more than six months after the end of the engagement, secondment or resignation, as the Council may direct.

#### **27. Return of Service property**

(1) Every member on leaving the Service shall forthwith deliver up to such person as may be authorized in that behalf, any uniform, clothing, equipment or accoutrements supplied to him or her by or on behalf of the Service.

(2) Despite subsection (1) the Director-General, at his or her discretion, may authorize a member of the Service to retain items of clothing on leaving the Service.

(3) Any person who fails to comply with subsection (1) or who returns such property in a damaged condition, the damage not being attributable to the proper discharge of his or her duties whilst a member of the Service, shall be liable for the cost of replacing or repairing such property and such cost shall be a debt due from



such person to the Service and maybe recoverable by deduction from any moneys due from the Service to such person or by civil suit for the whole amount or for any balance due after such deduction as aforesaid.

### **28. Members not to engage in any other gainful employment**

During the period of service with the Service no member shall engage in any other gainful employment, outside the scope of his or her duties in the Service, except with the approval of the Council in the case of a uniformed and disciplined member, or the Director-General in the case of any other member.

### **29. Pension Scheme and other schemes**

(1) The Council, in consultation with the National Treasury, shall establish a pension scheme for the members of the Service.

(2) Notwithstanding the provisions of subsection (1), the Director-General, may with the approval of the Council, establish such other schemes as may be considered to be necessary.

### **30. Oath of Office by members of Service**

(1) Every person recruited to and appointed as a member of the Service shall, on his or her appointment, make and subscribe to the oath of office set out in the Third Schedule.

(2) The oath of office taken or subscribed to by a member of the Service shall be taken and subscribed to before an officer of a rank not lower than that of a Senior Superintendent.

### **31. Staff of the Service**

(1) The Council shall employ such number of staff of the Service as may be necessary for the proper and efficient discharge of the functions of the Service.

(2) The Director-General may, in consultation with the Council, request for a public officer to be seconded, deployed or temporarily attached to the Service from either level of government for a specific period of time.

(3) For the purposes of this Act, a public officer who is seconded, deployed or temporarily attached to the Service under subsection (2), shall be regarded as a member of the Service and be subject only to the operational control and direction of the Director-General.

(4) The Council shall, in consultation with the Cabinet Secretary, establish a disciplinary mechanism for the staff of the Service who are either employed, seconded or deployed to the Service.

### **32. Terms and conditions of service for staff of the Service**

(1) The Council shall, on the advice of the Salaries and Remuneration Commission, determine the salaries of the staff of the Service who are employed, seconded or deployed to the Service.

(2) The Council shall, in consultation with the Public Service Commission, determine other terms and conditions of service of the staff of the Service who are either employed, seconded or deployed to the Service.

## **PART III – DISCIPLINE**

### **33. Disciplinary offences**

(1) Every member of the Service shall be subject to the provisions of this Part.

(2) A member of the Service who commits any of the acts set out in the Fourth Schedule commits an offence against discipline.

(3) A member of the Service who commits an offence under any other written law shall be liable to proceedings in a court of law in accordance with the provisions of the law under which the offence was committed.

(4) Despite the provisions of subsection (3), the Director-General or an officer authorised in writing by the Director-General may, for cause, take such disciplinary action as may be appropriate in the circumstances against a member of the Service who commits an offence under this Act or any other written law.

(5) The Council shall in consultation with the Cabinet Secretary, make rules of procedure for purposes of this section.

#### **34. Penalties for disciplinary offences**

(1) A member of the Service who commits an offence against discipline shall, on conviction, be liable to—

- (a) a reprimand;
- (b) an order of restitution;
- (c) stoppage of salary increments for a specified period of time, but not exceeding one year;
- (d) demotion in rank;
- (e) dismissal from the Service;
- (f) confinement to base for a period not exceeding fourteen days;
- (g) reduction of salary by not more than one third of the basic salary for a period not exceeding three months;
- (h) extra drills or parades or fatigues; and
- (i) any combination of the punishments provided under this section.

(2) The Director-General shall confirm the penalty of demotion in rank or dismissal from service if the penalty was imposed by an officer authorised by the Director-General in accordance with this Act.

(3) Where the Director-General or an officer authorised by the Director-General imposes a penalty on a member of the Service, the Director-General or that officer shall record the penalty in a register maintained for the purpose stating—

- (a) the name, rank and number of the member of the Service against whom the penalty has been imposed;
- (b) the nature of the offence;
- (c) the date or dates, if known, when the offence was committed;
- (d) the penalty imposed; and
- (e) the date the penalty was imposed.

(4) A member of the Service who commits an offence against discipline may, during disciplinary proceedings, be accompanied by an officer of the member's choice for assistance and support.

(5) An officer who accompanies a member under subsection (4), shall not be of a rank superior to the officer in charge of the disciplinary proceedings.

(6) A member of the Service who is convicted pursuant to this section may, apply for a review of the penalty imposed against him or her—

- (a) to the Council if the penalty was imposed by the Director-General; or

- (b) to the Director-General if the penalty was imposed by an officer authorised by the Director-General.

**35. Power to summon witnesses**

(1) The Director-General or an officer authorised by the Director-General for the purposes of disciplinary proceedings under this Act may, in relation to any matter connected with the proceedings—

- (a) summon and examine any member of the Service on oath or affirmation; or
- (b) require the production of relevant documents by any member of the Service.

(2) A member of the Service who has been summoned as a witness or is required to produce any relevant document under subsection (1) commits an offence against the discipline if—

- (a) he or she fails or refuses to attend at the time and place specified in the summons or, having attended, refuses to answer any questions that are lawfully put to him or her; or
- (b) he or she fails without reasonable cause to produce any relevant document.

(3) A member of the Service who has been summoned as a witness or is required to produce any relevant document under subsection (1) shall not answer questions or produce documents that may incriminate him or her.

**36. Loss or damage to property to be made good by recovery from salary**

(1) Despite the provisions of any other written law, where a member of the Service pawns, sells, loses through negligence, makes away with, or wilfully or negligently damages any article, equipment or property—

- (a) entrusted to him or her;
- (b) in the lawful custody of the Service and supplied to him or her; or
- (c) seized or taken charge of by him or her;

may, in addition to any other penalty that may be imposed under the relevant law, be ordered to make good, either wholly or partially, the value of such article or property or the amount of such loss or damage and such value or such amount may be recovered by deduction from his or her monthly salary including from allowances other than his or her rent allowance and trade pay.

(2) Despite the provisions of subsection (1), any member of the Service who pawns, sells, loses by negligence, makes away with, or wilfully or negligently damages any firearm, ammunition, accoutrement or uniform commits an offence against discipline and shall on conviction be liable to a penalty or combination of penalties set out in section 34(1).

**37. Desertion or absence without leave by members of the Service**

(1) A police officer may, on a reasonable suspicion that a member of the Service has deserted the Service or is absent without leave from the Service, arrest that person and present him or her before a magistrate having jurisdiction in the area in which the person was arrested.

(2) Where a person arrested under subsection (1) admits to having deserted the Service or is absent without leave from the Service and the magistrate is satisfied

that he or she has deserted or is absent without leave, the magistrate shall cause the person to be delivered to the Service for disciplinary action.

(3) Where a person arrested under subsection (1) refuses to admit to having deserted the Service or to being absent without leave from the Service or if the magistrate is not satisfied that the person has deserted the Service, the magistrate shall consider any evidence and any statement of the accused and may order the release of the accused person.

(4) A magistrate shall not discharge the accused if the accused is in custody for any other lawful reason.

### **38. Prohibition against torture or other cruel, inhuman or degrading treatment**

(1) A member of the Service shall not subject any person to torture or any cruel, inhuman or degrading treatment.

(2) A member of the Service who subjects a person to torture commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding twenty-five years.

(3) A member of the Service who subjects another person to cruel, inhuman or degrading treatment commits an offence and shall be liable, on conviction, to imprisonment for a term not exceeding fifteen years or to a fine not exceeding one million shillings, or to both such fine and imprisonment.

## **PART IV – OTHER OFFENCES CONCERNING THE SERVICE**

### **39. Application of this Part**

(1) This Part shall apply to any person who is not a member of the Service.

(2) For purposes of this Part, a staff of the Service is not a member of the Service.

(3) A person accused of an offence under this Part shall be tried by a subordinate court established under Article 169 of the Constitution.

### **40. Obstructing an officer**

A person who—

- (a) assaults, resists or wilfully obstructs a member of the Service in the performance of his or her duties or any person acting in aid of the member of the Service;
- (b) induces or does any act intended to induce a member of the Service to neglect or act contrary to duty as a member of the Service; or
- (c) induces or does any act intended to induce a member of the Service to commit a breach of discipline,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

### **41. Procuring or assisting in the desertion of a member of the Service**

A person who—

- (a) procures or persuades a member of the Service to desert or be absent without leave from the Service;
- (b) knowing that a member of the Service is about to desert or be absent without leave from the Service, assists that member of the Service; or

- (c) knowing that a person has deserted or is absent without leave from the Service, conceals the member of the service, assists in the concealment of the member, rescues that member from custody or assists in the rescue of that member from custody,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year.

#### **42. Unlawful purchase of Service store**

(1) A person who acquires any Service stores, solicits or procures any person to dispose of Service stores or acts for any person in the disposing of Service stores commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding two years.

(2) A person shall not be liable under subsection (1), where a person proves that the chattels in his or her possession were acquired lawfully after they had been disposed of by the order or the consent of the Service or of some other authorised person or authority who had or he or she had reasonable cause to believe had authority to give such order or consent.

#### **43. Unauthorised use of or dealing in uniform, decorations, etc., of the Service**

(1) A person who—

- (a) without lawful authority, uses or wears any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem supplied or authorised by the President or the Council;
- (b) uses or wears a uniform, decoration, badge or insignia of rank, wound stripe or emblem so nearly resembling any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem as to be calculated to deceive;
- (c) falsely presents himself or herself as a person who is or has been entitled to use or wear any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem; or
- (d) purchases or takes in pawn, solicits or procures any person to sell or pledge or acts for any person in the selling or pledging of any Service uniform, decoration, badge or insignia of rank, wound stripe or emblem awarded to a member of the Service,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year.

(2) Notwithstanding the provisions of subsection (1)(a), (b) or (c), a person shall not be prohibited from wearing medals, brooches or ornaments representing Service badges.

#### **44. Interference with aids to navigation, etc.**

A person who—

- (a) interferes with an aid to navigation established, managed or maintained by the Service; or
- (b) sets up an aid to navigation without the prior written approval or in breach of any term or condition specified by the Service in the erection of an aid to navigation for the Service,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding one year.

## PART V – LIMITATION OF RIGHTS OR FUNDAMENTAL FREEDOMS

### **45. Application of this Part**

(1) This Part shall apply to the members of the Service in active service.

(2) For purposes of this Part, "in active service" means a member of the Service engaged in operations of the Service.

### **46. Conditions for the limitation of rights or fundamental freedoms**

(1) A limitation of a right or fundamental freedom under this Part shall be in compliance with Article 24 of the Constitution and shall—

- (a) ensure the protection of national security, public safety, public order, public health or morals;
- (b) the protection of the rights and fundamental freedoms of others;
- (c) be necessary to achieve the purposes and objects of the Service;
- (d) be applied without discrimination; and
- (e) not impair the essence of the right or fundamental freedom being limited.

(2) The limitation of rights or fundamental freedoms under this Part, based on human dignity, is necessary for the purposes of employment in the Service in order to ensure—

- (a) protection of classified information;
- (b) maintenance and preservation of national security;
- (c) maintenance of the security and safety of members of the Service;
- (d) that the enjoyment of a right or a fundamental freedom by a member of the Service does not prejudice the enjoyment of a right or fundamental freedom by another member;
- (e) good order and discipline in the Service; and
- (f) public health and safety.

### **47. Limitation of right to privacy**

(1) The right to privacy set out in Article 31 of the Constitution shall be limited in respect of a member of the Service where—

- (a) the member's home or property within any Service base or Service establishment is to be searched;
- (b) the member's possessions are to be seized;
- (c) information relating to the member's family or private affairs is required to be revealed; or
- (d) the member's communications are to be investigated or interfered with.

(2) A limitation of a member of the Service's right to privacy under subsection (1)(c) shall be made where the member commits or is reasonably suspected of having committed an offence under this Act or any other written law.

**48. Limitation of the right to access to information**

(1) The right of access to information as provided for in Article 35(1) of the Constitution may be limited in respect of classified information or information in the custody of the Service.

(2) A limitation of the right of access to information under subsection (1) shall be in respect of information, including classified information, held by the Service to the extent necessary for the protection of the Service from—

- (a) any demand to furnish an unauthorised person with classified information;
- (b) any disclosure or publishing of information the disclosure or publishing of which would be prejudicial to national security; or
- (c) any disclosure or publishing of information relating to the operational plans of the Service.

(3) "Classified information" under this section shall include any information whose disclosure or publishing would prejudice national security and includes information on Service strategy, doctrine, capability, capacity or deployment.

(4) Categories of classified information under this section shall include—

- (a) top secret information;
- (b) secret information;
- (c) confidential information; and
- (d) restricted information.

**49. Limitation of the freedom of association**

(1) Despite the provisions of Article 36 of the Constitution in relation to the freedom of association, a member of the Service shall not join or participate in the activities of an association except as may be prescribed in a regulations made under this Act.

(2) Subsection (1) shall not apply to the membership of a member of the Service in, or the participation of that member in the activities of professional associations.

**50. Limitation of the right to assembly, demonstration, picketing and petition**

Despite the provisions of Article 37 of the Constitution a member of the service shall not assemble, demonstrate, picket or petition public authorities.

**51. Limitation of the right to labour relations**

Despite the provisions of Article 41 of the Constitution a member of the Service shall not form, join, agitate for or participate in the activities of a trade union or go on strike.

**52. Limitation of economic and social rights**

The economic and social rights set out in Article 43 of the Constitution may, in respect of a member of the Service, be limited, as prescribed by a regulation made under this Act, to the extent necessary for the training of members of the Service or for the operations of the Service.

**PART VI – FINANCIAL PROVISIONS****53. Funds of the Service**

(1) The funds of the Service shall consist of—

- (a) monies appropriated by the National Assembly for the purposes of the Service;
- (b) monies or assets that may accrue to the Service in the performance of its functions or the exercise of its powers under this Act or any other written law; and
- (c) monies lawfully provided or donated to the Service.

(2) The Service may retain surplus and profit funds generated out of its enterprise and commercial activities subject to the Public Finance Management Act (Cap. 412A).

(3) The surplus and profit funds retained under sub section (2) shall be directed to the furtherance of the functions of the Service.

#### **54. Accounts and audit**

(1) The books and records of accounts of the income, expenditure, assets and liabilities of the Service shall be kept and maintained in accordance with the Public Finance Management Act (Cap. 412A).

(2) The accounts of the Service shall be audited and reported in accordance with the provisions of Articles 226 and 229 of the Constitution and the Public Audit Act (Cap. 412B).

### PART VII – MISCELLANEOUS PROVISIONS

#### **55. Uniforms of the Service**

The Council shall, by notice in the *Gazette*, specify and designate uniforms for the members of the Service.

#### **56. Exemption from execution against public property**

A judgment, decree or order given or made against a member of the Service shall not be enforced by the levying of execution on any property of the Service or for which the Service is responsible in the possession of the member against whom the judgement, decree or order was made.

#### **57. Next of kin of members of the Service**

(1) Every member of the Service shall, on being recruited and appointed, give the particulars of the place, county and sub-county in which the member ordinarily resides and the name and address of the member's next of kin and those particulars shall be recorded in a register kept and maintained by the Service for that purpose.

(2) Where there is a change in the particulars recorded under subsection (1), the member shall notify the Service of the change and the Service shall make the necessary changes in the register.

#### **58. Uniforms and decorations not part of estate of members of Service**

The uniforms and decorations issued or authorised to a member of the Service shall not, on the death of that member, form part of the estate of the member in relation to any claim by a creditor or for any of the purposes of the administration of the estate of the member and shall be delivered to the Director-General and thereafter disposed of in the manner prescribed by Regulations made under this Act.

#### **59. Protection of members on duty**

(1) For purposes of this section, member includes a staff of the Service.



(2) Where a member of the Service has been captured or has gone missing in circumstances not constituting an offence under this Act, and the member's commanding officer is satisfied that the member's capture or absence arose from the performance of his or her duties while rendering services in terms of this Act, such member shall be regarded to be still serving in the Service for all purposes until the day on which he or she again reports for duty or on which his or her death is confirmed or on which a competent court issues an order whereby the death of such person is presumed.

(3) The pay, salary and allowances accruing to a member during his or her captivity or other absence contemplated in subsection (2) shall be paid to a beneficiary designated by the member concerned.

(4) The Director-General shall take the necessary steps to ensure that in respect of every member of the Service there is at all times a record of the particulars of the beneficiary designated by such member for purposes of subsection (3).

(5) A member of the Service may at any time designate another person in the place of the person designated for purposes of subsection (3) and shall ensure that any change in designation is notified to the Director-General in writing.

(6) Any change in designation becomes valid for purposes of subsection (3) when it is received by or on behalf of the Director-General.

(7) The Service shall compensate its members who lose their life or sustain injuries while on duty in line with the Work Injury Benefits Act (Cap. 236).

#### **60. Convening of boards of inquiry**

(1) The Director-General or any officer authorised by the Director-General may convene a board of inquiry to investigate and report on the facts relating to—

- (a) the absence without leave of a member of the Service;
- (b) the capture of any member of the Service by an enemy of Kenya;
- (c) the death of any member of the Service if an inquiry into the member's death is not required to be held by a civilian authority; or
- (d) any other matter that in the opinion of the Director-General or officer authorised by the Director-General requires convening of a board of inquiry.

(2) A board of inquiry convened under subsection (1) shall, if directed to do so by its convening authority, express an opinion on any question that may arise out of any of the matters referred to the board.

(3) The Director-General or any officer authorised by the Director-General in writing may convene a board of inquiry to investigate and report in any other matter.

(4) A board of inquiry shall consist of the number of members prescribed by Regulations made under this Act and be chaired by an officer of a rank not lower than Chief Inspector.

(5) The proceedings and findings of a board of inquiry shall not be admissible against any person in any disciplinary proceedings.

#### **61. Redress**

(1) If any member of the Service thinks he or she has been wronged in any way by member of a superior rank, he or she may complain in writing to the Director-General and seek redress for the wrong.

(2) The Director-General shall, on receiving a complaint under subsection (1), investigate the complaint and if the complaint is proven to be true, may grant any redress which appears to the Director-General to be necessary.

(3) This section shall be implemented in accordance with the Fair Administrative Action Act (Cap. 7L).

## **62. Secondment from National Security Organs**

(1) A national security organ may on request from the Director-General, second officers to the Service.

(2) An officer seconded to the Service shall remain a member of the Service or employee of the national security organ, as the case may be, and shall retain all the privileges and liabilities such membership or employment he or she is entitled or subject to.

(3) For the purposes of this Act, an officer who is seconded to the Service under subsection (1) shall be regarded as a member of the Service and be subject only to the operational control and direction of the Director-General.

## **63. Temporary holding areas**

The Director-General may through standing orders designate temporary holding areas for the detention of persons suspected to have committed offences against discipline under this Act.

## **64. Regulations**

The Cabinet Secretary may, in consultation with the Council make such Regulations as are necessary or expedient to give full effect to or for the carrying out of the provisions of this Act including—

- (a) the establishment of a disciplinary mechanism for the staff seconded or deployed to the Service;
- (b) termination of service;
- (c) resignation from service;
- (d) extension of service during times of emergency;
- (e) the associations whose membership or activities a member of the Service may not join or participate in;
- (f) the economic and social rights of members of the Service that may be limited for the purposes of the training of the members or the operations of the Service;
- (g) the disposal of the uniforms and decorations issued or authorised to deceased members of the Service;
- (h) compensation for missing persons under section 59(2);
- (i) rules of procedure for disciplinary proceedings against members of the Service;
- (j) rules of engagement between the Service and stakeholders for the furtherance of its functions;
- (k) the convening, procedure and membership of boards of inquiry;
- (l) the nature of commercial or business enterprises that the Council may engage in; and
- (m) any other matter necessary for the implementation of this Act.

**65. Service Standing Orders**

(1) The Director-General may make general, special or routine standing orders with respect to any matter relating to the Service.

(2) Any standing orders made under subsection (1) shall be consistent with the provisions of this Act or any other written law.

(3) Any standing orders made under subsection (1) shall not be published in the *Gazette*.

## PART VIII – REPEAL, SAVINGS AND TRANSITION PROVISIONS

**66. Interpretation of this Part**

In this Part, "former Service" means the National Youth Service established under section 3 of the repealed National Youth Service Act.

**67. Transition**

(1) The members of the Service and the staff serving in the former Service before the commencement of this Act, shall be deemed to be members and staff of the Service under this Act.

(2) Despite subsection (1), all the staff who were serving at the former Service shall upon the commencement of this Act be given an option to elect to serve in the Service or be redeployed in the Public Service within a period of one year.

(3) The Council shall determine the criteria and make guidelines for the transition of the members of the Service and staff serving in the former Service before the commencement of this Act.

(4) Assets and liabilities of the former Service shall be deemed to be assets and liabilities of the Service under this Act.

(5) All legal proceedings by or against the former Service shall be deemed to be legal proceedings by or against the Service under this Act.

**68.**

[Spent]

## FIRST SCHEDULE

[s. 6]

## RANKING STRUCTURE IN THE SERVICE

**Gazetted Officers**

Director-General

Deputy Director-General

Director

Senior Deputy Director

Deputy Director

Senior Assistant Director

Assistant Director

Senior Superintendent

Superintendent

**Inspectorate Officers**

Chief Inspector

Inspector

Cadet Inspector

**Subordinate Officers**

Senior Sergeant

Sergeant

Corporal

Private

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**SECOND SCHEDULE**

[s. 14(1)]

**CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL**

1. The Council shall meet at least once in every four months in any financial year for the dispatch of its business.
2. A meeting of the Council shall be held on such date and time as the Council may determine.
3. The Chairperson shall, on the written application of at least one-third of the members of the Council, convene a special meeting of the Council.
4. Unless a majority of the members of the Council otherwise agree, at least fourteen days' notice shall be given to each member of the Council in relation to the convening of a meeting of the Council.
5. The quorum for the conduct of business at a meeting of the Council shall be five members.
6. Despite the provisions of paragraph 5, a meeting of the Council shall not be invalid merely because of a vacancy among the members of the Council.
7. The decisions of the Council shall be by concurrence of the members present but where concurrence is not achieved, decisions shall be by a majority of the members present and voting.
8. All instruments made by, and decisions of, the Council shall be signified in writing under the hand of the Chairperson and secretary save as may be provided for in any other written law.
9. The Council may co-opt any person to attend and deliberate at its meetings if that person's knowledge or skills are necessary for the purposes of this Act.
10. A person who has been co-opted to attend and deliberate at a meeting of the Council shall not have a right to vote at the meeting.
11. The Council shall cause the minutes of its meetings to be entered in books kept and maintained for that purpose.

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12. If a person is present at a meeting of the Council or any committee of the Council at which any matter is the subject of consideration and in which matter the person, the person's spouse or the person's immediate relative or associate is directly or indirectly interested in a private capacity, the person shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not take part in any consideration or discussion, or vote on any question touching on such matter unless the Council determines otherwise.

13. A disclosure of interest made under paragraph 12 shall be recorded in the minutes of the meeting at which it is made.

THIRD SCHEDULE

[ss. 22, 30]

OATH OF OFFICE

I, ..... do hereby swear by Almighty God/do hereby solemnly and sincerely affirm that—

- 1. I will faithfully bear true allegiance to the President as the Commander-in-Chief of the Kenya Defence Forces and to the Republic of Kenya;
2. I will faithfully serve the President and the Republic as an Officer of the National Youth Service;
3. I will obey all laws and lawful orders, regulations, directions and instructions concerning the National Youth Service; and
4. I will discharge all the duties of an Officer of the National Youth Service according to the law without fear, favour, affection or ill will.

(Signature or thumb-print of person making oath)
Sworn/Affirmed by the said

after the oath has been read over and explained to him/her in the

language, which he/she has acknowledged to understand at ..... on this day of ..... day of 20 .....

(Name and signature of witness)

FOURTH SCHEDULE

[s. 33(2)]

OFFENCES AGAINST DISCIPLINE

- 1. It shall be an offence against discipline for any officer of the Service to—
(a) unlawfully strike, use or threaten to use violence against another officer or any other person;
(b) use any obscene, abusive or insulting language in any form against any officer of the Service;

- (c) use threatening, insubordinate or disrespectful language, word, act or demeanour to an officer senior in rank to him or her;
- (d) cause a disturbance at any Service premises;
- (e) be intoxicated while on duty;
- (f) consume any intoxicating liquor, psychotropic substance or narcotic drug, or smoke while in uniform or actively engaged in duty at a public place;
- (g) wilfully disobey a lawful command or order;
- (h) be absent without leave;
- (i) be asleep while on duty;
- (j) leave his or her post or place of duty before being relieved except when in fresh pursuit of an offender who it is his or her duty to apprehend;
- (k) while under arrest or detention, leave or escape from such arrest or detention before he or she is set at liberty by the relevant authority;
- (l) neglect or refuse to assist in the apprehension of any officer of the Service who has been charged with any offence when lawfully ordered to do so;
- (m) resist any lawful arrest;
- (n) negligently allow any prisoner or detainee who is committed to his or her charge or who it is his or her duty to guard, to escape;
- (o) discharge any weapon without authorisation or without reasonable lawful cause;
- (p) without reasonable cause, fail to attend at any parade, instruction class or court or any other duty which he or she is required to attend;
- (q) sell, pawn, negligently lose, make away with, wilfully or negligently damage, or fail to report any loss or damage to, any arm, ammunition, accoutrement, uniform or other article of personal issue or any vehicle or other property committed to his or her charge that belongs to the Service or for which the Service is responsible for;
- (r) be in improper possession of any public or private property;
- (s) commit any act of plunder or wanton destruction of property;
- (t) be negligent in the performance of his or her duties;
- (u) appear on duty untidy in his or her person, arms, uniform or equipment;
- (v) make or sign any false statement in any document or official record;
- (w) without proper authority, disclose or convey any information concerning any investigation or Service matter;
- (x) malingering or feign any disease or infirmity;
- (y) without proper authority, demand or exact from any person any carriage, portorage or provisions;
- (z) commit an act of corruption as defined by any written law;
- (aa) make any false statement on joining the Service;
- (bb) refuse or neglect to make or send any report which it is his or her duty to make or send;

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- (cc) knowingly falsely accuse or make a complaint against any officer of the Service or any other person affecting the character of that other officer or that other person, or wilfully suppress any material fact;
- (dd) without lawful excuse break out of Service barracks, quarters, lines or camp;
- (ee) make or sign any false statement in any document or official record;
- (ff) act or behave in a manner that constitutes cowardice under the Standing Orders;
- (gg) wilfully disobey, whether in hospital or elsewhere, any order and so cause or aggravate any disease or infirmity; or delay its cure;
- (hh) knowingly make a false statement affecting the character of such officer or other person or willfully suppress any material fact;
- (ii) be engaged in any other gainful employment or office without the authority of the Council;
- (jj) block or interfere with communication; or
- (kk) commit an act which amounts to hate speech under section 13 and or 62 of the National Cohesion and Integration Commission Act (Cap. 7N).

**2.** A member of the Service who is absent from duty without leave for a period exceeding twenty-one days shall, unless the contrary is proven, be considered to have deserted from the Service which shall be an offence against discipline.

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