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**THE KENYA DEFENCE FORCES (AMENDMENT)
ACT, 2016**

No. 44 of 2016

Date of Assent: 23rd December, 2016

Date of Commencement: By Notice

AN ACT of Parliament to amend the Kenya Defence Forces Act, 2012

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Defence Forces (Amendment) Act, 2016, and shall come into operation on such date as the Cabinet Secretary may by notice in the Gazette, appoint.

Short title and commencement.

2. The Kenya Defence Forces Act, 2012, in this Act referred to as the “principal Act” is amended in section 2 by inserting the following new definitions in proper alphabetical sequence—

Amendment of section 2 of No.25 of 2012.

“cruel, inhuman or degrading treatment or punishment” means a deliberate and aggravated treatment or punishment not amounting to torture, inflicted by a person in authority or the agent of the person in authority against a person under his or her custody, causing suffering, gross humiliation or debasement to the person;

“torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of—

- (i) obtaining information or a confession from the person or from a third person;
- (ii) punishing the person for the act which that person or a third person has committed or is suspected of having committed;
- (iii) intimidating or coercing that person or a third person; or
- (iv) for any reason based on discrimination of any kind, when such pain or suffering is afflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

3. Section 8 of the principal Act is amended by deleting subsections (3) and (4).

Amendment of section 8 of No. 25 of 2012.

4. Section 10 of the principal Act is amended—

Amendment of section 10 of No. 25 of 2012.

(a) by deleting paragraph (d) and substituting therefor the following new paragraph;

“(d) perform such functions as may be delegated by the President and National Assembly.”

(b) in paragraph (g), by deleting the words “issued to the Chief of the Defence Forces and report thereon to the President and Parliament” and substituting therefor the words “in defence matters and report thereon to the President and the National Assembly”;

(c) by deleting paragraph (h) and substituting therefor the following new paragraph—

(h) submit an annual report, in writing, to the President and National Assembly which shall include—

- (i) the work and accomplishment of the Ministry, the Services and the Defence Council during the period covered by the Report;
- (ii) the expenditure of the Ministry and the Services by the Principal Secretary in the Ministry; and
- (iii) such other recommendations as he or she may consider appropriate.

5. Section 11 of the principal Act is amended by deleting subsection (1) and substituting therefore the following new subsection—

Amendment of section 11 of No. 25 of 2012.

(1) The Cabinet Secretary may, where appropriate and in writing, delegate any power or assign any duty conferred on him or her under this Act to an employee of the Ministry.

6. Section 12 of the principal Act is amended in paragraph (l) by deleting the words “of the Defence Forces” and substituting therefor the words “instructions or directives issued to Service Commanders.”

Amendment of section 12 of No. 25 of 2012.

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7. Section 13(1) of the principal Act is amended—

Amendment of
section 13 of No.
25 of 2012.

(a) in paragraph (a), by deleting the words “through the Service Commanders” and substituting therefor the words “in line with the chain of command”; and

(b) by deleting paragraph (b).

8. Section 16 of the principal Act is amended by deleting the expression “(1)”.

Amendment of
section 16 of No.
25 of 2012.

9. Section 17 of the principal Act is amended by —

Amendment of
section 17 of No.
25 of 2012.

(a) inserting the words “in line with the chain of command” immediately after the words “responsible for”;

(b) deleting paragraph (b).

10. Section 20(1) of the principal Act is amended by inserting the following new paragraphs immediately after paragraph (g)—

Amendment of
section 20 of No.
2012.

(ga) shall direct and oversee the deployment of the Defence Forces as authorised under this Act;

(gb) shall develop the criteria for the recruitment, promotion and transfer of members of the Defence Forces.

11. Section 24 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsection—

Amendment of
section 24 of No.
25 of 2012.

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

12. Section 28(3) of the principal Act is amended by deleting the words “chances allocated per county” and substituting therefor the words “designated recruitment centres for all the counties”.

Amendment of
section 28 of No.
25 of 2012.

13. Section 31 of the principal Act is amended by renumbering the existing provision as subsection (1) and inserting the following new subsections—

Amendment of
section 31 of No.
25 of 2012.

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

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

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

14. Section 32 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 32 of No. 25 of 2012.

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

15. Section 33 of the principal Act is amended —

Amendment of section 33 of No. 25 of 2012.

- (a) in subsection (1) by inserting the words “and other authorities” immediately after the word “Service”;
- (b) by deleting subsection (2); and
- (c) in sub-section (3) by—
 - (i) deleting the expression “(2)” and substituting therefor the expression “(1)” and
 - (ii) deleting the words “administration, command” in subsection (3).

16. Section 34 of the principal Act is amended—

Amendment of section 34 of No. 25 of 2012.

- (a) in subsection (1), by inserting the words “and other authorities” immediately after the words “National Police Service”; and

(b) in subsection (2), by inserting the words “and other authorities” immediately after the words “National Police Service”.

(c) in subsection (4) —

(i) by adding the words “and other authorities as contemplated under Article 241(3)(b) of the Constitution” immediately after the words “National Police Service”;

(ii) in paragraph (a) by inserting the words “or the President” immediately after the words “National Security Council”;

(iii) in paragraph (b) by inserting the words “or the President” immediately after the words “National Security Council”;

17. Section 96(1) of the principal Act is amended in paragraph (a) by deleting the expression “non-property” and substituting therefor the expression “non-public property”.

Amendment of section 96 of No. 25 of 2012.

18. Section 112 of the principal Act is amended by inserting the words “and shall be liable on conviction by a court martial to imprisonment for a term not exceeding two years” at the end thereof.

Amendment of section 112 of No. 25 of 2012.

19. Section 113 of the principal Act is amended by inserting the words “by court martial” immediately after the words “conviction”.

Amendment of section 113 of No. 25 of 2012.

20. Section 115 of the principal Act is amended by inserting the words “by court martial” immediately after the words “conviction”.

Amendment of section 115 of No. 25 of 2012.

21. Section 123 of the principal Act is amended by deleting the words “be liable” immediately before the words “to imprisonment”.

Amendment of section 123 of No. 25 of 2012.

22. Section 126(3) of the principal Act is amended by inserting the words “be liable” immediately after the words “court martial”.

Amendment of section 126 of No. 25 of 2012.

23. The principal Act is amended by inserting the following new section immediately after section 133 —

Insertion of new section 133A in No. 25 of 2012.

Prohibition of torture or cruel treatment.

133A. (1) A member of the Defence Forces shall not subject any person to

torture, cruel, inhuman or degrading treatment.

(2) A member of the Defence Forces who subjects a person to torture cruel, inhuman or degrading treatment commits an offence and is liable on conviction to a fine not exceeding ten million shillings or imprisonment for a term not exceeding twenty five years or to both.

(3) A member of the Defence Forces who subjects a person to cruel, inhuman and degrading treatment commits an offence and is liable on conviction to a fine not exceeding five million shillings or imprisonment for a term not exceeding fifteen years or to both.

24. Section 142 (6) of the principal Act is amended by deleting the word “Act” and substituting therefor the word “Code”.

Amendment of section 142 of No. 25 of 2012.

25. Section 157 of the principal Act is amended in subsection (2) by inserting the following words at the end of the subsection—

Amendment of section 157 of No. 25 of 2012.

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

26. Section 160(3)(b) of the principal Act is amended by inserting the words “who is available at the time” immediately after the expression “Defence Forces”.

Amendment of section 160 of No. 25 of 2012.

26A. Section 186 of the principal Act is amended—

Amendment of section 186 of No. 25 of 2012.

(a) in paragraph (b), by inserting the words “and make subsequent appeals to any other superior court” immediately after the words “High Court”;

(b) in subsection (2), by inserting the words “and make subsequent appeals to any other superior court” immediately after the words “High Court”;

27. Section 196 of the principal Act is amended by inserting the word “martial” immediately after the words “rules of court”.

Amendment of section 196 of No. 25 of 2012.

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28. Section 199 of the principal Act is amended by deleting the word “Act” and substituting therefor the word “Code”.

Amendment of section 199 of No. 25 of 2012.

29. Section 210 of the principal Act is amended —

Amendment of section 210 of No. 25 of 2012.

- (a) by deleting subsections (1), (2) and (3); and
- (b) in subsection (4)(b), by deleting the words “and the Director of Public Prosecutions consents to the trial” and substituting therefor the words “which may be tried summarily or by court martial”.

30. Section 213 of the principal Act is amended —

Amendment of section 213 of No. 25 of 2012.

- (a) in subsection (2)(a), by deleting the words “of at least the rank of Brigadier” and substituting therefor the words “not below the rank of “Lieutenant Colonel”.
- (b) in subsection (3), by inserting the following new paragraphs immediately after paragraph (b) —
 - (ba) notwithstanding the provisions of section 157, have power to decide whether to prosecute or not to prosecute in relation to any offence under this Act wherein the accused person elects to be tried by court martial, or a commanding officer, or an appropriate superior authority remands the case for trial by court martial.
 - (bb) amend or substitute a charge referred to him or her by the Commanding Officer or appropriate superior authority at any time before a Court Martial is convened.
 - (bc) refer a charge or substituted charge to the Commanding Officer or appropriate superior authority with direction that the same be tried summarily or be dismissed.
- (c) in subsection (6), by deleting the words “shall be a separate office from that of a legal department in the Defence Forces or Ministry” and substituting therefor the words “shall be an independent office within the Defence Forces”.

31. Section 243 of the principal Act is amended in subsection (1) by deleting the words “sixty two” and substituting therefor the words “sixty four”.

Amendment of section 243 of No. 25 of 2012.

32. Section 245 of the principal Act is amended—

Amendment of section 245 of No. 25 of 2012.

(a) by deleting the marginal note and substituting therefor the following new marginal note—

“protection of members on duty”;

(b) in subsection (8)—

(i) by inserting the words “by the Defence Council” immediately after the word “prescribed”; and

(ii) by inserting the words “with the consent of the Defence Council” immediately before the word “notwithstanding”;

(c) in subsection (9) by inserting the words “of the regular forces” immediately after the word “member”;

(d) by deleting subsection (10) and substituting therefor the following new subsections—

“(10) The Government shall compensate members of the Defence Forces who lose their lives or suffer disabilities while undertaking military service or training.

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

33. Section 249 of the principal Act is amended—

Amendment of section 249 of No. 25 of 2012.

(a) by deleting subsection (7) and substituting therefor the following new subsection—

(7) An officer or service member may by notice in writing to the Service Commander or Defence Council as applicable request to be discharged from service or resign his or her commission and the Service Commander or

Defence Council, as the case may be, shall determine the request and communicate the decision within ninety days.

(b) in subsection (8) by—

- (i) inserting the words “or the Service Commander” immediately after the words “Defence Council” wherever they appear;
- (ii) deleting the words “reasonable time” and substituting therefor the words “fourteen days”;

34. Section 262 of the principal Act is amended in subsection (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 262 of No. 25 of 2012.

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

35. The principal Act is amended by repealing section 270.

Repeal of section 270 of No. 25 of 2012.

36. Section 304(1) of the principal Act is amended by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 304 of No. 25 of 2012.

(ba) the protection, preservation and use of land and installations used or occupied by the Kenya Defence Forces.

37. The principal Act is amended by inserting the following new section immediately after section 305—

Insertion of new section 305A in No. 25 of 2012.

Standing Orders.

305A. (1) The Chief of the Defence Forces or the Commander of a Service of the Defence forces or the Commandant of the Constabulary may make general, special, routine and standing orders with respect to all or any of the following matters in respect of the Forces, Service or Constabulary, as the case may be—

- (a) discipline, control, good order and guidance;
- (b) organization, administration and duties;

- (c) distribution, posting, transfer, attachment and inspection of personnel;
 - (d) administration, control and command of the reserves;
- (2) The Standing Orders shall not be inconsistent with this Act.