

LAWS OF KENYA

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**THE ARMED FORCES ACT**

CHAPTER 199

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60 of 1968,  
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 2 of 2002.

## CHAPTER 199

### THE ARMED FORCES ACT

*Commencement: 2nd December, 1968*

**An Act of Parliament to provide for the establishment, government and discipline of the Kenya Army, the Kenya Air Force and the Kenya Navy and their reserves; to make provision in relation to seconded and attached personnel and visiting forces; and for purposes connected therewith and purposes incidental thereto**

#### PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Armed Forces Act.

Interpretation.  
 12 of 1978, Sch.

2. (1) In this Act, except where the context otherwise requires-

“absent without leave” shall be construed by reference to section 32;

“this Act” includes regulations or rules made under this Act;

“acting rank” means a rank from which the Commander in the case of officers and the commanding officer in the case of servicemen has power to order the holder to revert, and “acting” in relation to a specified rank shall be construed accordingly;

“air signal” means a message, signal or indication given by any means whatsoever for the guidance of aircraft or a particular aircraft;

“aircraft material” includes-

- (a) parts of, and components of or accessories for, aircraft, whether for the time being in an aircraft or not;
- (b) engines, armaments, ammunition and bombs and other missiles of any description in, or for use in, an aircraft;
- (c) any other gear, apparatus or instruments in, or for use in, an aircraft;
- (d) any apparatus used in connexion with the taking-off or landing of aircraft or for detecting the movement of aircraft;
- (e) any fuel used for the propulsion of aircraft and any material used as a lubricant for aircraft or aircraft material;

“appropriate superior authority” has the meaning given in section 79;

“armed forces” means the armed forces of the Republic, namely the Kenya Army, the Kenya Air Force and the Kenya Navy, together with the constabulary;

“arrest” includes open arrest;

“before the enemy”, in relation to a person, means that he is in action against the enemy or is about to go into action against the enemy or is under attack or threat of imminent attack by the enemy;

“billeting order” means a billeting order made under section 151;

“civil court” means a court of ordinary criminal jurisdiction;

“civil offence” means an offence under Part XVI or an offence under some written law other than this Act, or an act or omission which if committed in Kenya would constitute such an offence;

“civil prison” means a prison within the meaning of the Prisons Act;

Cap. 90.

“colour service” means service in the armed forces other than service in the reserve or in a cadet force;

“Commander” means the Commander of the relative service of the armed forces appointed under section 5 (6);

“commanding officer”, in relation to a member of the armed forces, means the prescribed officer having powers of command over that person;

“competent service authority” means the officer prescribed as such;

“confirming officer” means a person who by virtue of section 109 has power to confirm the conviction and sentence of a court martial;

“constabulary” means the Armed Forces Constabulary established by section 191;

“convening officer”, in relation to a court martial, means the officer convening that court martial, and includes his successor or any

person for the time being exercising his or his successor's functions;

“co-operating forces” means military, air or naval forces of another country acting in co-operation with the armed forces under section 13;

“corresponding civil offence” means the civil offence the commission of which constitutes the offence under section 69;

“corresponding rank”, in relation to any rank in the Kenya Army, means such rank in the Kenya Air Force and such rank in the Kenya Navy as are prescribed;

“court martial” means a court martial held under Part VIII;

“damage” includes destruction;

“date of attestation”, in relation to any person, means the date on which he is attested under Part XIII;

“decoration” includes medal, medal ribbon, clasp and good conduct badge;

“Defence Council” means the Defence Council established by section 5;

“desertion” shall be construed by reference to section 31;

“enemy” includes all persons engaged in armed operations against any of the armed forces, and all armed mutineers, armed rebels, armed rioters and pirates;

“foreign country” means a country other than Kenya;

“Kenya Air Force”, “Kenya Army” and “Kenya Navy” mean the forces established by section 3;

Cap. 198 (1962).

“Kenya Military Forces” means the forces maintained under the Kenya Military Forces Act (now repealed);

“non-commissioned officer” means a serviceman holding the rank of senior sergeant, sergeant or corporal, or corresponding rank, or the rank of lance corporal;

“officer” means-

(a) a person commissioned in any service of the armed forces;

or

- (b) a person who is attached or seconded as a commissioned officer to any service of the armed forces;

“on active service”, in relation to a person, means that the person is serving in or with a unit of the armed forces which is on active service;

“on active service”, in relation to a unit of the armed forces, means that-

- (a) the unit is engaged in operations against an enemy; or
- (b) the President, considering that-
- (i) the armed forces or a part of the armed forces has recently been on active service or is imminently likely to be on active service; and
- (ii) it is necessary for the preservation of public security that the armed forces or part of the armed forces should be treated as being on active service,

has, by notice in the Gazette, declared the armed forces or that part of the armed forces to be on active service for a specified period not exceeding three months (which may be extended from time to time by a further period not exceeding three months, or terminated, by a further notice in the Gazette), and (where part only of the armed forces is declared to be on active service) the unit is included in that part of the armed forces;

“preservation of public security” has the same meaning as in the Preservation of Public Security Act; Cap. 57.

“prison” means a service prison or a civil prison;

“provost officer” means a provost marshal or other officer appointed by the Commander, for a service of the armed forces, to be a provost officer for the purposes of this Act;

“public property” means any property of the Government or a public body, or any property of the government of a country declared under section 11 to be a country to which that section applies, or any property belonging to a non-public fund authorized by the Commander or the commanding officer;

“recruiting officer” means a person authorized to recruit servicemen under section 172;

“registrar” means the Registrar of the High Court;

“requisitioning order” means a requisitioning order made under section 159;

“reserve” means the Kenya Army reserve, the Kenya Air Force reserve or the Kenya Naval reserve, as the case may be;

“reservist” means a member of the reserve;

“rules of procedure” means rules of procedure made under section 228;

“sentence”, in relation to imprisonment or active service punishment, includes an award made upon a case being dealt with summarily;

“service”, used adjectivally, means belonging to or connected with the armed forces;

“service custody” means the holding of any person under arrest or in confinement by any of the armed forces, including confinement in a service prison;

“service in the armed forces” includes service in the Kenya Military Forces;

“service of the armed forces” means the Kenya Army, the Kenya Air Force or the Kenya Navy;

“service prison” means premises set aside by one of the Commanders as a place of imprisonment for persons serving a service sentence of imprisonment;

“service sentence of imprisonment” means a sentence of imprisonment passed by a court martial or awarded on a charge being dealt with summarily;

“serviceman” means any member of a service of the armed forces who is not an officer;

“steal” has the same meaning as in Chapter XXVI of the Penal Code;

“stoppages” means the recovery, by the deduction from the pay of an offender, of a specified sum by way of compensation for any expense, loss or damage occasioned by the offence;

“subject to this Act”, in relation to a person, means that he is subject to this Act by virtue of Part III;

“superior officer”, in relation to a person, means-

- (a) an officer, warrant officer or non-commissioned officer of superior rank; or
- (b) an officer, warrant officer or non-commissioned officer of equal rank but greater seniority while exercising authority as that person’s superior;

“visiting force” has the meaning assigned to it in section 208;

“warrant officer” means a serviceman holding the rank of warrant officer class I or warrant officer class II or corresponding rank.

(2) Except where otherwise provided, references in this Act-

- (a) to a particular rank are to that rank in the Kenya Army;
- (b) to a person holding a particular rank include references to a person acting in that rank:

Provided that a punishment of a person acting in a rank may nevertheless be accompanied by an order that he revert to his substantive rank.

## PART II—ESTABLISHMENT AND COMMAND OF ARMED FORCES

3. (1) There are hereby established and there shall be maintained in accordance with this Act an army, an air force and a navy, to be known respectively as the Kenya Army, the Kenya Air Force and the Kenya Navy, not exceeding such strength as may from time to time be determined by the President on the advice of the Defence Council, and they shall rank in precedence in that order.

Establishment and employment of armed forces. 12 of 1978, Sch.

(2) The Kenya Army, the Kenya Air Force and the Kenya Navy are charged with the defence of the Republic and the support of the civil power in the maintenance of order, and with such other duties as may from time to time be assigned to them by the Minister after consultation with the Defence Council.

(3) The President shall be responsible for the organization and command of the armed forces.

(4) The President may, by notice in the Gazette, assign names to units of the armed forces and vary or replace any such names.

(5) The Minister may order that any member of the armed forces shall proceed to a place outside Kenya for the purpose of undergoing instruction or training or for other duty or employment.

Constitution of  
armed forces.

**4.** The Kenya Army, the Kenya Air Force and the Kenya Navy shall each consist of-

- (a) the regular force;
- (b) the reserve, consisting of-
  - (i) the regular reserve; and
  - (ii) the volunteer reserve, if the Defence Council decides that there shall be one; and
- (c) the cadet force, if the Defence Council decides that there shall be one.

Defence Council,  
Chief of General  
Staff and  
Commanders.  
12 of 1978, s.2,  
17 of 1979, Sch.

**5.** (1) There is hereby established the Defence Council, which shall consist of-

- (a) the Minister, who shall be chairman;
- (b) the Assistant Minister, who shall be vice-chairman;
- (c) the Chief of General Staff;
- (d) the Commander of each service of the armed forces;
- (e) the Permanent Secretary of the Ministry,

and the chairman of the Council may appoint a person to be secretary of the Council.

(2) The Defence Council may delegate to the Minister, the Assistant Minister, a public officer or a member of the armed forces the exercise of any power or the performance of any duty conferred or imposed on it by this Act, other than a power to make subsidiary legislation.



(3) The chairman of the Defence Council may assign to the Permanent Secretary of the Ministry, the Chief of General Staff, the Commander of any service of the armed forces or the secretary of the Council responsibility for any business of the Council:

Provided that the exercise of powers and the performance of duties specifically conferred or imposed on the Defence Council by this Act may not be assigned under this subsection.

(4) The Defence Council may make rules and standing instructions providing for-

- (a) the organization of the work of the Council and the manner in which it may perform its functions, subject to any assignment of responsibilities by the chairman under subsection (3);
- (b) the procedure to be followed by the Council in conducting its business; and
- (c) all matters which the Council may consider it necessary or desirable to provide for, in order to secure the better performance of the functions of the Council.

(5) Acts and instructions of the Defence Council may be signified, by command of the Defence Council, under the hand of the secretary of the Defence Council.

(6) The President may appoint officers to be Chief of General Staff and Commanders of each service of the armed forces.

6. (1) The Defence Council shall, subject to the powers of command of the President as Commander-in-Chief of the armed forces and to this Act, be responsible for the overall control and direction of the armed forces, and shall perform the other functions given to it by this Act.

Command of armed forces.  
12 of 1978, s. 3,  
17 of 1979, Sch.

(2) Subject to subsection (1) and to the other provisions of this Act, the Chief of General Staff shall, subject to the general direction of the Defence Council, be responsible for the control, direction and general superintendence of the armed forces.

(3) Subject to the directions of the Chief of General Staff, each Commander shall have the command and administration of the service of which he is Commander.

(4) The Chief of General Staff and each Commander may delegate

to an officer under his command any of his powers under this Act, except a power of delegation and a power for the exercise of which specific rank seniority or qualifications (which the officer does not hold) are stipulated by this Act.

### PART III—APPLICATION OF ACT

Persons subject to Act.  
14 of 1971, Sch.,  
2 of 2002, Sch.

7. (1) The following persons are subject to this Act-

- (a) officers and servicemen who are not reservists;
- (b) reservists who have been called out under section 184, section 185 or section 186;
- (c) any person who is serving with the armed forces under an engagement whereby he agrees to be subject to this Act, and who is not otherwise subject to this Act; and
- (d) any person to whom Parts IV to XI (inclusive ) for the time being apply by virtue of section 8 or section 9.

(2) In the application of this Act to female members of the services of the armed forces, so much of this Act as provides for active service punishment shall not apply.

Application of Act to constabulary.

8. (1) Parts IV to XI (inclusive) apply to members of the constabulary as they apply to officers and servicemen, but with the modifications specified in subsection (2).

(2) The modifications referred to in subsection (1) are-

- (a) the punishments which may be awarded by a court martial shall include dismissal, reduction in rank and a fine, and stoppages where the offence has occasioned loss or damage, but shall not include any other punishment less than imprisonment;
- (b) the only punishment which may be awarded 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 damages;
- (c) the following provision shall have effect in place of subsections (2) and (3) of section 70, that is to say, a member of the constabulary may be arrested by a provost officer or by a warrant officer or non-commissioned officer legally

exercising authority under a provost officer or on his behalf, or by order of any officer, or by a member of the constabulary who is senior to him in rank;

- (d) the provisions of this Act relating to the investigation and summary trial of offences shall apply as they apply to servicemen, except as otherwise expressly provided;
- (e) for the purposes of the provisions of this Act relating to the investigation and summary trial of offences, the commanding officer shall be the Commandant of the Constabulary and also the officer commanding the unit with which the member is serving; and
- (f) references in sections 141 and 142 to being, continuing to be or ceasing to be subject to this Act shall be replaced by references to being, continuing to be or ceasing to be in circumstances in which Parts IV to XI (inclusive) apply, and section 141 (3) shall not apply.

(3) Any fine imposed on a person to whom this Act applies by virtue of this section, whether by a court martial or on a charge being dealt with summarily, shall be recoverable as a debt due to the Government.

9. (1) Where any unit of any of the armed forces is on active service, Parts IV to XI (inclusive) apply to any person who-

- (a) is employed in the service of that unit or of any part or member thereof, or accompanies that unit or any part thereof; and
- (b) is not otherwise subject to this Act,

as those Parts apply to officers and servicemen subject to this Act, but with the modifications specified in subsection (2).

(2) The modifications referred to in subsection (1) are-

- (a) the punishments which may be awarded by a court martial shall include a fine, and stoppages where the offence has occasioned loss or damage, but shall not include any other punishment less than imprisonment;
- (b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding the equivalent of one month's pay and

Application of Act to civilians.  
12 of 1978, Sch.,  
17 of 1979, Sch.

no other punishment;

- (c) the following provision shall have effect in place of subsections (2) and (3) of section 70, that is to say, a person may be arrested by a provost officer, or by a warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer, or by a member of the constabulary;
- (d) the provisions of this Act relating to the investigation and summary trial of offences shall apply as they apply to servicemen, except as otherwise expressly provided;
- (e) for the purposes of the provisions of this Act relating to the investigation and summary trial of offences, the commanding officer shall be the officer commanding the unit in whose service the person is employed or which the person accompanies; or
- (f) references in sections 141 and 142 to being, continuing to be or ceasing to be subject to this Act shall be replaced by references to being, continuing to be or ceasing to be in circumstances in which Parts IV to XI (inclusive) apply, and section 141 (3) shall not apply.

(3) The Chief of General Staff may determine the rank in respect of which Parts IV to XI (inclusive) shall apply to a person who is subject to this Act by virtue of this section.

(4) Any fine imposed on a person to whom this Act applies by virtue of this section, whether by a court martial or on a charge being dealt with summarily, shall be recoverable as a debt due to the Government.

#### PART IV—CO-OPERATION WITH FORCES OF OTHER COUNTRIES

**10.** (1) The Defence Council may, subject to anything to the contrary in the conditions applicable to his service, place any officer or serviceman at the disposal of the service authorities of any country to which this subsection applies for the purpose of his undergoing instruction or training.

(2) Subsection (1) applies to any country in the Commonwealth, and to any other country which the President may, by notice in the Gazette and with the approval of the National Assembly, declare to be a country to which that subsection applies.

Attachment to  
other forces and  
employment outside  
Kenya.  
12 of 1978, s. 4.

(3) The President may, on the advice of the Defence Council, order that any unit of the armed forces shall be employed outside Kenya for any duty or employment.

(4) An officer or serviceman on service outside Kenya by virtue of this section-

- (a) shall not, solely by reason thereof, cease to be subject to this Act;
- (b) shall, for the purposes of gratuities and pension on discharge, retain his rights and such service shall be taken into account to the same extent as if it had been service in Kenya.

**11.** (1) The Defence Council may attach to any unit of the armed forces any member of the military, air or naval forces of any country to which this section applies who is placed at its disposal for that purpose by the service authorities of that country; and, subject to section 12, where a member of another force is so attached he shall, during the period of his attachment-

Secondment or attachment to armed forces.

- (a) have the like powers of command and punishment over members of the armed forces as are possessed by, and shall be deemed to be, an officer or serviceman of equivalent rank; and
- (b) be subject to this Act.

(2) This section applies to any country in the Commonwealth, and to any other country which the President may, by notice in the Gazette and with the approval of the National Assembly, declare to be a country to which this section applies.

**12.** (1) Notwithstanding section 11 (1), a person who is-

Saving for members of British forces. 14 of 1971, Sch.

- (a) a person subject to the Army Act, the Air Force Act or the Naval Discipline Act; and
- (b) seconded or attached to the armed forces,

shall remain subject to those Acts and shall not be a person subject to this Act, but in other respects section 11 (1) shall apply to him.

(2) In the event of a person referred to in subsection (1) committing an offence under the Army Act, the Air Force Act or the Naval Discipline Act, he may be arrested, tried and punished in Kenya by the service courts and authorities established under that Act.

(3) A person referred to in subsection (1) who is held in military, air force or naval custody by virtue of any finding or award by a service court or authority made in pursuance of subsection (2) is in lawful custody.

(4) Nothing in this section confers on any of the persons referred to in subsection (1) exemption from any law (other than this Act) or from the jurisdiction of any civil court or authority in Kenya.

(5) In this section, “the Army Act”, “the Air Force Act” and “the Naval Discipline Act” mean respectively the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 of the United Kingdom, as from time to time amended.

3 & 4 Eliz.  
2, c.18.  
3 & 4 Eliz.  
2, c. 19.  
5 & 6 Eliz.  
2, c. 53.

Co-operation with  
other forces.

**13.** (1) If the whole or any part of the armed forces is required to act in co-operation with any other military, air or naval force, the President may place the armed forces or such part thereof under the command of the officer commanding the other force, if that officer is senior in rank to all the officers of the armed forces or such part thereof.

(2) Where any part of the armed forces is acting in co-operation with any other military, air or naval force, the commander of that part of the armed forces may, in agreement with the commander of the other force, define the powers of command and order of precedence of any officer or non-commissioned officer of that part of the armed forces in relation to an officer or non-commissioned officer of the other force who is of the equivalent rank.

(3) In so far as powers of command depend on rank, any member of any other military, air or naval force-

- (a) who is acting in co-operation with any unit of any of the armed forces; or
- (b) whose unit is acting in co-operation with a unit of any of the armed forces,

shall have the same powers as a member of the armed forces of corresponding rank; and for the purposes of sections 27 and 70 any such member of another military, air or naval force shall be treated as if he were a member of the armed forces of corresponding rank.

## PART V—SERVICE OFFENCES

*Treachery, Cowardice and Offences Arising out of Service*

**14.** (1) Any person subject to this Act who, with intent to assist the enemy- Aiding enemy.

- (a) abandons or delivers up any place or post which it is his duty to defend, or abandons his place of duty, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend, or induces any person to abandon that person's place of duty; or
- (b) does any act calculated to imperil the success of operations of the armed forces, or of any co-operating forces, or of any part of the armed forces or of any co-operating forces; or
- (c) having been captured by the enemy, serves with or aids the enemy in the prosecution of hostilities, or in the taking of measures calculated to influence morale, or in any other way whatsoever not authorized by international usage; or
- (d) furnishes the enemy with arms or ammunition or with supplies of any description or with any other thing (whether similar to the foregoing or not); or
- (e) harbours or protects an enemy who is not a prisoner of war; or
- (f) gives any false air signal, or alters or interferes with any air signal or any apparatus for giving an air signal; or
- (g) when ordered by his superior officer, or otherwise under orders, to carry out any warlike operations in the air, fails to use his utmost exertions to carry such orders into effect; or
- (h) causes the capture or destruction by the enemy of any of the aircraft of the armed forces or of any co-operating forces,

shall be guilty of an offence and liable, on conviction by court martial, to suffer death or any other punishment provided by this Act.

(2) Any person subject to this Act who, knowingly and without reasonable excuse, does any of the acts specified in paragraphs (a) to (e) (inclusive) of subsection (1), otherwise than with intent to assist the enemy, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

(3) Any person subject to this Act who negligently causes or allows the capture or destruction by the enemy of any of the aircraft of the armed forces or of any co-operating forces shall, on conviction by court martial, be liable to imprisonment for life or any less punishment provided by this Act.

Communication with  
enemy.  
12 of 1978, Sch.

**15.** (1) Any person subject to this Act who, with intent to assist the enemy, communicates with or gives intelligence to the enemy or to any unauthorized person shall be guilty of an offence and liable, on conviction by court martial, to suffer death or any other punishment provided by this Act.

(2) Any person subject to this Act who, without authority, communicates with or gives intelligence to the enemy shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

(3) In this section, “intelligence” means information which is or purports to be information as to any matter about which information would or might be directly or indirectly useful to the enemy, and in particular (but without prejudice to the generality of the foregoing) as to any matter falling within the following paragraphs, being a matter about which information would or might be directly or indirectly useful to the enemy-

- (a) the number, description, armament, equipment, disposition, movement or condition of the armed forces or of any co-operating forces, or of any unit of the armed forces or of any co-operating forces, or of any of the vehicles, aircraft or ships of the armed forces or any co-operating forces;
- (b) any operations or projected operations of the armed forces or of any co-operating forces, or of any unit thereof, or of any of their aircraft or ships;
- (c) any code, cipher, call sign, password, countersign or frequency;
- (d) any measures for the defence or fortification of any place on behalf of the armed forces or of any co-operating forces;
- (e) the number, description or location of any prisoners of war;
- (f) weapons or munitions of war.



**16.** (1) Any person subject to this Act who is in command of any aircraft, ship, vehicle or establishment of the armed forces, and who with intent to assist the enemy-

Misconduct in action by person in command.

- (a) fails to use his utmost exertions to bring into action any aircraft, ship or vehicle which it is his duty to bring into action; or
- (b) surrenders any aircraft, ship or vehicle of the armed forces to the enemy when it is capable of being successfully defended or destroyed; or
- (c) fails to pursue any enemy whom it is his duty to pursue, or to assist to the utmost of his ability any friend whom it is his duty to assist; or
- (d) in the course of any action by or against the enemy, improperly withdraws from the action or from his station, or fails in his own person and according to his rank to encourage the persons under his command to fight courageously; or
- (e) surrenders any establishment, or any part of an establishment, of the armed forces to the enemy when it is capable of being successfully defended or when it is his duty to cause it to be destroyed,

shall be guilty of an offence and liable, on conviction by court martial, to suffer death or any other punishment provided by this Act.

(2) Any person subject to this Act who is in command of any aircraft, ship, vehicle or establishment of the armed forces, and who does any of the acts specified in paragraphs (a) to (e) (inclusive) of subsection (1), otherwise than with intent to assist the enemy, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

**17.** Any person subject to this Act who is not in command of any aircraft, ship, vehicle or establishment of the armed forces, and who fails, when ordered to prepare for action by or against the enemy or during any such action, to use his utmost exertions to carry the lawful orders of his superior officers into execution, shall be guilty of an offence and liable, on conviction by court martial, if the offence is committed with intent to assist the enemy, to suffer death or any other punishment provided by this Act, and in any other case to imprisonment for life or any less punishment provided by this Act.

Misconduct in action by others.

**18.** (1) Any person subject to this Act who, when before the

Cowardice.

enemy-

- (a) leaves the post, position or other place where it is his duty to be; or
- (b) throws away his arms, ammunition or tools; or
- (c) does any of the acts specified in paragraph (f), (g) and (h) of section 14 (1),

in such a manner as to show cowardice, or otherwise behaves in such a manner as to show cowardice, shall be guilty of an offence.

(2) Any person subject to this Act who, when before the enemy, induces other persons subject to this Act to commit an offence under subsection (1) shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

Neglect of duty.

**19.** Any person subject to this Act who neglects to perform or performs negligently any duty imposed on him shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences against morale.

**20.** Any person subject to this Act who-

- (a) spreads (whether orally, in writing, by signal or otherwise) reports relating to operations of the armed forces or of any co-operating forces, or of any part of any of the armed forces or of any co-operating forces, being reports calculated to create despondency or unnecessary alarm; or
- (b) when before the enemy, uses words calculated to create despondency or unnecessary alarm,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

Being captured through disobedience or neglect, and failure to rejoin forces.

**21.** (1) Any person subject to this Act who is captured by the enemy through disobedience of orders or wilful neglect of his duty shall be guilty of an offence.

(2) Any person subject to this Act who, having been captured by the enemy, fails to take, or prevents or discourages any other person

subject to this Act who has been captured by the enemy from taking, any reasonable steps to rejoin the armed forces available to him or, as the case may be, to that other person shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

**22.** (1) Any person subject to this Act on guard duty or watch who-

Offences by or in relation to sentries, etc.

(a) sleeps at his post; or

(b) when not on duty at a post, is asleep at a time when he is not allowed to be asleep; or

(c) is drunk; or

(d) leaves his post without having been regularly relieved or otherwise absents himself from any place where it is his duty to be,

shall be guilty of an offence.

(2) For the purposes of subsection (1), a person is drunk if, owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in a manner likely to bring discredit to the armed forces.

(3) Any person subject to this Act who strikes or otherwise uses force against any person on guard duty or watch, being a member of the armed forces or any co-operating forces or of any visiting force, or by the threat of force compels any such person to let him or any other person pass, shall be guilty of an offence.

(4) Any person guilty of an offence under this section shall be liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act:

Provided that, if the offence was not committed on active service, he shall not be liable to imprisonment for more than five years.

(5) References in this section to a person on guard duty or watch are references to a person who-

- (a) is posted or ordered to patrol, or has adopted the position of sentry at a post or has undertaken the patrol; or
- (b) is a member of a guard or other party mounted or ordered to patrol, for the purpose of protecting any persons, premises or place, or of controlling access to or egress from any premises or place, or of regulating traffic by road or rail or on any inland navigation; or
- (c) has been ordered to keep a specific watch.

Looting.

**23.** Any person subject to this Act who-

- (a) steals from, or with intent to steal searches, the person of anyone killed or wounded in the course of warlike operations; or
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or
- (c) takes otherwise than for the public service any aircraft, ship, vehicle, equipment or stores abandoned by the enemy, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding ten years or any less punishment provided by this Act.

Offences against civil population.

**24.** Any person subject to this Act who outside Kenya commits any wrongful act against the person or property of any member of the civil population shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### *Mutiny and Insubordination*

Mutiny.

**25.** (1) Any person subject to this Act who-

- (a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connexion with operations against, the enemy or the impeding of the performance of any such duty or service; or
- (b) incites any person to take part in such a mutiny, whether actual or intended,

shall be guilty of an offence and liable, on conviction by court martial,

to suffer death or any other punishment provided by this Act.

(2) Any person subject to this Act who, in a case not falling within subsection (1), takes part in a mutiny, or incites any person subject to this Act to take part in a mutiny whether actual or intended, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

(3) In this Part, “mutiny” means a combination between two or more persons subject to this Act, or between persons two at least of whom are subject to this Act-

- (a) to overthrow or resist lawful authority in the armed forces or any co-operating forces, or in any part of the armed forces or any co-operating forces; or
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against, or in connexion with operations against, the enemy; or
- (c) to impede the performance of any duty or service in the armed forces or in any co-operating forces, or in any part of the armed forces or of any co-operating forces.

**26.** Any person subject to this Act who, knowing that a mutiny is taking place or is intended-

Failure to suppress mutiny.

- (a) fails to use his utmost endeavours to suppress or prevent it; or
- (b) fails to report without delay that the mutiny is taking place or is intended,

shall be guilty of an offence and liable, on conviction by court martial-

- (i) if his offence was committed with intent to assist the enemy, to suffer death or any other punishment provided by this Act; and
- (ii) in any other case, to imprisonment for life or any less punishment provided by this Act.

**27.** Any person subject to this Act who-

Insubordinate behaviour.

- (a) strikes or otherwise uses violence against, or offers violence

to, his superior officer; or

(b) uses threatening or insubordinate language to his superior officer,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act:

Provided that he shall not be liable to imprisonment for more than five years if the offence was not committed on active service and did not involve striking or otherwise using violence against, or offering violence to, a superior officer exercising authority as such.

Disobedience to particular orders.

**28.** (1) Any person subject to this Act who, in such a manner as to show a wilful defiance of authority, disobeys any lawful command given or sent to him personally shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act.

(2) Any person subject to this Act who, wilfully or through neglect, disobeys any lawful command shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding five years or any less punishment provided by this Act:

Provided that he shall not be liable to imprisonment for more than two years if the offence was not committed on active service.

Obstruction of provost officers, etc.

**29.** Any person subject to this Act who-

(a) obstructs; or

(b) when called on refuses to assist,

any person known to him to be a provost officer, duty officer or officer of the patrol, or to be a person (whether subject to this Act or not) lawfully exercising authority under or on behalf of a provost officer, duty officer or officer of the patrol, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Disobedience to standing orders.

**30.** (1) Any person subject to this Act who contravenes or refuses or fails to comply with any provision of orders to which this section applies, being a provision which he knows of or might reasonably be expected to know of, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) This section applies to standing orders or other routine orders of a continuing nature made for any formation or unit or body of servicemen, or for any command or other area, garrison or place, or for any ship train or aircraft.

*Desertion and Absence without Leave*

31. (1) Any person subject to this Act who-

Desertion.  
12 of 1978, Sch.

(a) deserts; or

(b) persuades or procures any person subject to this Act to desert,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act:

Provided that a person shall not be liable to imprisonment for more than two years unless-

(i) if the offence was committed under paragraph (a), he was on active service or under orders for active service at the time when it was committed; or

(ii) if the offence was committed under paragraph (b), the person in relation to whom it was committed was on active service or under orders for active service at that time.

(2) For the purposes of this Part, a person deserts if he-

(a) leaves the armed forces, or fails to join or rejoin the armed forces when it is his duty to join or rejoin them, with (in either case) the intention, subsisting at the time of the leaving or failure or formed thereafter, of remaining permanently absent from his duty; or

(b) being an officer, enlists in or enters the armed forces without having resigned his commission, or being a serviceman enlists in or enters the armed forces without having been discharged from his previous enlistment; or

(c) absents himself without leave with intent to avoid serving in any place outside Kenya or to avoid service or any particular service when before the enemy; or

(d) absents himself without leave for a continuous period of more than ninety days.

(3) In addition to or without any other punishment, the court martial convicting a serviceman of desertion may direct that the whole or any part of his service preceding the period of desertion shall be forfeited:

Provided that this subsection does not apply to a reservist called out on permanent service.

Absence without leave.

**32.** Any person subject to this Act who-

- (a) absents himself without leave; or
- (b) persuades or procures any person subject to this Act to absent himself without leave,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Assisting desertion or absence without leave.  
12 of 1978, Sch.

**33.** Any person subject to this Act who-

- (a) knowingly assists any person subject to this Act to desert or absent himself without leave; or
- (b) knowing that any person subject to this Act has deserted or absented himself without leave, or is attempting to desert or absent himself without leave, fails to report that fact without delay, or fails to take any steps in his power to cause that person to be apprehended,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Failure to perform military duties.

**34.** Any person subject to this Act who without reasonable excuse fails to attend for any parade or other service duty of any description, or leaves any such parade or duty as aforesaid before he is permitted to do so, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Malingering, Drunkenness and Quarrelling*

Malingering.

**35.** Any person subject to this Act who-

- (a) falsely pretends to be suffering from sickness or disability;



or

- (b) injures himself with intent thereby to render himself unfit or temporarily unfit for service, or causes himself to be injured by any person with that intent; or
- (c) injures another person subject to this Act, at the instance of that person, with intent thereby to render that person unfit or temporarily unfit for service; or
- (d) with intent to render or keep himself unfit or temporarily unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**36.** (1) Any person subject to this Act who is drunk, whether on duty or not, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Drunkenness.

Provided that, if he is neither on active service nor on duty, he shall not be liable to imprisonment for more than six months.

(2) For the purposes of this section, a person is drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any other circumstances, he is unfit to be entrusted with his duty or with any duty which he may be called upon to perform, or behaves in a disorderly manner or in a manner likely to bring discredit to the armed forces.

**37.** Any person subject to this Act who-

Quarrelling.

- (a) fights or quarrels with any other person whether subject to this Act or not; or
- (b) uses threatening, abusive, insulting or provocative words or behaviour likely to cause a disturbance,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

*Offences relating to Property*

Offences concerning public property.

**38.** Any person subject to this Act who-

- (a) steals or fraudulently misapplies any public property, or is concerned in or connives at the stealing or fraudulent misapplication of any public property; or
- (b) receives or retains any public property, knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied; or
- (c) wilfully damages, or is concerned in the wilful damage of, any public property; or
- (d) by wilful neglect causes damage by fire to any public property,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding seven years or any less punishment provided by this Act.

Offences concerning property of persons subject to Act.

**39.** Any person subject to this Act who-

- (a) steals or fraudulently misapplies any property belonging to a person subject to this Act, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or
- (b) receives or retains any such property, knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied; or
- (c) wilfully damages, or is concerned in the wilful damage of, any such property,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Loss or hazarding of aircraft, ship or vehicle.

**40.** Any person subject to this Act who, either wilfully or by negligence, causes or allows any aircraft, ship or vehicle of the armed forces to be captured, lost, destroyed, damaged, stranded or hazarded shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act:

Provided that, if he has not acted wilfully or with wilful neglect,

he shall not be liable to imprisonment for more than two years.

**41.** Any person subject to this Act who, being in command of an aircraft, ship or vehicle of the armed forces or being a member of its crew, without lawful authority-

Improper carriage of goods.

- (a) receives or permits to be received on board the aircraft, ship or vehicle any goods or merchandise intended for disposal or delivery by way of trade or business (whether on his own account or on account of any other person), not being merchandise received in the course of salvage; or
- (b) agrees to carry any goods or merchandise on board the aircraft, ship or vehicle in consideration of the payment of freight, or demands or receives any payment in respect of such carriage, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**42.** Any person subject to this Act who-

Miscellaneous offences relating to property.

- (a) loses or by negligence damages any public property of which he has the charge or which has been entrusted to his care, or which forms part of property of which he has the charge or which has been entrusted to his care, or any service decoration granted to him; or
- (b) loses, or by negligence damages, any clothing, arms, ammunition or other equipment issued to him for his use for service purposes; or
- (c) by negligence causes damage by fire to any public property; or
- (d) fails to take proper care of any animal or bird of which he has the charge and which is used in the public service; or
- (e) makes away with (whether by pawning, selling or destruction or in any other way) any service decoration granted to him or any clothing, arms, ammunition or other equipment issued to him for his use for service purposes,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that it shall be a defence for a person charged under this section with losing any property or any service decoration that he took all reasonable steps for its care and preservation.

*Offences relating to Billeting and Requisitioning of Vehicles*

Billeting offences.

**43.** Any person subject to this Act who-

- (a) obtains billets, or orders or procures another person to obtain them, knowing that no billeting order is in force authorizing him to demand those billets or that he is otherwise not authorized to demand them; or
- (b) takes, agrees to take or demands from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting order any money or thing as consideration for not requiring, or for ceasing to require, accommodation for himself or the said other person or standing room for the vehicle; or
- (c) commits any wrongful act against the person or property of the occupier of premises in which he is billeted in pursuance of a billeting order or of any other person who is in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property as aforesaid,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Offences in relation to requisitioning of vehicles.

**44.** (1) Any person subject to this Act who-

- (a) gives directions for the provision of a vehicle, or orders or procures another person to give them, knowing that no requisitioning order is in force authorizing him to give directions for the provision of that vehicle and that he is not otherwise authorized to give such directions; or
- (b) in purported exercise of powers conferred by a requisitioning order, takes, or orders or procures any other person to take, possession of a vehicle, knowing that no requisitioning order is in force under which the taking possession of the vehicle could be authorized or that the taking possession thereof is otherwise not authorized under such an order; or
- (c) takes or agrees to take, or demands, from a person any money

or thing as consideration for directions, or any particular directions, for the provision of a vehicle not being given, or for possession of a vehicle not being taken or not being retained, under a requisitioning order,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding three years or any less punishment provided by this Act.

(2) Subsection (1) applies in relation to aircraft, ships, boats, trains, railway rolling stock, horses, mules, donkeys and camels, food, forage and stores (within the meaning of Part XII) as it applies in relation to vehicles.

### *Flying Offences*

**45.** Any person subject to this Act who, either wilfully or by negligence, does any act or makes any omission in flying an aircraft of the armed forces, or in the use of any such aircraft, or in relation to any such aircraft or to aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for life or any less punishment provided by this Act: Dangerous flying.

Provided that, if he has not acted wilfully or with wilful neglect, he shall not be liable to imprisonment for more than two years.

**46.** Any person subject to this Act who, being the pilot of an aircraft of the armed forces, flies it at a height less than the prescribed height, except- Low flying.

(a) while taking off or landing; or

(b) in such other circumstances as may be prescribed,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**47.** Any person subject to this Act who, being the pilot of an aircraft of the armed forces, flies it so as to cause, or as to be likely to cause, unnecessary annoyance to any person shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act. Annoyance by flying.

*Offences relating to Custody*

Irregular arrest and  
confinement.

**48.** (1) Any person subject to this Act who, when another person subject to this Act is under arrest-

- (a) unnecessarily delays the taking of such steps as it is his duty to take for investigating the allegations against that other person, or for having the allegations against that other person investigated by his commanding officer or the appropriate superior authority or tried by court martial; or
- (b) fails to release, or effect the release of, that other person when it is his duty to do so,

shall be guilty of an offence.

(2) Any person subject to this Act who, having committed a person (in this subsection referred to as the prisoner) to the custody of a provost officer or other officer or of a warrant officer or non-commissioned officer, fails without reasonable cause to deliver-

- (a) at the time of the committal; or
- (b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter,

to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed shall be guilty of an offence.

(3) Where any person (in this subsection referred to as the prisoner) is committed to the charge of a person subject to this Act who is in command of a guard, then if without reasonable cause that person does not, as soon as he is relieved from his guard and any further duty and in any case within twenty-four hours after the committal, give to the officer to whom it is his duty to report-

- (a) a written statement containing, so far as known to him, the prisoner's name and alleged offence and the name and rank or other description of the person by whom the prisoner is alleged to have committed the offence; and
- (b) if he has received it, the report required by subsection (2),

he shall be guilty of an offence.

(4) Any person who is guilty of an offence under this section shall

be liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**49.** (1) Any person subject to this Act who wilfully allows to escape any person who is committed to his charge, or whom it is his duty to guard, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding seven years or any less punishment provided by this Act.

Permitting escape, and unlawful release of prisoners.

(2) Any person subject to this Act who-

(a) without proper authority releases any person who is committed to his charge; or

(b) without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to guard,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**50.** (1) Any person subject to this Act who, being concerned in any quarrel or disorder, refuses to obey any officer who orders him into arrest, or strikes or otherwise uses violence against, or offers violence to, any such officer, shall be guilty of an offence, whether or not the officer is his superior officer.

Resistance to arrest.

(2) Any person subject to this Act who strikes or otherwise uses violence against, or offers violence to, any person, whether subject to this Act or not, whose duty it is to apprehend him or in whose custody he is shall be guilty of an offence.

(3) Any person guilty of an offence under this section shall be liable, on conviction by court martial, to imprisonment for a term not exceeding three years or any less punishment provided by this Act.

**51.** Any person subject to this Act who escapes from arrest, prison or other lawful custody (whether service custody or not) shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Escape from custody.

#### *Offences concerning Courts Martial and other Authorities*

**52.** (1) Any person subject to this Act who-

(a) having been duly summoned or ordered to attend as a witness

Offences concerning courts martial.

before a court martial, fails to comply with the summons or order; or

- (b) refuses to swear an oath when duly required by a court martial to do so; or
- (c) refuses to produce any document in his custody or under his control which a court martial has lawfully required him to produce; or
- (d) when a witness, refuses to answer any question which a court martial has lawfully required him to answer; or
- (e) wilfully insults any person who is a member of a court martial or a witness, or any other person whose duty it is to attend on or before the court, while that person is acting as a member thereof or is so attending, or wilfully insults any such person while that person is going to or returning from the proceedings of the court; or
- (f) wilfully interrupts the proceedings of a court martial or otherwise misbehaves before the court,

shall be guilty of an offence and liable, on conviction by court martial, other than the court in relation to which the offence was committed, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

(2) Notwithstanding subsection (1), where an offence under paragraph (e) or paragraph (f) of that subsection is committed in relation to a court martial, that court martial, if of opinion that it is expedient that the offender should be dealt with summarily by the court instead of being brought to trial before another court martial, may, by order under the hand of the president of the court, order the offender to be imprisoned for a term not exceeding twenty-one days.

False evidence.

**53.** (1) Any person subject to this Act who, having been lawfully sworn as a witness or as an interpreter in proceedings before a court martial or before any board or person having power under this Act to administer oaths, makes a statement material in those proceedings which he knows to be false or does not believe to be true shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding seven years or any less punishment provided by this Act.

(2) A person shall not be liable to be convicted of an offence under this section solely upon the evidence of one witness as to the falsity of



any statement alleged to be false.

**54.** Any person subject to this Act who prevents or obstructs any other person- Obstruction of police officer.

(a) in executing a warrant for the arrest of a person subject to this Act who has committed or is suspected of having committed an offence triable by a civil court; or

(b) in lawfully arresting without a warrant a person subject to this Act,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

#### *Prize Offences*

**55.** Any person subject to this Act who is in command of an aircraft or ship and who- Prize offences by person in command.

(a) having taken any aircraft or ship as prize, fails to send to the High Court, or to some other prize court having jurisdiction in the case, all the aircraft's papers or ship's papers, as the case may be, found on board; or

(b) unlawfully makes any agreement for the ransoming of any aircraft, ship or goods taken as prize; or

(c) in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any aircraft, ship or goods taken as prize,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding five years or any less punishment provided by this Act.

**56.** Any person subject to this Act who- Prize offences by others.

(a) strikes or otherwise ill-treats any person who is on board an aircraft or ship taken as prize, or who unlawfully takes from any such person any thing in his possession; or

(b) removes out of any aircraft or ship taken as prize (otherwise than for safe keeping or for the necessary use of the armed forces) any goods not previously adjudged by a prize court to be lawful prize; or

- (c) breaks bulk on board any aircraft or ship taken as prize, or detained in exercise of any belligerent right or under any law, with intent to embezzle or fraudulently misapply any thing therein,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding five years or any less punishment provided by this Act.

*Miscellaneous Offences*

Political activities.

**57.** Any person subject to this Act who-

- (a) promotes, or is a member of, or takes part in the activities of, any political association; or
- (b) expresses political views in a public place; or
- (c) addresses any meeting, or joins in any demonstration, the purpose of which is to express support for a political association or object or for a candidate in a national or local authority election,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act:

Provided that this section does not prevent any person from recording his vote at such an election.

Making false statement on enlistment.

**58.** Any person who, when before a recruiting officer for the purpose of being attested in pursuance of Part XIII, knowingly makes a false answer to any question contained in the attestation paper and put to him by or by the direction of the recruiting officer shall, if he has since become and remains subject to this Act, be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding three months or any less punishment provided by this Act.

Falsely obtaining or prolonging leave.

**59.** Any person subject to this Act who knowingly makes a false statement to any member or authority of the armed forces, or to a police officer, or to an administrative officer, for the purpose of obtaining leave or prolonging his leave shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Inaccurate

**60.** Any person subject to this Act who makes or signs-

(a) a certificate relating to any aircraft of the armed forces or any aircraft material; or certification.

(b) a certificate relating to any matter affecting the sea-going or fighting efficiency of any ship of the armed forces,

without having ensured its accuracy shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**61.** Any person subject to this Act who-

Making false document.

(a) makes, signs or makes an entry in any service report, return, pay list or certificate or other service document, being a document or entry which is to his knowledge false in a material particular; or

(b) alters any service report, return, pay list or certificate or other service document, or alters any entry therein, so that the document or entry is to his knowledge false in a material particular, or suppresses, defaces or makes away with any such document or entry which it is his duty to preserve or produce; or

(c) fails to make an entry in any such document so that the document is to his knowledge false in a material particular,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

**62.** Every officer who behaves in a scandalous manner, unbecoming the character of an officer, shall be guilty of an offence and shall, on conviction by court martial, be dismissed from the armed forces.

Scandalous conduct of officer.

**63.** Any officer, warrant officer or non-commissioned officer who strikes or otherwise ill-treats a person subject to this Act who is of inferior rank, or is of the same rank but of less seniority, shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding five years or any less punishment provided by this Act.

Ill-treatment of subordinate.

**64.** Any person subject to this Act who is guilty of disgraceful conduct of a cruel, indecent or unnatural kind shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding ten years or any less punishment provided

Disgraceful conduct.

by this Act.

False accusation.

**65.** Any person subject to this Act who-

- (a) makes an accusation against any other person subject to this Act which he knows to be false or does not believe to be true; or
- (b) in making a complaint where he thinks himself wronged, makes a statement affecting the character of another person subject to this Act which he knows to be false or does not believe to be true, or wilfully suppresses any material facts,

shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding three years or any less punishment provided by this Act.

Attempt to commit offence.

**66.** Any person subject to this Act who attempts to commit an offence under any of the foregoing provisions of this Part shall be guilty of an offence and liable, on conviction by court martial, to the same punishment as is provided for the offence attempted:

Provided that, if the offence is one punishable by death or by imprisonment for life, he shall not be liable to any greater punishment than imprisonment for a term not exceeding seven years.

Aiding and abetting.

**67.** Any person subject to this Act who aids, abets, counsels, procures or connives at the commission by another person of an offence under any of the foregoing provisions of this Part shall be guilty of the like offence and shall be liable to be charged, tried, and on conviction by court martial, punished as a principal offender.

Conduct to prejudice of good order and discipline.  
12 of 1978, Sch.

**68.** Any person subject to this Act who is guilty of any act, conduct or neglect to the prejudice of good order and service discipline shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

### *Civil Offences*

Civil offences.

**69.** (1) Any person subject to this Act who commits a civil offence, whether in Kenya or elsewhere, shall be guilty of an offence and, on conviction by court martial-

- (a) if the civil offence is treason or murder, shall be sentenced to death; and

(b) in any other case, shall be liable to any punishment which a civil court could award for the civil offence if committed in Kenya, being one or more of the punishments provided by this Act, or such punishment, less than the maximum punishment which a civil court could so award, as is provided by this Act:

Provided that, where a civil court could not so award imprisonment, a person so convicted shall be liable to suffer such punishment, less than dismissal from the armed forces, as is provided by this Act.

(2) A person shall not, except with the consent of the Attorney-General, be charged with an offence under this section committed in Kenya if the corresponding civil offence is treason, treasonable felony, treachery, murder, manslaughter or rape.

(3) Where the civil offence is murder or manslaughter, an offence under this section shall be deemed, for the purposes of subsection (2), to have been committed at the place where the act or omission which caused the death occurred, irrespective of the place of death.

#### PART VI—ARREST

**70.** (1) Any person subject to this Act who is found committing an offence under this Act, or is alleged to have committed or is reasonably suspected of having committed an offence under this Act, may be arrested in accordance with this section.

Power to arrest offenders.

(2) An officer may be arrested by an officer of superior rank, or, if engaged in a quarrel or disorder, by an officer of any rank.

(3) A serviceman may be arrested by an officer, a warrant officer or a non-commissioned officer:

Provided that a serviceman shall not be arrested by virtue of this subsection except by a person of superior rank.

(4) A provost officer may arrest any officer or serviceman:

Provided that an officer shall not be arrested by virtue of this subsection except on the order of another officer.

(5) The power of arrest given by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest.

(6) In this section, "provost officer" includes an officer or

serviceman lawfully exercising authority under a provost officer or on his behalf.

Power to arrest deserter or absentee.

**71.** (1) A police officer may arrest any person whom he has reasonable cause to suspect of being an officer or serviceman who has deserted or is absent without leave.

(2) Where no police officer is available, any person may arrest any person whom he has reasonable cause to suspect of being an officer or serviceman who has deserted or is absent without leave.

(3) Any person having authority to issue a warrant for the arrest of a person suspected of a criminal offence, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction a person who is reasonably suspected of being an officer or serviceman who has deserted or is absent without leave, may issue a warrant authorizing his arrest.

(4) Any person who is arrested in pursuance of this section shall as soon as practicable be brought before a subordinate court.

(5) Notwithstanding any other written law, a person arrested and brought before a subordinate court under this section or under section 73 or section 74 shall not be admitted to bail.

Provisions for avoiding delay after arrest.

**72.** (1) The allegations against a person arrested under section 70 or section 71 shall be investigated without unnecessary delay, and as soon as practicable thereafter either proceedings shall be taken to deal with the allegations or he shall be released from arrest.

(2) Wherever any person subject to this Act is arrested and remains in custody for more than eight days without his being tried by court martial or dealt with summarily-

- (a) a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner; and
- (b) a similar report shall be made to the prescribed authority and in the prescribed manner every eight days until a court martial sits or the offence is dealt with summarily or he is released from arrest:

Provided that, where the person is on active service, this subsection need be complied with only so far as is reasonably practicable, having regard to the exigencies of active service.

(3) For the purposes of section 48 (1), the question whether there has been unnecessary delay in the taking of steps for investigating allegations against a person under arrest shall be determined without regard to subsection (2) of this section.

**73.** (1) Where a person who is brought before a subordinate court is alleged to be an officer or serviceman who has deserted or is absent without leave, the following provisions shall have effect.

Proceedings before civil court where suspected deserter or absentee arrested.

(2) If he admits that he is illegally absent from the armed forces and the court is satisfied of the truth of the admission, then-

(a) unless he is in custody for some other cause, the court shall; and

(b) notwithstanding that he is in custody for some other cause, the court may,

forthwith either cause him to be delivered into service custody in such manner as the court thinks fit or commit him to some prison, police station or other place provided for the confinement of persons in custody, to be kept there for such reasonable time as the court fixes (not exceeding such time as the court considers reasonably necessary for the purpose of enabling him to be delivered into service custody) or until sooner delivered into service custody.

(3) Any time fixed by the court under subsection (2) may be extended by the court from time to time if it appears to the court reasonably necessary to do so for the purpose aforesaid.

(4) If he does not admit that he is illegally absent as aforesaid, or if the court is not satisfied of the truth of the admission, the court shall consider the evidence and any statement of the accused, and, if satisfied that he is subject to this Act and if of opinion that there is sufficient evidence to justify his being tried under this Act for the offence of desertion or absence without leave, then, unless he is in custody for some other cause, the court shall cause him to be delivered into service custody or commit him as aforesaid, but otherwise shall discharge him:

Provided that if he is in custody for some other cause the court shall have power, but shall not be required, to act in accordance with this subsection.

(5) The provisions of the Criminal Procedure Code relating to the constitution and procedure of subordinate courts holding preliminary inquiries and conferring powers of adjournment and remand on such courts so acting, and those relating to evidence and the issue and

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enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to proceedings under this section.

Deserter or absentee  
surrendering to  
police.

**74.** (1) Where a person surrenders himself, as being an officer or serviceman who has deserted or is absent without leave, to a police officer elsewhere than at a police station, the police officer shall bring him to a police station.

(2) Where a person surrenders himself, as being an officer or serviceman who has deserted or is absent without leave, to a police officer at a police station, or is brought to a police station under subsection (1), the police officer in charge of the police station shall forthwith inquire into the case, and, if it appears to him that the person is an officer or serviceman who has deserted or is absent without leave, he may cause him to be delivered into service custody without bringing him before a subordinate court or may bring him before a subordinate court.

Certificate of arrest  
or surrender of  
deserter or absentee.

**75.** (1) Where a subordinate court deals with a person under section 73, then when that person is delivered into service custody there shall be handed over with him a certificate in the prescribed form, signed by a magistrate, containing particulars of his arrest or surrender and of the proceedings before the court.

(2) Where a person is delivered into service custody without being brought before a court, whether under section 74 or under any other lawful power, there shall be handed over with him a certificate, in the prescribed form, signed by the police officer who causes him to be delivered into service custody, containing the particulars of his surrender.

(3) In any proceedings for an offence under section 31 or section 32-

(a) a document purporting to be a certificate under subsection (1) or subsection (2) of this section, or under the corresponding provisions of any service law other than this Act, and to be signed as thereby required, shall be evidence of the matter stated in the document;

(b) where the proceedings are against a person who has been taken into service custody on arrest or surrender, a certificate purporting to be signed by a provost officer or any corresponding officer of the forces of another country, or by any other officer in charge of the guard-room or other place where that person was confined on being taken into custody, stating the fact, date, time and place of arrest or surrender,



shall be evidence of the matters stated in the certificate.

76. It shall be the duty of the superintendent or other person in charge of a civil prison, or the person in charge of any police station or other place provided for the confinement of persons in custody, to receive any person duly committed to that prison, police station or place by a subordinate court as being an officer or serviceman who has deserted or is absent without leave, and to detain him until he is delivered in accordance with the directions of the court, into service custody.

Superintendent of prison to receive deserters and absentees.

77. (1) Where a person is in service custody charged with, or with a view to his being charged with, an offence under Part V it shall be the duty of the superintendent or other person in charge of a civil prison, or the person having charge of any police station or other place provided for the confinement of persons in custody, to receive that person and to detain him for a period not exceeding fifteen days, upon receiving a written order purporting to be signed by the person's commanding officer.

Temporary reception of person in service custody into civil custody.

(2) Notwithstanding subsection (1), where a person is in service custody charged with an offence under Part V or the corresponding provisions of any service law other than this Act, a magistrate empowered to hold a subordinate court of the first class may, on application being made to him by affidavit or other sworn evidence by the commanding officer of the person in custody and on being satisfied that it is in the interests of law and order to do so, by warrant from time to time remand the person in custody for a reasonable time, not exceeding twenty-one days at any one time, to a civil prison, police station or other place provided for the confinement of persons in custody.

(3) A magistrate to whom an application under subsection (2) is made, may, on the same application or on a subsequent application made by the commanding officer, order, by endorsement on the warrant, that the person in custody be returned to service custody for such periods as may be necessary to enable a court martial to be held, or may order his discharge from the civil prison or other place where he is detained.

PART VII—PRELIMINARY INVESTIGATION AND SUMMARY TRIAL OF CHARGES

78. (1) Instead of the accused being tried by court martial-

Certain charges may be dealt with summarily.

(a) the commanding officer of the accused may deal summarily with the charge if it is for an offence prescribed as one which a commanding officer may deal with summarily;

(b) the appropriate superior authority may deal summarily with the charge if it is for an offence prescribed as one which the appropriate superior authority may deal with summarily,

but subject in either case to any prescribed limitations.

(2) Notwithstanding subsection (1), a commanding officer of the rank of major or corresponding rank shall not deal summarily with a charge against an officer of the rank of captain or corresponding rank or above; and a commanding officer below the rank of major or corresponding rank shall not deal summarily with a charge against any officer.

(3) References in this Act to dealing summarily with a charge are references to the commanding officer of the accused or the appropriate superior authority determining whether the accused is guilty and either recording a finding of guilty and awarding punishment or dismissing the charge.

Appropriate superior authority.

**79.** For the purposes of this Act, the appropriate superior authority is the Commander or such officer, not below the rank of lieutenant-colonel or corresponding rank, as may be prescribed:

Provided that an officer of such rank as may be prescribed shall not be the appropriate superior authority for the purposes of a case in which the accused is above such rank as may be prescribed.

Commanding officer to investigate all charges.

**80.** Where a person subject to this Act is accused of an offence under Part V, the accusation shall be reported in the form of a charge to the accused's commanding officer, and the commanding officer shall investigate the charge in the prescribed manner.

Charges against officer.  
19 of 1982, Sch.

**81.** (1) After investigating a charge against an officer, the commanding officer shall either-

(a) if the charge is one which he has power to deal with summarily and he considers that the charge should be so dealt with, deal summarily with the charge; or

(b) in any other case, refer the charge in the prescribed manner to the appropriate superior authority:

Provided that he may dismiss the charge if he is of the opinion that it ought not to be further proceeded with.

(2) Where the commanding officer deals with a charge summarily and records a finding of guilty, the punishments which he may award

to an officer of the rank of captain or corresponding rank or below are, subject to the limitations hereinafter provided, those set out in the following scale-

(a) forfeiture of up to six months' seniority of rank in the prescribed manner;

(b) a fine not exceeding half a month's pay;

(c) severe reprimand;

(d) reprimand;

(e) admonition;

(f) where the offence has occasioned any expense, loss or damage, stoppages.

(3) Where the commanding officer refers the charge to the appropriate superior authority, the appropriate superior authority shall either-

(a) if the charge is one which he has power to deal with summarily and he considers that the charge should be so dealt with, deal summarily with the charge; or

(b) in any other case, take the prescribed steps with a view to the charge being tried by court martial:

Provided that the appropriate superior authority may refer the charge back to the accused's commanding officer with a direction that it shall be dismissed or dealt with summarily, but without prejudice to the bringing of another charge if the appropriate superior authority so directs or if the commanding officer thinks fit.

(4) Where the appropriate superior authority deals with a charge summarily and records a finding of guilty, the punishments which he may award are, subject to the limitations hereinafter provided, those set out in the following scale-

(a) forfeiture of up to twelve months seniority of rank and the prescribed manner;

(b) a fine not exceeding one month's pay;

(c) severe reprimand;

(d) reprimand;

(e) admonition;

(f) where the offence has occasioned any expense, loss or damage, stoppages.

(5) Where the commanding officer or the appropriate superior authority deals with a charge summarily and considers that the accused is guilty, then, if he intends to award a punishment of forfeiture of seniority of rank, a fine or stoppages-

(a) a finding shall not be recorded until the accused has been afforded the opportunity of choosing to be tried by court martial; and

(b) if the accused chooses to be tried by court martial, a finding shall not be recorded but the prescribed steps shall be taken with a view to the charge being tried by court martial.

(6) Except where expressly provided by this Act, not more than one punishment shall be awarded under this section for one offence.

(7) Stoppages may be awarded either in addition to or without any other punishment.

(8) A severe reprimand or a reprimand may be awarded in addition to forfeiture of seniority of rank or a fine.

Charges against  
servicemen.  
12 of 1978, s. 5.

**82.** (1) After investigating a charge against a serviceman, the commanding officer shall either-

(a) if the charge is one which he has power to deal with summarily and he considers that the charge should be so dealt with, deal summarily with the charge; or

(b) in any other case, take the prescribed steps with a view to the charge being tried by court martial:

Provided that he may dismiss the charge if he is of the opinion that it ought not to be further proceeded with.

(2) Where the commanding officer refers the charge for trial by court martial, the convening officer to whom the charge is referred shall either-

(a) if the charge is one which he considers should be so dealt

with, take the prescribed steps with a view to the charge being tried by court martial; or

- (b) refer the charge back to the commanding officer with a direction that it shall be dismissed or dealt with summarily, and in any such case the commanding officer shall comply with that direction.

(3) The reference back of a charge in pursuance of subsection (2) shall be without prejudice to the bringing of another charge if the appropriate superior authority so directs or if the commanding officer thinks fit.

(4) Where the commanding officer deals with a charge summarily and records a finding of guilty, the punishments which he may award are, subject to the limitations hereinafter provided, those set out in the following scale-

- (a) if the accused is a warrant officer or a non-commissioned officer-
- (i) dismissal from the armed forces;
  - (ii) reduction in rank to private or corresponding rank, or any less reduction in rank;
  - (iii) forfeiture of seniority of rank in the prescribed manner;
  - (iv) a fine of a sum not exceeding one month's pay;
  - (v) severe reprimand;
  - (vi) reprimand;
  - (vii) such minor punishments as may be prescribed;
  - (viii) admonition;
  - (ix) where the offence has occasioned any expense, loss or damage, stoppages;
- (b) if the accused is a serviceman other than a warrant officer or non-commissioned officer-
- (i) imprisonment for a term not exceeding forty-two days or, if the accused is on active service, active service punish-

ment for a period not exceeding forty-two days:

Provided that, where more than one term of imprisonment or active service punishment is awarded in the course of the same hearing, the terms shall not exceed forty-two days in the aggregate;

- (ii) dismissal from the armed forces;
- (iii) a fine of a sum not exceeding one month's pay;
- (iv) such minor punishments as may be prescribed;
- (v) admonition;
- (vi) where the offence has occasioned any expense, loss or damage, stoppages.

(5) Where the commanding officer deals with a charge summarily and considers that the accused is guilty, then, if he intends to award a punishment of dismissal from the armed forces, reduction in rank or stoppages-

- (a) a finding shall not be recorded until the accused has been afforded the opportunity of choosing to be tried by court martial; and
- (b) if the accused chooses to be tried by court martial, a finding shall not be recorded but the prescribed steps shall be taken with a view to the charge being tried by court martial:

Provided that where the accused has not chosen to be tried by court martial the punishment of-

- (i) dismissal;
- (ii) reduction in rank of a warrant officer; or
- (iii) reduction in rank of senior sergeant or sergeant, or corresponding rank, to private or corresponding rank,

shall be subject to confirmation by the Commander.

(6) Except where expressly provided by this Act, not more than one punishment shall be awarded under this section for one offence.

(7) Where a serviceman is sentenced to imprisonment he may in addition be sentenced to dismissal from the armed forces.

(8) In the case of a warrant officer or non-commissioned officer, a severe reprimand or reprimand may be awarded in addition to forfeiture of seniority of rank or a fine.

(9) Where an offender is on active service on the day of the sentence, a fine may be awarded in addition to active service punishment.

(10) Stoppages may be awarded either in addition to or without any other punishment.

(11) Minor punishments may be awarded in addition to a fine.

**83.** (1) Where a charge has been dealt with summarily and has not been dismissed, the reviewing authority may at any time review the finding or award.

Review of summary findings and awards. 12 of 1978, s. 6, 17 of 1979, Sch.

(2) Where on a review under this section it appears to the reviewing authority expedient, by reason of any mistake of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, to do so, the authority may quash the finding; and if the finding is quashed the authority shall also quash the award.

(3) Where on a review under this section it appears to the reviewing authority that-

- (a) a punishment awarded was invalid; or
- (b) a punishment awarded was too severe; or
- (c) where the award included two or more punishments, those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe; or
- (d) a punishment awarded was too lenient,

the authority may vary the award by substituting such punishment or punishments as the authority thinks proper, being a punishment or punishments which could have been included in the original award:

Provided that no award shall be varied to the prejudice of the accused under this subsection unless he has had an opportunity of being heard by, or of making written representation to, the reviewing

authority.

(4) In this section, “the reviewing authority” means-

- (a) any officer superior in command to the officer who dealt summarily with the charge; or
- (b) the Commander; or
- (c) the Chief of General Staff, if the Commander was involved in the summary proceedings; or
- (d) the Defence Council.

#### PART VIII—COURTS MARTIAL

##### *Constitution of Courts Martial*

Trial by court martial.

**84.** Subject to this Act, a court martial shall have power to try any person subject to this Act for any offence which under this Act is triable by court martial, and to award for such an offence any punishment provided by this Act for that offence.

Officers having power to convene court martial.  
12 of 1978, Sch.,  
17 of 1979, Sch.

**85.** (1) A court martial may be convened by the Chief of General Staff or by the Commander.

(2) An order convening a court martial shall be signed either by the Chief of General Staff or by the Commander or by an officer not below the rank of major or corresponding rank authorized in writing by the Chief of General Staff to sign such orders on behalf of the Chief of General Staff or the Commander.

(3) An order convening a court martial and purporting to be signed by the Chief of General Staff, the Commander or an officer authorized under subsection (2) shall, in proceedings be presumed to have been so signed, and in the last-mentioned case the officer shall be presumed to have been duly authorized, until the contrary is proved.

Constitution of court martial.  
4 of 1973, Sch.

**86.** (1) A court martial shall consist of a presiding officer and not less than two other members:

Provided that a court martial shall consist of a presiding officer and not less than four other members if-

- (i) an officer is to be tried; or



(ii) the only punishment or the maximum punishment which can be awarded in respect of the charge before the court is death.

(2) The presiding officer of a court martial shall be a person who-

(a) is an officer not below the rank of major or corresponding rank:

Provided that, if the convening officer is of opinion that such an officer having suitable qualities is not available having regard to the exigencies of the service, and records his opinion in a written statement (which shall be conclusive of his opinion), the presiding officer may be an officer not below the rank of captain or corresponding rank; and

(b) has been an officer for a period of not less than five years or for periods amounting in the aggregate to not less than five years,

appointed in writing by the convening officer.

(3) The other members of a court martial shall be persons who have been officers for a period of not less than two years or for periods amounting in the aggregate to not less than two years, appointed in writing by the convening officer, and at least two of them shall be of or above the rank of captain or corresponding rank.

**87.** (1) The convening officer shall not be a member of the court martial which he convenes.

Disqualifications for membership of court martial.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the accused's commanding officer, and any other officer who has investigated the charge against the accused, or who under service law has held or been one of the persons holding an inquiry into matters relating to the subject-matter of the charge against the accused, shall not be a member of the court martial which tries that accused, nor shall he be judge advocate at the court martial.

**88.** (1) A court martial shall sit at such place, whether within or outside Kenya, as is specified in the order convening it.

Place for sitting of court martial.

(2) If the convening officer directs a court martial which is sitting at some place to sit at some other place, or if a court martial sitting at some place considers it requisite in the interests of justice to sit at

some other place, it may adjourn for the purpose of sitting at that other place.

Appointment of  
judge advocate .  
12 of 1978, Sch.,  
2 of 2002, s. 89.

**89.** Except with the written consent of the Attorney-General, there shall be a judge advocate at each court martial who shall be a magistrate or an advocate appointed by the Chief Justice.

*Provisions Relating to Trial*

Challenge.  
4 of 1973, Sch.

**90.** (1) An accused about to be tried by a court martial shall be entitled to object, on any reasonable grounds, to any member of the court, whether appointed originally or in place of another member.

(2) To enable the accused to avail himself of the right of objection conferred by subsection (1), the names of the members of the court shall be read out in the presence of the accused before they are sworn, and he shall be asked whether he objects to any of those members.

(3) Every objection to a member made by an accused shall be considered by the other members of the court.

(4) If the objection is to the presiding officer and not less than one-third of the other members of the court allow it, the court shall adjourn and the convening officer shall appoint another presiding officer.

(5) If the objection is to any other member of the court and not less than one-half of the members entitled to vote allow it, the member objected to shall retire and the vacancy may be, or if the number of members would be reduced below the legal minimum shall be, filled in the prescribed manner by another officer.

Oaths and  
affirmations.

**91.** (1) An oath shall be administered to every member of a court martial, to the judge advocate and to any person attending as officer under instruction, shorthand writer or interpreter.

(2) Every witness before a court martial shall give evidence on oath:

Provided that-

- (i) if a child called as a witness does not in the opinion of the court understand the nature of the oath, his evidence may be received unsworn if in the opinion of the court he is sufficiently intelligent to justify his evidence being received and understands the duty of speaking the truth, but where his evidence is given unsworn on behalf of the prosecution the accused may not be convicted upon

that evidence unless it is corroborated by some other material evidence supporting it and implicating the accused; and

- (ii) if a person objects to being sworn on the ground either that he has no religious belief or that the taking of an oath is contrary to his religious belief, or if it is not reasonably practicable to administer an oath to a person in the manner appropriate to his religious belief, he shall make an affirmation instead.

(3) An oath or affirmation required to be made under this section shall be in the prescribed form and shall be administered at the prescribed time, by the prescribed person and in the prescribed manner.

**92.** (1) Subject to this section, a court martial shall sit in open court and in the presence of the accused.

Court martial to sit in open court.

(2) A court martial may sit in closed court if it considers it necessary or expedient in the interests of the administration of justice to do so; and without prejudice to that power a court martial may order that, subject to any exceptions the court may specify, the public shall be excluded from all or any part of the proceedings of the court if it appears to the court that any evidence to be given or statement to be made in the course of the proceedings or that part, as the case may be, might otherwise lead to disclosure of any information which might directly or indirectly endanger national security.

(3) A court martial shall sit in closed court while deliberating on its finding or sentence on any charge.

(4) A court martial may sit in closed court on any other deliberation amongst its members.

(5) Where a court martial sits in closed court, no person shall be present except the members of the court and such other persons as may be prescribed.

**93.** (1) The rules as to the admissibility of evidence to be observed in proceedings before courts martial shall be the same as those observed in civil courts, and no person shall be required in proceedings before a court martial to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil court.

Evidence.

(2) Notwithstanding subsection (1), a statutory declaration shall, in a trial by court martial, be admissible as evidence of the facts declared

in it in a case where, and to the extent to which, oral evidence to similar effect would be admissible in that trial:

Provided that a statutory declaration shall not be admitted in evidence in a trial by court martial on behalf of either the prosecution or the defence-

- (i) where the declaration is put forward on behalf of the prosecution, unless a copy of the declaration has, not less than seven days before the commencement of the trial, been delivered to the accused; nor
- (ii) where the declaration is put forward on behalf of the defence, unless a copy of the declaration has, not less than seven days before the commencement of the trial, or within such shorter period as the court may allow, been delivered to the commanding officer of the accused; nor
- (iii) in any case, if, within three days before the commencement of the trial or such longer period as the court may in special circumstances allow, the accused or the commanding officer of the accused has delivered a notice in the prescribed form to the other of them requiring that oral evidence shall be given instead of a statutory declaration; nor
- (iv) in any case, if the court martial is of the opinion that it is desirable in the interests of justice that oral evidence should be given instead of a statutory declaration and records that it is of that opinion.

(3) A court martial shall take judicial notice of all matters of common knowledge, including all matters within the general service knowledge of the court, and of all other matters of which judicial notice would be taken in a civil court.

Privileges of witnesses and others.

**94.** A witness before a court martial or any other person whose duty it is to attend the court is entitled to the same immunities and privileges as a witness before the High Court.

Contempt of court martial by civilian. 4 of 1973, Sch.

**95.** Where in Kenya any person other than a person subject to this Act-

- (a) having been duly summoned to attend as a witness before a court martial, fails to comply with the summons; or

- (b) refuses to swear an oath when duly required by a court martial to do so; or
- (c) refuses to produce any document in his custody or under his control which a court martial has lawfully required him to produce; or
- (d) refuses, when a witness, to answer any question which a court martial has lawfully required him to answer; or
- (e) wilfully insults any person who is a member of a court martial or a witness or any other person whose duty it is to attend the court, while that person is acting as a member of the court or is so attending, or wilfully insults any such person as aforesaid while that person is going to or returning from the proceedings of the court; or
- (f) wilfully interrupts the proceedings of a court martial or otherwise misbehaves before the court; or
- (g) does any other thing which would, if the court martial had been a court of law having power to commit for contempt, have been contempt of that court,

the presiding officer of the court martial may in writing report the contempt to any court of law having jurisdiction in the place where the contempt is alleged to have been committed, being a court having power to commit for contempt, and that court of law may thereupon inquire into the reported contempt and, after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in the same way as if he had been guilty of contempt of the court to which the contempt is reported.

**96.** (1) An accused charged before a court martial with an offence under Part V may, if it is not proved that the offence was committed in circumstances involving a greater punishment, be convicted of the offence as having been committed in circumstances involving a less punishment.

Power to convict of offence other than that charged.

(2) An accused charged before a court martial with an offence may be convicted of attempting to commit that offence.

(3) An accused charged before a court martial with attempting to commit an offence may be convicted on that charge notwithstanding

that it is proved that he actually committed the offence,

(4) Where an accused is charged before a court martial under section 69 with attempting to commit a civil offence, he may be convicted on that charge notwithstanding that it is proved that he actually committed the civil offence.

(5) Where an accused is charged before a court martial with an offence under section 69, and-

(a) the corresponding civil offence is one in proceedings for which, if he had been tried by a civil court for committing the offence in Kenya, he might have been convicted of another civil offence; and

(b) the court finds that he has committed that other civil offence,

he may be convicted of an offence under section 69 in respect of the commission of that other civil offence.

(6) An accused charged before a court martial with one of the offences specified in the first column of the First Schedule, may be convicted of the offence bearing the same number in the second column of that Schedule.

Dissolution of court martial.  
4 of 1973, Sch.

**97.** (1) If, whether before or after the trial has begun, it appears to the convening officer necessary or expedient in the interests of the administration of justice that a court martial should be dissolved, the convening officer may by order dissolve the court martial.

(2) Without prejudice to the generality of subsection (1), if after the trial has begun-

(a) the court is, by reason of the death of one of the members or for any other reason, reduced below the legal minimum, the convening officer shall dissolve the court;

(b) it is represented to the convening officer that owing to the sickness or other incapacity of the accused it is impracticable having regard to all the circumstances to continue the trial within a reasonable time, the convening officer may dissolve the court.

(3) If after the trial has begun the presiding officer of the court dies or is otherwise unable to attend and the court is not reduced below the legal minimum, then-

(a) if the senior of the other members of the court is not below the rank of captain or corresponding rank, the convening officer may appoint him presiding officer of the court and the trial shall proceed accordingly; and

(b) if he is below that rank, the convening officer shall dissolve the court.

(4) Where a court martial is dissolved under this section, the accused may be tried by another court martial.

**98.** (1) Subject to this section, every question to be determined on a trial by court martial shall be determined by a majority of the votes of the members of the court.

Decision of court martial.  
4 of 1973, Sch.

(2) In the case of an equality of votes on the finding, the court shall acquit the accused.

(3) A conviction where the only punishment which the court can award is death shall not have effect unless it is reached with the concurrence of all members of the court; and, where all the members do not concur in a conviction in such a case, the court shall be dissolved and the accused may be tried by another court.

(4) Where the accused is convicted and the court has power to sentence him either to death or to some other punishment, sentence of death shall not be passed without the concurrence of all the members of the court.

(5) In the case of an equality of votes on the sentence, or on any question arising after the trial has begun, except the finding, the presiding officer of the court shall have a second or casting vote.

**99.** (1) Without prejudice to section 92, the finding of a court martial on each charge shall be announced in open court.

Finding and sentence.

(2) A conviction shall be, and shall be announced as being, subject to confirmation.

(3) The sentence of a court martial, together with any recommendation to mercy, shall be announced in open court, and every sentence of a court martial shall be, and shall be announced as being, subject to confirmation.

*Finding of Insanity*

Where accused  
incapable of making  
defence.

**100.** (1) Where, on the trial of a person by court martial, the court is of the opinion that he is of unsound mind and consequently incapable of making his defence, the court shall so find.

(2) A finding under subsection (1) shall not have effect until it is-

(a) confirmed by an officer who would have had power to confirm a finding of guilty made by the same court martial;  
and

(b) promulgated.

(3) Where a finding under subsection (1) has been confirmed and promulgated, it shall forthwith be reported to the President, and the accused shall be kept in custody during the President's pleasure in such place and manner as the President may direct, and pending the President's directions the accused shall be kept in service custody.

Where accused  
insane.

**101.** (1) Where, on the trial of a person by court martial, the court is of the opinion that he did the act or made the omission charged but was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission was made, it shall make a special finding that the accused was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission.

(2) Where under subsection (1) the court or the confirming officer comes to or substitutes a finding of guilty but insane, the confirming officer or the reviewing authority, as the case may be, shall not have power to substitute for that finding a finding of guilty; but otherwise the provisions of this Act as to revision, confirmation and review (and in particular the provisions which confer power to substitute for a finding any other finding which could have been come to by the same court martial) shall apply in relation to a finding under subsection (1) as they apply in relation to a finding of guilty.

(3) Where a finding under subsection (1) has been confirmed and promulgated, it shall forthwith be reported to the President, and the accused shall be kept in custody during the President's pleasure in such place and manner as the President may direct, and pending the President's directions the accused shall be kept in service custody.

*Punishments*

Punishment of

**102.** (1) The punishments which may be awarded to an officer



by sentence of a court martial are, subject to the limitations hereinafter provided, those set out in the following scale- officers.

- (a) death;
- (b) imprisonment;
- (c) dismissal from the armed forces;
- (d) reduction in rank by one rank;
- (e) forfeiture of seniority of rank in the prescribed manner;
- (f) a fine not exceeding the equivalent of three months' pay;
- (g) severe reprimand or reprimand;
- (h) admonition;
- (i) where the offence has occasioned any expense, loss or damage, stoppages;

and in relation to an officer references in this Act to punishments are references to those punishments.

(2) For the purposes of this Act, a punishment specified in any paragraph of the scale contained in subsection (1) shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the succeeding paragraphs, of the scale.

(3) Except where expressly provided by this Act, not more than one punishment shall be awarded under this section for one offence.

(4) Stoppages may be awarded either in addition to or without any other punishment.

(5) A severe reprimand or a reprimand may be awarded in addition to forfeiture of seniority of rank or a fine.

(6) Where an officer is sentenced by a court martial to imprisonment, he shall also be sentenced to dismissal from the armed forces; and, if the court martial fails to sentence him to such dismissal, the sentence of imprisonment shall not be invalid but shall be deemed to include a sentence of such dismissal.

Punishment of  
servicemen.

**103.** (1) The punishments which may be awarded to a serviceman by sentence of a court martial are, subject to the limitations hereinafter

provided, those set out in the following scale-

- (a) death;
- (b) imprisonment;
- (c) dismissal from the armed forces;
- (d) where the offender is on active service on the day of the sentence, active service punishment for a period not exceeding ninety days;
- (e) in the case of a warrant officer or non-commissioned officer, reduction in rank to private or corresponding rank, or any less reduction in rank;
- (f) in the case of a warrant officer or non-commissioned officer, forfeiture of seniority of rank in the prescribed manner;
- (g) a fine not exceeding the equivalent of three months' pay;
- (h) in the case of a warrant officer or non-commissioned officer, severe reprimand or reprimand;
- (i) admonition;
- (j) where the offence has occasioned any expense, loss or damage, stoppages.

(2) For the purposes of this Act, a punishment specified in any paragraph of the scale contained in subsection (1) shall be treated as less than the punishments specified in the preceding paragraphs, and greater than those specified in the succeeding paragraphs, of the scale.

(3) Except where expressly provided by this Act, not more than one punishment shall be awarded under this section for one offence.

(4) Where a serviceman is sentenced by a court martial to imprisonment, he may in addition be sentenced to dismissal from the armed forces.

(5) Where a warrant officer or non-commissioned officer is sentenced by a court martial to imprisonment or active service punishment, he shall also be sentenced to reduction in rank to private or corresponding rank; and, if the court martial fails to sentence him to such reduction in rank, the sentence shall not be invalid but shall be deemed to include a sentence of such reduction in rank.

(6) In the case of a warrant officer or non-commissioned officer, a severe reprimand or a reprimand may be awarded by a court martial in addition to forfeiture of seniority of rank or a fine.

(7) Where an offender is on active service on the day of the sentence, a fine may be awarded in addition to active service punishment.

(8) Stoppages may be awarded by a court martial either with or without any other punishment.

(9) Active service punishment shall consist of such duties or drills (in addition to those which the offender might be required to perform if he were not undergoing punishment) and such loss of privileges, as may be prescribed, and may include confinement in such place and manner as may be prescribed and such personal restraint which is necessary to prevent the escape of the offender as may be prescribed.

**104.** (1) The following provisions shall have effect where a person has been convicted by court martial, or having been dealt with summarily has been found guilty, of unlawfully obtaining any property, whether by stealing it, by receiving or retaining it knowing or having reason to believe it to have been stolen, by fraudulently misapplying it or by any other means.

Restitution or compensation for theft, etc.

(2) If any of the property unlawfully obtained has been found in the possession of the offender, it may be ordered to be delivered or paid to the person appearing to be its owner.

(3) If there has been found in the possession of the offender any property (other than money) appearing to have been obtained by him by the conversion or exchange of any of the property unlawfully obtained, the property may be ordered to be delivered to the person appearing to be the owner of the property unlawfully obtained.

(4) Where money is found in the possession of the offender, whether or not it appears to have been obtained as aforesaid, or any pay or other money is due or is to become due to the offender, an order may be made that the person appearing to be the owner of the property unlawfully obtained shall be paid a specified sum out of that money as or towards compensation for the loss caused to him by the offence, in so far as not otherwise made good under this Act or by the recovery of the property unlawfully obtained.

(5) Where any of the property unlawfully obtained has been sold or given in pawn to some other person who did not then know that it had

been unlawfully obtained, an order may be made that that other person, upon restoring to its owner the property sold or given as aforesaid, shall be paid a specified sum out of any money found in the possession of the offender (whether or not the money appears to be proceeds of the sale or giving in pawn) or out of any pay or other money due or to become due to the offender, as or towards compensation for the loss caused to him in consequence of the sale or giving in pawn.

(6) Where any of the property unlawfully obtained has been given in exchange to some other person who did not then know that it had been unlawfully obtained, an order may be made that that other person, upon restoring to its owner the property given as aforesaid, shall have restored to him the property given by him in exchange for the property unlawfully obtained.

(7) An order under this section may be made by the court martial by whom the offender is convicted or by the commanding officer or appropriate superior authority making the finding of guilty, as the case may be, or by the confirming officer or by any reviewing authority; and in this section “appearing” means appearing to the court, officer or authority making the order.

(8) An order made under this section by a court martial shall not have effect until it is confirmed by the confirming officer; and the provisions of this Part as to the confirmation, revision and review of the proceedings of court martial shall apply to an order under this section as they apply to a sentence.

(9) The operation of an order under this section shall be suspended-

- (a) if an application for leave to appeal to the High Court against the conviction is duly lodged, until either the application is finally refused or is withdrawn or the appeal is determined or abandoned;
- (b) in any other case, until the expiration of the period prescribed under Part IX as the period within which such an application may be made,

and where the operation of such an order is suspended by this section-

- (i) it shall not take effect if the conviction is quashed on appeal;
- (ii) the High Court may by order annul or vary the order

although the conviction is not quashed;

- (iii) the prescribed steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or the money ordered to be paid.

(10) Notwithstanding subsection (9) an order under this section shall not be suspended, so far as it relates to the restoration of property to the person appearing to be its owner, if the court, officer or authority making the order directs to the contrary in any case in which the title to the property appears to be undisputed.

(11) An order under this section shall not bar the right of any person, other than the offender or a person claiming through him, to recover any property delivered or money paid in pursuance of the order from the person to whom it is delivered or paid.

#### *Promulgation—Petitions*

**105.** Any finding, sentence, determination or other thing required by this Act to be promulgated shall be promulgated either by being communicated to the accused or in such other manner as may be prescribed or as the confirming officer or reviewing authority, as the case may be, may direct.

Promulgation of finding or sentence.

**106.** (1) At any time after a court martial has convicted and sentenced a person, but not later than the prescribed time after confirmation is completed, the convicted person may in the prescribed manner present a petition against the conviction or the sentence or both.

Petition against finding or sentence.

(2) Where the person is sentenced to death, the sentence shall not be executed until his case has been reviewed under section 111.

#### *Confirmation, Revision and Review*

**107.** Where a court martial convicts a person of an offence, the record of the proceedings of the court martial shall be transmitted to a confirming officer for confirmation of the conviction and the sentence of the court.

Conviction and sentence to be confirmed.

**108.** (1) A confirming officer shall deal with the conviction and sentence of a court martial either-

Powers of confirming officer.

- (a) by withholding confirmation, if he is of opinion that the finding of the court is unreasonable, or cannot be supported,

having regard to the evidence, or involves a wrong decision on a question of law, or that on any ground there was a miscarriage of justice; or

(b) by confirming the conviction or sentence; or

(c) by referring the conviction or sentence or both for confirmation to a higher confirming officer; or

(d) by directing that a court martial shall revise the conviction under section 110.

(2) Instead of withholding confirmation of the conviction, a confirming officer may, if-

(a) some other conviction could have been validly made by the court martial on the charge before it; and

(b) he is of opinion that the court martial must have been satisfied of the facts necessary to justify that other conviction,

substitute that other conviction, and if he does so he shall consider in what manner, if at all, the powers conferred by subsection (4) should be exercised.

(3) Where it appears to a confirming officer that a sentence is invalid, he may instead of withholding confirmation of the sentence substitute for it a sentence of any punishment or punishments which could have been awarded by the court martial, not being greater than the punishment or the greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments.

(4) In confirming a sentence, a confirming officer may-

(a) remit in whole or in part any punishment awarded by the court martial; or

(b) commute any such punishment for one or more of the punishments provided by this Act, being less than the punishment commuted.

(5) In confirming a sentence, a confirming officer may postpone the carrying out of the sentence for such time as he considers expedient, and a confirming officer may extend or terminate any postponement made under this subsection.

(6) A conviction, finding or sentence substituted by the confirming officer, or any sentence having effect after the confirming officer has remitted or commuted punishment, shall be treated for all purposes as a conviction, finding or sentence of the court duly confirmed.

(7) The confirmation of a conviction or sentence shall not be deemed to be completed until the conviction or sentence has been promulgated; and in the event of any such substitution, remission or commutation as aforesaid the conviction, finding or sentence shall be promulgated as it has effect after the substitution, remission or commutation.

(8) Where the confirming officer withholds confirmation, the decision shall be promulgated and shall have effect as from the date of promulgation.

**109.** (1) Subject to this section, the following shall have power to confirm the conviction and sentence of a court martial, that is to say- Confirming officers.

- (a) the convening officer of the court martial or any officer superior in command to him; or
- (b) failing him, an officer appointed by the Defence Council to act as confirming officer, whether for a particular case or for a particular class of cases.

(2) The following persons shall not have power to confirm the conviction or sentence of a court martial-

- (a) a person who was a member of the court martial;
- (b) a person who as commanding officer of the accused investigated the allegations against him, or who is for the time being the commanding officer of the accused;
- (c) a person who, as appropriate superior authority, investigated the allegations against the accused.

(3) An authorization authorizing the convening of a court martial may reserve for confirmation by superior authority convictions or sentences, or both, in such circumstances as may be specified by or under the authorization, and the powers conferred by subsection (1) shall be exercisable subject to any such reservation.

(4) Where a person is convicted by a court martial held on board a ship and is disembarked before the conviction or sentence has been confirmed, it may be confirmed by any officer having command over

the person or over the area in which he then is, being an officer having power to confirm convictions and sentences of courts martial of the same kind.

Revision of conviction of court martial.

**110.** (1) A confirming officer may direct that a court martial shall revise any conviction made by the court in any case where it appears to him that-

- (a) the conviction was against the weight of evidence; or
- (b) some question of law determined at the trial and relevant to the conviction was wrongly determined.

(2) Any such direction shall be accompanied by the necessary directions for the reassembly of the court, and shall contain a statement of the reasons for the direction.

(3) On a revision of a conviction, the court shall reconsider the conviction, and (unless the court adheres to it) may substitute for it either a finding of not guilty or any other finding which the court could originally have made at the trial in place of the conviction.

(4) On a revision of a conviction the court shall not have power to hear further evidence.

(5) Where on a revision of a conviction the court either adheres to the conviction or substitutes for it a conviction of another offence, or of the same offence in different circumstances, the court may substitute a different sentence for the original sentence:

Provided that the court shall not have power to substitute a sentence of a punishment greater than the punishment or the greatest of the punishments awarded by the original sentence, or to substitute a sentence which in the opinion of the court is more severe than the original sentence.

(6) The confirming officer shall not have power to direct the revision of any substituted conviction or finding come to by the court on a previous direction of the confirming officer, or the revision of the original conviction if adhered to by the court on such a previous direction; but otherwise this Act shall apply to the proceedings of the court on any such revision as it applies to their deliberations on the original finding or sentence, and any substituted conviction, finding or sentence shall be treated for all purposes as an original conviction, finding or sentence of the court:

Provided that the decision of the court on the revision shall not



be required to be announced in open court.

**111.** (1) A conviction or sentence which has been confirmed may at any time be reviewed by a reviewing authority, and if after confirmation of a conviction or sentence a petition is duly presented under section 106 against the conviction or sentence then, subject to this section, the conviction or sentence shall be so reviewed as soon as practicable after the presentation of the petition and after consideration of the matters set forth in it:

Review of findings and sentences of court martial.

Provided that if the petitioner also appeals or has appealed under Part IX the review need not be made or continued.

(2) The reviewing authorities for the purposes of this Act-

(a) the Defence Council; or

(b) any officer superior in command to the confirming officer.

(3) A conviction and a sentence of a court martial shall not be treated as a conviction or a sentence of the court until confirmed:

Provided that-

(i) this subsection does not affect the keeping of the accused in custody pending confirmation, revision or approval, or pending the disposal of a petition or appeal; and

(ii) a sentence of death passed on a person on active service and the conviction in consequence of which it was passed need not be reviewed if in the opinion of the confirming officer it is essential in the interests of discipline and for securing the safety of the force with which the person sentenced is present that the sentence should be carried out at once, and the confirming officer records that opinion on confirming the sentence.

(4) On a review under this section, the reviewing authority may-

(a) in so far as the review is of a conviction, quash the conviction and, if the sentence relates only to the conviction quashed, the sentence; or

(b) in so far as the review is of a sentence, quash the sentence; or

(c) in any case, exercise the like powers of substituting convictions and findings, substituting sentences and remitting or commuting punishment as are conferred on a confirming officer by subsections (2), (3) and (4) of section 108,

and any substituted conviction, finding or sentence, or sentence having effect after the remission or commutation of punishment, shall be treated for all purposes as a sentence of the court duly confirmed.

(5) Where a reviewing authority exercises any of the powers conferred by subsection (4), the determination of the authority shall be promulgated and shall have effect as from the promulgation thereof.

Reconsideration of sentences of imprisonment.

**112.** (1) A sentence of imprisonment may be reconsidered by the Commander; and if on any such reconsideration it appears that the conduct of the offender since his conviction has been such as to justify remission of the sentence, whether in part or in whole, the Commander may remit it accordingly.

(2) The power to reconsider a sentence may be exercised at any time after confirmation, and where after a review a sentence remains effective it shall be reconsidered at such intervals as may be prescribed:

Provided that delay in complying with this subsection does not invalidate the sentence.

Death sentence requires President's approval.

**113.** Without prejudice to section 124, a sentence of death shall not be carried out unless it has been approved by the President:

Provided that a sentence of death passed on a person on active service may be carried out without the approval of the President under that section, where in the opinion of the confirming officer it is essential in the interests of discipline and for securing the safety of the force with which the person sentenced is present that the sentence should be carried out at once, and the confirming officer records that opinion on confirming the sentence.

Custody of court martial records and right of accused to copy.

**114.** (1) The record of the proceedings of a court martial shall be kept in the custody of the Commander for the prescribed period.

(2) Subject to this section, a person tried by a court martial shall be entitled to obtain from the Commander on demand at any time within the prescribed period a copy of the record of the proceedings of the court, on payment of the prescribed fee.

(3) Where a person tried by court martial dies within the prescribed

period, his personal representative or any person who in the opinion of the Commander ought to be treated as his personal representative for the purposes of this section shall, subject to this section, be entitled to obtain from the Commander on demand at any time within the prescribed period a copy of the record of the proceedings of the court, on payment of the prescribed fee.

(4) If a person applies for a copy of the record of any proceedings under subsection (2) or subsection (3), and the Minister certifies that it is requisite for reasons of security that the proceedings or a part thereof should not be disclosed, the applicant shall not be entitled to a copy of the proceedings or of that part.

(5) In this section, “the prescribed period”, in relation to any person tried by court martial, means the period of five years beginning with the date of his acquittal or, where he was convicted, of the promulgation of the conviction and sentence or, where a conviction was not confirmed, of the promulgation of the withholding of confirmation:

Provided that, where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the prescribed period shall be the period of five years beginning with the date of the promulgation of the conviction or convictions and the sentence thereon or of the withholding of confirmation of that conviction or those convictions.

(6) A reference in this section to the record of the proceedings of a court martial includes a reference to the record of any proceedings with respect to the confirmation, revision or review of the conviction and sentence of the court martial.

#### PART IX—APPEALS FROM COURTS MARTIAL

**115.** (1) Subject to this Part, where a person has been convicted by a court martial-

- (a) the person convicted may, with the leave of the High Court given pursuant to section 116, appeal to the High Court against the conviction, or against the sentence, or against both;
- (b) the Attorney-General may, in any case, within forty days of the promulgation of the conviction, appeal to the High Court against the sentence.

(2) Subject to this Part, where a person has been acquitted of a charge by a court martial, the Attorney-General may, within forty days

Appeal to High  
Court.  
14 of 1971, Sch.,  
19 of 1984.

of the acquittal, appeal to the High Court against the acquittal.

(3) The decision of the High Court on any appeal under this Act shall be final and shall not be subject to any further appeal.

Application for leave to appeal.

**116.** (1) Leave to appeal to the High Court shall not be given unless an application is made by or on behalf of the appellant, and lodged with the registrar, within forty days of the promulgation of the conviction.

(2) An application for leave to appeal shall be in the prescribed form and shall specify the grounds on which leave to appeal is sought, and shall give such other particulars as may be prescribed.

(3) Except in the case of a conviction involving sentence of death, the High Court may extend the period within which an application for leave to appeal must be lodged, whether that period has expired or not.

(4) In considering whether or not to give leave to appeal, the High Court shall have regard to any expression of opinion made by a judge advocate that the case is a fit one for appeal, and, if any such expression is made, may without further proceedings give leave to appeal.

(5) Where the High Court dismisses an application for leave to appeal, it may, if it considers the application frivolous or vexatious, order that any sentence passed by the court martial shall run from the day on which the Court dismisses the application.

Appellant may present case in writing.  
14 of 1971, Sch.

**117.** An appellant may, if he so desires, present his case in writing.

Determination of appeal in ordinary cases.

**118.** (1) Subject to section 119, the High Court shall allow an appeal against conviction and quash the conviction if it considers that the conviction-

- (a) is unreasonable; or
- (b) cannot be supported, having regard to the evidence; or
- (c) involves a wrong decision on a question of law,

or that on any ground there was a miscarriage of justice, and otherwise it shall dismiss the appeal:

Provided that the High Court may, notwithstanding that it

considers that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) The court shall allow an appeal against acquittal and convict the accused if it considers that-

- (a) the evidence was such that the person acquitted should have been convicted; or
- (b) the acquittal involves a wrong decision on a question of law,

and shall pass such sentence as it thinks proper, and otherwise it shall dismiss the appeal; and section 96 shall apply as it applies to a trial by court martial.

(3) On an appeal against sentence, the court may reduce or increase the sentence or alter the nature of the sentence, as it thinks proper.

**119.**(1) If the High Court considers that an appellant-

Powers of court in special cases.

- (a) was not properly convicted on a particular charge brought against him before the court martial which tried him; but
- (b) was properly convicted on some other charge so brought, then, if the sentence passed by the court martial on the appellant was not one which could lawfully be passed for the offence of which he was convicted on that other charge, the High Court shall pass on the appellant such sentence as it thinks proper, in substitution for the sentence passed on him by the court martial.

(2) Where an appellant has been convicted of an offence, and -

- (a) the court martial by which he was tried could lawfully have convicted him of some other offence; and
- (b) it appears to the High Court that the court martial must have been satisfied of facts which proved him guilty of that other offence,

the High Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court martial a finding of guilty of the other offence and pass on the appellant such sentence as it thinks proper (being a sentence which could lawfully have been passed for that other offence and not one of greater severity), in substitution for the sentence

passed on him by the court martial.

(3) Where-

- (a) an appellant has been convicted of an offence committed in circumstances involving the greater of two punishments, and it appears to the High Court that the court martial ought to have found him guilty of an offence as being committed in circumstances involving the less punishment; or
- (b) an appellant has been convicted of an offence and it appears to the High Court that the court martial ought to have convicted him of the offence subject to exceptions or variations,

the High Court may, instead of allowing or dismissing the appeal, substitute for the conviction a conviction of the offence as being committed in circumstances involving the less punishment or, as the case may be, a conviction of the offence subject to exceptions or variations, and pass on the appellant such sentence as it thinks proper (being a sentence which could lawfully have been passed for the offence specified or involved in the substituted finding and not one of greater severity) in substitution for the sentence passed on him by the court martial.

(4) If on an appeal the High Court considers that the appellant did the act or made the omission charged but was insane so as not to be responsible for his acts or omissions at the time when the act was done or the omission was made, it shall quash the conviction and substitute a special finding that the appellant was guilty of the act or omission charged but was insane as aforesaid when he did the act or made the omission, and section 101 (3) shall apply accordingly.

(5) The term of any sentence of imprisonment passed by the High Court under this section shall, unless the High Court otherwise directs, run from the time from which it would have run if it had been passed in the proceedings appealed against, and a sentence passed by the High Court shall be deemed for the purposes of this Act to be a sentence passed by the court martial and confirmed.

Court may appoint assessor.

**120.** The High Court may appoint a person with special or expert knowledge to act as assessor, if the court considers that such knowledge is required for the proper determination of an appeal before it.

**121.** (*Repealed by 12 of 1978, Sch.*)

Proceedings to be heard in absence of

**122.** An appellant shall not be entitled to be present at the hearing of an appeal or at any proceedings preliminary or incidental to such an

appeal, except where-

appellant.

(a) rules of court provide that he shall have the right to be present; or

(b) the High Court gives him leave to be present;

and accordingly any power of the High Court under this Part to make a determination or pass a sentence may be exercised notwithstanding the absence of the appellant.

**123.** Where a person appeals against his conviction, the Attorney-General shall make arrangements for the defence of the appeal.

Defence on appeal.

**124.** Where a person is convicted by court martial and sentenced to death-

Person sentenced to death to have opportunity to appeal.

(a) the sentence shall not be executed until after the expiration of the period within which an application for leave to appeal to the High Court against the conviction may be lodged; and

(b) if such an application is duly lodged, the sentence shall not be executed until either the application is finally refused or is withdrawn or (if it is granted) the appeal is determined or abandoned:

Provided that the foregoing provisions of this section do not apply to a sentence of death passed on a person on active service, where in the opinion of the confirming officer it is essential in the interests of discipline and for securing the safety of the force with which the person sentenced is present that the sentence should be carried out at once, and the confirming officer records that opinion on confirming the sentence.

**125.** An appellant, when in custody, shall be taken to, kept in custody at and brought back from any place at which he is entitled to be present for the purposes of this Part in the prescribed manner, and the High Court may order him to be taken to any prescribed place for the purpose of any proceedings of the High Court.

Removal of prisoner.

**126.** Upon the hearing of an appeal under this Part, the High Court shall consist of one or more judges.

Composition of court.

**127.** In the case of an appeal, or an application for leave to appeal, under this Part, it shall be the duty of the Commander to furnish to the registrar, in accordance with rules of court, a record of the proceedings of the court martial including any proceedings with respect to the

Furnishing of documents.

confirmation, revision or review of the conviction and sentence of the court martial, and any petition presented by the person convicted.

Duties of registrar.

**128.** (1) The registrar shall take all necessary steps for obtaining the determination of an application or appeal under this Part, and shall obtain and lay before the High Court in proper form all documents, exhibits and other things relating to the proceedings before the court martial which appear necessary for the proper determination of the application or appeal.

(2) The registrar shall furnish the necessary forms and instructions relating to applications for leave to appeal under this Part to any person who asks for them, to persons in charge of prisons and to such other persons as he thinks fit;

and every person in charge of a prison shall cause the forms and instructions so furnished to be placed at the disposal of persons imprisoned who desire to make application for leave to appeal under this Part.

Saving of prerogative of mercy.

**129.** Nothing in this Part affects the exercise of the President's prerogative of mercy.

Procedure.  
Cap. 75.

**130.** Subject to this Part and to any rules of court, the provisions of the Criminal Procedure Code relating to the hearing of appeals from subordinate courts shall apply to the hearing and determination of appeals under this Part.

#### PART X—PROVISIONS CONCERNING TRIAL AND PUNISHMENT

Commencement of sentence of imprisonment.

**131.** Subject to sections 108 (5), 116 (5) and 135, a sentence of imprisonment or of active service punishment in respect of an offence under Part V shall run from the beginning of the day on which sentence was originally pronounced by the court martial or was originally awarded by the commanding officer, as the case may be:

Provided that, where a person after being convicted or found guilty of an offence is convicted or found guilty of another offence either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence of imprisonment or active service punishment which is passed upon him in respect of the subsequent conviction shall be executed after the expiration of the former sentence, unless the court martial or other authority imposing the sentence directs that it shall be executed concurrently with the former sentence or any part thereof.

Duration of sentence of imprisonment.

**132.** (1) Where a person serving a sentence of imprisonment in



respect of an offence under Part V becomes unlawfully at large during the currency of the sentence, no account shall be taken, in calculating the period for which he is liable to be imprisoned in pursuance of the sentence, of the time beginning with the day on which he became at large and ending with the day on which he is taken into service custody or the custody of a civil authority or (not having been taken into such custody) returns to the place in which he was imprisoned before he become unlawfully at large:

Provided that, if he satisfies the prescribed authority that during any part of such time he was in the custody of a civil authority otherwise than on account of an offence committed by him while unlawfully at large, such part shall not be disregarded in calculating the period for which he is liable to be imprisoned in pursuance of the sentence.

(2) In subsection (1), “civil authority” means an authority, other than a service authority, of Kenya or of a foreign country (including a police officer), authorized by law to detain persons.

(3) A person who-

(a) is serving a sentence of imprisonment in a civil prison in respect of an offence under Part V; and

(b) after being temporarily released under some law, is at large at any time during the period for which he is liable to be imprisoned in a civil prison in pursuance of his sentence,

shall be deemed to be unlawfully at large if the period for which he was temporarily released has expired or if an order recalling him has been made in pursuance of that law.

(4) Without prejudice to subsection (1), where any person serving a sentence of imprisonment for an offence under Part V has in the prescribed circumstances been temporarily released on compassionate grounds, no account shall be taken, in calculating the period for which he is liable to be imprisoned in pursuance of the sentence, of the time beginning with the day after that on which he is released and ending with the day on which he is required to return to custody.

(5) A person who is-

(a) released as mentioned in subsection (4) for any period; or

(b) otherwise allowed out of service custody, in pursuance of regulations made under this Act, for any period or subject to any condition,

shall, on failure to return at the expiration of the period or to comply with the condition, be treated for the purposes of subsection (1) as being unlawfully at large.

Service of sentence  
of imprisonment

**133.** Where a sentence of imprisonment is passed on or awarded to a person for an offence under Part V, the person's commanding officer shall cause him to be sent to a prison and the superintendent or other person in charge of the prison shall receive him and imprison him until he has served his sentence or the person is otherwise lawfully required to be delivered from the prison.

Committed to civil  
prison.

**134.** A person who is sentenced to death or imprisonment, and who is committed or transferred to a civil prison shall while in that prison be imprisoned and otherwise dealt with in the same manner as a person imprisoned therein under a similar sentence of civil court.

Suspension  
of sentence or  
punishment.

**135.** (1) Without prejudice to section 108 (5), a confirming officer, in confirming a sentence passed by a court martial on a serviceman, may order that the sentence shall be suspended wholly or in part.

(2) A commanding officer may recommend to the Commander that a punishment awarded on a case being dealt with summarily shall be suspended wholly or in part, and the Commander may order that the sentence be suspended wholly or in part accordingly.

(3) A sentence passed on or punishment awarded to a serviceman which is not for the time being suspended may, on the review or reconsideration of the sentence or punishment be suspended wholly or in part by order of the authority reviewing or reconsidering the sentence or punishment.

(4) The suspension under this section of a sentence or punishment may (without prejudice to its again being re-effected) be terminated on review or reconsideration of a sentence or punishment by an order of the authority reviewing or reconsidering the sentence or punishment.

(5) A sentence or punishment which is suspended shall be reviewed, under section 83 or section 111, at intervals of not more than three months, and if the suspension is not previously terminated it shall be remitted by the reviewing authority after not more than one year from the date of award.

(6) Where, while a person's sentence or punishment is suspended under this section, the person receives a sentence or punishment for a fresh offence, the suspended sentence or punishment shall be reviewed; and, if the reviewing authority terminates the suspension it shall direct

whether the two sentences are to run concurrently or consecutively.

(7) Without prejudice to the further suspension of the earlier sentence or punishment, termination under subsection (6) of this section of the suspension of that sentence or punishment shall not be affected by the latter sentence or punishment not being confirmed or by its being quashed.

(8) Where the sentence or punishment of a person in custody is suspended, he shall thereupon be released, and no suspended sentence or punishment shall be executed until the suspension is terminated.

**136.** Where a person is sentenced by a court martial held outside Kenya to imprisonment for a term exceeding forty-two days, he shall be returned to Kenya as soon as practicable after the sentence has been confirmed.

Sentence of imprisonment passed outside Kenya.

**137.** No action shall lie in respect of anything done by any person in pursuance of a sentence of imprisonment for an offence under Part V, if the doing thereof would have been lawful but for a defect in any warrant or other instrument made for the purposes of that sentence.

Indemnity for person acting under warrant.

**138.** (1) The following provisions shall have effect with respect to evidence in proceedings under this Act, whether before a court martial, a commanding officer, the appropriate superior authority, a court or otherwise.

Proof of certain facts by documentary evidence. 12 of 1978, Sch., 17 of 1979. Sch.

(2) A document purporting to be a copy of the attestation paper signed by any person and to be certified to be a true copy by a person stated in the certificate properly to have the custody of the attestation paper shall be evidence of the enlistment of the person attested.

(3) The attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answers to questions which he is therein recorded as having given.

(4) A letter, return or other document stating that a person –

- (a) was or was not serving at any particular time or during any particular period in the armed forces or in any particular service of the armed forces or part thereof, or was discharged therefrom at or before any particular time; or
- (b) held or did not hold at any particular time any particular rank or appointment in any particular service of the armed forces, or had at or before any particular time been attached, posted or transferred to the armed forces or any particular service of

the armed forces or part thereof, or at any particular time or during any particular period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or

- (c) was or was not at any particular time authorized to use or wear any particular decoration, badge, wound stripe or emblem,

shall, if purporting to be issued by the President, the Chief of General Staff or the Commander, or by a person authorized in writing by any of them, be evidence of the matters stated in the document; and, in this subsection, “the armed forces” includes the Kenya Military Forces.

(5) A record made in any service book or other prescribed document, being a record made in pursuance of this Act or otherwise in pursuance of service duty, and purporting to be signed by the commanding officer or by any person whose duty it was to make the record, shall be evidence of the facts stated therein; and a document purporting to be a copy of any such record (including the signature thereto) and to be certified to be a true copy by a person stated in the certificate properly to have the custody of the service book or other prescribed document shall be evidence of the record.

(6) A document purporting to be issued by order of the President, the Chief of General Staff or the Commander and to contain instructions or orders given or made by the President, the Chief of General Staff or the Commander shall be evidence of the giving of the instructions or making of the orders and of their contents.

(7) A certificate purporting to be signed by the President or the Chief of General Staff, or by a person authorized in writing by either of them, and stating-

- (a) that a decoration of a description specified in or annexed to the certificate is a service decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one supplied or authorized by the President or the Chief of General Staff,

shall be evidence of the matters stated in the certificate.

(8) A certificate purporting to be signed by a person’s commanding officer or by an officer purporting to be authorized by him to give the certificate, and stating the contents of, or of any part of, standing orders or other routine orders of a continuing nature made for-

- (a) any formation or unit or body of men of the armed forces;  
or
- (b) any command or other area, garrison or place; or
- (c) any aircraft, ship or train,

shall in proceedings against that person be evidence of the matters stated in the certificate.

(9) A certificate purporting to be signed by the Defence Council that any unit is a unit of the armed forces shall be conclusive evidence of the facts stated therein.

(10) A certificate purporting to be signed by a person's commanding officer stating that such person is or is not a member of any unit of the armed forces shall, in proceedings against such person, be evidence of the facts stated in such certificate.

**139.** (1) Where a person subject to this Act has been tried by a civil court (whether at the time of the trial he was subject to this Act or not), a certificate of the court-

Proof of outcome of civil trial.

- (a) that the person has been tried by the court for a particular offence;
- (b) as to the result of the trial;
- (c) as to what judgment or order was given or made by the court;
- (d) that other specified offences were taken into consideration at the trial,

shall for the purposes of this Act be evidence of the matters so certified.

(2) A document purporting to be a certificate under this section and to be signed by a judge or a magistrate shall, unless the contrary is shown, be taken to be such a certificate.

**140.** (1) The original proceedings of a court martial purporting to be signed by the presiding officer of the court shall, on production from proper custody, be admissible in evidence before a court martial or a civil court.

Evidence of proceedings of court martial.  
4 of 1973, Sch.

(2) A document purporting to be a copy of the record of the proceedings of a court martial or of any part thereof and to be certified to be a true copy by a person stated in the document properly to have the custody of the record shall be evidence of the record or of that part thereof.

Trial of offence after offender ceases to be subject to Act.

**141.** (1) Subject to section 142, where a person subject to this Act has committed, or is reasonably suspected of having committed, an offence under Part V, he shall in relation to that offence or suspected offence be treated, for the purposes of the provisions of this Act relating to arrest, keeping in custody, investigation or charges, trial and punishment by court martial (including confirmation, review and reconsideration) and execution of sentences, as being still subject to this Act notwithstanding that he may have ceased to be subject to this Act.

(2) Where a person-

- (a) is, by virtue of subsection (1), treated as being still subject to this Act and is in service custody; and
- (b) while in such custody (whether before or after trial) commits, or is reasonably suspected of having committed, an offence which, if he were actually subject to this Act, would be an offence under Part V,

he shall, in relation to that offence or suspected offence, be treated, for the purposes of the provisions of this Act mentioned in subsection (1) and the provisions of this Act relating to dealing summarily with charges, as having been subject to this Act when the offence was committed or is suspected of having been committed and as continuing to be subject to this Act thereafter.

(3) Where by virtue of either or both of subsections (1) and (2) a person is treated as being at any time subject to this Act, such treatment shall extend to him-

- (a) if he holds any rank in the armed forces, as to a person having that rank;
- (b) in any other case, as to a person having the rank which he held when he was last actually subject to this Act:

Provided that, when he has been sentenced for the offence in question and the sentence has been confirmed, the said treatment shall extend to him (in any case) as an officer or serviceman, as the case may be.

(4) Where apart from this subsection any provision of this Act would under subsection (3) apply to a person, in relation to different offences, as to a person having different ranks, it shall apply to him as to a person having the lower or lowest of those ranks.

**142.** (1) A person shall not be tried by court martial or have a charge against him dealt with summarily for an offence under Part V, other than an offence under section 25, section 26 or section 31 (1) (a), unless the trial is begun within three years after the commission of the offence, any period during which he was illegally absent or a prisoner of war being disregarded:

Limitation of time for trial of offences. I4 of 1971, Sch.

Provided that-

- (i) in the case of an offence under section 69, where any written law requires that proceedings for the corresponding civil offence shall be brought within a particular time, that time limit shall apply to the trial of the offence under that section instead of three years (the same periods being disregarded); and
- (ii) subject to any time limit applicable by virtue of paragraph (i) of this proviso, a person may be tried by court martial for a civil offence committed outside Kenya notwithstanding that it was committed more than three years before the beginning of the trial, if the Attorney-General consents to the trial.

(2) A person shall not be tried by court martial for an offence under Part V, other than an offence under section 25, section 26 or section 31 (1) (a), unless the trial is begun within three months after he ceases to be actually subject to this Act, or the trial is for a civil offence committed outside Kenya and the Attorney-General consents to the trial.

(3) Where a person who has committed an offence under section 31 (1) (a) (otherwise than on active service) has since the offence served as a member of the armed forces continuously in an exemplary manner for not less than three years, he shall not be tried for that offence.

**143.** (1) Nothing in this Act restricts the offences for which a person may be tried by a civil court, or the jurisdiction of a civil court to try a person subject to this Act for an offence other than an offence under Part V.

Trials by civil courts.

(2) Where a person-

(a) is tried by a civil court for a civil offence; and

(b) has already been sentenced to or awarded punishment for an offence under Part V consisting of an act or omission that constitutes (whether wholly or in part) the civil offence, section 63 of the Interpretation and General Provisions Act shall be construed as if the words “but shall not be liable to be punished twice for the same offence” were omitted therefrom, but the civil court shall, in sentencing the person, have regard to the punishment imposed in respect of the offence under Part V.

Cap. 2.

Persons not to be tried under this Act for offences already disposed of.

**144.** (1) Where a person subject to this Act-

(a) has been tried for an offence by a competent civil court or under Part V, or has had an offence committed by him taken into consideration by any such court or by a court martial in sentencing him; or

(b) has been charged with an offence under Part V, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority; or

(c) has had an offence condoned by his commanding officer,

he shall not be liable in respect of that offence to be tried by court martial or to have the case dealt with summarily.

(2) For the purposes of this section-

(a) a person shall not be deemed to have been tried for an offence under Part V if confirmation is withheld of a finding that he is guilty of the offence;

(b) a person shall not be deemed to have had an offence committed by him taken into consideration by a court martial in sentencing him if confirmation of the sentence of the court martial is withheld or the sentence is quashed;

(c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied, on the review thereof;

(d) an offence shall be deemed to have been condoned by the



commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorized by him in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;

(e) a person ordered under section 52 (2) to be imprisoned for an offence under that section shall be deemed to have been tried by court martial for the offence.

(3) Where confirmation of a finding of guilty is withheld, the accused shall not be tried again by court martial for the offence unless the order convening the second court martial is issued not later than twenty-eight days after the promulgation of the decision to withhold confirmation.

(4) Except as provided by the foregoing provisions of this section, proceedings for an offence under Part V (whether before a court martial or before a commanding officer or appropriate superior authority) shall not be barred on the ground of condonation.

#### PART XI—FORFEITURES AND DEDUCTIONS

**145.** (1) No forfeiture of the pay of an officer or serviceman shall be imposed unless it is authorized by this Act, and no deduction from such pay shall be made unless it is authorized by this Act or prescribed.

Forfeitures and deductions: general provisions.

(2) Notwithstanding that deduction is ordered from the pay of an officer or serviceman, he shall (subject to any forfeiture) be allowed to remain in receipt of pay at a rate not less than that prescribed for the purposes of this section.

(3) Notwithstanding that forfeiture of pay of an officer or serviceman for any period has been ordered, he shall be allowed to remain in receipt of pay at a rate not less than that prescribed for the purposes of this section, but any amount which he should have forfeited for that period may be recovered from him by deduction from pay after the end of the period.

(4) Any amount authorized to be deducted from the pay of an officer or serviceman may be deducted from any balance (whether or not representing pay) which may be due to him as an officer or serviceman, and references in this Act to the making of deductions from pay shall be construed accordingly.

**146.** (1) The pay of an officer or serviceman shall be forfeited-

Forfeiture of pay for

absence from duty  
12 of 1978, Sch.,  
17 of 1979, Sch.

- (a) for any day of absence in circumstances which constitute an offence under section 31 or section 32 or, if the Chief of General Staff or an officer authorized by him so directs, for any day of other absence without leave (other than absence by reason of having been captured by the enemy);
- (b) for any day of imprisonment or active service punishment to which he is sentenced by a court martial or which is awarded by his commanding officer or the appropriate superior authority, or imprisonment of any description to which he is liable by virtue of a sentence or order of a civil court;
- (c) where he is convicted or found guilty of an offence under Part V, for any day (whether before or after he is convicted or found guilty) on which he is in hospital on account of sickness or injury certified by a medical officer to have been occasioned by the offence.

(2) The pay of an officer or serviceman shall be forfeited for any day of absence by reason of his having been captured by the enemy, if the Defence Council is satisfied that-

- (a) he was captured through disobedience of orders or wilful neglect of his duty; or
- (b) having been captured he failed to take any reasonable steps available to him to rejoin the armed forces; or
- (c) while in captivity he served with or aided the enemy in the prosecution of hostilities or in the taking of measures calculated to influence morale, or in any other way whatsoever not authorized by international usage.

(3) Time shall be computed for the purposes of this section (and in particular, as to the counting or disregarding of parts of days) in the prescribed manner.

Deductions for  
penalties.

**147.** (1) Where a fine is imposed on an officer or service man under this Act, the amount of the fine may be deducted from his pay.

(2) Where an officer or serviceman is charged with a civil offence (whether within or outside Kenya) and is sentenced or ordered by the court to pay any fine, penalty, damages, compensation or costs, and the whole or part thereof is met by a payment made by or on behalf of any service authority, the amount of the payment may be deducted from his pay.

**148.** (1) Without prejudice to the provisions of this Act as to the imposition of stoppages as a punishment, the following provisions shall have effect where, after the prescribed investigation, it appears to the Commander or an officer authorized by him in writing that any loss of, or damage to, public property has been occasioned by any wrongful act or negligence of an officer or serviceman (in this section referred to as the person responsible).

Compensation for loss occasioned by wrongful act or negligence.

(2) The Commander or authorized officer may order the person responsible to pay a specified sum as or towards compensation for the loss or damage, and any such sum may be deducted from his pay, so far as it has not otherwise been paid by the person responsible.

(3) No order shall be made under subsection (2) if, in proceedings before a court martial, the commanding officer or the appropriate superior authority, the person responsible-

(a) has been exonerated by a finding that he was not guilty of the wrongful act or negligence in question; or

(b) has been awarded stoppages in respect of the same loss or damage,

but otherwise the fact that such proceedings have been brought in respect of the wrongful act or negligence in question shall not prevent the making of an order under subsection (2).

**149.** (1) Where damage occurs to any premises in which one or more units of the armed forces, or parts of such units, are quartered or billeted, or any fixtures, furniture or effects in or belonging to such premises are damaged or lost, and it appears on investigation in the prescribed manner that the damage or loss was occasioned by the wrongful act or negligence of persons belonging to any of the units or parts of units but that those persons cannot be identified, any person belonging to any of the units or parts of units may be required to contribute in the prescribed manner, towards compensation for the damage or loss, such amount as may be determined to be just, and the amount may be deducted from his pay.

Deduction for barrack damage.

(2) Subsection (1) extends to vehicles, aircraft, ships and trains in which units or parts of units of the armed forces are being transported, and reference to premises, quartering and occupation shall be construed accordingly.

**150.** A forfeiture or deduction imposed under any of sections 146, 147, 148 and 149 or under regulations made under this Act

Remission of forfeitures and

deductions. may be remitted by the Commander, or by such authority as may be prescribed.

PART XII—BILLETING AND REQUISITIONING OF VEHICLES

*Billeting*

Billeting orders. **151.** At any time when this section is in operation by virtue of an order under section 168, an officer not below the rank of major or corresponding rank commanding a unit of the armed forces may, if he considers it necessary for the purpose of securing accommodation for members of the armed forces or their vehicles, issue a billeting order requiring the police officer in charge of police for a specified area to provide billets at specified places in that area for a specified number of members of the armed forces, or for a specified number of vehicles of the armed forces, or for both, and this sub-Part shall apply accordingly.

Premises in which billets may be required. **152.** (1) Billets for persons may be required to be provided-

- (a) in any hotel (whether licensed or not) or in any other premises occupied for the purposes of a business consisting of or including the provision of sleeping accommodation for reward; or
- (b) in any other building to which the public habitually have access, whether on payment or otherwise, or which is wholly or partly provided or maintained out of public funds; or
- (c) in any dwelling, outhouse, warehouse, barn or stables, but not in any other premises.

(2) Billets for vehicles may be required to be provided in any building or on any land.

Billeting. **153.** (1) Where a billeting order has been produced to the police officer in charge of police for the specified area, he shall, on the demand of the officer commanding a unit of the armed forces, or on the demand of an officer or serviceman authorized in writing by such an officer, billet on the occupiers of premises which fall within section 152, and are at one of the places specified in the billeting order, such number of persons, vehicles as may be required by the officer or serviceman, not exceeding the number specified in the billeting order.

(2) The police officer in charge of police shall exercise his functions under this section in such manner as in his opinion will cause least hardship to persons on whom billeting takes place.

(3) The police officer in charge of police may, to such extent and subject to such restrictions as he thinks proper, authorize any police officer to exercise his functions under this section on his behalf, and the foregoing provisions of this section shall apply accordingly.

**154.** (1) Where persons are billeted in pursuance of a billeting order, the occupier on whom they are billeted shall furnish such accommodation and meals as the officer or serviceman demanding the billets may require, not exceeding such accommodation and meals as may be prescribed.

Accommodation to be provided, and payment therefor.

(2) Where vehicles are billeted in pursuance of a billeting order, the occupier on whom they are billeted shall furnish standing room for the vehicles.

(3) Where persons or vehicles have been billeted in pursuance of a billeting order, they may continue to be billeted, so long as section 151 is in operation, for such period as is requisite, and the allotment of the billets among the persons or vehicles concerned may be varied from time to time.

(4) The occupier on whom any person or vehicle is billeted shall be entitled to receive the prescribed payment for the billeting:

Provided that no payment shall be required in respect of vehicles billeted otherwise than in a building unless the land on which they are billeted-

- (i) has its surface made up for the passage or parking of vehicles; and
- (ii) is not land where vehicles are normally allowed to stand free of charge irrespective of the persons by whom they are owned or driven.

(5) Payment for billeting shall be made-

- (a) at least once in every seven days, where the billeting continues for more than seven days; and
- (b) before the persons billeted finally leave, or the vehicle are finally removed from, the premises where they are billeted.

**155.** In relation to premises of which there is no occupier, this sub-Part shall apply as if the person entitled to possession thereof were the occupier.

Where no occupier.

Appeals against  
billeting.

**156.** (1) Any person who-

- (a) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting order; or
- (b) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion, may apply to a tribunal consisting of a person or persons appointed by the Minister.

(2) On an application under subsection (1) (a), the tribunal may direct that such number of the persons billeted as may seem just shall be billeted on some other occupier, or may dismiss the application.

(3) On an application under subsection (1) (b), the tribunal may grant such exemption as may seem just, or may dismiss the application.

(4) An application under subsection (1) shall not affect billeting pending the determination of the application.

Compensation for  
damage.

**157.** (1) Where any damage is caused to any premises by the billeting of persons or vehicles in pursuance of a billeting order, the occupier may recover from the Government compensation of an amount equal to the depreciation of the premises caused by the damage.

(2) Where any person, other than the recipient of compensation under subsection (1), has any interest in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be just.

(3) The Resident Magistrate's Court shall have jurisdiction to deal with any claim arising under subsection (1) or subsection (2), irrespective of the amount of the claim.

Application to  
civilians employed  
with armed forces,  
and to aircraft, ships  
and boats.

**158.** (1) In relation to persons employed with the armed forces and not entitled under the foregoing provisions of this sub-Part to be billeted, being persons of such descriptions as may be prescribed, those provisions shall apply as they apply in relation to members of the armed forces.

(2) The foregoing provisions of this sub-Part apply to and in respect of aircraft, ships and boats as they apply to and in respect of vehicles, and in relation to ships and boats "land" includes water.

*Requisitioning of Vehicles*

**159.** At any time when this section is in operation by virtue of an order made under section 168, an officer not below the rank of major or corresponding rank commanding any part of the armed forces may, if it is necessary in the interests of defence or public safety and the necessity is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the vehicles, issue a requisitioning order authorizing the requisitioning of specified vehicles, or of a specified number of vehicles of a specified description, from among the vehicles in a specified area for meeting the needs of any specified unit of the armed forces or any part thereof.

Requisitioning orders.

**160.(1)** A requisitioning order may be issued to the officer commanding any part of the armed forces, and that officer, or any officer or serviceman authorized by him in writing, may give directions for the provision-

Requisitioning of vehicles.

- (a) in so far as the requisitioning order authorizes the requisitioning of specified vehicles, of all or any of those vehicles;
- (b) in so far as the order authorizes the requisitioning of vehicles of a specified description, of the number of vehicles of that description specified in the order or any lesser number of such vehicles.

(2) A direction under subsection (1) given as respects a vehicle shall be a direction given to the person having possession of the vehicle either-

- (a) to furnish it immediately at the place where it is; or
- (b) to furnish it at a place within one hundred miles from the premises of that person, at a time specified by the officer or serviceman giving the direction:

Provided that no direction shall be given under paragraph (b) as respects a vehicle which is neither mechanically propelled nor a trailer normally drawn by a mechanically-propelled vehicle.

(3) If the officer to whom the requisitioning order was issued, or any officer or serviceman authorized by him in writing-

- (a) is satisfied that a person who has been directed to furnish a

vehicle under subsections (1) and (2) has refused or failed to furnish it in accordance with that direction; or

- (b) has reasonable grounds for believing that it is not practicable without undue delay to give such a direction to the person having possession of the vehicle,

he may take, or authorize any officer or serviceman to take, possession of the vehicle; and, where possession is taken of a vehicle in pursuance of this subsection, this sub-Part shall, with the necessary modifications, apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

(4) The police officer in charge of police for any area specified in a requisitioning order shall, on being so requested by or on behalf of the officer to whom the requisitioning order was issued, give instructions for securing that so far as practicable police officers will be available, if required, for accompanying officers or servicemen requisitioning vehicles in pursuance of the requisitioning order.

Period for which vehicles to be requisitioned.

**161.** Where a vehicle has been furnished in pursuance of a requisitioning order, it may be retained, so long as section 159 is in operation, for any period for which it is required for any purpose connected with the needs of the armed forces.

Provision of vehicles for purchase.

**162.** A requisitioning order may require any person to furnish a vehicle for the purpose of its being purchased by the Government.

Payment for vehicles requisitioned.  
14 of 1971, Sch.

**163.** (1) The person by whom a vehicle is furnished in pursuance of a requisitioning order, otherwise than for the purpose of its being purchased, shall be entitled to be paid-

- (a) a sum for the use of the vehicle calculated, by reference to the period for which possession of the vehicle is retained, at the rate of payment commonly recognized or generally prevailing in the area at the time at which the vehicle is furnished or, if no such rate is readily ascertainable, at such rate as may be just; and
- (b) a sum equal to the cost of making good any damage caused to the vehicle, not being damage resulting in its total loss or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and which has not been made good during that period by the Government; and



(c) if, during the said period, a total loss of the vehicle occurs, a sum equal to the value of the vehicle immediately before the occurrence of the damage which caused the loss,

and in paragraph (b) “fair wear and tear” means such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.

(2) The person by whom a vehicle is furnished in pursuance of a requisitioning order for the purpose of its being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.

(3) Where a vehicle is furnished in pursuance of a direction under section 160 (2) (b)-

(a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section (if that subsection applies), the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and for the purposes of subsection (2) of this section (if that subsection applies) the vehicle shall be deemed to have been furnished at that time;

(b) in addition to the payments provided for by subsection (1) or subsection (2) of this section, the person by whom the vehicle is furnished shall be entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.

(4) Where a direction to furnish a vehicle is given under section 160 (2) (b), and after the giving of the direction any damage occurs to the vehicle (whether or not resulting in its total loss), if the damage prevents the vehicle being furnished in accordance with the requisitioning order the foregoing provisions of this section shall apply as if the vehicle had been furnished and had been furnished otherwise than for the purpose of its being purchased (notwithstanding that it may have been required to be furnished for the purpose of its being purchased), subject however to the following modifications, that is to say-

(a) paragraphs (a), (b) and (c) of subsection (1) of this section shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage;

(b) paragraph (b) of subsection (3) of this section shall have effect as if “ in complying with” there were replaced by “by reason of anything done for the purpose of complying with”.

(5) Where a person is required by a direction to furnish a vehicle-

(a) he shall notify the details of the requisitioning and of any payment thereof to any person whom he knows to have an interest in the vehicle; and

(b) any person having such an interest shall be entitled to recover from him such part (if any) of the payment received by him for the vehicle as may be just.

(6) Where, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then-

(a) for the purposes of paragraphs (a) and (b) of subsection (1), that period shall be deemed to have come to an end immediately after the occurrence of the loss; and

(b) no claim shall be made for the return of the vehicle (if it still exists), or for any payment in respect thereof other than such as is provided for by subsection (1).

(7) The Resident Magistrate’s Court shall have jurisdiction to deal with any claim arising under this section irrespective of the amount of the claim.

Avoidance of hardship in requisitioning vehicles.  
14 of 1971, Sch.

**164.** In deciding which, of alternative vehicles, is to be specified in a requisitioning order or is to be the subject of a direction under section 160, the person issuing the direction given shall act in such manner as will in his opinion cause least hardship.

Issue of search warrant.

**165.** If a magistrate is satisfied that a person has failed to afford facilities for inspection which he has been required to afford by or under regulations made under section 227 (1) (t), he may issue a search warrant authorizing a named police officer to enter any premises within which the facilities are required, accompanied by that person, at any time between six o’clock in the morning and nine o’clock in the evening, and to inspect anything which may be found therein.

Damage by vehicles being delivered for requisitioning.

**166.** The person using a vehicle for the purpose of its being furnished in pursuance of a direction under section 160 (2) (b) shall be deemed, as respects any claim in respect of injury or damage to any

other person or property, to be so using the vehicle as a servant of the Government, and section 4 of the Insurance (Motor Vehicles Third Party Risks) Act shall not apply to the use of a vehicle for that purpose. Cap. 405.

**167.** (1) Subject to this section, the foregoing provisions of this sub-Part, except those provisions which relate only to mechanically-propelled vehicles and trailers normally drawn thereby, apply to and in respect of aircraft, ships, boats, horses, mules, donkeys, camels, food, forage, fuel and stores as they apply to and in respect of vehicles.

Application to aircraft, ships, horses, etc., food, forage and stores.

(2) Where stores are required for, and can be conveyed with, a vehicle with respect to which a direction is given under section 160 (2) (b), such a direction may be given as well in relation to the stores as in relation to the vehicle, and the foregoing provisions of this sub-Part shall apply accordingly:

Provided that section 163 (4) shall not apply, but, if after the direction is given the furnishing of the stores is prevented by damage to them or to the vehicle, such payment (if any) shall be made in respect of the stores as may be just in all the circumstances.

(3) In this section, “stores” means any chattel (other than a vehicle, aircraft, ship, boat, horse, mule, donkey or camel, or food, forage or fuel) which is required for, or for use in connexion with-

- (a) persons, vehicles, aircraft, ships or boats billeted or to be billeted in pursuance of a billeting order or otherwise temporarily accommodated or to be temporarily accommodated; or
- (b) vehicles, aircraft, ships, boats, horses, mules, donkeys or camels furnished or to be furnished in pursuance of a requisitioning order.

#### *Supplemental*

**168.** Whenever it appears to the President that the public interest so requires, he may, by order in the Gazette, direct that either or both of sections 151 and 159 shall come into operation for a specified period, either generally or in respect of a specified area, and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation for the specified period.

Bringing into operation sections 151 and 159. 12 of 1978, Sch.

#### PART XIII—COMMISSIONING OF OFFICERS AND ENLISTMENT OF SERVICEMEN

**169.** (1) The Defence Council may, in the name of the President, Grant of

commissions.

grant a commission in the armed forces to a citizen of Kenya who has been recommended for a commission in that service by a commissions board established by regulations made under this Act.

(2) Every person who is granted a commission shall, on being granted the commission, take an oath of allegiance in the form in the Second Schedule.

Term of commission.  
19 of 1982, Sch.

**170.** (1) A commission may be either-

- (a) a regular commission; or
- (b) a short service commission, that is to say a commission for a term of years not exceeding five in the first instance.

(2) An officer holding a regular commission who retires from the armed forces with a pension or gratuity shall thereupon be transferred to the reserve, and shall serve in it until the age of-

- (a) sixty-five years in the case of an officer retiring with the rank of major-general or corresponding rank or above; or
- (b) fifty-five years in the case of an officer retiring with the rank of colonel or corresponding rank or above; or
- (c) the age of fifty years in the case of a person retiring with the rank of lieutenant-colonel or corresponding rank or below.

(3) An officer holding a short service commission who completes the term of his commission with a pension or gratuity shall on such completion be transferred to the regular reserve and shall remain in it for a period of three years.

Termination of  
commission.

**171.** (1) The Commander may terminate the commission of any officer during the first eighteen months of the officer's actual commissioned service.

(2) The Defence Council may terminate the commission of any officer of the rank of major or corresponding rank or below.

(3) The President may terminate the commission of any officer above the rank of major or corresponding rank or above.

Recruiting officers.

**172.** Any person authorized in that behalf by the Defence Council may recruit servicemen into the armed forces in the prescribed manner.

**173.** (1) A person offering to enlist in the armed forces shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the enlistment, and a recruiting officer shall not recruit any person unless that person satisfies him that he has been given such a notice, understands it and wishes to enlist. Enlistment.

(2) A recruiting officer shall not recruit a person under the apparent age of eighteen years unless written consent to the enlistment has been given by his parents or guardian or, where his parents or guardian are dead or unknown, by the District Commissioner of the district in which the person resides.

(3) A recruiting officer shall not recruit a person who is not a citizen of Kenya.

(4) A person on attestation shall take an oath of allegiance in the form in the Second Schedule.

**174.** (1) The term for which a person who has apparently attained the age of eighteen years may enlist shall be one of the prescribed periods of colour service (not exceeding twelve years) beginning on the date of his attestation. Term of enlistment.

(2) The period for which a person who has not apparently attained the age of eighteen years may enlist shall be a period of colour service ending the prescribed number of years after he attains the age of eighteen years (the prescribed number not being greater than twelve).

(3) In reckoning the service of a serviceman, there shall be excluded therefrom-

(a) all periods during which he has been absent from his duty by reason of-

(i) imprisonment; or

(ii) desertion; or

(iii) absence without leave exceeding seven days; and

(b) any period ordered by a court martial to be forfeited.

(4) A serviceman who is of good character, may, within two years before completing his period of colour service, with the approval of the competent service authority, re-engage for such further period of colour service as may be prescribed:

Provided that, except as provided by subsection (5), the further period of colour service, together with the previous period of colour service, shall not exceed a total continuous period of twenty-one years' colour service from the date of his original attestation or the date upon which he apparently attained the age of eighteen years, whichever is the later.

(5) A serviceman who has completed a period of twenty-one years' colour service may, with the approval of the competent service authority, continue to serve from year to year in all respects as if his period of colour service were still unexpired:

Provided that he may at any time give to his commanding officer three months' notice that he wishes to be discharged, and on the expiration of that notice he may claim to be discharged.

(6) A serviceman who completes his period of colour service (and any period by which his service is prolonged under subsection (5) of this section or under section 175) or is otherwise discharged (other than under section 176, section 177 or section 178) shall thereupon be transferred to the reserve, and shall serve in it for a period of three years (or for any longer period which may be provided for in his terms of enlistment or re-engagement), but not in any case after he has completed twenty-one years' colour service or has reached the age of forty-five years.

Prolongation of  
service.  
12 of 1978, Sch.

**175.** Any officer who is due to retire or who completes the term of his commission, and any serviceman whose period of colour service expires, during a state of war, insurrection, hostilities or public emergency or at a time when he is on active service may be retained in the armed forces and his service prolonged for such further period as the Defence Council may determine.

Discharge.

**176.** A serviceman may be discharged by the competent service authority at any time during his period of colour service -

- (a) if, within two years after the date of his attestation, his commanding officer considers that he is unlikely to be an efficient member of the armed forces; or
- (b) for activities or behaviour likely to be prejudicial to the preservation of public security; or
- (c) if he is convicted of a civil offence; or
- (d) if he is pronounced by a medical officer to be mentally or physically unfit for further service; or

- (e) on reduction of establishment; or
- (f) at his own request on compassionate grounds; or
- (g) if for any reason his services are no longer required; or
- (h) if he is granted a commission; or
- (i) if he is sentenced by court martial to be dismissed from the armed forces.

**177.** A serviceman may claim to be discharged at anytime within three months after the date of his attestation on payment of the sum of two hundred shillings:

Right to purchase discharge.

Provided that-

- (i) subsections (2) and (5) of section 180 shall not apply to a serviceman discharged under this section;
- (ii) no serviceman may claim to be discharged during a state of war, insurrection, hostilities or public emergency or at a time when he is on active service.

**178.** A warrant officer who is reduced to the rank of private or corresponding rank may thereupon claim to be discharged, except during a state of war, insurrection, hostilities or public emergency or at a time when he is on active service.

Right to discharge on reduction to ranks.

**179.** (1) Notwithstanding anything in this Part, a serviceman is not entitled to be discharged or transferred to the reserve at a time when he has become liable, as a person subject to this Act, to be proceeded against for an offence under Part V.

Postponement of discharge or transfer pending proceedings for offences, etc.

(2) Notwithstanding anything in this Part, a serviceman who is serving a sentence of imprisonment in respect of an offence under Part V is not entitled to be discharged or transferred to the reserve during the currency of the sentence.

**180.** (1) Subject to this Part, every serviceman becoming entitled or liable to be discharged shall be discharged with all convenient speed, but until discharged he shall remain subject to this Act.

Mode of discharge.

(2) When a serviceman who is entitled or liable to be discharged is serving outside Kenya, he shall be returned to Kenya free of cost with all convenient speed and shall be discharged on his arrival there

or, if he consents to his discharge being delayed, within six months after his arrival.

(3) A serviceman shall not be discharged unless his discharge has been authorized by order of the competent service authority.

(4) Every serviceman shall be given on his discharge a certificate of discharge containing the prescribed particulars.

(5) A serviceman who is discharged in Kenya shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested, or to any place in Kenya at which he intends to reside and to which he can be conveyed at no greater cost.

Validity of attestation  
and enlistment.  
12 of 1978, s.7.

**181.** (1) Where a person has made the prescribed declaration upon his attestation and has thereafter received pay as a serviceman-

- (a) the validity of his enlistment shall not be called in question on the grounds of any error or omission in his attestation paper;
- (b) if, within a period of three months from the date on which he made the declaration, he claims that his enlistment is invalid by reason of non-compliance with the requirements of this Act or any other matter whatsoever (not being an error or omission in his attestation paper), the claim shall be submitted to the Defence Council as soon as may be, and if the claim is well founded the Defence Council shall cause him to be discharged with all convenient speed; but if no such claim is made within that period, or if the Defence Council is of opinion that the claim is unfounded, the person concerned shall be deemed to have been validly enlisted notwithstanding any such non-compliance or other matter and he shall be a serviceman until his discharge.

(2) Where a person has received pay as a serviceman without having previously made the prescribed declaration upon his attestation-

- (a) he shall be a serviceman until discharged;
- (b) he may claim to be discharged at any time within three months after the first day in respect of which he has received pay.

(3) Nothing in this section shall prejudice the determination of any question as to the term for which a person enlisted or prevent the



discharge of a person who has not claimed his discharge.

#### PART XIV—THE RESERVES

**182.** (1) Every officer and every serviceman who is liable to be transferred to the regular reserve shall until transferred remain subject to this Act.

Transfer to reserve.

(2) When an officer or a serviceman who falls to be transferred to the regular reserve is serving outside Kenya, he shall be returned to Kenya free of cost with all convenient speed and shall be transferred to the regular reserve on his arrival there or, if he consents to his transfer being delayed, within six months after his arrival.

(3) A serviceman who is transferred to the regular reserve in Kenya shall be entitled to be conveyed free of cost from the place where he is transferred to the place stated in his attestation paper to be the place where he was attested, or to any place in Kenya at which he intends to reside and to which he can be conveyed at no greater cost.

**183.** (1) The volunteer reserve, if the Defence Council decides in pursuance of section 4 that there shall be one, shall consist of such officers and servicemen as the Defence Council determines.

Volunteer reserve.

(2) Commissions in the volunteer reserve shall be granted and may be terminated in the same manner as is provided in relation to the regular force by sections 169 and 171.

(3) Servicemen may be enlisted into the volunteer reserve, and when enlisted shall serve in the volunteer reserve, in the same manner as is provided in relation to the regular forces by sections 172, 173, 175, 176, 177, 178, 179, 180 and 181, and those sections shall apply *mutatis mutandis* in relation to enlistment and servicemen enlisted into the volunteer reserve as they apply to enlistment and servicemen enlisted into the regular forces.

**184.** (1) Every reservist is liable to be called out for training for a period not exceeding, or for periods not exceeding in the aggregate, twenty-eight days in any one year.

Calling out reservists for annual training.

(2) A reservist, during any training for which he is called out, may be posted or attached to and trained with any unit of the armed forces.

**185.** (1) The President may, by notice in the Gazette, at any time when he considers it necessary, call out reservists (whether by class or by name) temporarily-

Calling out reservists temporarily.

- (a) to strengthen the regular force in time of war; or
- (b) to support the civil power in the maintenance of order in the event of disturbances, for a period not exceeding twenty-eight days.

(2) The President in such notice may give or authorize the Minister to give such directions as may seem necessary or proper for facilitating the calling out of the reservists.

(3) Every such notice and all such directions shall be obeyed, and every reservist called out by the notice shall attend at the place and time appointed by the notice or the directions, and after that time shall be deemed to be called out on temporary service.

Calling out reservists  
on permanent  
service.  
Cap. 57.

**186.** (1) At any time when Part III of the Preservation of Public Security Act is in operation (whether generally or in a part of Kenya), the President may, by proclamation, call out reservists (whether by class or by name) on permanent service, either generally or (as the case may be) in that part of Kenya.

(2) The President in such proclamation may give or authorize the Minister to give such directions as may seem necessary or proper for facilitating the calling out of the reservists.

(3) Every reservist who is an officer called out on permanent service is liable to serve until his services are no longer required, but in any case not beyond the age limits specified in section 170 (2), irrespective of whether he held a regular commission or a short service commission, together with such further period as the Minister may determine.

(4) Every reservist who is a serviceman called out on permanent service is liable to serve as a serviceman until his services are no longer required, but in any case not longer than the remainder of his period of service in the reserve together with such further period as the Minister may determine.

Punishment for non-attendance.

**187.** (1) Any reservist who, without leave lawfully granted or other reasonable excuse, fails to report when called out under this Part shall-

- (a) if called out under section 184 or section 185, be guilty of absence without leave within the meaning of section 32;

(b) if called out under section 186, be guilty, according to the circumstances, of desertion within the meaning of section 31, or of absence without leave within the meaning of section 32.

(2) Section 70 applies to reservists who commit an offence under this section as it applies to persons otherwise subject to this Act.

**188.** Where a reservist fails to report when called out and his absence continues for not less than twenty-one days, an entry of such absence shall be made by an officer in the service books, and such entry shall be prima facie evidence of the fact of such absence. Record of illegal absence.

**189.** A reservist who has completed his period of service in the reserve shall be released from the reserve, unless- Release from reserve on completion of service.

(a) he is on active service; or

(b) the reserve has been called out on permanent service; or

(c) at the expiration of the period he stands charged as a person subject to this Act with the commission of, or is a serviceman undergoing punishment for, an offence under this Act;

and, if he stands so charged or is such a serviceman, his service shall be prolonged and his release deferred until he has been tried and undergone any punishment awarded in respect of the offence with which he is charged, or until his punishment is completed, as the case may be.

**190.** A reservist may be released from the reserve by the competent service authority at any time if- Release from reserve during service.

(a) he is pronounced by a medical officer to be mentally or physically unfit for further service; or

(b) his services for any reason are no longer required.

#### PART XV—THE ARMED FORCES CONSTABULARY

**190A.** In this Part, “public establishment” means-

Interpretation of Part. 12 of 1978, s.8.

(a) any establishment of the armed forces; and

(b) any building or other premises belonging to, or in the occupation of, the Government which the Minister, after consultation with the Minister for the time being responsible for matters relating to internal security, may, by notice in

the Gazette, declare to be a public establishment for the purposes of this Part.

Armed Forces  
Constabulary.

**191.** There is hereby established a force, to be known as the Armed Forces Constabulary, which shall be part of the armed forces, and which shall consist of a Commandant and such other ranks as the Minister determines.

Commandant.

**192.** The Commandant shall, subject to the directions of the Minister, be responsible for the general control, discipline and administration of the constabulary.

Declaration by  
members.

**193.** Every member of the constabulary shall on joining the constabulary make before an officer of the armed forces or before the Commandant an oath of allegiance in the form in the Second Schedule.

Functions of  
constabulary.  
12 of 1978, Sch.

**194.** The functions of the constabulary shall be to maintain the security, protection (including protection against fire and other damage) and orderly regulation of all public establishments and of public property in the charge of the armed forces.

Powers and  
privileges of  
members.  
12 of 1978, Sch.

**195.** In the exercise of their functions under this Act, all members of the constabulary have the like powers and privileges as are by law accorded to police officers, including the power to carry arms:

Provided that such powers and privileges do not apply in relation to a member of the constabulary when he is beyond the limits of a public establishment, except when that member-

- (i) is performing his functions in respect of public property under the control of the armed forces; or
- (ii) is in control or fresh pursuit of a person who is reasonably suspected of having committed an offence-
  - (a) in or on such establishment; or
  - (b) in relation to public property under the control of the armed forces; or
  - (c) in relation to a member of the constabulary, or to an officer or serviceman, or to a person employed in the service of a unit of the armed forces.

Powers of arrest.

**196.** (1) Where any person is found committing, or is reasonably suspected of committing or having committed, an offence of the kind

described in paragraph (ii) of the proviso to section 195, a member of the constabulary may demand his name and address, and if he refuses or fails to give his name and address to the satisfaction of such member, or if such member has reasonable grounds for believing that unless arrested the person will escape or cause an unreasonable amount of delay, trouble or expense in being brought before a court, such member may without warrant arrest him forthwith.

(2) A person making an arrest under subsection (1) shall-

- (a) without unnecessary delay make over the arrested person to a police officer, who shall take him to the nearest police station without unnecessary delay; or
- (b) in the absence of a police officer, take the arrested person to the nearest police station.

(3) Where any person has been arrested under subsection (1) of this section, the officer in charge of the police station to which he has been brought shall deal with the case in accordance with section 36 of the Criminal Procedure Code.

Cap. 75.

**197.** A member of the constabulary may use arms against any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person in any public establishment:

Use of arms.  
12 of 1978, Sch.

Provided that-

- (i) resort shall not be had to the use of arms under this section unless the member has reasonable ground to believe that he or any other person is in danger of grievous bodily harm, and that he cannot otherwise effect such arrest; and
- (ii) the use of arms under this section shall be, as far as possible, to disable and not to kill.

PART XVI—CIVIL OFFENCES CONCERNING THE  
ARMED FORCES AND THE CONSTABULARY

**198.** Any person who-

Obstructing  
constabulary, etc.

- (a) assaults, resists or wilfully obstructs a member of the constabulary in the performance of his duties under this Act, or any person acting in the aid of such a member; or
- (b) induces or does any act calculated to induce a member of

the constabulary to neglect or to act contrary to his duty as such member; or

- (c) induces or does any act calculated to induce a member of the constabulary to commit any breach of discipline or any act whereby any lawful order given to a member of the constabulary or any written law with which it is the duty of a member of the constabulary to comply may be evaded or infringed,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years, and may be arrested without a warrant by any member of the constabulary or any police officer.

Procuring and assisting desertion.

**199.** Any person who-

- (a) procures or persuades a person to desert or to absent himself without leave from the armed forces or the constabulary; or
- (b) knowing that a person is about to desert or absent himself without leave from the armed forces or the constabulary, assists him in so doing; or
- (c) knowing a person to be a deserter or absentee without leave from the armed forces or from the constabulary, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding one year.

Pretending to be a deserter.

**200.** Any person who falsely represents himself to any service authority or civil authority to be a deserter or absentee without leave from the armed forces or from the constabulary shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

Obstructing person in execution of duty.

**201.** Any person who wilfully obstructs or otherwise interferes with an officer or serviceman acting in the execution of his duty shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

Aiding malingering.

**202.** Any person who-

- (a) produces in an officer or serviceman any sickness or disability; or

- (b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

with a view to enabling him to avoid service in the armed forces, whether permanently or temporarily, shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding one year.

**203.** (1) Any person who acquires any service stores, or solicits or procures any person to dispose of any service stores, or acts for any person in the disposing of any service stores, shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding two years, unless he proves either-

Unlawful purchase, etc., of military stores.

- (a) that he did not know, and could not reasonably be expected to know, that the chattels in question were service stores; or
- (b) that the chattels in question had (by the transaction with which he is charged or by some earlier transaction) been disposed of by order or with the consent of the Government or of some other person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent; or
- (c) that the chattels in question had become the property of an officer who had retired or ceased to be an officer, or of a serviceman who had been discharged, or of the personal representatives of an officer or serviceman who had died.

(2) A police officer may arrest without warrant any person who is reasonably suspected of having committed an offence under this section, and may seize any property which is reasonably suspected of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with a crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence under this section, issue a warrant to search for such property as in the case of stolen goods; and any property reasonably suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a court.

(4) In this section-

“acquire” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

“dispose of” means sell, offer or expose for sale, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);

“service stores” means any chattels or goods of any description belonging to the Government, which have been issued for use for the purpose of the armed forces, or are held in store for the purpose of being so issued when required, and any chattels or goods which had belonged, and had been issued or held, as aforesaid at some past time.

(5) For the purposes of subsection (3), property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

**204.** (1) Any person who-

- (a) refuses to receive any person billeted upon him in pursuance of a billeting order, or without reasonable excuse fails to furnish him with the accommodation properly required for him; or
- (b) gives or agrees to give to any person billeted upon him in pursuance of a billeting order any money or reward in place of receiving any person or vehicle or of furnishing accommodation properly required for him; or
- (c) obstructs the billeting in his building or on any land or water under his control of any vehicle, aircraft, ship or boat,

shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

**205.** (1) Any person who-

- (a) fails to furnish any vehicle or specified thing which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle or specified thing at the time and place at which he is directed to furnish it; or

Refusal to receive  
persons billeted, etc.

Enforcement of  
requisitioning.



(b) fails to comply with any regulations made under section 227 (1) (t); or

(c) obstructs any officer or other person in the exercise of his functions under Part XII in relation to the inspection or requisitioning of vehicles or specified things,

shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

(2) In subsection (1), “specified thing” means one of the things, animals and commodities specified in section 167 (1).

**206.** (1) Where any official document is issued in connexion with any pay, pension, allowance, gratuity or other money payable to any person in respect of his or any other person’s service in the armed forces, any person who receives, detains or has in his possession that document-

Illegal dealings in documents relating to pay, pensions, mobilization, etc.

(a) as a pledge or a security for a debt; or

(b) with a view to obtaining payment, from the person entitled to the pay, pension, allowance, gratuity or other money, of a debt due either to himself or to any other person,

shall be guilty of an offence.

(2) Any person who has in his possession without lawful authority or reasonable excuse (the proof whereof shall lie on him) any such document as aforesaid, or any official document issued in connexion with the mobilization or demobilization of the armed forces or any part or member thereof, shall be guilty of an offence.

(3) Any person who is guilty of an offence under this section shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

(4) For the purposes of this section, a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

**207.** (1) Any person who-

(a) without authority, uses or wears any service decoration, or any badge, insignia of rank, wound stripe or emblem supplied or authorized by the President or the Defence Council; or

Unauthorized use of and dealing in decorations, etc.

- (b) uses or wears any decoration, badge, insignia of rank, wound stripe or emblem so nearly resembling any service decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorized as aforesaid, as to be calculated to deceive; or
- (c) falsely represents himself to be a person who is or has been entitled to use or wear any service decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorized as aforesaid,

shall be guilty of an offence:

Provided that this subsection shall not prohibit the wearing of brooches or ornaments representing service badges.

(2) Any person who purchases or takes in pawn any service decoration awarded to any member of the armed forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence, unless he proves that at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of the armed forces.

(3) Any person who is guilty of an offence under this section shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

#### PART XVII—VISITING FORCES

Interpretation of Part.

**208.** In this Part-

“appropriate authority”, in relation to a country, means such authority as is appointed by the government of that country for the purposes of this Part;

“civilian component” means the civilian personnel accompanying a visiting force, who are employed in the service of the visiting force or are employed by an authorized service organization accompanying a visiting force, and who are not stateless persons or citizens of Kenya or persons ordinarily resident in Kenya;

“dependant” means a person who is not ordinarily resident in Kenya and who-

- (a) is the wife or husband of a member of a visiting force; or

(b) is wholly or mainly maintained or employed by such a member; or

(c) is in the custody, charge or care, or is part of the family, of such a member;

“designated country” means a country designated under section 209;

“forces”, in relation to a country, means the naval, military or air forces of that country;

“member”, in relation to a visiting force, includes a member of the civilian component of that visiting force, and a dependant;

“sentence” includes any punishment awarded or imposed by a service court;

“service court”, in relation to a country, means a court established under the service law of that country, or any authority empowered by that service law to investigate or try charges, or any authority empowered by that service law to review the proceedings of such a court or authority;

“service law”, in relation to a country, means the laws governing the forces of that country;

“visiting force” means any body of the forces of a designated country which for the time being is lawfully present in Kenya in time of peace under a treaty, agreement or arrangement to which the Government is a party.

**209.** (1) Where it appears to the President that it is expedient that this Part should have effect in relation to any particular country, he may, by order, designate that country as a country to which this Part applies.

Power to apply Part.

(2) An order under subsection (1) may provide that it shall have effect subject to limitations or conditions, or that this Part shall apply with modifications or adaptations.

**210.** (1) Subject to sections 71 and 72 of the Constitution, the service courts and service authorities of a designated country may, within Kenya or on board any ship or aircraft belonging to the Government, exercise over members of a visiting force which belongs to that country all such powers as are exercisable by them according to the law of the country.

Powers of service courts of visiting forces.

(2) Where a sentence has been passed, whether within or outside Kenya, by a service court of a designated country upon a member of a visiting force then, for the purposes of proceedings in a court of Kenya-

- (a) the service court shall be deemed to have been properly constituted; and
- (b) the sentence shall be deemed to have been within the jurisdiction of the service court and to have been in accordance with the law of the designated country; and
- (c) the sentence, if executed according to the tenor of the sentence, shall be deemed to be lawfully executed.

(3) Any person who is detained in custody in pursuance of a sentence as respects which subsection (2) has effect is in lawful custody.

(4) Notwithstanding the foregoing provisions of this section, a sentence of death passed by a service court of a designated country shall not be carried out in Kenya unless under the law of Kenya a sentence of death could have been passed in a similar case.

Restrictions on prosecutions for civil offences.

**211.** (1) A member of a visiting force shall not be prosecuted for a civil offence unless-

- (a) the Attorney-General certifies that-
  - (i) the offence is one in relation to which the courts of Kenya have the exclusive or the primary right to exercise jurisdiction under a treaty, agreement or arrangement to which the Government is a party; and
  - (ii) the Minister has not waived that right in respect of that offence; or
- (b) the Attorney-General certifies that, although the offence is one in respect of which a service court of the country to which the visiting force belongs has the primary right to exercise jurisdiction under a treaty, agreement or arrangement to which the Government is a party, that right has been waived in respect of the offence by the service authorities of the visiting force or by the government of that country:

Provided that a person may be arrested, and a warrant for his

arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that a certificate has not been given under this subsection.

(2) Where a member of a visiting force has been tried by a service court of the country to which the force belongs under the powers conferred by section 210 (1)-

- (a) he shall not be tried for the same offence by a court of Kenya; and
- (b) if he is subsequently convicted by a court of Kenya and it appears to that court that the conviction is wholly or partly in respect of acts or omissions in respect of which he was convicted by the service court, the court of Kenya in sentencing him shall have regard to any sentence passed by the service court.

**212.** (1) For the purposes of this Part, a certificate issued by or on behalf of the appropriate authority of a designated country- Proof of certain facts.

- (a) that a body of the forces of that country is or was at a particular time present in Kenya shall, in proceedings in a court of Kenya, be conclusive evidence of the fact certified;
- (b) that a named person at a particular time either was or was not a member (whether as a member or as a member of the civilian component or as a dependant) of a visiting force of that country shall, in proceedings in a court of Kenya, be sufficient evidence of the fact, unless the contrary is proved;
- (c) that a named person-
  - (i) on a particular date was sentenced by a service court of that country to a particular punishment; or
  - (ii) is, or was at a particular time, detained in custody in pursuance of a sentence passed upon him by a service court of that country; or
  - (iii) at a particular time and place was tried by a service court of that country for a particular offence,

shall, in proceedings in a court of Kenya, be conclusive evidence of the fact certified.

(2) Where-

- (a) in a certificate issued for the purposes of this section reference is made to a person by name; and
- (b) in proceedings in a court of Kenya reference is made to a person by that name (whether as a party to the proceedings or otherwise),

the reference in the certificate and the reference in the proceedings shall be presumed to be references to the same person, unless the contrary is proved.

(3) A document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of a particular authority, shall be presumed to be a certificate issued by or on behalf of that authority, unless the contrary is proved.

(4) Where a document purporting to be a certificate issued for the purpose of this section-

- (a) is one which under this section may be issued by or on behalf of the appropriate authority of a designated country; and
- (b) purports to be signed by or on behalf of an authority of that country,

that authority shall, in any proceeding in a court of Kenya, be presumed to be the appropriate authority of that country for the purposes of this section, unless the contrary is proved.

(5) Where in proceedings in a court of Kenya it is admitted or proved (whether by means of a certificate or otherwise) that a body of the forces of a designated country is or was at a particular time present in Kenya, it shall be presumed in those proceedings that the body is or was at that time lawfully present in Kenya, unless the contrary is proved.

#### PART XVIII—MISCELLANEOUS

Precedence and command of members of armed forces.

**213.** (1) Officers, warrant officers, non-commissioned officers and servicemen below the rank of non-commissioned officer shall stand in relation to each other in the order of precedence in which they are named in this subsection.

(2) Officers, warrant officers and non-commissioned officers of the same rank shall, as between themselves, stand in order of

precedence and command according to any order which may be made by the President, and where no such order is in force then according to their seniority reckoned by the date of their respective appointments to their current rank.

**214.** Duties or tolls for embarking from or disembarking on any pier, wharf, quay or landing place, or for passing over any road, ferry or bridge, shall not be payable in respect of-

Exemptions from tolls, etc.

- (a) members of the armed forces or of any co-operating forces or of the constabulary, when on duty;
- (b) vehicles of the armed forces or of any co-operating forces;
- (c) horses or other animals of the armed forces.

**215.** No judgment, decree or order given or made against a member of the armed forces by any court shall be enforced by the levying of execution on any property in the possession of the person against whom it is given or made which is public property used by him for service purposes.

Exemption from execution against public property.

**216.** (1) Save as expressly provided by this Act, no pay, service award, grant, pension or allowance payable to any person in respect of his or any other person's service in the armed forces shall be capable of being assigned or charged, and a purported assignment or charge of the same, or an agreement to assign or charge the same, shall be void.

No assignment of or charge on service pay, etc.

(2) Save as expressly provided by this Act, no order shall be made by any court if its effect would be to prevent any person from receiving money which he is precluded by this section from assigning and to direct payment thereof to another person.

(3) This section does not prevent-

- (a) a court from ordering that a sum of money due from a member of the armed forces be recovered from money which he is precluded by this section from assigning; or
- (b) a sum being paid, out of money which a person is precluded by this section from assigning, to that person's trustee in bankruptcy for distribution among creditors under the law relating to bankruptcy.

**217.** (1) A person subject to this Act may make a statutory declaration under the Oaths and Statutory Declarations Act outside

Certain officers may take statutory

declarations.  
Cap. 15.

Kenya before any officer of the rank of major or corresponding rank or above (in this section referred to as an authorized officer).

(2) A statutory declaration purporting to have been made before an authorized officer, and containing in the attestation a statement of the date on which and the place at which the declaration was made and of the full name and rank of that officer, shall be admitted in evidence without proof that the signature is the signature of that officer.

Residence and next  
of kin to be recorded.

**218.** (1) Every officer on being commissioned and every serviceman on enlistment shall give particulars of the place and district in which he ordinarily resides and the name and address of his next of kin, and those particulars shall be recorded at the headquarters of his unit.

(2) The record shall be verified periodically, and it shall be the duty of the officer or serviceman to report any alteration which may occur in the recorded particulars.

Execution of wills.

**219.** A will made by a member of the armed forces who has at law the capacity to make a will shall be validly executed if it is in writing and is signed by him in the presence of an officer, who subscribes his name as witness in the member's presence, or if it is executed with the formalities prescribed by any other written law for the execution of a will.

Administration of  
estates.

**220.** (1) Where a member of the armed forces dies leaving a valid will, the paymaster or any officer having in his charge or control any pay, accumulation of pay, gratuity or other money or any other movable property belonging to the member shall pay or deliver it to the executor of the member.

(2) Where a member of the armed forces dies without leaving a valid will, the paymaster or any officer having in his charge or control any pay, accumulation of pay, gratuity or other money or any movable property belonging to the member shall pay or deliver it to the Public Trustee together with a copy of the record specified in section 218 of this Act, and the Public Trustee shall administer and distribute the money or property in accordance with the Public Trustee Act, or may grant a certificate as provided in section 4 of that Act.

Cap. 168.

Uniforms and  
decorations not part  
of estate.

**221.** Uniforms and decorations shall not be treated as part of the estate of a deceased member of the armed forces in relation to claims or creditors or for any of the purposes of administration under this Act or otherwise, and they shall be delivered to the Commander and thereafter disposed of in the prescribed manner.



**222.** In every case of desertion, the movable property of the deserter in the charge or control of the paymaster or any other officer (including any money belonging or due to the deserter) shall be disposed of in the prescribed manner. Property of deserter.

**223.** (1) The Commander, or any officer authorized by regulations made under this Act, may convene a board of inquiry to investigate and report on the facts relating to- Board of inquiry.  
4 of 1973, Sch.

- (a) the absence of any person subject to this Act; or
- (b) the capture of any such person by the enemy; or
- (c) the death of any person where an inquiry into the death is not required to be held by a civil authority; or
- (d) any other matter of a prescribed class,

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matters referred to the board.

(2) The Defence Council, the Commander or the commanding officer may convene a board of inquiry to investigate and report on any other matter.

(3) A board of inquiry shall consist of the prescribed number of persons, being persons subject to this Act, and the chairman of the board shall be an officer not below the rank of lieutenant or corresponding rank.

(4) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court martial, appropriate superior authority or commanding officer other than proceedings for an offence under section 53, or for an offence under section 69 where the corresponding civil offence is perjury.

**224.** (1) Where a board of inquiry inquiring into the absence of an officer or serviceman reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall be entered in the service books. Report of inquiry  
into absence to be  
recorded.

(2) A record entered in pursuance of subsection (1) shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Defence Council or a subsequent board of inquiry, have the like effect as a conviction by court martial for desertion.

Complaints by  
officers.

**225.** (1) If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint in writing to the Defence Council through his commanding officer and the Commander.

(2) On receiving such a complaint, the Defence Council shall investigate the complaint and grant any redress which appears to it to be necessary.

Complaints by  
serviceman.  
12 of 1978, Sch.,  
17 of 1979, Sch.

**226.** (1) If a serviceman thinks himself wronged in any matter by an officer (other than his commanding officer) or by a serviceman, he may make a complaint to his commanding officer.

(2) If a serviceman thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) or for any other reason, he may make a complaint in writing to the Commander through his commanding officer.

(3) If a serviceman is dissatisfied with the decision of the Commander under subsection (2), he may make a complaint in writing to the Chief of General Staff through his commanding officer and the Commander.

(4) On receiving a complaint under this section, the commanding officer, the Commander or the Chief of General Staff, as the case may be, shall investigate it and grant any redress which appears to be necessary.

Regulations.  
12 of 1978, Sch.,  
13 of 1978, Sch.,  
17 of 1979, Sch.

**227.** (1) Subject to the powers of the President under this Act the Defence Council may make regulations for better carrying out the provisions and purposes of this Act and generally for the good government of the armed forces and the constabulary, and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to-

- (a) the commissioning and appointment of officers, and their terms of service, retirement, resignation and precedence, and similar matters;
- (b) the enlistment of recruits, including the administration of oaths and affirmations;
- (c) the promotion of officers and servicemen;

- (d) the persons, being members of the armed forces, in whom command over any service of the armed forces or any part or member thereof is vested, and as to the circumstances in which such command is vested;
- (e) the attachment and secondment of officers and servicemen under Part IV;
- (f) with the consent of the Treasury, the pay, allowances, pensions and gratuities of members of the armed forces, including the manner of reckoning service before the commencement of this Act for pensions and gratuities;
- (g) the seniority in rank, and the pension and other benefits, of a person who resigns his commission or is discharged from the armed forces to facilitate his being granted a commission or his enlisting in another service of the armed forces;
- (h) the periods and terms of service in the volunteer reserve, and other matters concerning service in the volunteer reserve;
- (i) the distribution, organization and duties of the armed forces;
- (j) the government, discipline, pay and conditions of service of cadet forces;
- (k) the distribution, posting, transfer, attachment and inspection of personnel;
- (l) the description, supply, use and disposal of arms, accoutrements, clothing and other stores, including investigation into losses thereof;
- (m) the proper administration and control of establishments of the armed forces, including prohibiting, regulating or controlling entry into, presence within, meetings in and traffic within such establishments;
- (n) the discipline, good order and guidance of the armed forces;
- (o) forfeiture of pay and deductions from pay (but not so as to permit a penal deduction, that is to say a deduction to be made by reason of the commission of an offence or other wrongful act or in consequence of negligence), and the

- determination of questions concerning forfeiture of pay and deductions from pay;
- (p) the delegation of any or all of the functions of a commanding officer under this Act, in specified cases and to a specified extent, to officers of a specified class;
- (q) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;
- (r) the execution of sentences of imprisonment under this Act, including the prisons in which they are to be served, and the classification, treatment, employment, discipline, control, removal and temporary release on compassionate grounds of persons serving such sentences, and the appointment, powers and duties of inspectors, visitors, governors and members of the staff of service prisons, and the removal of prisoners;
- (s) active service punishment;
- (t) billeting and requisitioning, including requiring persons to furnish particulars of the motor vehicles, and of the trailers normally drawn by motor vehicles, and of the ships, boats, horses, mules, donkeys, camels, food, forage, fuel and stores in their possession and to afford proper facilities for their inspection;
- (u) the government, discipline and pay of the reserve, including calling out reservists and requiring reservists to report themselves from time to time and to obtain the permission of the competent service authority before leaving Kenya;
- (v) the government, discipline, pay and conditions of service of the constabulary;
- (w) the convening, constitution and procedure of boards of inquiry, the rules of evidence to be observed and the taking of evidence by such boards, including the administration of oaths and affirmations to witnesses;
- (x) fees and forms;
- (y) prescribing anything which may be prescribed under this Act, other than a matter which may be prescribed under section 228 (2) (m);

- (z) the making of inquiries regarding members of the armed forces missing in action and the giving of awards and decorations, the promotion of, and the disposal of pay and allowances of, such persons.

(2) Subject to this Act, any regulations made under subsection (1) may empower the Chief of General Staff, or the Commander in respect of his service, or the Commandant of the constabulary in respect of the constabulary, to make (subject to restrictions or exceptions) general, special, routine and standing orders with respect to all or any of the following matters-

- (a) discipline, control, good order and guidance;
- (b) organization, administration and duties;
- (c) promotion, pay and allowances;
- (d) the distribution, posting, transfer, attachment and inspection of personnel;
- (e) the description, supply, use and disposal of arms, accoutrements, clothing and other stores,

but such orders shall not be inconsistent with this Act and shall not be published in the Gazette.

**228.** (1) The Minister, on the advice of the Defence Council, may make rules, called rules of procedure, with respect to the matters specified in subsections (2), (3) and (4). Rules of procedure. 4 of 1973, Sch.

(2) Rules of procedure may make provision with respect to the investigation and trial of, and awarding of punishment for, offences triable by court martial, commanding officers and appropriate superior authorities, and with respect to the confirmation and revision of findings and sentences of courts martial, and, without prejudice to the generality of the foregoing, rules of procedure may make provision with respect to-

- (a) the procedure to be observed in bringing charges before commanding officers and appropriate superior authorities;
- (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether on oath or not and whether in full or in abstract form) for the purpose of investigating or dealing

summarily with such charges or otherwise as a preliminary to their trial by court martial, and in any case making provision for the application of section 91 in any case where the accused requires that evidence shall be taken on oath;

- (c) adding to a charge which has been investigated, or replacing it with, a new charge for an offence disclosed by evidence taken on the investigation, and treating the investigation as the investigation of the new charge;
- (d) the convening and constitution of courts martial;
- (e) the sittings, adjournment and dissolution of courts martial.
- (f) the procedure to be observed in trials by court martial;
- (g) the representation of the accused at such trials;
- (h) procuring the attendance of witnesses before courts martial and at the taking of evidence in the circumstances described in paragraph (b);
- (i) applying in relation to proceedings before commanding officers and appropriate superior authorities, and otherwise in relation to proceedings preliminary to trial by court martial, all or any of the provisions of sections 93, 94 and 95;
- (j) empowering a court martial or the convening officer, in specified cases and to a specified extent, to amend a charge which is being tried by the court, but so that the power shall not be exercisable in circumstances substantially different from those in which indictments are amendable by a civil court, and shall not be exercisable except subject to the same conditions (as nearly as circumstances admit) as those subject to which indictments may be amended;
- (k) empowering a court martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to specified exceptions or variations, if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;
- (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or

the rules of procedure relating to the investigation or trial of, or award of punishment for, offences which may be tried by courts martial, commanding officers or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts martial;

(m) any matter which may be prescribed in relation to the matters mentioned in this subsection.

(3) Rules of procedure may make provision with respect to the exercise by a judge advocate of his functions at a trial by court martial, and, without prejudice to the generality of the foregoing, as to the effect of advice or rulings given to a court martial by a judge advocate on questions of law (including questions as to the joinder of charges and as to the trial of persons jointly or separately), for requiring or authorizing the presiding officer of a court martial in specified cases to direct that any such questions of law shall be determined by a judge advocate in the absence of the presiding officer and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination any specified provisions of this Act relating to the court or its members and the proceedings thereof.

(4) Rules of procedure may make provision for determining the cases in which and the extent to which courts martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences under Part V which he has committed, and in such case may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offences of which he was in fact found guilty.

**229.** (*Repealed by 12 of 1978, Sch.*).

**230.** The Chief Justice may make rules prescribing the practice and procedure in appeals under Part IX. Rules of court.

**231.** (1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases, and to make different provision for different cases or classes of cases, and classes of cases may be defined by reference to any circumstances specified in the instrument. Powers exercisable in subsidiary legislation.

(2) Any regulations, rules, orders or other instruments made under

this Act may-

- (a) impose conditions, or require acts or things to be performed or done to the satisfaction of any person named therein, whether or not he is a member of the armed forces or the constabulary;
- (b) empower such a person to issue directions, either orally or in writing, requiring acts or things to be performed or done, or prohibiting acts or things from being performed or done; or
- (c) prescribe periods or dates within, upon or before which such acts or things shall be performed or done or such conditions shall be fulfilled, and providing for appeal against any such imposition, requirement, or directions.

Execution of orders, instruments, etc.

**232.** Save as expressly provided by this Act, any direction, requirement, order or determination which under this Act may be given or made by an officer or a service authority may be signified under the hand of any officer duly authorized in that behalf; and any instrument signifying such direction, requirement, order or determination and purporting to be signed by an officer stated therein to be so authorized shall, unless the contrary is proved, be presumed to have been signed by an officer so authorized.

FIRST SCHEDULE

(s. 96)

ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE CONVICTED BY  
COURT MARTIAL

<i>Offence Charged</i>	<i>Alternative Offence</i>
1. Striking his superior officer.	1. Using violence to his superior officer otherwise than by striking him. Offering violence to his superior officer.
2. Using violence to his superior officer otherwise than by striking him.	2. Offering violence to his superior officer.
3. Using threatening language to his superior officer.	3. Using insubordinate language to his superior officer.



<i>Offence Charged</i>	<i>Alternative Offence</i>
4. Disobeying in such a manner as to show wilful defiance of authority, a lawful command given or sent him personally.	4. Disobeying a lawful command wilfully or through neglect.
5. Desertion.	5. Absence without leave.
6. Attempting to desert.	6. Absence without leave.
7. Stealing property.	7. Fraudulently misapplying property.
8. An offence under section 38 involving wilfulness.	8. The corresponding offence involving negligence.
9. An offence under section 49(1).	9. Any offence under section 49 (2).
10. Any offence under section 50 involving striking.	10. The corresponding offence involving the use of violence other than striking. The corresponding offence involving the offering of violence.
11. Any offence under section 50 involving the use of violence other than striking.	11. The corresponding offence involving the offering of violence.

SECOND SCHEDULE

(ss. 169 (2),  
173 (4) and 193)

OATH OF ALLEGIANCE

I, .....  
do hereby swear by Almighty God [*or do hereby solemnly and sincerely affirm*] that-

- (i) I will be faithful and bear true allegiance to the President and to the Republic of Kenya.
- (ii) I will faithfully serve the President and the Republic of Kenya as an Officer [*or Serviceman*] of the Armed Forces of the Republic of Kenya [*or as a member of the Armed Forces Constabulary*];
- (iii) I will obey all laws, and all orders, regulations, directions and instructions concerning the Armed Forces of the Republic of

Kenya [*or* the Armed Forces Constabulary]; and

(iv) I will discharge all the duties of an Officer [*or* Serviceman] of the Armed Forces of the Republic of Kenya [*or* as a member of the Armed Forces Constabulary] according to the law, without fear, favour, affection or ill-will.

.....  
*Signature or thumb-print of  
person making the oath*

Sworn [*or* affirmed] by the said  
.....  
after the oath had been read over  
and explained to him in the  
.....  
language, which he acknowledged  
to understand, at.....this .....  
day of ....., 19.....

[Subsidiary]

## SUBSIDIARY LEGISLATION

L.N. 250/1969,  
L.N. 552/1988.

## Regulations under section 227

THE ARMED FORCES (ARMED FORCES CONSTABULARY  
— SUMMARY JURISDICTION) REGULATIONS

1. These Regulations may be cited as the Armed Forces (Armed Forces Constabulary-Summary Jurisdiction) Regulations. Citation.

2. In these Regulations- Interpretation.

“commanding officer” means the commanding officer of the unit to which a member of the constabulary is attached;

“detachment” means any formation of the Constabulary attached to any unit of the armed forces;

“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. (*Deleted by L.N. 552/1988*).

4. (1) subject to paragraph (2) the Commandant, with the agreement of the commanding officer, may delegate to a detachment commander of whatever rank the power to investigate and deal summarily with charges which he himself may investigate and deal: Delegation of powers.  
L.N. 552/1988.

Provided that such a delegation shall not include-

- (i) The power to remand the accused for trial by court martial; or
- (ii) The power to order the making of an abstract of evidence.

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

- (a) a fine not exceeding the equivalent of a quarter of a month’s pay;
- (b) stoppages up to a maximum of three hundred shillings.

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

5. The Commandant and the commanding officer shall not deal summarily Limitation of powers.

[Subsidiary]  
L.N. 552/1988.

with a charge under any of the following sections of the Act-

- (a) sections 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28 (1) and 31;
- (b) sections 38 (a) and 39 (a), where the subject matter exceeds in value one thousand shillings;
- (c) sections 38 (b), 39 (b), 40, 43, 44, 45, 46, 47, 49 (1), 52, 53, 55, 56, 57, 60, 61, 62, 63, 64 and 65;
- (d) section 66, where the Commandant and the commanding officer may not deal summarily with the substantive offence;
- (e) section 69, unless the corresponding civil offence is one of those specified in the Schedule.

Stoppages.

6. The Commandant and the commanding officer shall not, without the permission of higher authority, award the punishment of stoppages exceeding one thousand shillings.

Dismissal and reduction in rank.

7. The punishments of dismissal and reduction in rank, when awarded by a commanding officer, are subject to confirmation by the Commandant.

Restriction on summary dealing with charges by commanding officer of the rank of captain.

8. A commanding officer of the rank of Deputy Commandant may only award the following punishments-

- (a) a fine not exceeding the equivalent of half a month's pay;
- (b) stoppages up to a maximum of five hundred shillings.

Restriction on summary dealing with charges by commanding officer of the rank of lieutenant.

9. A commanding officer of a rank of Inspector of Constabulary or below may only award the following punishments-

- (a) a fine not exceeding the equivalent of a quarter of a month's pay;
- (b) stoppages up to a maximum of three hundred shillings.

#### SCHEDULE

(r. 5)

#### CIVIL OFFENCES WHICH A COMMANDING OFFICER OR APPROPRIATE SUPERIOR AUTHORITY MAY DEAL WITH SUMMARILY

Cap. 63.

1. Theft, contrary to section 275 of the Penal Code, where the value of the thing stolen does not exceed two hundred shillings.

2. Common assault, contrary to section 250 of the Penal Code.

Cap. 403.

3. Careless driving of a motor vehicle, contrary to section 49 of the Traffic Act.

[Subsidiary]

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.

### THE ARMED FORCES (GENERAL) REGULATIONS

L.N. 251/1969.

1. These Regulations may be cited as the Armed Forces (General) Regulations. Citation.

2. In these Regulations— Interpretation.

“civilian employee” means a person who is subject to the Act by virtue of section 9 thereof;

“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. (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 armed forces is the officer who has powers of command over that member and who- Commanding officer.

(a) is in immediate command of the unit to which that member belongs or is attached and who is directly responsible in disciplinary matters to an officer empowered to convene a court martial to try an officer or serviceman belonging or attached to that unit; 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 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 armed 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

## [Subsidiary]

or detachment or of any part or member thereof or accompanying that unit or any part thereof.

Officer appointed to command.

4. (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 81 (2) and section 82 (4) 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.

Second in command.

5. 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.

Senior officers.

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

Powers of command.

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

Appointments, promotion, pay and allowances.

8. The Chief of General Staff may make standing orders with respect to the administration of pay and allowances and the promotion of personnel, and the appointments which may be held by personnel.

Standing orders.

9. The Chief of General Staff or the Commander, in respect of his 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) the description, supply, use and disposal of arms, accoutrements, clothing and other stores.

Manner of promulgation.

10. Any matter required by the Act to be promulgated shall be promulgated either-

- (a) by being communicated to the accused; or
- (b) if the accused absents himself without leave before the matter can be communicated to him, by being published in the orders of the unit to which he belongs or is attached; or
- (c) in such other manner as may be directed by the confirming officer or reviewing authority in exceptional cases.

[Subsidiary]

11. (1) The certificate required by section 75 (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. Form of certificates of arrest.
- (2) The certificate required by section 75 (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. For the purposes of section 138 (5) of the Act, the prescribed documents are those specified in the Third Schedule to these Regulations. Prescribed documents of record.
13. Without prejudice to any proceedings under any other section of the Act, the cause and extent of all damage or loss to which section 149 of the Act relates, and the time at which such damage or loss was occasioned, shall be investigated- Investigation of barrack damage.
- (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 will total two thousand shillings or more such investigation shall be by a board of inquiry convened as aforesaid.
14. The amount which a person may be required to contribute under subsection (1) of section 149 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: Contribution towards barrack damage.
- 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. (1) Subject to paragraph (2) of this regulation, an investigation for the purpose of section 148 (1) of the Act into the cause of any loss or damage to public property shall be by- Investigation into loss or damage of public property.
- (a) a board of inquiry convened under section 223 of the Act; or

[Subsidiary]

(b) an examination by the 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 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 so desires, for the consideration of the 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 was guilty of a wrongful act or negligence which occasioned such loss or damage as aforesaid, it shall not be necessary to give him an opportunity of making any such statement as aforesaid.

Deductions and forfeitures.

16. (1) The pay of an officer or serviceman 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 145 of the Act, the minimum monthly rate of pay which an officer or serviceman 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 gross salary have been made in respect of governmental imposts and the recovery of advances.

(3) Notwithstanding paragraph (2), when an officer or serviceman 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.

(4) Without prejudice to the power of remission of forfeitures and deductions by the Commander under section 150 of the Act, any deduction of pay imposed under section 148 of the Act may be remitted by any officer superior in command to the officer imposing the deduction.

Forfeiture of pay for absence from duty.

17. For the purposes of section 146 (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 being absent or in hospital, prevented from performing a service duty which thereby devolved on some other person.



[Subsidiary]

FIRST SCHEDULE

(r. 11 (1))

CERTIFICATE UNDER SECTION 75 (1) OF THE ARMED FORCES ACT

I certify that ..... (full name) whose service particulars are given below appeared before the ..... Magistrate’s Court in accordance with section 73 of the Act at .....on the ....., 19.... 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 serviceman referred to above

- No. ....
- Rank.....
- Name.....
- Unit.....

Dated this ..... day of ....., 19....

.....  
Magistrate

\*Delete as appropriate.

SECOND SCHEDULE

(r. 11 (2))

CERTIFICATE UNDER SECTION 75 (2) OF THE ARMED FORCES ACT

I certify that ..... (full name) surrendered himself at ..... (place) on the ..... day of ....., 19...., as being illegally absent from his unit at ..... (place) on the ..... day of ..... 19...., and gave the following particulars-

- No. ....
- Rank.....
- Name.....
- Unit.....

Dated this..... day of ....., 19.....

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

[Subsidiary]

## THIRD SCHEDULE

(r. 12)

1. Unit orders book.
2. Unit order book, 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 (servicemen).
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 or serviceman.
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.

[Subsidiary]

26. Runway controller's log book.
27. Authorization for movement of mechanical transport.
28. Mechanical transport vehicle log book.
29. Ship's log book.

[Subsidiary]

L.N. 252/1969.

**THE ARMED FORCES (ACTIVE SERVICE PUNISHMENT)  
REGULATIONS**

Citation. 1. These Regulations may be cited as the Armed Forces (Active Service Punishment) Regulations.

Interpretation. 2. In these Regulations-

“offender” means a person subject to the Act who has been awarded active service punishment by sentence of a court martial or by a commanding officer.

Places where punishment may be carried out. 3. An offender shall undergo active service punishment with the unit to which he belongs or to which he is for the time being attached:

Provided that where the officer commanding any body of servicemen or any command or other area (not being below the rank of lieutenant-colonel) 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.

Nature of punishment. 4. 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 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 Sundays or, if the offender is not of the Christian religion, any other day which is the equivalent of a Sunday in the religion to which the offender belongs;

(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 could not be subjected if he were undergoing a sentence of imprisonment in a service prison.

Personal restraint. 5. (1) An offender may not be placed under personal restraint except-

(a) to prevent his escape; or

[Subsidiary]

(b) to protect himself or others from injury.

(2) An offender may 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:

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-eighthours 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 his violence.

### THE ARMED FORCES (BOARD OF INQUIRY) REGULATIONS

L.N. 253/1969.

1. These Regulations may be cited as the Armed Forces (Board of Inquiry) Regulations. Citation.

2. In these Regulations, “represented” means represented by an officer or an advocate. Interpretation.

3. A Board of Inquiry may be convened for the purposes of section 223 of the Act by order of the Commander, any officer commanding a formation or body of servicemen or any officer commanding a unit or detachment of the armed forces, hereinafter referred to as the convening authority. Convening authority.

4. The following provisions shall apply in relation to the order convening a board- Order convening a board.

(a) the order shall specify the composition of the board and the place and time at which the board shall assemble;

(b) the order may, and where the matter referred to the board is that mentioned in regulation 7 (1) (a) shall, specify the terms of reference of the board and be published in service orders;

(c) the order may direct the board to express their opinion on any question arising out of any matter referred to the board; and

(d) the convening authority may at any time revoke, vary or suspend the order.

5. (1) A board convened to investigate any matter shall consist of not less than three persons subject to service law of whom one shall be of the rank of lieutenant or above or corresponding rank who shall be the chairman of the board. Constitution of board.

## [Subsidiary]

board and not more than one of whom may be a serviceman of the rank of Warrant Officer Class II or above or corresponding rank.

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

## Duties of board.

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

## Matters for reference to board.

7. (1) Subject to the provisions of these Regulations, a board shall be convened with reference to-

- (a) the absence of any person subject to the Act who has been continuously absent without leave for a period of not less than twenty-one days and the deficiency (if any) in public property issued to him for his use;
- (b) the capture of any person subject to the Act by the enemy and his conduct in captivity if, on his return from captivity, the convening authority considers that there are reasonable grounds for suspecting-
  - (i) that he was captured through disobedience to orders or wilful neglect of his duty; or
  - (ii) that having been captured he failed to take any reasonable steps available to him to rejoin the armed 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; and
- (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 as aforesaid, a board may be convened with reference to any matter which the convening authority decides to refer to a board.

## Deferring and staying of proceedings.

8. (1) Subject to paragraph (2) where any matter is the subject of investigation by any authority of the armed forces, or by a civil authority, or of proceedings under service law, or 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

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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 a board is not necessary.

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

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

9. A board shall assemble at the time and place stated in the order convening the board. Assembly of board.

10. The chairman shall lay the terms of reference before the board, and the board shall proceed to hear and record evidence in accordance with these Regulations. Procedure of board.

11. (1) The chairman 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. Adjournment and reassembly.

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

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

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

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

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

13. (1) Where it appears to the convening authority, or if a board has been convened either to the convening authority or to the chairman, 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 chairman 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 Persons who may be affected by finding.

[Subsidiary]

the convening authority or, as the case may be, the chairman, may specify.

(2) Any such 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 chairman.

Oaths.

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

Provided that, where a child of tender years called as a witness does not, in the opinion of the board, understand the nature of an oath, his evidence may be received though not given on oath if, in the opinion of the board, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) Subject to paragraph (3), an oath shall be administered to any person in attendance on a board as interpreter.

Infra.

(3) An oath shall be administered before a board in the form and manner prescribed by the Armed Forces Rules of Procedure.

Exhibits.

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

(2) When an original document or book is produced to a board by a witness, the board may, at the request of the witness, compare a copy of it or an extract therefrom of the relevant parts with the original, and after they have satisfied themselves that such copy or extract is correct and the chairman has certified thereon that the board have compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall-

(a) be marked with a number or letter and be signed by the chairman or have a label affixed to it bearing a number or letter and the signature of the chairman;

(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 chairman shall ensure that proper steps are taken for its safe custody.

Record of proceedings.

16. (1) The chairman 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.



[Subsidiary]

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

Provided that, if the board considers it necessary, any particular question and answer shall be taken down verbatim.

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

(4) A record of the proceedings shall be signed by the chairman and such other members of the board as there may be and forwarded to the convening authority.

17. Where a board reports that a person subject to the Act has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, and that there is a deficiency in any public property issued to him for his use, a record of the report of such deficiency shall, in addition to the record required by section 224 (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. Record of report.

SCHEDULE (r. 17)

Record of a report of a Board of Inquiry into the absence of .....  
.....  
.....  
[number, rank, name and unit]  
entered in pursuance of section 224 of the Armed Forces Act.

The Board of Inquiry sitting at ..... on the  
..... day of ....., 19....., and consisting of  
..... [rank, name and unit) chairman, and.....

.....[rank, name and unit] }  
.....[rank, name and unit] } members.

report that..... [number, rank, name and unit] has been absent from ..... [unit] at..... [place] without leave or other sufficient cause for a period beginning on the .....day of ....., 19....., and is still so absent, and further report\* that the said ..... [rank and name] was on the ..... day of ....., 19....., and still is deficient of the public property issued to him for his use particulars of which are set out below-

.....  
.....  
.....

\* Omit if no such further report is made.

[Subsidiary]

Dated this ..... day of ....., 19.....

*(Signed).....**Commanding Officer of the  
person referred to in the report*L.N. 254/1969,  
L.N. 145/1985,  
L.N. 553/1988.**THE ARMED FORCES (SUMMARY JURISDICTION)  
REGULATIONS**

Citation.

1. These Regulations may be cited as the Armed Forces (Summary Jurisdiction) Regulations.

Interpretation.

2. (1) In these Regulations-

“civilian employee” means a person who is subject to the Act by virtue of section 9 thereof;

“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;

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

(2) These Regulations do not apply in respect of members of the constabulary.

Commanding officer.

3. (1) For the purposes of these Regulations, 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 and who is directly responsible in disciplinary matters to an officer empowered to convene a court martial to try an officer or serviceman belonging or attached to that unit; or

(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; or

(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 paragraph (a) or paragraph (b), is by the custom of the service the officer entitled to exercise the powers

[Subsidiary]

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.

4. (1) Subject to regulation 10, a commanding officer may delegate to a subordinate commander of whatever rank who is under his command and directly responsible to him in disciplinary matters the power to investigate and deal summarily with charges with which he himself may so deal. Delegation.

(2) Notwithstanding the restrictions placed upon the powers of a subordinate commander by virtue of regulation 10, 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-

- (a) the power to remand the accused for trial by court martial; or
- (b) the power to order the making of an abstract of evidence.

(4) When a commanding officer delegates the power to investigate and deal summarily with charges under this regulation, 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 regulation 10.

5. A commanding officer shall not deal summarily with a charge under any of the following sections of the Act- Restriction on commanding officer dealing summarily with charges. L.N. 145/1985, L.N. 553/1988.

- (a) sections 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 28 (1) ;
- (b) section 31, unless the desertion alleged falls within the definition of that offence in subsection 2 (d);
- (c) sections 38 (a) and 39 (a), where the subject-matter exceeds in value one thousand shillings;
- (d) sections 38 (b) and 39 (b), 40, 43, 44, 45, 46, 47, 49 (1), 52, 53, 55, 56, 57, 60, 61, 62, 63, 64 and 65;
- (e) section 66, where the commanding officer may not deal summarily with the substantive offence;

## [Subsidiary]

(f) section 69, unless the corresponding civil offence is one of those specified in the Schedule to these Regulations.

Limitation on awarding stoppages.  
L.N. 553/1988.

6. A commanding officer shall not, without the permission of higher authority, award the punishment of stoppages exceeding one thousand shillings.

Limitation of powers of commanding officer of the rank of captain.  
L.N. 553/1988.

7. A commanding officer of the rank of captain or corresponding rank may only award the following punishments-

(a) to a warrant officer or non-commissioned officer-

- (i) a fine not exceeding the equivalent of half a month's pay;
- (ii) severe reprimand;
- (iii) reprimand;
- (iv) admonition;
- (v) stoppages up to a maximum of five hundred shillings;

(b) to a serviceman, other than a warrant officer or noncommissioned officer-

- (i) imprisonment for a period not exceeding forty-two days;
- (ii) a fine not exceeding the equivalent of half a month's pay;
- (iii) the minor punishments specified in regulation 13;
- (iv) admonition;
- (v) stoppages up to a maximum of two hundred shillings.

Limitation on powers of commanding officer not above lieutenant.  
L.N. 553/1988.

8. A commanding officer of the rank of lieutenant or corresponding rank, or below, may only award the following punishments-

(a) to a warrant officer or non-commissioned officer-

- (i) a fine not exceeding the equivalent of a quarter of a month's pay;
- (ii) severe reprimand;
- (iii) reprimand;
- (iv) admonition;
- (v) stoppages up to a maximum of three hundred shillings;

[Subsidiary]

(b) to a serviceman, other than a warrant officer or non-commissioned officer-

- (i) imprisonment for a period not exceeding twenty-one days;
- (ii) a fine not exceeding the equivalent of a quarter of a month's pay;
- (iii) the minor punishments specified in regulation 13;
- (iv) admonition;
- (v) stoppages up to a maximum of three hundred shillings.

9. Where the commanding officer is commanding officer by virtue of paragraph (b) of regulation 3- Commanding officer of detachment.

(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) where he has been so 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.

10. A subordinate commander to whom the power to investigate and deal summarily with charges has been delegated under regulation 4 may only award the following punishments- Limitation on powers of officer exercising delegated powers.

(a) if he is of the rank of major or corresponding rank or above-

(i) to a non-commissioned officer-

- (a) a fine not exceeding the equivalent of half a month's pay;
- (b) severe reprimand;
- (c) reprimand;
- (d) admonition;

(ii) to a serviceman, other than a warrant officer or non-commissioned officer-

- (a) imprisonment for a period not exceeding twenty-eight days;
- (b) a fine not exceeding the equivalent of half a month's pay;

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- (c) the minor punishments specified in regulation 13;
- (d) admonition;
- (b) if he is of the rank of captain or corresponding rank or below-
  - (i) to a senior sergeant or sergeant-
    - (a) reprimand;
    - (b) admonition;
  - (ii) to a corporal or lance corporal-
    - (a) a fine not exceeding the equivalent of a quarter of a month's pay;
    - (b) severe reprimand;
    - (c) reprimand;
    - (d) admonition;
  - (iii) to a private-
    - (a) imprisonment for a period not exceeding fourteen days;
    - (b) a fine not exceeding the equivalent of a quarter of a month's pay,
    - (c) the minor punishments specified in regulation 13;
    - (d) admonition.

Appropriate superior authority.  
L.N. 145/1985.

11. Any officer not below the rank of lieutenant-colonel or corresponding rank who is appointed appropriate superior authority by the Commander is hereby prescribed for the purposes of section 79 of the Act as the appropriate superior authority, in addition to the Commander:

Provided that an officer of the rank specified in the first column hereunder or corresponding rank 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 hereunder or corresponding rank-

lieutenant-colonel .. ... ..	captain
colonel .. ... ..	major
brigadier .. ... ..	lieutenant-colonel
major-general .. ... ..	colonel

[Subsidiary]

lieutenant-general .. ... .. brigadier

general .. ... .. major-general.

12. The appropriate superior authority shall not deal summarily with a charge against an officer under any of the following sections of the Act-

Limitation on powers of appropriate superior authority. L.N. 145/1985, L.N. 553/1988.

- (a) sections 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 28 (1);
- (b) sections 38 (a) and 39 (a) where the subject-matter exceeds in value two thousand shillings;
- (c) sections 38 (b) and 39 (b), 40, 43, 44, 45, 46, 47, 49 (1), 52, 53, 55, 56, 57, 60, 61, 62, 63, 64 and 65;
- (d) section 66, where the appropriate superior authority may not deal summarily with the substantive offence;
- (e) section 69, unless the corresponding civil offence is one of those specified in the Schedule to these Regulations.

13. (1) The minor punishments which a commanding officer may award under section 82 (4)(a) (vii) and (b) (iv) of the Act are-

Award of minor punishments. L.N. 553/1988.

- (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;
- (c) extra guards or picquets,

except 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;
- (c) extra guards or picquets,

except 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 regulation are the maximum periods which may be awarded in the course of any one hearing.

[Subsidiary]

## SCHEDULE

(rr. 5 and 12)

CIVIL OFFENCES WHICH A COMMANDING OFFICER OR APPROPRIATE  
SUPERIOR AUTHORITY MAY DEAL WITH SUMMARILY

- Cap. 63. 1. Theft, contrary to section 275 of the Penal Code, where the value of the thing stolen does not exceed two hundred shillings.
2. Common assault, contrary to section 250 of the Penal Code.
- Cap. 403. 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.

**THE ARMED FORCES (COMMISSIONING OF OFFICERS)  
REGULATIONS**

L.N. 256/1969.

1. These Regulations may be cited as the Armed Forces (Commissioning of Officers) Regulations.
2. (1) There is hereby established a board, to be known as the Armed Forces Commissions Board and hereinafter referred to as the Board.
- (2) The function of the Board shall be to make recommendations to the Defence Council pursuant to the provisions of section 169 of the Armed Forces Act in relation to each service of the armed forces as 'to the grant of commissions in that service to citizens of Kenya.
3. The Board shall consist of-
- (a) the Chief of General Staff, or a person deputed by him in writing for the purposes of these Regulations, who shall be chairman;
- (b) two officers of or above the rank of captain or corresponding rank;
- (c) the Permanent Secretary in the Office of the President, or a person deputed by him in writing for the purposes of these Regulations;
- (d) the Permanent Secretary of the Ministry for the time being



[Subsidiary]

responsible for defence, or a person deputed by him in writing for the purposes of these Regulations; and

(e) the Permanent 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.

(4) The Board shall meet at such times as the chairman of the Board may decide.

(2) The chairman and not less than three members shall constitute a quorum.

(3) The chairman shall have a deliberative vote, and in the case of an equality of votes shall also have a casting vote; a decision of the majority of members present and voting at the meeting shall be the decision of the Board.

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

(5) Subject to the provisions of these Regulations the Board may regulate its own proceedings.

(6) The chairman may co-opt to serve on the Board for such length of time as he thinks fit any person or persons whose assistance or advice he may require, but a person so co-opted shall not be entitled to vote at any meeting of the Board or be counted as a member for the purposes of forming a quorum.

(7) The chairman may appoint a secretary to the Board.

#### **THE ARMED FORCES (EXECUTION OF SENTENCE OF DEATH) REGULATIONS**

L.N. 64/1970.

1. These Regulations may be cited as the Armed Forces (Execution of Sentence of Death) Regulations.

Citation.

2. In these Regulations-

Interpretation.

“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;

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

3. (1) a person under sentence shall be detained in accordance with this regulation.

Custody of person under sentence.

(2) During the whole or any part of the period between the passing and

[Subsidiary]

the carrying out of the sentence, a person under such sentence may be detained in-

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

(3) The manner in which a person under sentence who is in the civil or military 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 is entitled to be present for the purposes of Part IX 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-

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

(4) No person under sentence who is in military custody shall 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.

Treatment of persons  
under sentence.

4. Where a person under sentence is in military custody-

- (a) he shall be deprived of every article which it might be dangerous or inexpedient to leave in his possession;
- (b) he shall be confined in a separate cell and kept apart from all other persons;
- (c) he shall be kept by day and by night in the constant charge of two persons who are officers, warrant officers or non-commissioned officers;

Infra.

- (d) he shall be subject to the Armed Forces(Imprisonment) Regulations so far as they are consistent with these Regulations;
- (e) he shall not be required to perform any duties other than to keep clean his person and cell;
- (f) he shall be allowed daily physical exercise;
- (g) he shall be granted facilities to correspond with his relatives, friends and legal advisors;
- (h) he shall be permitted to smoke;
- (i) he shall be visited once daily by an officer of the unit in which he is

[Subsidiary]

in custody and once daily by the medical officer of such unit;

- (j) he may be visited at any time by any person authorized to visit him by written order of the local commander;
- (k) he may be visited by such of his relatives, friends and legal advisers as he desires to see and as are authorized to visit him by written order of the local commander;
- (l) he 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;
- (m) except as hereinbefore provided, he shall not be visited by any person;
- (n) all visits 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. Notwithstanding regulations 3, 6 and 9, no person under sentence shall 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 commissioner of prisons or the deputy commissioner of prisons. Transfer to civil prison.

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

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

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

(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 military 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 armed 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;

## [Subsidiary]

- (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) the officer in command of the unit in which the person under sentence is in custody,

and no other person shall be present without the authority of the local commander.

Execution in civil  
custody.  
Cap. 90.

8. A sentence of death passed under the Act which is carried out in a civil prison shall be executed in accordance with the Prisons Act.

Death warrant.

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

(2) The local commander shall not issue the death warrant until he is satisfied that, having regard to section 111 and section 124 (A) of the Act, the sentence of the death may be carried into effect.

(3) No sentence of death passed under the Act shall be carried into effect until the death warrant has been received by the military officer nominated under regulation 7 (2) or by the superintendent of the prison where the sentence is to be carried out.

Death certificate and  
return of warrant  
after execution in  
military custody.

10. (1) As soon as practicable after a sentence of death has been carried out in military 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 local commander.

Burial after execution  
in military custody.

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

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 ....., 19.....
was sentenced to suffer death, which sentence has been duly confirmed
in accordance with the Armed Forces Act, and has not been commuted:

\* Delete if inapplicable.

Now, therefore, in pursuance of the Armed 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....., 19 .....
..... (d)

Rank and appointment.....

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

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 Armed Forces (Execution of Sentence of Death) Regulations.

(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 Armed 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 local commander of the person under sentence.

[Subsidiary]

SECOND SCHEDULE

(r. 9 (11))

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 ..... 19....., was sentenced to suffer death:

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

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

\* Delete execution to be carried out in civil prison.

Now, therefore, I hereby order you to carry into effect the said sentence on.....(b) by.....(d) 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 (e).

Signed at..... this ..... day of ....., 19.....

Rank .....

Commanding ..... Local Commander.

RETURN OF WARRANT (e)

The above sentence passed on ..... (b) was carried into effect at ..... (f) on the .....day of ....., 19 ....., at..... hours.

[Subsidiary]

..... (g)  
..... (h)

- (a) Military officer or superintendent of civil prison 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 Armed 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 military 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 Armed Forces (Execution of Sentence of Death) Regulations.

**THIRD SCHEDULE**

(r. 10 (1))

CERTIFICATE OF MEDICAL OFFICER (a)

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

Dated this ..... day of ..... 19.....

.....

Rank.....

- (a) Only required if sentence carried out in military 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

[Subsidiary]

been carried out into effect, and his number, rank and unit.

(d) Insert the place where the sentence of death was carried into effect.

L.N. 14/1971.

**THE ARMED FORCES (IMPRISONMENT) REGULATIONS**

Citation.

1. These Regulations may be cited as the Armed Forces (Imprisonment) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires -  
“legal adviser” means -

(a) an advocate; or

(b) 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;

(c) any clerk in the full-time service of an advocate or such a person, and authorized in writing by the advocate or person to interview a prisoner;

(d) any officer representing or assisting a prisoner for the purposes of his defence or in connexion with his petition or 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;

“service prison” means-

(a) any premises set aside by one of the Commanders 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.

Service of sentences.

3. (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



[Subsidiary]

person under such sentence belongs or if such unit has no such prison, in a service prison established by some other unit; or

(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. (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. Committal.

(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 the First or Second 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. 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- Release from custody.

(a) in accordance with an order of a court of competent jurisdiction; or

(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. (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- Temporary release from service prison.

(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;

## [Subsidiary]

- (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;
- (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) A temporary release under this regulation shall be subject to the following-

- (a) that the prisoner shall comply with any conditions laid down by the commanding officer and to be observed by, or in relation to, the prisoner during the period of his 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.

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

Period of remission in service prison.

7. (1) The periods of remission which can be earned by good conduct by a prisoner shall be-

- (a) if the sentence does not exceed thirty-one days, nil;
- (b) if the sentence exceeds thirty-one days, one-third of the sentence except in a case where this would result in the said person serving less than thirty-one days, in which case the period of remission shall be such period as will reduce the sentence which he is required to serve to thirty-one days.

(2) For the purpose of calculating remission in accordance with paragraph (1), fractions of a day shall be ignored.

(3) A prisoner due to be released on a Sunday, Christmas Day or Good Friday shall be released on the previous day and the uncompleted day shall be deemed to be remitted.

Records of remission.

8. (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.

[Subsidiary]

(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. 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-

Forfeiture of remission.

(a) his sickness occasioned by his own misconduct; or

(b) his undergoing a sentence of a civil court; or

(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. 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.

Effect on remission of subsequent sentences of imprisonment.

11. Corporal punishment shall not be inflicted on prisoners.

Corporal punishment.

12. 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.

Use of force.

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

Requirements of service prisons.

(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) Two prisoners shall not be confined together in one room, the confinement must be solitary or of at least three prisoners in the room.

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

14. (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.

Work.

## [Subsidiary]

(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; or
- (b) undergoing restricted diets as a punishment; or
- (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.

## Days of rest.

15. Sunday shall be a day of rest and no prisoner shall be engaged on work or training except work which is necessary for the cleaning of the service prison:

Provided that a prisoner may be required to carry out any type of work or training on a Sunday if, in the opinion of the officer in charge, it is in the interests of the service for him so to do.

## Work in association.

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

- (a) not in the interest of such prisoner;
- (b) 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.

## No work for private benefit.

17. 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.

## Rations.

18. (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 as a punishment.

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

## Tobacco.

19. A prisoner shall not be permitted to smoke nor to retain in his possession any tobacco, cigarettes, matches or lighter, or any naked light for

[Subsidiary]

the purpose of lighting tobacco or cigarettes.

20. (1) A prisoner shall be allowed to write letters as follows-

Correspondence.

(a) on first admission, one letter; and

(b) in every week of his sentence following the week in which he 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 writing materials during the hours permitted by the officer in charge for leisure.

(3) A prisoner may receive-

(a) any number of letters;

(b) books, newspapers, journals and periodicals at the discretion of the officer in charge.

21. (1) A parcel addressed to a prisoner shall be opened and examined by an officer in the presence of the prisoner and any 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: Parcels.

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) A prisoner may with the consent and at the discretion of the officer in charge receive toilet requirements and other articles.

22. (1) The officer in charge or any officer deputed by him may scrutinize letters written by or addressed to a prisoner. Censorship.

(2) The officer in charge may withhold from a prisoner the whole or any part of a letter addressed to him, but he shall communicate to him any part of the letter which is unobjectionable.

(3) The officer in charge may withhold a letter written by a prisoner, but in such case he shall give the prisoner an opportunity of writing in its place another letter which does not contain the material to which the officer in charge objects.

(4) If any letter 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.

(5) In any case where the officer in charge withholds a letter written by or addressed to a prisoner he shall record the fact and his reasons for so acting.

**[Subsidiary]**

Visits.

23. (1) A prisoner may receive visits from his relatives and friends at the discretion 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.

Visit by legal advisers.

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

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

Medical examination.

25. The officer in charge shall ensure that every prisoner who is-

- (a) in close confinement; or
- (b) subject to any form of mechanical restraint; or
- (c) undergoing restricted diet as a punishment; 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.

Appeals.

26. The manner 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 IX 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:

Provided that he shall not be kept in a civil prison or in a police station for periods exceeding seven days at any one time.

Rights as to appeal to be notified.

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

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

[Subsidiary]

instructions in connexion with the petition or appeal.

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

28. (1) On admission to a service prison, a prisoner shall be searched in accordance with regulation 29. Searching persons under sentence.

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

29. The following conditions shall be observed in relation to the search of a prisoner- Condition of search.

(a) every search shall take place in the presence of at least two members of the staff;

(b) no other prisoner shall be present at the search.

30. The officer in charge of the service prison from which a prisoner escapes shall be the prescribed authority for the purposes of the proviso to subsection (1) of section 132 of the Act. Duration of sentence on persons who escape.

31. If a prisoner dies the officer in charge shall- Deaths.

(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 Armed Forces (Board of Inquiry) Regulations. Supra.

32. A prisoner shall be guilty of an offence if he- Offence against discipline.

(a) treats with disrespect any member of the staff of a service prison, any visitor thereto, or any person employed therein;

(b) is idle, 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;

## [Subsidiary]

- (h) commits any nuisance;
- (i) has in his room or possession any unauthorized articles, or attempts to obtain such articles;
- (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.

Procedure for dealing with offences.

33. 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 82 of the Act.

Punishment which may be awarded by an officer in charge.

34. (1) An officer in charge may award any of the punishments set out in paragraph (2) 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) restricted diet for a period not exceeding three consecutive days in any one period;
- (c) forfeiture of remission of sentence for a period not exceeding eleven days;
- (d) deprivation of library books and periodicals;
- (e) admonishment;
- (f) extra military instruction not exceeding three periods of forty-five minutes each.

Restricted diet.

35. (1) Restricted diet shall consist of one-half ration per day with unrestricted water.

(2) On the days on which a prisoner is undergoing restricted diet he shall not attend parades, nor shall he be required to undertake any task of labour, but he may be required to carry out light work in his room.



[Subsidiary]

(3) A prisoner who is undergoing restricted diet shall not be required to undergo any further period on such diet in respect of any other offence until an interval has elapsed equal to the period of restricted diet already undergone.

(4) Every prisoner undergoing restricted diet shall be visited every day by the commanding officer in charge, or by an officer appointed by the officer in charge, and by a medical officer.

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

(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, and by a medical officer, and in addition at least once every three hours by a member of the staff.

37. (1) In this regulation-

Mechanical restraint.

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

“restraint order” means an order issued under paragraph (4).

(2) Save as provided by regulation 39, no prisoner shall 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.

(3) 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.

(4) 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.

(5) A restraint order shall-

- (a) specify the date and hour when the handcuffs are to be applied;
- (b) specify the period, not exceeding forty-eight hours, during which the prisoner is to remain in handcuffs;
- (c) state whether the handcuffs are to be applied with the hands of the

[Subsidiary]

prisoner placed to the front or to the rear of the body.

(6) 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.

(7) 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.

(8) 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.

Canvas suit.

38. (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.

Religious books and chaplains.

39. (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.

Visit by chaplain.

40. (1) A chaplain 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 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 minister shall officiate at the burial of a prisoner who dies while under sentence.

[Subsidiary]

41. 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.	Attendance at divine service.
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42. An officer in charge shall provide educational training for prisoners whenever practicable.	Educational training.
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43. No person shall without the authority of the officer in charge 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.	Prohibition of liquor, tobacco.
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44. 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.	Communication with prisoners.
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45. (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.	Unauthorized person entry of service prison.
---	--

(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).

46. Any person who, not being a person subject to the Act, contravenes any of the provisions of regulation 43, 44 or 45 shall be guilty of an offence and liable to a fine not exceeding three thousand shillings, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.	Penalty.
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**FIRST SCHEDULE** (r. 4 (2))

ORDER FOR THE COMMITTAL OF A MEMBER OF THE ARMED 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 .....,19.....,  
awarded imprisonment for a period of .....days, by his  
commanding officer for the offence(s) of .....

[Subsidiary]

.....  
.....(b).

Now, therefore, in pursuance of the Armed 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 ....., 19.....

(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 Armed 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.

**SECOND SCHEDULE**

(r. 4 (2))

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

To the Officer in Charge of ..... (a).  
Whereas No. .... Rank.....  
was convicted by a Court Martial held at .....  
of the offence(s) of .....

..... (b)  
and, by a sentence passed on the .....  
day of ....., 19...., sentenced to imprisonment for a  
term of ..... (c)  
commencing on the said day, which sentence has been duly confirmed  
in accordance with the provisions of the Armed Forces Act.  
..... (d).

Now, therefore, in pursuance of the Armed 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 ....., 19.....

(Signature) ..... (c).

Rank and appointment .....

[Subsidiary]

- (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 Armed Forces Act. Where there is more than one offence the statement of each must be set out.
- (c) Where the original sentence was death and has been commuted to imprisonment, for the words in brackets substitute the words "suffer death which sentence has duly been confirmed in accordance with the provisions of the Armed Forces Act but has been commuted into imprisonment for a term of.....".
- (d) If any part of the sentence has been remitted on confirmation insert "with a remission of ....."
- (e) The committal form must be signed by the commanding officer for the time being of the person concerned.

**THIRD SCHEDULE**

(r. 5)

**ORDER FOR THE RELEASE OF A PERSON UNDERGOING SENTENCE OF IMPRISONMENT UNDER THE ARMED FORCES ACT**

To the Officer in Charge of ..... (a).  
 Where No. .... Rank ..... (b).  
 Name ..... of the ..... (b).  
 Unit is now in your custody undergoing a sentence of imprisonment awarded by his commanding officer  
 \_\_\_\_\_ (b).  
 passed by court martial

Now, therefore, in pursuance of the powers conferred by Part VIII of the Armed Forces Act, I do hereby order you to release the said person from custody.

Signed at ..... this ..... day of ....., 19.....

(Signature) .....

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 or reconsidering authority. 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.

[Subsidiary]

**Rules under section 228****THE ARMED FORCES RULES OF PROCEDURE**L.N. 249/1969,  
L.N. 305/ 1986.*Arrangement of Rules*

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PRELIMINARY

1. These Rules may be cited as the Armed Forces Rules of Procedure. Citation.

2. In these Rules- Definition.

“convening a fresh court” includes dissolving the existing court;

“member”, in relation to a court martial, does not include the presiding officer;

“sexual offence” means an offence under section 69 of the Act where the corresponding civil offence is an offence under Chapter XV of the Penal Code, or an attempt to commit such an offence, and shall include any offence of an indecent or unnatural kind under section 64 of the Act, or any attempt to commit such offence under section 66 of the Act, or an offence of an indecent kind under section 68 of the Act; Cap. 63.

“special finding”, in relation to-

(a) section 96 of the Act, means a finding which a court martial may make in accordance with that section;

(b) section 101 of the Act, means a finding in accordance with subsection (1) of that section that the accused is guilty of the act or omission charged but was insane when he did the act or made the omission;

(c) rule 64 (3), means a finding that the accused is guilty of the charge subject to the exception or variation specified in the findings.

ARREST AND AVOIDANCE OF DELAY

3. When a person is detained by service authority in arrest his commanding officer shall, unless it is impracticable, within forty-eight hours of becoming aware that he is so detained have such person brought before him, inform him of the charge against him and begin to investigate it. Avoidance of delay by a commanding officer in investigating charges.

4. Every case of a person being detained by service authority in arrest beyond the period of forty-eight hours referred to in rule 3 without such investigation having begun and the reason therefor shall be reported by his commanding officer to higher authority. Report to higher authority where no investigation commenced within forty-eight hours of arrest.

5. The report required by section 72 (2) of the Act with regard to the necessity for further delay 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 officer who would be responsible for convening a court martial for the trial of the accused. Eight-day delay report.

**[Subsidiary]**

Arrest not to exceed 72 days without permission from higher authority.

6. An accused shall not be held in arrest for more than seventy-two consecutive days without a court martial being convened for his trial, unless the officer who would be responsible for convening the court martial directs in writing that he shall not be released from arrest; and when giving such a direction the officer shall state his reasons for giving it.

#### INVESTIGATION OF CHARGES BY COMMANDING OFFICER

Methods of investigating charge.

7. (1) Subject to paragraphs (2) and (3), when a commanding officer investigates a charge, he shall first read and, if necessary, explain the charge to the accused and shall then—

- (a) hear the evidence himself in accordance with rule 8; or
- (b) cause the evidence to be reduced to writing in the form of an abstract of evidence made in accordance with rule 9, and read and consider it:

Provided that—

- (i) notwithstanding that he has heard all or part of the evidence himself, he may cause the evidence to be reduced to writing;
- (ii) after the evidence has been reduced to writing and he has considered it, he may himself hear evidence in accordance with rule 8; and
- (iii) before he submits to higher authority a charge against an officer or against a civilian to whom Parts IV to X of the Act apply by virtue of section 9 of the Act, or remands a serviceman for trial by court martial, he shall cause the evidence to be reduced to writing.

(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 new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigation of the original charge may be treated, for the purposes of these Rules, as the investigation of the added or substituted charge.

(3) Where a civilian to whom Parts IV to X of the Act apply by virtue of section 9 of the Act is charged with an offence with which an appropriate superior authority can deal summarily, it shall not be necessary for his commanding officer to read the charge to the accused; but it shall be a sufficient compliance with this rule if his commanding officer causes to be delivered to the accused a copy of the charge-sheet and of the abstract of evidence and considers them together with any statement made by the accused under rule 9 (3).

Hearing of evidence by commanding officer.

8. When a commanding officer investigates a charge by hearing the evidence himself—

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(a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer shall read to be accused a written statement made by the witness:

provided that a written statement of a prosecution witness shall not be used if the accused requires that the witness shall give his evidence orally;

(b) the accused shall be allowed to cross-examine any prosecution witness;

(c) the accused may, on his own behalf, give evidence on oath or may make a statement without being sworn;

(d) the accused may call witnesses in his defence, who shall give their evidence orally and in his presence;

(e) the evidence shall not be given on oath unless the commanding officer so directs or the accused so demands;

(f) if the evidence is given on oath the commanding officer shall, subject to the accused's right to make a statement without being sworn, administer the oath to each witness and to any interpreter in accordance with rule 33;

(g) when a commanding officer awards the punishment of forfeiture of seniority of rank that award shall be in the appropriate form set out in the Fifth Schedule.

9. (1) An abstract of evidence shall be in Form II in the First Schedule and shall be made in the following way— Abstract of evidence.

(a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;

(b) the accused shall not be present while the abstract of evidence is being made;

(c) it shall consist of 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 précis of the evidence to be given by that witness may be included instead of a signed statement;

(d) 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 and he shall then be cautioned in the following terms—

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“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 he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it.

(4) The accused’s statement, and a certificate in Form III set out in the First 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.

Investigation before summary dealing by commanding officer.

10. Before a commanding officer deals summarily with a charge after the evidence has been reduced to writing-

- (a) any prosecution witness who has not given his evidence orally shall do so if the accused requires it; and
- (b) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

Dismissal of charge by commanding officer.

11. (1) A commanding officer may dismiss a charge at any time during his investigation 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 may refer the charge to higher authority in accordance with the rule 12.

(3) After a commanding officer has referred a charge to higher authority in accordance with rule 12 he shall not dismiss it unless it has been referred back to him with a direction that it shall be dismissed in accordance with section 81 (3) or section 82 (2) (b) of the Act.

Reference of charge to higher authority.

12. When a commanding officer submits to higher authority a charge against an officer, or against a civilian to whom Parts IV to X of the Act apply by virtue of section 9 of the Act, or has remanded a serviceman for trial by court martial, he shall send to higher authority-

- (a) a copy of the charge-sheet on which the accused is held;
- (b) a draft charge-sheet containing the charges upon which the commanding officer considers that the accused should be dealt with summarily or tried by court martial;
- (c) the abstract of evidence;
- (d) a statement of the character and service record of the accused; and

- (e) a recommendation as to how the charge should be proceeded with.

#### PREPARATION OF CHARGE-SHEETS AND FRAMING OF CHARGES

13. (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: Charge-sheets.

Provided that charges under paragraph (a) of section 31 (1), paragraph (a) of section 32, paragraphs (a) and (b) of section 42 (where the charge is connected with a charge under either of the before-mentioned paragraphs) or section 51 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.

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

(3) The commencement of each charge-sheet shall be in the appropriate paragraph of Form I 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.

14. (1) Each charge shall state one offence only. Charges.

(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 III 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 will enable the accused to know every act, neglect or omission which it is intended to prove against him as constituting the offence;

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(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.

Joint charges.

15. (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 13 (1) in the same charge-sheet as the other charges against him.

Construction of charge-sheets and charges.

16. In the construction of a charge-sheet or charge there shall be presumed in favour of supporting it every proposition which may reasonably be presumed to be impliedly included, though not expressed therein, and the statement of the offence and the particulars of the offence shall be read and construed together.

#### ACTION BY HIGHER AUTHORITY ON RECEIPT OF CHARGE

Action by higher authority on receipt of charge.

17. When a higher authority receives a charge against an accused he shall, if he does not refer it back to the commanding officer or deal summarily with it himself or himself convene a court martial to try the accused, refer the charge either to an appropriate superior authority in order that that authority may deal summarily with it or to the officer who would be responsible for convening the appropriate court martial to try the accused, and shall, when he so refers the charge, send to the appropriate superior authority or other officer concerned the documents mentioned in rule 12 together with his own recommendation as to how the case should be proceeded with.

#### INVESTIGATION OF, AND SUMMARY DEALING WITH, CHARGES BY AN APPROPRIATE SUPERIOR AUTHORITY

Documents to be given to officers, servicemen and civilians dealt with summarily.

18. An appropriate superior authority shall ensure before investigating and dealing summarily with a charge that the accused is given, not less than twenty-four hours before the charge is so investigated and dealt with, a copy of the charge-sheet containing the charge upon which he will be so dealt with and a copy of the abstract of evidence.

Investigations of and summary dealing

19. When an appropriate superior authority investigates and deals summarily with a charge-



[Subsidiary]

with charges against officers, servicemen and civilians.

- (a) he shall first read the charge to the accused;
- (b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing, but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them;
- (c) if the witnesses against the accused do not give their evidence orally the appropriate superior authority shall read the abstract of evidence to the accused if he so requires;
- (d) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;
- (e) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;
- (f) each witness who gives evidence shall give it on oath and the oath shall be administered by the appropriate superior authority to each witness and to any interpreter in accordance with rule 33;
- (g) when an appropriate superior authority awards the punishment of forfeiture of seniority of rank that award shall be in the appropriate form set out in the Fifth Schedule;
- (h) a record shall be made of the proceedings in accordance with the form set out in the Third Schedule.

20. An appropriate superior authority shall, if an accused elects to be tried by court martial or the appropriate superior authority in the course of investigating, or whilst dealing summarily with, a charge determines that it is desirable that the charge should be tried by court martial, either himself convene the court martial or refer the charge to higher authority in accordance with rule 17.

Alternative courses open to appropriate superior authority.

#### CONVENING OF COURTS MARTIAL

21. When an officer convenes a court martial he shall-

- (a) issue a convening order in Form I in the Fourth Schedule;
- (b) 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 who has investigated them;
- (c) if he is of the opinion that charges should be put in separate charge-sheets, so direct and direct the order in which they are to be tried;
- (d) direct, if there is more than one accused, whether the accused are

Duties of convening officer when convening court martial.

[Subsidiary]

to be tried separately or jointly;

- (e) appoint the presiding officer and members of the court and any waiting members in accordance with rule 22;
- (f) take the necessary steps to procure the appointment of a judge advocate;
- (g) appoint an officer or counsel assisted by an officer to prosecute or detail a commanding officer to appoint an officer to prosecute:

Provided that the convening officer may appoint two such officers to prosecute if he thinks fit;

- (h) appoint the date, time and place for the trial;
- (i) send to the presiding officer the charge-sheet, the convening order and, if he considers it necessary or desirable, a copy of the abstract of evidence from which any evidence which in his opinion would be inadmissible under the Act at the court martial has been expurgated;
- (j) send to each member of the court and to each waiting member a copy of the charge-sheet;
- (k) send to the prosecutor copies of the charge-sheet and convening order together with the original abstract of evidence and, where an expurgated copy thereof has been sent to the presiding officer, an unexpurgated copy thereof showing the passages which have been expurgated in that copy;
- (l) send to the judge advocate copies of the charge-sheet and convening order and an unexpurgated copy of the abstract of evidence showing, where an expurgated copy has been sent to the presiding officer, the passages which have been expurgated in that copy;
- (m) ensure that the accused is given a proper opportunity to prepare his defence in accordance with rule 24; and
- (n) take steps in accordance with rule 89 to procure the attendance at the court martial of all witnesses to be called for the prosecution and all witnesses whose attendance the accused has reasonably requested in accordance with rule 24:

Provided that the convening officer may require the accused to defray or to undertake to defray, as the convening officer thinks fit, the cost of the attendance of a witness whose attendance he has requested and if the accused refuses to defray or to undertake to defray, as the case may be, such cost, the convening officer shall not be obliged to take any further steps to procure the attendance of that witness.

Appointment of

22. The convening officer shall-

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- (a) appoint the presiding officer of a court martial by name;
- (b) appoint the members of a court martial by name; and
- (c) appoint such waiting members as he thinks expedient by name.

presiding officer and members.

23. (1) Subject to rule 79, any officer subject to the Act may, by direction of the convening officer or at the discretion of the presiding officer, remain with a court martial throughout the proceeding as an officer under instruction.

Officers under instruction.

(2) An officer under instruction, although allowed to be present in closed court, shall take no part in any of the deliberations or decisions of the court.

24. (1) An accused who has been remanded for trial by court martial may be represented by counsel and shall be afforded a proper opportunity for preparing his defence and allowed proper communication with his defending officer or counsel and with his witnesses.

Preparation of defence.

(2) A defending officer or counsel shall be appointed by the commanding officer to defend an accused who has been remanded for trial by court martial, unless the accused states in writing that he does not wish such an appointment to be made.

(3) If the prosecution is to be undertaken by a legally qualified officer or by counsel the accused shall be notified of this fact in sufficient time to enable him, if he so desires and it is practicable, to make arrangements for a legally qualified officer or counsel to defend him.

(4) As soon as practicable after an accused has been remanded for trial by court martial, and in any case not less than twenty-four hours before his trial, he shall be given-

- (a) a copy of the charge-sheet;
- (b) an unexpurgated copy of the abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the presiding officer;
- (c) notice of any additional evidence which the prosecution intends to adduce; and
- (d) a list of the ranks, names and units of the presiding officer and members who are to form the court and of any waiting members.

(5) When an accused is given a copy of the charge-sheet and of the abstract of evidence in accordance with this rule he shall-

- (a) if necessary, have the charge explained to him; and
- (b) be informed that, upon his making a written request to his commanding officer not less than twenty-four hours before his

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trial requiring the attendance at his trial of any witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken at the possible expense of the accused in accordance with these Rules to procure the attendance of any such witness at his trial.

(6) When an accused is served with a copy of a statutory declaration which the prosecution proposes to hand to the court in accordance with section 93 (2) of the Act and rule 56 of these Rules, he shall be informed of his right under that section to require that oral evidence shall be given in lieu of such statutory declaration.

(7) When it is intended to try two or more accused jointly notice of this fact shall be given to each such accused when he is given a copy of the charge-sheet.

(8) An accused may, before trial, by written notice to the convening officer claim to be tried separately on the ground that he would be prejudiced in his defence if he were not tried separately; and in such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused who has so claimed shall be tried separately.

(9) When a charge-sheet contains more than one charge the accused may, before trial, by written notice to the convening officer claim to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge, and in such case the convening officer shall, if he is of the opinion that the interests of justice so require, direct that the accused shall be tried separately on that charge.

#### ASSEMBLY AND SWEARING OF COURT

Preliminary matters to be considered by court and beginning of trial.

25. (1) Upon a court martial assembling the court shall, before beginning the trial, satisfy themselves in closed court—

- (a) that the court has been convened in accordance with the Act and these Rules;
- (b) that the court consists of not less than the legal minimum of officers;
- (c) that the presiding officer and members are of the required rank and length of service;
- (d) that the presiding officer and members have been duly appointed and are not disqualified under the Act;
- (e) that the judge advocate has been duly appointed;
- (f) that the accused appears from the charge-sheet to be subject to service law or otherwise liable to trial by court martial and to be subject to the jurisdiction of the court; and

[Subsidiary]

(g) that each charge is on its face correct in law and framed in accordance with these Rules.

(2) Where a vacancy occurs through a member of the court being disqualified under the Act or being absent when the court assembles the presiding officer may appoint a duly qualified waiting member to fill that vacancy.

(3) The presiding officer may, if the interests of justice so require, substitute a duly qualified waiting member for a member appointed by the convening officer.

(4) If the court is not satisfied on any of the matters mentioned in paragraph (1), and is not competent to rectify the matter itself under the Act or these Rules, it shall, before commencing the trial, report to the convening officer thereon.

(5) When the court has complied with this rule and is ready to proceed with the trial the presiding officer shall open the court and the trial shall begin.

26. (1) The order convening the court and the names of the officers appointed to try the accused shall be read in the hearing of the accused, who shall be given an opportunity to object to any of those officers in accordance with section 90 of the Act. Objections to court.

(2) When a court is convened to try more than one accused, whether separately or jointly, each accused shall be given an opportunity to object to any officer on the court in accordance with the preceding paragraph and shall be asked separately whether he has any such objection.

(3) An accused shall state the names of all the officers to whom he objects before any objection is disposed of.

(4) If more than one officer is objected to the objection to each officer shall be disposed of separately and the objection to the lowest in rank shall be disposed of first, except where the presiding officer is objected to, in which case the objection to him shall be disposed of before the objection to any other officer.

(5) An accused may make a statement and call any person to make a statement in support of his objection.

(6) An officer to whom the accused has objected may state in open court anything relevant to the accused's objection whether in support or in rebuttal thereof.

(7) An objection to an officer shall be considered in closed court by all the other officers on the court including any officer who has been appointed by the presiding officer in accordance with paragraph (9) in place of an officer who has retired.

**[Subsidiary]**

(8) When an objection to an officer is allowed that officer shall forthwith retire and take no further part in the proceedings.

(9) When an officer objected to (other than the presiding officer) retires and there is a duly qualified waiting member in attendance the presiding officer shall immediately appoint him to take the place of the officer who has retired.

(10) The court shall satisfy themselves that a waiting member who takes the place of a member of the court is of the required rank and not disqualified under the Act and shall give the accused an opportunity to object to him and shall deal with any such objection in accordance with this rule.

(11) If an objection to the presiding officer is allowed the court shall report to the convening officer without proceeding further with the trial.

(12) If as a result of the allowance of an objection to a member there are insufficient officers available to form a court in compliance with the Act, the court shall report to the convening officer without proceeding further with the trial, and the convening officer may either appoint an officer as a member to fill the vacancy or convene a fresh court to try the accused.

## Swearing of court.

27. (1) Immediately after rule 26 has been complied with an oath shall be administered to the presiding officer and each member of the court in accordance with rule 33 and in the presence of the accused.

(2) The oath shall be administered by the judge advocate to the presiding officer first and afterwards to each member of the court.

(3) A court may be sworn at one time to try any number of accused then present before it, whether they are to be tried jointly or separately.

(4) When a court is convened to try two or more accused separately and one accused objects to the presiding officer or to any member of the court, the court may, if they think fit, proceed to determine that objection in accordance with the rule 26 or postpone the trial of that accused and swear the court for the trial of the other accused only.

## Swearing of judge advocate.

28. After the court has been sworn an oath shall be administered to the judge advocate in accordance with rule 33 and in the presence of the accused.

## Swearing of officers under instruction.

29. After the court and judge advocate have been sworn an oath shall be administered to any officer under instruction in accordance with rule 33 and in the presence of the accused.

## Appointment and swearing of, and objections to, interpreters and shorthand writers.

30. (1) A competent and impartial person may be appointed at any time to act as an interpreter or shorthand writer at a trial by court martial and before he so acts an oath shall be administered to him in accordance with rule 33 and in the presence of the accused.

(2) Before a person is sworn as an interpreter or as a shorthand writer

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the accused shall be given an opportunity to object to him in the same manner as an objection may be taken to a member of the court, and, if the court think that the objection is reasonable, that person shall not act as an interpreter or shorthand writer.

31. The accused shall have no right to object to a judge advocate, a prosecutor or an officer under instruction.

No right of objection to judge advocate, prosecutor or officer under instruction.

32. (1) When a court has been convened to try two or more accused separately and have been sworn in accordance with rule 27 (3), the court shall try them in the order indicated by the convening officer or, where he has given no such indication, in such order as the court think fit.

Order of trial.

(2) When a court has been convened to try an accused on charges which are included in more than one charge-sheet, the court shall take the charge-sheets in the order indicated by the convening officer or, where he has given no such indication, in such order as they think fit.

33. (1) An oath which is required to be administered under these Rules shall be administered in the appropriate form and in the manner set out in the Sixth Schedule:

Oaths and solemn affirmations

Provided that the opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(2) Subject to rule 27 (2), every oath shall be administered at a court martial by the presiding officer, a member of the court or the judge advocate.

(3) Where a person is permitted to make a solemn affirmation instead of swearing an oath the affirmation shall be in the appropriate form set out in the Sixth Schedule.

ARRAIGNMENT OF ACCUSED

34. (1) When the court and judge advocate have been sworn the accused shall be arraigned.

Arraignment of accused.

(2) If there is more than one charge against the accused before the court he shall be required to plead separately to each charge.

(3) If there is more than one charge-sheet against the accused before the court the court shall arraign and try the accused upon the charge in the first of such charge-sheets and shall announce their finding thereon, and if the accused has pleaded guilty the court shall comply with paragraphs (1) and (2) of rule 44 before they arraign him upon the charge in any subsequent charge-sheet.

35. (1) The accused, before pleading to the charge, may offer a plea to the jurisdiction of the court; and if he does so—

Plea to jurisdiction of court.

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(a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and

(b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allows the plea they shall adjourn and report to the convening officer.

(3) When a court report to the convening officer under this rule the convening officer shall-

(a) if he approves the decision of the court to allow the plea, dissolve the court;

(b) if he disapproves the decision of the court-

(i) refer the matter back to the court and direct them to proceed with the trial; or

(ii) convene a fresh court to try the accused.

Objection to charge.

36. (1) An accused before pleading to a charge may object to it on the grounds that it is not correct in law or is not framed in accordance with these Rules, and if he does so the prosecutor may address the court in answer to the objection and the accused may reply to the prosecutor's address.

(2) If the court uphold the objection they shall either amend the charge, if permissible under rule 81, or adjourn and report to the convening officer:

Provided that if there is another charge or another charge-sheet before the court the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this rule, the convening officer shall-

(a) if he approves the decision of the court to allow the objection-

(i) dissolve the court; or

(ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or

(iii) amend the charge to which the objection relates if permissible under rule 82, and direct the court to try it as amended;

(b) if he disapproves the decision of the court to allow the objection-



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- (i) direct the court to try the charge; or
- (ii) where there is another charge or another charge-sheet before the court to which the objection does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
- (iii) convene a fresh court to try the accused.

37. (1) An accused, before pleading to a charge, may offer a plea in bar of trial in reliance upon section 142 or section 144 of the Act; and if he does so- Plea in bar of trial.

- (a) the accused may adduce evidence in support of the plea and the prosecutor may adduce evidence in answer thereto; and
- (b) the prosecutor may address the court in answer to the plea and the accused may reply to the prosecutor's address.

(2) If the court allow the plea, they shall adjourn and report to the convening officer:

Provided that, if there is another charge or another charge-sheet before the court, the court may, before adjourning under this rule, proceed with the trial of such other charge or other charge-sheet.

(3) When a court report to the convening officer under this rule the convening officer shall-

- (a) if he approves the decision of the court to allow the plea-
  - (i) dissolve the court; or
  - (ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only;
- (b) if he disapproves the decision of the court to allow the plea-
  - (i) direct the court to try the charge; or
  - (ii) where there is another charge or another charge-sheet before the court to which the plea does not relate and which the court has not tried, direct the court to proceed with the trial of such other charge or charge-sheet only; or
  - (iii) convene a fresh court to try the accused.

38. (1) Where two or more accused are charged jointly any one of the accused may, before pleading to the charge, apply to the court to be tried separately on the ground that he would be prejudiced in his defence if he were Application by accused at joint trial to be tried separately.

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not tried separately.

(2) If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) If the court are of the opinion that the interests of justice so require they shall allow the application and try separately the accused who made it.

Application by accused to have charges tried separately.

39. (1) Where a charge-sheet contains more than one charge the accused may, before pleading to the charges, apply to the court to be tried separately on any charge in that charge-sheet on the ground that he would be prejudiced in his defence if he were not tried separately on that charge.

(2) If the accused makes such an application the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

(3) If the court are of the opinion that the interests of justice so require they shall allow the application and try the accused separately on the charge to which it relates as if that charge had been inserted in a separate charge-sheet.

Plea to charge.

40. (1) After any pleas under rules 35 and 37, any objection under rule 36, and any application under rules 38 and 39, have been dealt with, the accused shall be required (subject to paragraph (2)) to plead either guilty or not guilty to each charge on which he is arraigned.

(2) Where a court is empowered by section 96 of the Act to find an accused guilty of an offence other than that charged or guilty of committing the offence in circumstances involving a less degree of punishment or where they could, after hearing the evidence, make a special finding of guilty subject to exceptions or variations in accordance with rule 64, the accused may plead guilty to such other offence or to the offence charged as having been committed in circumstances involving a less degree of punishment or to the offence charged subject to such exceptions or variations.

Acceptance of plea of guilty.

41. (1) If an accused pleads guilty to a charge under paragraph (1) or paragraph (2) of rule 40 the judge advocate shall, before the court decide to accept the plea, explain to the accused the nature of the charge and the general effect of his plea and in particular the difference in procedure when an accused pleads guilty and when an accused pleads not guilty.

(2) A court shall not accept a plea of guilty under either paragraph (1) or paragraph (2) of rule 40 if—

- (a) the court are not satisfied that the accused understands the nature of the charge or the effect of his plea; or
- (b) the presiding officer, having regard to all the circumstances, considers that the accused should plead not guilty; or

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(c) the accused is liable if convicted to be sentenced to death.

(3) In the case of a plea of guilty under rule 40 (2) a court shall also not accept the plea unless the convening officer concurs and they are satisfied of the justice of such a course; and the concurrence of the convening officer may be signified by the prosecutor.

(4) When a plea of guilty under paragraph (1) or paragraph (2) of rule 40 is not accepted by the court or the accused either refuses to plead to the charge or does not plead to it intelligibly, the court shall enter a plea of not guilty.

(5) When a court are satisfied that they can properly accept a plea of guilty under paragraph (1) or paragraph (2) of rule 40 they shall record a finding of guilty in respect thereof.

42. (1) When an accused pleads guilty to the first of two or more alternative charges the court, if they accept the accused’s plea of guilty, shall record a finding of guilty in respect of the first charge and the prosecutor shall withdraw any alternative charge before the accused is arraigned on it.

Pleas on alternative charges.

(2) When an accused pleads guilty to one of two or more charges which are laid in the alternative other than the first of such charges the court may—

(a) proceed as if the accused had pleaded not guilty to all the charges; or

(b) with the concurrence of the convening officer (which may be signified by the prosecutor) record a finding of guilty on the charge to which the accused has pleaded guilty and a finding of not guilty on any alternative charge which is placed before it on the charge-sheet; and where the court record such findings the prosecutor shall before the accused is arraigned on it withdraw any charge which is alternative to the charge of which the court have found the accused guilty and which is placed after it in the charge-sheet.

PROCEDURE AFTER RECORDING FINDING OF GUILTY

43. (1) After the court have recorded a finding of guilty, if there is no other charge in the same charge-sheet to which the accused has pleaded not guilty and no other accused who has pleaded not guilty to a charge in that charge-sheet, they shall proceed with the trial as directed by rule 44.

Order of trial where pleas of guilty and not guilty.

(2) If there is another charge in the charge-sheet to which the accused has pleaded not guilty, or there is another accused who has pleaded not guilty to a charge in that charge-sheet, the court shall not comply with rule 44 until after they have dealt with such other charge or tried such other accused and have announced and recorded their finding in respect thereof.

44. (1) After the court have recorded a finding of guilty in respect of a charge to which an accused pleaded guilty the prosecutor shall, subject to rule 43, read the abstract of evidence to the court or inform the court of the facts contained therein:

Procedure on finding of guilty after plea of guilty.

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Provided that, if an expurgated copy of the abstract was sent to the presiding officer, the prosecutor shall not read to the court those parts of the abstract which have been expurgated or inform the court of the facts contained in those parts, and shall not hand the original abstract to the court until the trial is concluded.

(2) If the abstract of evidence is, in the opinion of the court, inadequate or incomplete, the court shall hear and record in accordance with these Rules sufficient evidence to enable them to determine the sentence.

(3) After paragraphs (1) and (2) have been complied with the accused may-

(a) adduce evidence of character and in mitigation of punishment;  
and

(b) address the court in mitigation of punishment.

(4) After paragraph (3) has been complied with the court shall proceed as directed in paragraphs (1), (2), (3) and (4) of rule 69.

#### CHANGE OF PLEA

Change of plea.

45. (1) An accused who has pleaded not guilty may at any time before the court close to deliberate on their finding withdraw his plea of not guilty and substitute a plea of guilty (including a plea of guilty under rule 40 (2)), and in such case the court shall, if they are satisfied that they can accept the accused's changed plea, record a finding in accordance with the accused's changed plea and so far as is necessary proceed as directed by rule 44.

(2) If at any time during the trial it appears to the court that an accused who has pleaded guilty does not understand the effect of his plea or the nature of the charge, the court shall enter a plea of not guilty and proceed with the trial accordingly.

(3) When a court enter a plea of not guilty in respect of any charge under paragraph (2) they shall, if there was a charge laid in the alternative thereto which the prosecutor withdrew under rule 42, reinstate such alternative charge, arraign the accused thereon and proceed with the trial as if it had never been withdrawn.

#### PROCEDURE ON PLEAS OF NOT GUILTY

Application for adjournment of trial.

46. After a plea of not guilty to any charge has been entered-

(a) the court shall ask the accused whether he wishes to apply for an adjournment on the grounds that any of these Rules relating to procedure before trial have not been complied with and that he has been prejudiced thereby, or on the ground that he has not had sufficient opportunity for preparing his defence;

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- (b) if the accused applies for an adjournment-
- (i) the accused may adduce evidence in support of his application and the prosecutor may adduce evidence in answer thereto; and
  - (ii) the prosecutor may address the court in answer to the application and the accused may reply to the prosecutor's address;
- (c) the court may grant an adjournment if they think the interests of justice so require.

47. (1) The prosecutor may if he desires, and shall if required by the court, make an opening address explaining the charge, where necessary, and the nature and general effect of the evidence which he proposes to adduce. Case for prosecution.

(2) The witnesses for the prosecution shall then be called and give their evidence.

48. (1) If the prosecutor intends to adduce evidence which is not contained in any abstract of evidence given to the accused notice of such intention together with the particulars of the evidence shall, when practicable, be given to the accused a reasonable time before the evidence is adduced. Calling of witnesses whose evidence not contained in abstract of evidence.

(2) If such evidence is adduced without notice or particulars having been given the court may, if the accused so desires, either adjourn after receiving the evidence or allow any cross-examination arising out of that evidence to be postponed, and the court shall inform the accused of his right to apply for such an adjournment or postponement.

49. The prosecutor shall not be bound to call all the witnesses against the accused whose evidence is contained in the abstract of evidence nor a witness whom he has notified the accused that he intends to call under rule 48, but if the prosecutor does not intend to call such a witness to give evidence he shall either tender him for cross-examination by the accused, or give the accused reasonable notice that he does not intend to call the witness and that the accused will be allowed to communicate with him and to call him as a witness for the defence, if he so desires and if the witness is available. Notice to accused that witness will not be called by prosecutor.

#### CALLING AND EXAMINATION OF WITNESSES

50. Subject to section 91 of the Act, an oath shall be administered to each witness in accordance with rule 33 before he gives evidence and in the presence of the accused. Swearing of witnesses.

51. During a trial a witness other than the prosecutor or accused shall not, except by leave of the court, be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or otherwise with regard to the evidence the court may direct the witness to withdraw during such discussion. Exclusion of witnesses from court.

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Examination of witnesses.

52. (1) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceedings, and on the conclusion of any such cross-examination may be re-examined by the person who called him on matters arising out of the cross-examination.

(2) The person examining a witness shall put his questions to the witness orally and, unless an objection is made by the witness, the court, the judge advocate, the prosecutor or the accused, the witness shall reply forthwith; and if such an objection is made the witness shall not reply until the objection has been disposed of.

(3) The court may allow the cross-examination or re-examination of a witness to be postponed.

Examination of witnesses by court.

53. (1) The presiding officer, the judge advocate and, with permission of the presiding officer, any member of the court, may put questions to a witness.

(2) Upon any such questions being answered the prosecutor and the accused may put to the witness such questions arising from the answer which he has given as seem proper to the court.

Reading back of evidence to witnesses.

54. (1) The record which has been made of the evidence given by a witness shall be read back to him before he leaves the court and when this is done he may ask for the record to be corrected or explain the evidence which he has given.

(2) If any such correction is made or explanation given the prosecutor and the accused may put such questions to the witness respecting the correction or explanation as seem proper to the court.

(3) When a shorthand writer is employed it shall not be necessary to comply with paragraphs (1) and (2) if, in the opinion of the court and the judge advocate, it is unnecessary to do so:

Provided that if any witness so demands paragraph (1) shall be complied with.

Calling of witnesses by court and recalling of witnesses.

55. (1) The court may, at any time before the judge advocate begins to sum up, call a witness or recall a witness if in the opinion of the court it is in the interests of justice to do so; and, if the court call a witness or recall a witness under this rule, the prosecutor and the accused may put such questions to the witness as seem proper to the court.

(2) The prosecutor and the accused may, at any time before the judge advocate begins to sum up, recall a witness by leave of the court and the prosecutor and the accused may put such questions to the witness as seem proper to the court.

Statutory declarations.

56. A statutory declaration which is admissible in accordance with the provisions of section 93 of the Act shall be handed to the court by the prosecutor

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or the accused, as the case may be, without being produced by a witness.

#### SUBMISSION OF NO CASE TO ANSWER AND STOPPING OF CASE

57. (1) At the close of the case for the prosecution the accused may submit to the court in respect of any charge that the prosecution has failed to establish a prima facie case for him to answer and that he should not be called upon to make his defence to that charge; and if the accused makes such a submission the prosecutor may address the court in answer thereto and the accused may reply to the prosecutor's address.

Submission of no case to answer and power of court to stop a case.

(2) The court shall not allow the submission unless they are satisfied that-

(a) the prosecution has not established a prima facie case on the charge as laid; and

(b) it is not open to them on the evidence adduced to make a special finding under either section 96 of the Act or rule 64 (3).

(3) If the court allow the submission they shall find the accused not guilty of the charge to which it relates and announce this finding in open court forthwith; if the court disallow the submission they shall proceed with the trial of the offence as charged.

(4) Irrespective of whether there has been a submission under this rule or not, the court may at any time after the close of the hearing of the case for the prosecution, and after hearing the prosecutor, find the accused not guilty of a charge, and if they do so they shall announce such finding in open court forthwith.

#### CASE FOR THE DEFENCE

58. (1) After the close of the case for the prosecution the presiding officer or, if he so directs, the judge advocate shall explain to the accused that—

Explanation to accused of rights when making defence.

(a) if he wishes he may give evidence on oath as a witness or make a statement without being sworn, but that he is not obliged to do either;

(b) if he gives evidence on oath he will be liable to be cross-examined by the prosecutor and to be questioned by the court and the judge advocate, but if he makes a statement without being sworn no one will be entitled to ask him any questions; and

(c) whether he gives evidence or makes a statement or remains silent he may call witnesses on his behalf both to the facts of the case and to his character.

(2) After the presiding officer or judge advocate has complied with paragraph (1) he shall ask the accused if he intends to give evidence on oath or to make a statement without being sworn and if he intends to call any witness

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on his behalf and, if so, whether he is a witness to fact or to character only.

(3) If the accused intends to call a witness to the facts of the case other than himself or to hand in a statutory declaration as to the facts of the case he may make an opening address outlining the case for the defence before the evidence for the defence is given.

Evidence for defence. 59. (1) After rule 58 has been complied with the witnesses for the defence (if any) shall be called and give their evidence.

(2) Rules 50, 51, 52, 53, 54, 55 and 56 shall apply to the witnesses and the evidence for the defence as they apply to the witnesses and the evidence for the prosecution.

Evidence in rebuttal. 60. After the witnesses for the defence have given their evidence the prosecutor may, by leave of the court, call a witness or recall a witness to give evidence on any matter raised by the accused in his defence which the prosecution could not properly have mentioned to the court before the accused disclosed his defence or which the prosecution could not reasonably have foreseen.

Closing addresses. 61. (1) After all the evidence has been given the prosecutor and the accused may each make a closing address to the court.

(2) The accused shall be entitled to make his closing address after the closing address by the prosecutor.

(3) Where two or more accused are represented by the same defending officer or counsel he may make one closing address only.

#### SUMMING-UP BY JUDGE ADVOCATE

Summing-up by judge advocate. 62. After the closing addresses the judge advocate shall sum up the evidence and advise the court on the law relating to the case in open court.

#### DELIBERATION ON, AND ANNOUNCEMENT OF, FINDING ON CHARGE

Deliberation on finding on charge. 63. (1) After the judge advocate's summing-up the court shall close to deliberate on their finding on the charge.

(2) While the court are deliberating on their finding on the charge no person shall be present except the presiding officer and members of the court and any officer under instruction.

(3) If the court, while deliberating on their finding on the charge, require further advice from the judge advocate the court shall suspend their deliberation and ask and be given such advice in open court.

Expression of opinions on, and form of, finding. 64. (1) The opinion of the presiding officer and each member as to the finding shall be given in closed court, orally, and on each charge separately, and their opinions shall be given in order of seniority commencing with the



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junior in rank.

(2) Save as is otherwise provided in paragraph (4), the court shall record on every charge on which a plea of not guilty has been recorded—

- (a) a finding of guilty or a special finding in accordance with section 96 or section 101 (1) of the Act or paragraph (3) of this rule; or
- (b) a finding of not guilty or of not guilty and honourably acquitted of the charge.

(3) Where the court are of the opinion as regards any charge that the facts which they find to be proved in evidence differ from the facts alleged in the particulars of the charge, but are nevertheless sufficient to prove the offence stated in the charge and that the difference is not so material as to have prejudiced the accused in his defence, the court may, instead of recording a finding of not guilty, record a finding that the accused is guilty of the charge subject to any exception or variation which they shall specify in the finding.

(4) Where the court have recorded a finding of guilty on a charge which is laid in the alternative they shall find the accused not guilty of any charge alternative thereto which is placed before it in the charge-sheet and record no finding on any charge alternative thereto which is placed after it in the charge-sheet.

65. (1) The finding on each charge shall be announced in open court forthwith.

Announcement of finding.

(2) Every conviction shall be announced as being subject to confirmation.

(3) The finding shall be in the appropriate part of Form VI set out in the Fourth Schedule.

#### PROCEDURE AFTER ANNOUNCEMENT OF FINDING

66. After the court have announced their finding on any charge on which the court have entered a plea of not guilty, if there is another charge in the same charge-sheet on which the court have accepted a plea of guilty, the court shall comply with paragraphs (1) and (2) of rule 44 in respect of that charge before proceeding further with the trial.

Completion of procedure on plea of guilty before deliberation on sentence.

67. Where there is another charge-sheet against the accused before the court the court shall not comply with rules 68, 69 and 70 until they have arraigned and tried the accused and have complied with rule 65 and, if necessary, with rule 66 in respect of each charge in such other charge-sheet, unless that charge-sheet is withdrawn under rule 80.

Trial of charges in other charge-sheets before deliberation on sentence.

68. If the findings on all charges against the accused are not guilty the court shall order the accused to be released and the presiding officer and judge advocate shall date and sign the record of the proceedings; and the presiding officer shall then forward the record as directed in the convening order.

Release of accused.

## [Subsidiary]

Accused's record and plea in mitigation.

69. (1) If the finding on a charge against the accused is guilty, or the court makes a special finding in accordance with section 96 of the Act of rule 64(3) of these Rules, the court, before deliberating on their sentence, shall whenever possible take evidence of his age, rank and service record including-

- (a) any recognized acts of gallantry or distinguished conduct on the part of the accused and any decoration to which he is entitled;
- (b) particulars of any offence of which the accused has been found guilty during his service and which is recorded in the service books relating to the accused; and
- (c) the length of time he has been under arrest awaiting trial or in confinement under a current sentence.

(2) Evidence of the matters referred to in paragraph (1) may be given by a witness producing to the court a written statement in Form VIII in the Fourth Schedule containing a summary of the entries in the service books relating to the accused, after the witness has in court verified such statements and identified the accused as the person to whom it relates.

(3) In addition to the evidence contained in the statement referred to in paragraph (2) it shall be the duty of the prosecutor whenever possible to call as a witness an officer to give to the court any information in the possession of the service authorities regarding-

- (a) the accused's family background and responsibilities and any other circumstances which may have made him more susceptible to the commission of the offence charged;
- (b) his general conduct in the service; and
- (c) particulars of offences which do not appear in the statement above referred to of which the accused has been found guilty by a civil court, not being offences of which he was found guilty while under the age of fourteen years, and which are of the same general nature as that of which the accused has been found guilty by the court martial:

Provided that the court shall not be informed of any such civil offence unless the finding is proved in accordance with section 139 of the Act, or the accused has admitted, after the purpose for which such admission is required has been explained to him, that he has been found guilty of the offence.

(4) The accused may cross-examine any witness who gives evidence in accordance with paragraphs (2) and (3) and, if the accused so requires, the service books, or a duly certified copy of the material entries therein, shall be produced, and if the contents of the form are in any respect not in accordance with the service books or such certified copy the court shall cause the form to be corrected accordingly.

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(5) After paragraphs (1), (2), (3) and (4) have been complied with the accused may—

- (a) give evidence on oath and call witnesses in mitigation of punishment and to his character; and
- (b) address the court in mitigation of punishment.

70. (1) Before the court close to deliberate on their sentence the accused may request the court to take into consideration any other offence under the Act committed by him of a similar nature to that of which he has been found guilty, and, upon such a request being made, the court may agree to take into consideration any of such other offences as to the court seem proper.

Request by accused for other offences to be taken into consideration.

(2) A list of the offences which the court agree to take into consideration shall be read to the accused by the judge advocate, who shall ask the accused if he admits having committed them.

(3) The accused shall sign a list of the offences which he admits having committed and the court shall take the offences in this list into consideration; and the list shall be signed by the presiding officer and be attached to the record of the proceedings as an exhibit.

#### DELIBERATION ON SENTENCE

71. While the court are deliberating on their sentence no person shall be present except the presiding officer, the members, the judge advocate and any officer under instruction.

Persons entitled to be present during deliberation on sentence.

72. (1) The court shall award a sentence in respect of each of the offences of which the accused is found guilty; and the sentence or sentences shall be in the appropriate form set out in Part I of the Fifth Schedule.

Sentence and recommendation to mercy.

(2) The opinion of the presiding officer and each member as to the sentence shall be given orally and in closed court, and their opinions shall be given in order of seniority commencing with the junior in rank.

(3) When the court have agreed to take into consideration an offence or offences not included in the charge-sheet the court shall award one sentence in respect of the list of offences which they are taking into consideration, but not greater than the maximum sentence which may be awarded under the Act for the offence of which the accused has been found guilty, save that they may include in their sentence a direction that such deductions shall be made from the pay of the accused as they would have had the power to direct to be made if the accused had been found guilty of the offence taken into consideration as well as of the offence of which he has been found guilty.

(4) The court may make a recommendation to mercy and if they do so shall record in the proceedings their reasons for making it.

**[Subsidiary]**

Postponement of deliberation on sentence.

73. Where two or more accused are tried separately by the same court upon charges arising out of the same transaction the court may, if they think that the interests of justice so require, postpone their deliberation upon the sentence to be awarded to any one or more of such accused until they have recorded and announced their findings in respect of all such accused.

## ANNOUNCEMENT OF SENTENCE AND CONCLUSION OF TRIAL

Announcement of sentence and conclusion of trial.

74. (1) The sentence or sentences, and any recommendation to mercy together with the reasons for making it, shall be announced in open court; and the sentence or sentences shall be announced as being subject to confirmation.

(2) When paragraph (1) has been complied with the presiding officer shall announce in open court that the trial is concluded.

(3) Immediately after the conclusion of the trial the presiding officer and judge advocate shall date and sign the record of the proceedings.

(4) The presiding officer shall then forward the record as directed in the convening order.

## GENERAL DUTIES OF PRESIDING OFFICER, PROSECUTOR AND DEFENDING OFFICER OR COUNSEL

General duties of presiding officer.

75. It shall be the duty of the presiding officer to ensure that the trial is conducted in accordance with the Act and these Rules and in a manner befitting a court of justice, and in particular-

- (a) to ensure that the prosecutor and the defending officer or counsel conduct themselves in accordance with these Rules;
- (b) to ensure that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise;
- (c) to ensure that an officer under instruction does not express an opinion to the court on any matter relating to the trial before the court have come to their finding, nor on sentence before the court have decided upon the sentence; and
- (d) to ensure that the record of the proceedings and the exhibits attached to or kept with such record are kept in safe custody.

General duties of prosecutor and defending officer or counsel.

76. (1) It shall be the duty of the prosecutor and of the defending officer or counsel to assist the court in the administration of justice, to treat the court and judge advocate with due respect and to present their cases fairly, and in particular-

- (a) to conform with these Rules and the practice of the civil courts relating to the examination, cross-examination and re-

[Subsidiary]

examination of witnesses;

(b) not to refer to any matter not relevant to the charge before the court; and

(c) not to state as a matter of fact any matter which is not proved or which they do not intend to prove by evidence.

(2) Without prejudice to the generality of paragraph (1) it shall be the duty of the prosecutor to bring the whole of the transaction before the court and not to take any unfair advantage of, or to withhold any evidence in favour of, the accused.

77. (1) Subject to these Rules, the following persons shall be allowed to appear as counsel at a court martial- Counsel.

(a) an advocate;

(b) with the consent of the convening officer, any person who is recognized by him as having in any country or territory outside Kenya rights and duties similar to those of an advocate and as being subject to punishment or disability for a breach of professional rules.

(2) Any right granted by these Rules to the accused at a court martial to call or examine witnesses or to address the court, any right of the accused to object to the admissibility of evidence at a court martial and any right granted to the accused by rules 24 (5), (7) and (8), 26, 30, 35, 36, 37, 38, 39, 46, 57, 70, 78 (2), 90 and 92 (2), may be exercised by his defending officer or his counsel on his behalf, and any reference in these Rules to any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court martial by the accused shall be construed as including any address, request, application, claim, submission, objection or plea to the jurisdiction or in bar of trial made, taken or offered at a court martial by his defending officer or counsel on his behalf.

(3) If the accused is to be defended at his court martial by counsel not nominated by the convening officer the accused shall give the convening officer notice of this fact not less than twenty-four hours before his trial.

#### POWERS AND DUTIES OF JUDGE ADVOCATE

78. (1) The judge advocate shall be responsible for the proper discharge of his functions to the Chief Justice. General duties of judge advocate.

(2) The prosecutor and the accused respectively are at all times after the judge advocate is named to act at the trial entitled to his opinion on any question of law or procedure relative to the charge or trial whether he is in or out of court, subject when he is in court to the permission of the court.

(3) On the assembly of the court the judge advocate shall advise the court

[Subsidiary]

of any defect in the constitution of the court or in the charge-sheet, and during the trial he shall advise the court upon all questions of law or procedure which may arise; and the court shall accept the judge advocate's advice on all such matters unless they have weighty reasons for not doing so, and if the court do not accept it their reasons for not doing so shall be recorded by the presiding officer in the record of the proceedings.

(4) After the closing addresses the judge advocate shall sum up the evidence and advise the court upon the law relating to the case before the court close to deliberate on their finding; and if in the course of deliberating on their finding the court require further advice from the judge advocate, they shall suspend their deliberation and ask and be given such advice in open court.

(5) If when the court announce a finding of guilty or a special finding under section 96 of the Act or rule 64 (3) of these Rules the judge advocate is of the opinion that such finding or special finding is contrary to the law relating to the case-

- (a) he shall once more, but not more than once more, advise the court what findings are in his opinion open to them;
- (b) the court shall then reconsider their finding in closed court; and
- (c) the record of the proceedings relating to such reconsideration shall be in Form VII in the Fourth Schedule.

(6) The judge advocate shall be present whenever the court is sitting whether in open or closed court, except when the court is deliberating on the finding on the charge or on a revision thereof.

(7) The judge advocate shall have equally with the presiding officer the duty of ensuring that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance, or of his incapacity to examine or cross-examine witnesses, or to make his own evidence clear and intelligible, or otherwise.

(8) The judge advocate shall be responsible for seeing that a proper record of the proceedings is made in accordance with rule 90.

Judge advocate  
sitting alone.

79. (1) If-

- (a) during the course of a trial any question as to the admissibility of evidence arises; or
- (b) during a joint trial an application is made by any of the accused for a separate trial; or
- (c) an application is made by an accused that a charge should be tried separately,

the presiding officer may direct that the point at issue shall be determined by the judge advocate in the absence of the presiding officer and the members of

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the court and of any officer under instruction; and where the presiding officer so directs he, the members of the court and any officer under instruction shall withdraw from the court.

(2) The judge advocate shall, when the presiding officer and members of the court and any officer under instruction have withdrawn in accordance with paragraph (1), hear the arguments and evidence relevant to the point at issue and shall give his ruling upon this point and such reasons therefor as he may consider necessary; and after the judge advocate has given his ruling the presiding officer and members of the court and any officer under instruction shall return to the court room and the judge advocate shall announce his ruling to them and the court shall follow his ruling.

(3) When a judge advocate sits alone in accordance with this rule the proceedings before him shall form part of the proceedings of the court, and sections 52 (1), 53, 91, 92 (1) and (2), 93, 94, 95 and 97 of the Act and rules 33, 50, 51, 52, 53, 54, 55, 56, 76, 77, 83, 84, 85, 89, 90, 91, 92, 95, 96 and 103 of these Rules shall apply to proceedings before the judge advocate sitting alone as they apply to proceedings before the presiding officer and members of the court, and anything which is authorized by those sections and those rules to be done by the court or by the presiding officer may be done by the judge advocate when sitting alone.

(4) When a judge advocate is sitting alone in accordance with this rule and a person subject to the Act commits an offence against section 52 (1) of the Act, the judge advocate shall report the occurrence to the presiding officer who shall take such action as he considers appropriate.

(5) The judge advocate shall be responsible for ensuring that the presiding officer and members do not see the record of the proceedings before the judge advocate when sitting alone until after the court has announced its finding.

#### WITHDRAWAL AND AMENDMENT OF CHARGE-SHEETS AND CHARGES

80. A court may with the concurrence of the convening officer (which may be signified by the prosecutor) allow the prosecutor to withdraw a charge before the accused is arraigned thereon or a charge-sheet before the accused is arraigned on any charge therein.

Withdrawal of charge-sheets and charges.

81. (1) At any time during a trial, if it appears to the court that there is in the charge-sheet-

Amendment of charge-sheets and charges by court.

(a) a mistake in the name or description of the accused;

(b) a mistake which is attributable to a clerical error or omission, the court may amend the charge-sheet so as to correct the mistake.

(2) At any time during a trial, if it appears to the court before they close to deliberate on their finding that it is desirable in the interests of justice to make any addition to or omission from or alteration in a charge which cannot be made under paragraph (1), they may, if such addition, omission or alteration

**[Subsidiary]**

can be made without unfairness to the accused, so amend the charge if the judge advocate concurs.

Amendment of charges by convening officer.

82. When a court report to the convening officer under rule 36 (2) he may amend the charge in respect of which they have reported to him by making any addition to or omission from or alteration in the charge which, in his opinion, is desirable in the interests of justice and which he is satisfied can be made without unfairness to the accused.

**SITTINGS AND ADJOURNMENT OF COURT**

Sittings of court.

83. Subject to the provisions of the Act and of these Rules relating to adjournment, a trial shall be continued from day to day, and the court shall sit for such time each day as may be reasonable in the circumstances:

Provided that the court shall not sit on a Sunday, or on a public holiday, unless in the opinion of the court or of the convening officer the exigencies of the service make it necessary to do so.

Adjournment

84. (1) During a trial the court may adjourn from time to time and from place to place as the interests of justice require.

(2) If during a trial any reason emerges which makes it advisable that the court should not continue to hear the case, the court shall adjourn and report thereon to the convening officer.

(3) If at any time during a trial the accused becomes ill and it appears to the court that the illness is such that it will be impracticable to continue the trial, the court shall ascertain the facts of the illness and shall then adjourn and report to the convening officer.

View by court.

85. (1) If at any time during a trial before the court close to deliberate on their finding it appears to the court that they should, in the interests of justice, view any place or thing, they may adjourn for this purpose.

(2) When the court view any place or thing the presiding officer, members of the court, judge advocate, prosecutor, accused and defending officer or counsel (if any) shall be present.

Absence of presiding officer, members or judge advocate.

86. (1) If after the commencement of a trial the presiding officer or judge advocate dies or is otherwise unable to attend the court shall adjourn and report to the convening officer, who shall dissolve the court if there is any likelihood of a long delay.

(2) If after the commencement of a trial any member of the court dies or is otherwise unable to attend the court, if not thereby reduced below the legal minimum, shall continue with the trial, but if reduced below the legal minimum the court shall adjourn and the presiding officer shall report to the convening officer, who shall dissolve the court if there is any likelihood of a long delay.

(3) If the presiding officer, judge advocate, or a member of the court is



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absent during any part of a trial he shall take no further part in it, and the like steps shall be taken as if the presiding officer, judge advocate or member, as the case may be, had died.

(4) An officer cannot be added to the court after the accused has been arraigned.

(5) Where a court is dissolved in accordance with this rule the convening officer shall without undue delay take the prescribed steps to convene another court to try the accused.

#### INSANITY

87. (1) Where on the trial of a person the question of his fitness to be tried falls to be determined in accordance with section 100 (1) of the Act the court shall take evidence as to his condition and, if after considering the evidence the court are of the opinion that the accused is fit to stand trial, they shall proceed with the trial; but if they are of the opinion that the accused is unfit to stand his trial they shall so find and their finding shall be announced in open court forthwith and as being subject to confirmation. Insanity.

(2) If a court, in the course of their deliberation on their finding on a charge, find pursuant to section 101 of the Act that the accused was guilty of the offence but was insane when he committed the act or made the omission, their finding shall be announced in open court forthwith and as being subject to confirmation.

(3) Immediately after a finding has been announced under paragraph (1) or paragraph (2) the presiding officer shall announce in open court that the proceedings are terminated and thereupon the presiding officer and the judge advocate shall date and sign the record of the proceedings, and the presiding officer shall then forward the record as directed in the convening order.

#### INTERVIEWING AND ATTENDANCE OF WITNESS

88. (1) The prosecution shall not without the consent of the convening officer, or, after the trial has begun, without the consent of the presiding officer, interview any witness whose attendance at the trial the accused has requested in accordance with rule 24 (5) (b), or who has made a statutory declaration a copy of which the accused has served on the prosecution in accordance with section 93 of the Act. Interviewing of witnesses.

(2) Except as provided in rule 49, neither the accused nor any person on his behalf shall, without the consent on the convening officer, or after the trial has begun, without the consent of the presiding officer, interview any witness for the prosecution whose evidence is included in the abstract of evidence, or in respect of whom the prosecution have given the accused notice under rule 48 that they intend to call him as a witness at the trial, or who has made a statutory declaration a copy of which the prosecution have served on the accused in accordance with section 93 of the Act.

**[Subsidiary]**

Procuring attendance  
of witnesses.

89. (1) A witness who is subject to the Act may be ordered by the proper service authority to attend at the taking of an abstract of evidence or a trial by court martial.

(2) A witness who is not subject to the Act may be summoned to attend-

- (a) the taking of an abstract of evidence by an order under the hand of the commanding officer of the accused; or
- (b) a trial by court martial by an order under the hand of an officer authorized to convene a court martial or of a staff officer on his behalf or, after the assembly of the court, of the presiding officer.

(3) The summons referred to in paragraph (2) shall, when it relates to the taking of an abstract of evidence, be in Form IV in the First Schedule, and when it relates to a trial by court martial it shall be in Form III in the Fourth Schedule, and shall be served on the witness either personally or by leaving it with some person at the witness's normal place of abode.

(4) At the time of service of the summons referred to in paragraph (2) there shall be paid or tendered to the witness a sum in respect of his reasonable expenses in respect of journeying to, attending at and returning from the taking of the abstract of evidence or the trial, as the case may be:

Provided that for the purpose of this paragraph the tender of a warrant or voucher entitling the witness to travel free of charge shall be deemed to constitute tender of his expenses in respect of any traveling authorized by the warrant or voucher.

(5) Section 95 of the Act applies in relation to proceedings at the taking of an abstract of evidence as it applies in relation to proceedings at a court martial as though the words "officer taking the abstract of evidence" were substituted for the words "presiding officer of the court martial".

#### RECORD OF PROCEEDINGS

90. The proceedings of courts martial shall be recorded as follows-

- (a) the proceedings shall be recorded in writing in accordance with the appropriate part of Form V in the Fourth Schedule and in sufficient detail to enable the confirming officer to follow the course of the proceedings and to judge the merits of the case;
- (b) when there is no shorthand writer present the evidence shall be taken down in narrative form as nearly as possible in the words used:

Provided that, if the court, the judge advocate, the prosecutor or the accused considers it necessary, any particular question and answer shall be taken down verbatim;

Record of  
proceedings.

[Subsidiary]

- (c) when an objection, submission or application is made during a trial at which there is no shorthand writer a record shall be made of the proceedings relating to such objection, submission or application if and in such detail as the court or judge advocate thinks fit:

Provided that if the prosecutor or accused so requests a note shall be made of the objection, submission or application, the grounds therefor, the advice of the judge advocate thereon and the decision of the court;

- (d) When any address by the prosecutor or the accused or summing-up of the judge advocate is not in writing and there is no shorthand writer present it shall only be necessary to record as much of such address or summing-up as the presiding officer or the judge advocate thinks proper:

Provided that if the prosecutor or accused so requests a note shall be made of any particular point in such address or summing-up;

- (e) there shall not be recorded in the record of the proceedings any matter not forming part of the trial; but, if any comment or report seems to the court to be necessary, the presiding officer may forward it to the proper service authority in a separate document.

91. (1) Subject to paragraph (2), any document or thing admitted in evidence shall be made an exhibit. Exhibits.

(2) When an original document or book is produced to the court by a witness the court may at the request of the witness compare a copy of it or an extract of the relevant parts therefrom with the original, and after they have satisfied themselves that such copy or extract is correct and the judge advocate has certified thereon that the court has compared it with the original and found it correct, the court 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 judge advocate or have a label bearing a number or letter and the signature of the judge advocate affixed to it;
- (b) be attached to or kept with the record of proceedings unless in the opinion of the court having regard to the nature of the exhibit or for other good reason 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 presiding officer shall ensure that proper steps are taken for its safe custody.

92. (1) During a trial the record of proceedings and the exhibits shall be deemed to be in the custody of the presiding officer, save when he has withdrawn Custody and inspection of record

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of proceedings  
during trial.

from the court in accordance with rule 79 (1) when they shall be deemed to be in the custody of the judge advocate.

(2) With the permission of the court, the prosecutor or the accused may at any reasonable time before the trial is concluded have a particular part of the record of the proceedings read to him and, if proper precautions are taken for its safety, inspect any exhibit.

#### CONFIRMATION, REVISION AND PROMULGATION

Confirmation and  
promulgation.

93. (1) When a confirming officer receives the record of the proceedings of a court martial and the finding of the court requires confirmation he shall record, in the appropriate part of Form X in the Fourth Schedule, his decision with regard to the proceedings, and any sentence and any order which the court may have made under section 104 of the Act, on the record of the proceedings; and such record of his decision shall form part of the record of the proceedings.

(2) When a court have accepted a plea of guilty made under rule 40 (2) the confirming officer may confirm their finding, notwithstanding that the court have accepted the plea without the concurrence of the convening officer, if in the opinion of the confirming officer it is in the interests of justice to do so.

(3) When a court have rejected a plea to the jurisdiction of the court or a plea in bar of trial or have overruled an objection to a charge it shall not be necessary for the confirming officer to approve specifically the decision of the court, but his approval shall be implied from his confirming the finding on the charge to which the plea or objection relates; and, if he disapproves the decision of the court to reject the plea or to overrule the objection, he shall withhold confirmation of the finding on the charge to which the plea or objection relates.

(4) A confirming officer may state his reasons for withholding confirmation in any case, but if he withholds confirmation, where a court have rejected plea to the jurisdiction or a plea in bar of trial or have overruled an objection to the charge, because he disapproves this decision of the court, he shall when recording his decision under paragraph (1) state that he has withheld confirmation for this reason.

(5) If the sentence of a court martial is informally expressed the confirming officer may in confirming the sentence vary the form thereof so that it shall be properly expressed.

(6) Whenever it appears there is sufficient evidence or a plea of guilty under paragraph (1) or paragraph (2) of rule 40 to justify the finding of the court, such finding and any lawful sentence consequent thereon may be confirmed, and if confirmed shall be valid, notwithstanding any deviation from these Rules, if the accused has not been prejudiced by such deviation.

(7) When a confirming officer has confirmed a finding and sentence of a court or has withheld confirmation thereof he shall send the record of the proceedings to the commanding officer of the accused for promulgation to the

[Subsidiary]

accused of the finding and sentence, or of the fact that confirmation has been withheld, as the case may be.

(8) The fact of promulgation shall be recorded on the record of the proceedings in Form XIII in the Fourth Schedule.

(9) If confirmation has been withheld because the confirming officer disapproves the court's decision to reject a plea to the jurisdiction or a plea in bar of trial or to overrule an objection to the charge, the accused shall be so informed.

94. (1) The proceedings and decision of a court on revision shall be recorded on the record of the proceedings in Form IX in the Fourth Schedule, and the presiding officer shall date and sign such record and decision and return it to the confirming officer after it has been signed by the judge advocate.

Revision.

(2) When an accused is acquitted on revision the revised finding shall be communicated to the accused in such manner as may be specified by the confirming officer.

#### LOSS OF PROCEEDINGS

95. (1) If before confirmation the whole or any part of the original record of the proceedings of a court martial is lost and a copy exists, such copy may, if the presiding officer or the judge advocate certifies it to be correct, be accepted and used in lieu of the original.

Loss of original record of proceedings before confirmation.

(2) If before confirmation the whole or any part of the original record of the proceedings of a court martial is lost and no copy thereof exists, but evidence of the proceedings of the court can be procured to enable the record or part thereof which has been lost to be reconstituted sufficiently to permit the confirming officer to follow the course of the proceedings and to judge the merits of the case, the record as so reconstituted may be accepted and used in lieu of the original if the judge advocate certifies it to be an adequate record:

Provided that where part only of the original record of the proceedings of a court martial has been lost, and the part which remains is sufficient to enable the confirming officer to follow the course of the proceedings and judge the merits of the case, such remaining part may be accepted and used as if it were the complete record if the judge advocate certifies it to be an adequate record, and in such case it shall not be necessary to reconstitute the part of the record which has been lost.

(3) If before confirmation the whole or any part of the original record of proceedings of a court martial is lost and such loss cannot be made good under either paragraph (1) or paragraph (2), the confirming officer shall withhold confirmation and shall record his decision in the appropriate form set out in the Fourth Schedule.

96. If after confirmation the whole or any part of the original record of the proceedings of a court martial is lost and a copy thereof is certified by the presiding officer or judge advocate to be correct, or a sufficient record

Loss of original record of proceedings

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after confirmation.

of the charge, finding, sentence and proceedings before the court and of the confirmation of the finding and sentence remains or can be reconstituted to permit of the case being reviewed or the sentence reconsidered, such copy or reconstituted record or remaining part of the record may be accepted and used in lieu of the original.

LENGTH OF CUSTODY OF RECORD OF PROCEEDINGS AND COST OF COPIES  
OF PROCEEDINGS

Custody of record  
of proceedings after  
confirmation.

97. For the purposes of section 114 (1) of the Act the prescribed period during which the record of the proceedings of a court martial shall be kept in the custody of the Commander shall be six years from the conclusion of the trial.

Cost of copies  
of record of  
proceedings.

98. The rate at which copies of the record of the proceedings of a court martial shall be supplied in accordance with section 114 (2) and (3) of the Act shall be the estimated cost of the copy required not exceeding two shillings for every folio of one hundred words.

PETITIONS

Petitions.

99. (1) If an accused who has been sentenced by a court martial wishes to petition before confirmation against the finding or sentence or both, he shall present a petition to the confirming officer in the appropriate form set out in the Seventh Schedule.

(2) If an accused who has been sentenced by a court martial wishes to petition after confirmation against the finding or sentence or both, he shall present a petition to the reviewing authority in the appropriate form set out in the Seventh Schedule.

(3) For the purposes of section 106 of the Act the prescribed time within which a petition may be presented to the reviewing authority after confirmation shall be six months from the date that confirmation of a conviction or sentence is promulgated.

(4) If an accused who has been sentenced by a court martial wishes to petition at any time after promulgation against the sentence, he shall present a petition to the Commander for the reconsideration of the sentence under section 106 of the Act in the appropriate form set out in the Seventh Schedule to these Rules.

(5) For the purposes of section 112 (2) of the Act the prescribed intervals at which a sentence of imprisonment is to be reconsidered shall be intervals of not more than six months, provided that a sentence of less than one year but of or exceeding three months is to be first reconsidered not later than at the completion of half the sentence, excluding any remission due.

(6) In any of the circumstances specified in the first column of Part II of the Seventh Schedule a petition under paragraph (2) or paragraph (4) which is presented to the person specified in relation to those circumstances in the second column of that Schedule shall be treated as having been presented to

the authority to whom the petition is addressed.

#### MISCELLANEOUS

100. A notice under paragraph (iii) of the proviso to section 93 (2) of the Act requiring that oral evidence shall be given in lieu of a statutory declaration shall be in Form IV in the Fourth Schedule to these Rules. Notice requiring oral evidence in place of statutory declaration.

101. (1) Where in the opinion of the officer who is or would be responsible for convening a court martial to try the accused or, if he is not available, of the senior officer on the spot, the exigencies of the service render compliance with all or any of the provisions of the rules mentioned in paragraph (4) impracticable, he may make a declaration to that effect in Form II in the Fourth Schedule. Exceptions from Rules on account of the exigencies of service.

(2) A declaration made under paragraph (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court martial to try the accused.

(3) When a declaration has been made under paragraph (1) it shall not be necessary to comply with any provision of these Rules which is mentioned in that declaration and these Rules shall be construed accordingly.

(4) The provisions of these Rules in respect of which a declaration may be made under paragraph (1) are-

(a) rule 18 in so far as it provides that the documents specified therein shall be given to the accused not less than twenty-four hours before the appropriate superior authority investigates and deals summarily with the charge;

(b) rule 24, paragraphs (2) and (3) and paragraph (4) in so far as it provides that the documents specified therein shall be given to the accused not less than twenty-four hours before his trial.

(5) If an accused is brought to trial by court martial or is dealt with summarily by an appropriate superior authority any declaration which has been made in his case under paragraph (1) shall be attached to the record of the proceedings of the court martial or to the record made by the appropriate superior authority as the case may be.

102. (1) When in the opinion of the officer who is or would be responsible for convening a court martial to try the accused, or if he is not available of the senior officer on the spot, a charge-sheet, abstract of evidence or other document which, or a copy of which, is required under these Rules to be given to an accused contains information the disclosure of which would or might be directly or indirectly useful to an enemy, he may make a declaration to that effect in Form II in the Fourth Schedule specifying the document concerned. Exceptions from Rules in interests of security.

(2) A declaration made under paragraph (1) by the senior officer on the spot shall be forwarded by him as soon as possible to the officer who is or would be responsible for convening a court martial to try the accused.

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(3) When a declaration has been made under paragraph (1) it shall not be necessary to give to the accused any document mentioned in that declaration, or any copy of such a document, and it shall be a sufficient compliance with these Rules if the accused is given a proper opportunity to inspect such document while preparing and making his defence.

(4) If an accused is brought to trial by court martial or is dealt with summarily by an appropriate superior authority any declaration which has been made in his case under paragraph (1) shall be attached to the record of the proceedings of the court martial or to the record made by the appropriate superior authority as the case may be.

Procedure in case of illiteracy or incapacity.

103. (1) In any case where these Rules provide for a person to make, read or sign any written statement or other document, if such person is illiterate, or otherwise incapacitated, then such statement or other document—

- (a) may be written down for him;
- (b) shall be read over to him in a language which he understands;
- (c) shall have his signature, mark or thumbprint affixed to it; and
- (d) shall be endorsed with a certificate by the person assisting him to the effect that this rule has been complied with and that he is satisfied that such illiterate or incapacitated person has understood the contents of that statement or document.

(2) The certificate referred to in paragraph (1) shall identify the person giving it by name, and number, rank and unit where appropriate, or address, as the case may be.

Deviations from the forms in the Schedules.

104. A deviation or omission from a form or form of words set out in a Schedule to these Rules shall not, by reason only of such deviation or omission, render any document, act or proceeding invalid.

Cases not covered by Rules.

105. In any case not provided for by these Rules such course shall be adopted as appears best calculated to do justice.

## FIRST SCHEDULE

### FORMS FOR COMMANDING OFFICERS

Form I. Delay Report.

Form II. Abstract of evidence.

Form III. Certificate to be attached to an abstract of evidence after it has been handed to the accused.

Form IV. Summons to a witness to attend the taking of an abstract of evidence.



FORM I

(r. 5)

DELAY REPORT

Unit Address.....

Telephone: .....

.....

.....

.....

To: .....

(Convening Officer)

<sup>1</sup>.....EIGHT DAY DELAY REPORT  
pursuant to the Armed Forces Act, section 72 (2).

Number, Rank, Name of accused .....

Date placed in arrest....., 19.....

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

<sup>2</sup>The accused is in close/open arrest.

The reasons for his retention in arrest are .....

<sup>2</sup>The abstract of evidence { was taken on ....., 19.....  
has not yet been taken because .....

<sup>2</sup>The Attorney-General { was consulted on ....., 19....  
has not yet been consulted because .....

<sup>2</sup>The Attorney-General's advice { was received on ....., 19....  
has not yet been received.

<sup>2</sup>Action { is being taken } { on the Attorney-General's }  
has been taken } advice as follows }

.....  
.....

[Subsidiary]

<sup>2</sup>Date of trial                    {    has not yet been fixed.  
     {    has been fixed as ..... , 19 .....

Reasons for delay since last report.....  
 .....  
 .....

.....  
*Officer commanding accused's unit*  
 ( to be signed personally by the C.O.)

Date ....., 19.....

NOTES

- <sup>1</sup> Insert "1st", "2nd", "3rd", "Final" or as the case may be.
- <sup>2</sup> Strike out words not applicable.

FORM II

(r. 9 (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 evidence<sup>1</sup> of witnesses for  
 the prosecution and compiled by me (the Commanding Officer of the  
 accused) (.....<sup>2</sup> on the direction of the commanding  
 officer of the accused).

.....  
 (*Signature and rank*)

(*Date*) .....

NOTES

- <sup>1</sup> Strike out any reference to statements or précis which are not applicable.
- <sup>2</sup> Insert name and rank of the officer making the abstract.

FORM III

(r. 9 (4))

CERTIFICATE TO BE ATTACHED TO AN ABSTRACT OF EVIDENCE AFTER IT HAS BEEN HANDED TO THE ACCUSED

Certified that I .....<sup>1</sup> today handed to the accused.....<sup>2</sup> the abstract of evidence relating to him dated.....day of....., 19....., and duly cautioned him in accordance with rule 9 (2) and that he (elected to make and sign the statement dated the ..... day of ..... , 19....., which is marked ..... and attached to this certificate) (did not make a statement).

.....  
(Signature of certifying officer)

(Date).....

NOTES

<sup>1</sup> Insert rank, name and unit of officer signing the certificate.

<sup>2</sup> Insert number, rank, name and unit of the accused.

FORM IV

(r. 89 (3))

SUMMONS TO A WITNESS TO ATTEND THE TAKING OF AN ABSTRACT OF EVIDENCE

TO : .....<sup>1</sup>

WHEREAS a charge has been preferred against.....<sup>2</sup>

AND WHEREAS I have directed an abstract of the evidence to be taken at .....<sup>3</sup> on the ..... day of ..... , 19.....

Pursuant to section 228 of the Armed Forces Act and rule 89 of the Armed Forces Rules of Procedure, made thereunder, YOU ARE HEREBY SUMMONED and required to attend, as a witness, the taking of the said abstract of evidence at.....<sup>3</sup> on the ..... day of ..... , 19....., at .....o'clock in the ..... noon and to bring with you the documents hereinafter mentioned, viz. :<sup>4</sup>.....

.....  
.....  
.....  
.....

[Subsidiary]

Whereof you shall fail at your peril.  
 Given under my hand at ..... on the  
 ..... day of ....., 19.....  
 ..... (Signature, rank and unit).  
*Commanding officer of the accused*

NOTES

- <sup>1</sup> Insert name and address of the person to whom the summons is to be sent.
- <sup>2</sup> Insert the number, rank, name and unit of the accused.
- <sup>3</sup> Insert the place where the abstract of evidence is to be taken.
- <sup>4</sup> Specify the documents (if any) which the witness is to bring. If the witness is not required to bring any documents, strike out the words relating to the documents.

SECOND SCHEDULE

- Form I. Commencement of a charge-sheet.
- Form II. Statement of offences.
- Form III. Illustrations of charge-sheets.

FORM I (r. 13 (3))

COMMENCEMENT OF A CHARGE-SHEET

1. The accused ..... (number, rank, name and unit) (an officer) (a serviceman) of the Armed Forces being subject to the Armed Forces Act, under section 7 (a) of that Act, is charged with-  
 .....  
 .....

2. The accused ..... (number, rank, name and unit)

A reservist called out under { section 184  
 section 185 } of the Armed Forces Act,  
 section 186 }

being subject to that Act under section 7 (b) of that Act, is charged with-  
 .....  
 .....

3. The accused .....(name and unit in which employed) a person serving with the Armed Forces under an engagement whereby he agrees to be subject to the Armed Forces Act, while so serving, being subject to that Act under section 7 (c) of that Act, is charged with-  
 .....  
 .....

[Subsidiary]

4. The accused .....(number, rank and name) a member of the Armed Forces Constabulary, being subject to the Armed Forces Act, under section 8 (1) of that Act, is charged with-

.....  
.....

5. The accused ..... (name) a person

{ employed in the service of { a unit  
a part of a unit } which is  
accompanying a unit { a member of a unit }

on active service, being subject to the Armed Forces Act, under section 9 (1) of that Act, is charged with-

.....  
.....

6. The accused ..... (number, rank, name and unit)

{ an officer } of the { military } forces of a country to  
a serviceman } air } which  
naval }

section 11 (2) of the Armed Forces Act, applies, { seconded }  
attached }

to a unit of the Armed Forces being subject to that Act under section 11 (1) (b) of that Act, is charged with-

.....  
.....

7. The accused .....(name) formerly (number, rank and unit if applicable)

{ an officer } of the Armed Forces  
a serviceman }  
a reservist }  
a person }  
a member of the Armed Forces  
Constabulary }

[Subsidiary]

then subject to the Armed Forces Act, under section  $\left\{ \begin{array}{l} 7 (a) \\ 7 (b) \\ 7 (c) \\ 8 (1) \\ 9 (1) \end{array} \right\}$

of that Act, now liable to trial by court-martial under section 141 of that Act, is charged with-

.....  
 .....

FORM II

(r. 14 (4))

**STATEMENTS OF OFFENCES**

TREACHERY, COWARDICE AND OFFENCES ARISING OUT OF SERVICE

*Section 14*

(1)  $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \\ (f) \\ (g) \\ (h) \end{array} \right\}$  With intent to assist the enemy, contrary to section 14 (1)  $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \\ (f) \\ (g) \\ (h) \end{array} \right\}$  of the Armed Forces Act.

(2) Knowingly and without lawful excuse doing an act specified in paragraph  $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \\ (f) \\ (g) \end{array} \right\}$  of section 14 (1) of the Armed Forces Act, contrary to section 14 (2) of that Act.

(3) Negligently causing the  $\left\{ \begin{array}{l} \text{capture} \\ \text{destruction} \end{array} \right\}$  by the enemy of aircraft belonging to the armed forces, contrary to section 14 (3) of the Armed Forces Act.

Section 15

[Subsidiary]

- |               |   |                        |   |           |   |     |   |              |
|---------------|---|------------------------|---|-----------|---|-----|---|--------------|
| (1)           | { | Communicating with     | } | the enemy | { | (1) | } | of the Armed |
| (2)           |   | Giving intelligence to |   |           |   |     |   |              |
| to section 15 |   |                        |   |           |   |     |   |              |

Section 16

- |     |     |   |   |                     |     |        |
|-----|-----|---|---|---------------------|-----|--------|
| (1) | {   | Misconduct by a person<br>in command with intent to<br>assist the enemy contrary<br>to section 16 (1) | } | of the Armed Forces |     |        |
|     |     |   |   |                     | (a) | } Act. |
|     |     |   |   |                     | (b) |        |
|     |     |   |   |                     | (c) |        |
|     |     |   |   |                     | (d) |        |
|     | (e) |   |   |                     |     |        |

(2) Misconduct by a person in command otherwise than with intent to assist the enemy contrary to section 16 (2) of the Armed Forces Act.

Section 17

Misconduct by a person not in command (with intent to assist the enemy) contrary to section 17 of the Armed Forces Act.

Section 18

- |     |     |  |   |                     |     |        |
|-----|-----|--|---|---------------------|-----|--------|
| (1) | {   | Cowardice before the enemy<br>contrary to section 18 (1) | } | of the Armed Forces |     |        |
|     |     |  |   |                     | (a) | } Act. |
|     |     |  |   |                     | (b) |        |
|     | (c) |  |   |                     |     |        |

(2) Inducing cowardice before the enemy contrary to section 18 (2) of the Armed Forces Act.

Section 19

Neglecting to perform	}	a duty contrary to section 19 of the Armed
Negligently performing		

Section 20

- (a) Spreading reports relating to operations calculated to create despondency or unnecessary alarm contrary to section 20 (a) of the Armed Forces Act.
- (b) When before the enemy using words calculated to create despondency or unnecessary alarm contrary to section 20 (b) of the Armed Forces Act.

Section 21

(1) Being captured through disobedience or wilful neglect contrary to section 21 (1) of the Armed Forces Act.

[Subsidiary]

- (2)  $\left\{ \begin{array}{l} \text{Failing to take} \\ \text{Preventing} \\ \text{Discouraging} \end{array} \right\} \left\{ \begin{array}{l} \text{a person} \\ \text{from taking} \end{array} \right\} \left\{ \begin{array}{l} \text{reasonable steps after capture to} \\ \text{rejoin the armed forces contrary} \\ \text{to section 21 (2) of the Armed} \\ \text{Forces Act.} \end{array} \right\}$

*Section 22*

- (1)  $\left\{ \begin{array}{l} \text{Sleeping at his post when on guard duty or} \\ \text{watch contrary to section 22 (1) (a)} \\ \text{Sleeping when on guard duty or watch} \\ \text{contrary to section 22 (1) (b)} \\ \text{Drunkenness when on guard duty or watch} \\ \text{contrary to section 22 (1) (c)} \\ \text{Leaving his post} \\ \text{Absenting himself} \end{array} \right\} \left\{ \begin{array}{l} \text{when on guard} \\ \text{duty or watch} \\ \text{contrary to section} \\ \text{22 (1) (d)} \end{array} \right\} \left\{ \begin{array}{l} \text{of the Armed Forces} \\ \text{Act.} \end{array} \right\}$

- (2)  $\left\{ \begin{array}{l} \text{Striking} \\ \text{Using violence against} \\ \text{Compelling} \end{array} \right\} \left\{ \begin{array}{l} \text{a person on guard duty or watch to let a} \\ \text{person pass contrary to section 22 (3) of} \\ \text{the Armed Forces Act.} \end{array} \right\}$

*Section 23*

- $\left. \begin{array}{l} (a) \\ (b) \\ (c) \end{array} \right\} \left\{ \begin{array}{l} \text{Looting contrary to section} \\ \text{23} \end{array} \right\} \left\{ \begin{array}{l} (a) \\ (b) \\ (c) \end{array} \right\} \left\{ \begin{array}{l} \text{of the Armed Forces Act.} \end{array} \right\}$

*Section 24*

- Committing an offence against the  $\left\{ \begin{array}{l} \text{person} \\ \text{property} \end{array} \right\} \left\{ \begin{array}{l} \text{of a member of a civil population} \\ \text{outside Kenya contrary to section} \\ \text{24 of the Armed Forces Act.} \end{array} \right\}$

## MUTINY AND INSUBORDINATION

*Section 25*

- (1) (a) Mutiny  $\left\{ \begin{array}{l} \text{with violence} \\ \text{relating to the} \\ \text{enemy} \end{array} \right\} \left\{ \begin{array}{l} \text{contrary to section 25 (1) (a) of the} \\ \text{Armed Forces Act.} \end{array} \right\}$



(1) (b) Incitement to mutiny { with violence } contrary to section  
 { relating to the enemy } 25 (1) (b) of the  
 Armed Forces Act.

(2) { Mutiny } contrary to section 25 (2) of the Armed  
 { Incitement to mutiny } Forces Act.

Section 26

(a) Failing to suppress or prevent mutiny contrary to section 26 (a) of the  
 Armed Forces Act.

(b) Failing to report mutiny contrary to section 26 (b) of the Armed Forces  
 Act.

Section 27

(a) { Striking } his superior officer contrary to section  
 { Using violence against } 27 (a) of the Armed Forces Act.  
 { offering violence to }

(b) Using { threatening } language to his superior officer contrary to  
 { insubordinate } section 27 (b) of the Armed Forces Act.

Section 28

(1) Disobeying a lawful command with wilful defiance of Authority contrary  
 to section 28 (1) of the Armed Forces Act.

(2) Disobeying a lawful command contrary to section 28 (2) of the Armed  
 Forces Act.

Section 29

(a) Obstructing { a provost officer } a provost officer  
 { a duty officer } a duty officer  
 { an officer of the patrol } an officer of the  
 { a person exercising } patrol  
 { authority under or }  
 { on behalf of }

contrary to section 29 (a) of the Armed Forces Act.

[Subsidiary]

(b) Refusing to assist	{	a provost officer	}	a provost officer	}
		a duty officer			
		an officer of the patrol			
		a person exercising authority under or on behalf of		a duty officer	
				an officer of the patrol	

contrary to section 29 (b) of the Armed Forces Act.

*Section 30*

(1) Disobedience to standing orders contrary to section 30 (1) of the Armed Forces Act.

DESERTION, ABSENCE WITHOUT LEAVE, ETC.

*Section 31*

(1) (a) Desertion contrary to section 31 (1) (a) of the Armed Forces Act.

(1)(b) { Persuading } a person to desert contrary to section 31 (1)  
           { Procuring } (b) of the Armed Forces Act.

*Section 32*

(a) Absence without leave contrary to section 32 (a) of the Armed Forces Act.

(b) { Persuading } a person to absent himself without leave contrary  
       { Procuring } to section 32 (b) of the Armed Forces Act.

*Section 33*

(a) Assisting a person to desert or absent himself contrary to section 33 (a) of the Armed Forces Act.

(b) Failing to { report without delay { a deserter or absentee }  
                   { take steps to cause { a person attempting to }  
                   { the apprehension of { desert or absent }  
   { himself. } }

contrary to section 33 (b) of the Armed Forces Act.

*Section 34*

Failing to attend for a service duty	}	contrary to section 34 of the Armed Forces Act.
Leaving a service duty without permission		

MALINGERING, DRUNKENNESS AND QUARRELLING

Section 35

Malingering contrary to section 35  $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \end{array} \right\}$  of the Armed Forces Act.

Section 36

(1) Drunkenness contrary to section 36(1) of the Armed Forces Act.

Section 37

(a)  $\left\{ \begin{array}{l} \text{Fighting} \\ \text{Quarrelling} \end{array} \right\}$  with another person contrary to section 37 (a) of the Armed Forces Act.

(b) Using  $\left\{ \begin{array}{l} \text{words} \\ \text{behaviour} \end{array} \right\}$  likely to cause a disturbance contrary to section 37(b) of the Armed Forces Act.

OFFENCES RELATING TO PROPERTY

Section 38

(a)  $\left\{ \begin{array}{l} \text{Stealing} \\ \text{Fraudulently misapplying} \\ \text{Being concerned in} \\ \text{Conniving at} \end{array} \right\} \text{the} \left\{ \begin{array}{l} \text{stealing of fraudulent} \\ \text{misapplication of} \end{array} \right\} \left\{ \begin{array}{l} \text{public} \\ \text{property} \\ \text{contrary} \\ \text{to section} \\ \text{38 (a) of} \\ \text{the Armed} \\ \text{Forces Act.} \end{array} \right\}$

(b)  $\left\{ \begin{array}{l} \text{Receiving} \\ \text{Retaining} \end{array} \right\}$  public property contrary to section 38 (b) of the Armed Forces Act.

(c)  $\left\{ \begin{array}{l} \text{Wilfully damaging} \\ \text{Being concerned in} \\ \text{the wilful damage of} \end{array} \right\}$  public property contrary to section 38 (c) of the Armed Forces Act.

(d) By wilful neglect damaging public property by fire contrary to section 38(d) of the Armed Forces Act.

[Subsidiary]

## Section 39

(a)  $\left\{ \begin{array}{l} \text{Stealing} \\ \text{Fraudulently misapplying} \\ \\ \text{Being concerned in} \\ \\ \text{Conniving at} \end{array} \right\} \left\{ \begin{array}{l} \\ \\ \\ \text{the} \\ \\ \end{array} \right\} \left\{ \begin{array}{l} \text{stealing of fraudulent} \\ \text{misapplication of} \end{array} \right\} \left\{ \begin{array}{l} \text{property contrary} \\ \text{to section 39 (a)} \\ \text{of the Armed} \\ \text{Forces Act.} \end{array} \right\}$

(b)  $\left\{ \begin{array}{l} \text{Receiving} \\ \\ \text{Retaining} \end{array} \right\} \left\{ \begin{array}{l} \text{property contrary to section 39 (b) of the Armed} \\ \text{Forces Act.} \end{array} \right\}$

(c)  $\left\{ \begin{array}{l} \text{Wilfully damaging} \\ \text{Being concerned in} \\ \text{the wilful damage of} \end{array} \right\} \left\{ \begin{array}{l} \text{property contrary to section 39 (c) of the} \\ \text{Armed Forces Act.} \end{array} \right\}$

## Section 40

$\left\{ \begin{array}{l} \text{Wilfully} \\ \text{Negligently} \end{array} \right\} \left\{ \begin{array}{l} \text{causing} \\ \text{allowing} \end{array} \right\} \left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \\ \text{a vehicle} \end{array} \right\} \text{ to be } \left\{ \begin{array}{l} \text{captured} \\ \text{lost} \\ \text{destroyed} \\ \text{damaged} \\ \text{stranded} \\ \text{hazarded} \end{array} \right\}$   
 contrary to section 40 of the Armed Forces Act.

## Section 41

(a) Being concerned in an improper  
 (b) transaction involving the use of  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \\ \text{a vehicle} \end{array} \right\}$  contrary to  $\left\{ \begin{array}{l} \text{(a)} \\ \text{(b)} \end{array} \right\}$   
 section 41 of the Armed Forces Act.

## Section 42

(a)  $\left\{ \begin{array}{l} \text{Losing} \\ \text{Negligently damaging} \end{array} \right\} \left\{ \begin{array}{l} \text{public property} \\ \text{a service decoration} \\ \text{granted to him} \end{array} \right\} \left\{ \begin{array}{l} \text{contrary to section} \\ \text{42 (a) of the} \\ \text{Armed Forces} \\ \text{Act.} \end{array} \right\}$

(b)  $\left\{ \begin{array}{l} \text{Losing} \\ \text{Negligently damaging} \end{array} \right\} \left\{ \begin{array}{l} \text{his equipment contrary to section 42 (b)} \\ \text{of the Armed Forces Act.} \end{array} \right\}$

[Subsidiary]

(c) Negligently damaging public property by fire contrary to section 42 (c) of the Armed Forces Act.

(d) Neglect of  $\left\{ \begin{array}{l} \text{an animal} \\ \text{a bird} \end{array} \right\}$  contrary to section 42 (d) of the Armed Forces Act.

(e) Making away with  $\left\{ \begin{array}{l} \text{a service decoration} \\ \text{granted to him} \\ \text{his equipment} \end{array} \right\}$  contrary to section 42 (e) of the Armed Forces Act.

Section 43

(a) Unlawfully  $\left\{ \begin{array}{l} \text{obtaining} \\ \text{ordering} \\ \text{procuring} \end{array} \right\}$  a person to obtain  $\left\{ \begin{array}{l} \text{billets contrary to} \\ \text{section 43 (a) of the} \\ \text{Armed Forces Act.} \end{array} \right\}$

(b) Corruption in relation to a billeting order contrary to section 43 (b) of the Armed Forces Act.

(c)  $\left\{ \begin{array}{l} \text{Committing an offence against} \\ \text{Damaging} \\ \text{Damaging of property in} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{a person} \\ \text{property} \end{array} \right\}$  in  $\left\{ \begin{array}{l} \text{his billet} \\ \text{contrary to} \\ \text{section 43 (c)} \\ \text{of the Armed} \\ \text{Forces Act.} \end{array} \right\}$

Section 44

(1)  $\left\{ \begin{array}{l} (a) \\ (b) \end{array} \right\}$  Unlawful requisitioning contrary  $\left\{ \begin{array}{l} (a) \\ (b) \end{array} \right\}$  of the Armed Forces Act.

(1) (c) Corruption in relation to a requisition order contrary to section 44(1) (c) of the Armed Forces Act.

OFFENCES RELATING TO FLYING

Section 45

$\left\{ \begin{array}{l} \text{Willfully} \\ \text{Negligently} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{doing an act} \\ \text{making an} \\ \text{ommission} \end{array} \right\}$  in  $\left\{ \begin{array}{l} \text{flying} \\ \text{the use of aircraft} \\ \text{relation to} \\ \left\{ \begin{array}{l} \text{aircraft} \\ \text{aircraft} \\ \text{material} \end{array} \right\} \end{array} \right\}$

[Subsidiary]

$$\left. \begin{array}{l} \text{causing } \left\{ \begin{array}{l} \text{loss of life} \\ \text{bodily injury} \end{array} \right\} \\ \text{likely to cause loss of} \\ \text{life or bodily injury} \end{array} \right\} \text{ to a person contrary to section} \\ \text{45 of the Armed Forces Act.}$$

*Section 46*

Unlawful low flying contrary to section 46 of the Armed Forces Act.

*Section 47*

Flying an aircraft in a manner causing or likely to cause unnecessary annoyance to a person contrary to section 47 of the Armed Forces Act.

OFFENCES RELATING TO AND BY PERSONS IN CUSTODY

*Section 48*

$$(1)(a) \text{ Delaying } \left\{ \begin{array}{l} \text{an investigation} \\ \text{a trial} \end{array} \right\} \text{ contrary to section 48 (1) (a) of} \\ \text{the Armed Forces Act.}$$

- (1) (b) Failing to release a person in arrest contrary to section 48 (1) (a) of the Armed Forces Act.
- (2) Failing to report the offence for which a person has been placed in custody contrary to section 48 (2) of the Armed Forces Act.
- (3) Failing to give in writing information relating to a person committed to his charge as a guard commander contrary to section 48 (3) (b) of the Armed Forces Act.

*Section 49*

- (1) Willfully allowing a person to escape contrary to section 49 (1) of the Armed Forces Act.
- (2)(a) Releasing a person without authority contrary to section 49 (2) (a) of the Armed Forces Act.
- (2)(b) Allowing a person to escape contrary to section 49 (2) (b) of the Armed Forces Act.

*Section 50*

$$(1) \left\{ \begin{array}{l} \text{Refusing to obey} \\ \text{Striking} \\ \text{Using violence against} \\ \text{Offering violence to} \end{array} \right\} \left\{ \begin{array}{l} \text{an officer who orders him into} \\ \text{arrest contrary to section 50 (1)} \\ \text{of the Armed Forces Act.} \end{array} \right.$$

[Subsidiary]

- (2)  $\left\{ \begin{array}{l} \text{Striking} \\ \text{Using violence against} \\ \text{Offering violence to} \end{array} \right\}$  a person  $\left\{ \begin{array}{l} \text{whose duty it is} \\ \text{to apprehend him} \\ \text{in whose custody he is} \end{array} \right\}$   
 contrary to section 50 (2) of the Armed Forces Act.

*Section 51*

Escaping from custody contrary to section 51 of the Armed Forces Act.

## OFFENCES RELATING TO COURTS MARTIAL AND OTHER AUTHORITIES

*Section 52*

- (1)  $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \\ (f) \end{array} \right\}$  Contempt of a court martial  
 contrary to section 52 (1)  $\left\{ \begin{array}{l} (a) \\ (b) \\ (c) \\ (d) \\ (e) \\ (f) \end{array} \right\}$  of the Armed Forces Act.

*Section 53*

- (1) Making a false statement contrary to section 53 (1) of the Armed Forces Act.

*Section 54*

- (a)  $\left\{ \begin{array}{l} \text{Preventing} \\ \text{Obstructing} \end{array} \right\}$  a person in executing a warrant of arrest  
 contrary to section 54 (a) of the Armed Forces Act.
- (b)  $\left\{ \begin{array}{l} \text{Preventing} \\ \text{Obstructing} \end{array} \right\}$  a person in making a lawful arrest contrary to  
 section 54 (b) of the Armed Forces Act.

## PRIZE OFFENCES

*Section 55*

- (a) Being in  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \end{array} \right\}$  failing to send to  $\left\{ \begin{array}{l} \text{the High Court} \\ \text{a prize court} \end{array} \right\}$
- all papers found on board  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \end{array} \right\}$  taken as a prize  
 contrary to section 55 (a) of  
 the Armed Forces Act.

[Subsidiary]

(b) Being in command of  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \end{array} \right\}$  unlawfully making an agreement for the ransoming of  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \\ \text{goods} \end{array} \right\}$   
 taken as a prize contrary to section 55 (b) of the Armed Forces Act.

(c) Being in command of  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{by agreement} \\ \text{by collusion} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{restoring} \\ \text{abandoning} \end{array} \right\}$   
 $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \\ \text{goods} \end{array} \right\}$   
 taken as a prize contrary to section 55 (c) of the Armed Forces Act.

*Section 56*

(a)  $\left\{ \begin{array}{l} \text{Striking} \\ \text{Ill-treating} \\ \text{Unlawfully taking a thing} \\ \text{from the possession of} \end{array} \right\}$  a person on board  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \end{array} \right\}$

taken as a prize contrary to section 56 (a) of the Armed Forces Act.

(b) Removing out of  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \end{array} \right\}$  taken as a prize any goods not lawfully adjudged to be a prize contrary to section 56 (b) of the Armed Forces Act.

(c) Fraudulently breaking bulk on board  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{a ship} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{taken as a prize} \\ \text{detained by} \\ \text{belligerent right} \end{array} \right\}$   
 contrary to section 56 (c) of the Armed Forces Act.

## MISCELLANEOUS OFFENCES

*Section 57*

(a)  $\left\{ \begin{array}{l} \text{Promoting} \\ \text{Being a member of} \\ \text{Taking part in the activities of} \end{array} \right\}$  a political association contrary to section 57 (a) of the Armed Forces Act.

(b) Expressing political views in a public place contrary to section 57 (b) of the Armed Forces Act.



- (c)  $\left\{ \begin{array}{l} \text{Addressing a meeting} \\ \text{Joining in a demonstration} \end{array} \right\}$  in support of a
- Political  $\left\{ \begin{array}{l} \text{association} \\ \text{object} \end{array} \right\}$   $\left\{ \begin{array}{l} \text{contrary to} \\ \text{section 57 (c)} \\ \text{of the Armed} \\ \text{Forces Act.} \end{array} \right\}$
- Candidate for a  $\left\{ \begin{array}{l} \text{national} \\ \text{local authority} \end{array} \right\}$  election

*Section 58*

Making a false answer on enlistment contrary to section 58 of the Armed Forces Act.

*Section 59*

Making a false statement to  $\left\{ \begin{array}{l} \text{obtain} \\ \text{prolong} \end{array} \right\}$  leave contrary to section 59 of the Armed Forces Act.

*Section 60*

- (a)  $\left\{ \begin{array}{l} \text{Making} \\ \text{Signing} \end{array} \right\}$  a certificate relating to  $\left\{ \begin{array}{l} \text{an aircraft} \\ \text{aircraft material} \end{array} \right\}$

without ensuring its accuracy contrary to section 60 (a) of the Armed Forces Act.

- (b)  $\left\{ \begin{array}{l} \text{Making} \\ \text{Signing} \end{array} \right\}$  a certificate relating to  $\left\{ \begin{array}{l} \text{the seagoing} \\ \text{the fighting} \end{array} \right\}$

efficiency of a ship without ensuring its accuracy contrary to section 60 (b) of the Armed Forces Act.

*Section 61*

- (a)  $\left\{ \begin{array}{l} \text{Making} \\ \text{Signing} \\ \text{Making a false entry in a} \end{array} \right\}$  a false  $\left\{ \begin{array}{l} \text{service document contrary to} \\ \text{section 61 (a) of the Armed} \\ \text{Forces Act.} \end{array} \right\}$

- (b)  $\left\{ \begin{array}{l} \text{Altering} \\ \text{Altering an entry in} \\ \text{Making away with} \\ \text{Suppressing} \\ \text{Defacing} \end{array} \right\}$  a service document contrary to section 61 (b) of the Armed Forces Act.

[Subsidiary]

- (c) Failing to make an entry in a service document so that it is to his knowledge false contrary to section 61 (c) of the Armed Forces Act.

*Section 62*

Scandalous conduct unbecoming the character of an officer contrary to section 62 of the Armed Forces Act.

*Section 63*

Striking } a person of { inferior rank } contrary to section 63 of  
 Ill-treating } { less seniority } the Armed Forces Act.

*Section 64*

Disgraceful conduct { of a cruel } kind contrary to section 64  
 { an indecent } of the Armed Forces Act.  
 { an unnatural }

*Section 65*

- (a) Making a false accusation contrary to section 65 (a) of the Armed Forces Act.

- (b) { Making a false statement } in a complaint contrary to  
 { Wilfully suppressing a material fact } section 65 (b) of the Armed  
 Forces Act.

*Section 66*

Attempting to commit a service offence contrary to section 66 of the Armed Forces Act, that is to say (*set out the offence*).

*Section 67*

{ Aiding, abetting, } the commission of a service offence contrary  
 { counseling or } to section 67 of the Armed Forces  
 { procuring } Act, that is to say (*set out the offence*).  
 { Conniving at }

*Section 68*

{ An act } to the prejudice of good order and service discipline  
 { Conduct } contrary to section 68 of the Armed Forces Act.  
 { Neglect }

## CIVIL OFFENCES

## Section 69

Committing a civil offence contrary to section 69 (1) of the Armed Forces Act, that is to say (*here describe the civil offence in such words as sufficiently describe the offence*).

FORM III

(r. 13 (2))

## ILLUSTRATIONS OF CHARGE-SHEETS

(i) *Charge-Sheet*

The accused, No. 1234567 Lance-Corporal Peter Ohoo of 1st Battalion Kenya Rifles, a serviceman of the Armed Forces, being subject to the Armed Forces Act under section 7 (a) of that Act, is charged with-

## 1st Charge

STEALING PUBLIC PROPERTY CONTRARY TO SECTION 38 (a) OF THE  
ARMED FORCES ACT

in that he  
at Nanyuki on 1st January, 1980, stole a pair of binoculars, public property.

2nd Charge  
(Alternative to  
1st charge)RECEIVING PUBLIC PROPERTY CONTRARY TO SECTION 38 (b) OF THE  
ARMED FORCES ACT

in that he  
at Nanyuki on 1st January, 1980, received a pair of binoculars, public property,  
knowing or having reason to believe them to be stolen.

Nanyuki,  
16th January, 1980.

J. MUTISYA, Lieutenant-Colonel.  
Commanding 1<sup>st</sup> Battalion Kenya Rifles,  
*Commanding officer of the accused.*

To be tried by court martial

Nairobi,  
21<sup>st</sup> January, 1980.

A. NGATIA, Brigadier.<sup>1</sup>  
*Commander Kenya Army.*

## NOTE

<sup>1</sup> The order for trial may be signed by a staff officer as "an officer authorized to sign for" the Chief of General Staff or the Commander Kenya (Air Force) (Army) (Navy) as the case may be—*see* second illustration Charge-Sheet. However, such an officer must be at least of the rank of major or corresponding rank and must have written authority from the Chief of General Staff personally to sign such orders either on behalf of the Chief of General Staff or on behalf of any Commander.

[Subsidiary]

(ii) *Charge-Sheet*

The accused, No. 2345678 Corporal James Munyao, a reservist called out under section 184 of the Armed Forces Act, being subject to that Act under section 7 (b) of that Act and Paul Gachibi formerly No. 3456789 a Private of the 2nd Battalion Kenya Rifles, a serviceman of the Armed Forces, then subject to the Armed Forces Act, under section 7 (a) of that Act, now liable to trial by court martial under section 141 of that Act, are charged with-

Both accused jointly:

1st Charge

COMMITTING A CIVIL OFFENCE CONTRARY TO SECTION 69 (1) OF THE ARMED FORCES ACT, THAT IS TO SAY ASSAULT OCCASIONING ACTUAL BODILY HARM CONTRARY TO SECTION 251 OF THE PENAL CODE

in that they

at Nairobi on 1st January, 1980, assaulted Julius Mwenda, thereby occasioning him actual bodily harm.

Corporal Munyao only:

2nd Charge

USING VIOLENCE AGAINST HIS SUPERIOR OFFICER, CONTRARY TO SECTION 27 (a) OF THE ARMED FORCES ACT

in that he

at Nakuru on 2nd January, 1980, used violence against No. 4567890 Sergeant John Kinyoki who had ordered him into arrest by seizing the said sergeant by the jacket and by kicking his legs.

Paul Gachibi only:

3rd Charge

USING INSUBORDINATE LANGUAGE TO HIS SUPERIOR OFFICER, CONTRARY TO SECTION 27(b) OF THE ARMED FORCES ACT

in that he

at Nakuru on 2nd January, 1980, said to No. 4567890 Sergeant John Kinyoki, who was then his superior officer, when asked by the said Sergeant for his (the accused's) particulars "Push off and find out for yourself" or words to that effect.

Nakuru,

20th January, 1980.

J. NDUNDA, Lieutenant-Colonel.  
Commanding 2nd Battalion Kenya Rifles,  
*Commanding officer of both accused.*

To be tried by court martial

A. MACHARIA, Major<sup>1</sup>.

Nairobi,

25th January, 1980.

{ An officer authorized to sign for  
the Chief of Defence Staff.  
the Commander, Kenya Army. }

NOTES

<sup>1</sup> See note 1 to Charge-Sheet (i) above.

THIRD SCHEDULE

(r. 19 (h))

RECORD OF PROCEEDINGS, BEFORE AN APPROPRIATE SUPERIOR AUTHORITY

Accused's number, rank and name..... unit .....

1. Questions to be put to the accused by the officer dealing with the case before the charge is read.

Q. Have you received a copy of the charge-sheet and abstract of evidence not less than 24 hours ago?

A. ....

Q. Have you had sufficient time to prepare your defence?

A. ....

2. 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. ....

3. 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.

4. 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, with your character and with matters in mitigation of punishment.

A. ....

Q. Do you wish to present any other evidence in your defence?

A. ....

5. 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, examine and consider the accused's record of service. If he intends to award the punishment of forfeiture of seniority of rank, a fine or stoppages or in the case of a civilian a fine, he shall not announce and record his finding unless the accused says in answer to the following question that he will accept his award-

Q. Will you accept my award or do you elect to be tried by court-martial?

A. ....

6. Finding .....

Award.....

.....

(Signature, rank and appointment of appropriate superior authority}

(Date) .....

[Subsidiary]

**FOURTH SCHEDULE**

**COURT MARTIAL FORMS**

- Form I Convening order.
- Form II Declarations under rules 101 and 102.
- Form III Summons to a witness to attend at a court martial.
- Form IV Notices requiring oral evidence to be given in lieu of a statutory declaration.
- Form V Record of proceedings of a court martial.
- Form VI Findings.
- Form VII Record of reconsideration of finding under rule 78 (5).
- Form VIII Serving record of accused.
- Form IX Record of proceedings on revision under section 110 of the Act.
- Form X Confirmation.
- Form XI Determination by a confirming officer or reviewing authority of a suspended sentence, and direction that sentences are to run concurrently or consecutively.
- Form XII Restitution order.
- Form XIII Promulgation.

FORM I

(r. 21 (a))

**CONVENING ORDER**

**CONVENING ORDER FOR A COURT MARTIAL**

ORDERS BY .....<sup>1</sup>  
 Commanding .....  
 (Place and date) .....

The detail of officers as mentioned below will assemble at ..... at .....  
 ..... hours on the ..... day  
 of ....., 19...., for the purpose  
 of trying by a court martial the accused person(s)  
 named in the margin.

Name, etc.,  
 of accused.  
 .....  
 .....  
 .....

**PRESIDING OFFICER**

.....

**MEMBERS<sup>3</sup>**

.....  
 .....  
 .....

**WAITING MEMBER(S)<sup>3</sup>**

.....  
 .....

JUDGE ADVOCATE

The judge advocate has been appointed by the Chief Justice.

An officer of the rank of major or above having suitable qualifications is not in the opinion of the convening officer available with due regard to the public service.\*

The record of the proceedings will be forwarded in an envelope marked confidential to ..... Signed this ..... day of ....., 19.....

(Signature, rank and appointment of the convening officer) or

(Signature, rank and appointment of the appropriate staff officer) An officer authorized to sign for

(Appointment held by the convening officer)

\* Strike out if not applicable.

NOTES

- 1Insert rank and name of convening officer. 2Insert number, rank, name and unit of the accused. These particulars must agree with his description in the charge-sheet. 3A member or a waiting member should be described by giving his rank,name and unit.

FORM II

(r. 101 (1))

DECLARATIONS UNDER RULES 101 AND 102

In the case of .....1

I .....2(the officer who (is) (would be) responsible for convening a court martial to try the accused) (the senior officer on the spot) hereby declare that in my opinion the following exigencies of the service, namely .....

render compliance with the following provisions of the Armed Forces Rules of Procedure- (paragraphs (2) and (3) of rule 24) \* (rule 18) \* (subparagraphs (a), (b), (c) and (d) of rule 24 (4)) \* impracticable.

Signed at ..... this ..... day of....., 19..... (Signature)

\*Delete as appropriate.

NOTES

- 1Insert number, rank, name and unit of accused. 2Insert rank, name and appointment of officer making the declaration.

[Subsidiary]

In the case of .....<sup>1</sup>

I .....<sup>2</sup> (the officer who (is) (would be) responsible for convening a court martial to try the accused) (the senior officer on the spot) hereby declare that in my opinion the <sup>3</sup>

..... contain(s) information the disclosure of which would or might be directly or indirectly useful to an enemy.

Signed at ..... this ..... day of ....., 19.....

.....  
(Signature)

NOTES

- <sup>1</sup> Insert number, rank, name and unit of the accused.
- <sup>2</sup> Insert rank, name and appointment of officer making the declaration.
- <sup>3</sup> Here indicate the document(s).

FORM III

(r. 89 (3))

SUMMONS TO A WITNESS TO ATTEND AT A COURT MARTIAL

To .....<sup>1</sup>

WHEREAS a court martial (has been ordered to assemble at ..... (has assembled at .....)) on the ..... day of ..... 19....., for the trial of <sup>2</sup> .....

Pursuant to section 228 of the Armed Forces Act and rule 89 of the Armed Forces Rules of Procedure made thereunder YOU ARE HEREBY SUMMONED and required to attend as a witness at the sitting of the said Court at ..... on the ..... day of ....., 19 ....., at ..... o'clock in the.....noon and to bring with you the documents hereinafter mentioned, viz.:<sup>3</sup> ..... and so to attend from day to day until you shall be duly discharged: whereof you shall fail at your peril.

Given under my hand at ..... on the ..... day of ....., 19.....

.....  
(Signature, rank, appointment)  
(An officer authorized to convene a court martial) \*  
(President of the Court)\*

.....<sup>4</sup> an officer authorized to sign for .....<sup>5</sup> an officer authorized to convene a court martial.\*

\*Strike out if not applicable.



NOTES

<sup>1</sup> Insert name and address of the person to whom the summons is to be sent.

<sup>2</sup> Here enter number, rank, name and unit of the person to be tried.

<sup>3</sup> Specify the documents which the witness is to bring. The words relating to documents should be deleted if not applicable.

<sup>4</sup> Insert the appointment of the staff officer.

<sup>5</sup> Insert appointment of officer for whom the staff officer is signing.

FORM IV

(r. 100)

NOTICES REQUIRING ORAL EVIDENCE TO BE GIVEN  
IN LIEU OF A STATUTORY DECLARATION

NOTICE BY A COMMANDING OFFICER

To .....<sup>1</sup>  
I .....<sup>2</sup> Commanding .....<sup>3</sup>  
hereby give notice that I require that .....<sup>4</sup>  
shall give oral evidence in lieu of (his) (her) statutory declaration dated  
..... at your forthcoming trial by court martial.

.....  
(Signature and rank)  
(Commanding Officer of the  
accused)

(Date) .....

NOTICE BY AN ACCUSED

(r. 100)

To .....<sup>2</sup> Commanding.....<sup>3</sup>  
I .....<sup>1</sup> hereby give notice that I require  
that .....<sup>4</sup>  
shall give oral evidence in lieu of (his) (her) statutory declaration dated  
..... at my forthcoming trial by court martial.

.....  
(Date)

.....  
(Signature)

NOTES

<sup>1</sup> Insert number, rank, name and unit of the accused.

<sup>2</sup> Insert rank and name of commanding Officer.

<sup>3</sup> Insert unit.

<sup>4</sup> Insert name of witness.

[Subsidiary]

FORM V

(r. 90)

RECORD OF PROCEEDINGS OF A COURT MARTIAL

Page 1

(A)

RECORD OF PROCEEDINGS OF A COURT MARTIAL

Proceedings of a court martial held at .....
on the.....day of ....., 19.....,
by order of.....(Chief of General Staff
(Commander Kenya (Air Force) (Army) (Navy)) .....
Dated the .....day of ....., 19.....

PRESIDENT

MEMBERS

JUDGE ADVOCATE

Trial of .....
.....

The court comply with rule 25.
.....?not being available owing to .....
..... the presiding officer appoints .....
a qualified waiting member to take his place.

The accused is brought before the court.
Prosecutor .....
Defending (officer) (counsel) .....

At..... hours the trial begins.

The convening order is read in the hearing of the accused, marked
.....signed by the presiding officer and attached to the record.

The names of the presiding officer and members of the court are read in
the hearing of the accused and they severally answer to their names.

Q. Do you object to being tried by me as presiding officer, or by
any of the officers whose names you have heard read?
A. ....

The proceedings relating to the objection(s) are recorded on pages<sup>2</sup>
.....

NOTES

<sup>1</sup> Insert number, rank, name and unit of the accused as given in the charge-sheet.

<sup>2</sup> Strike out if not applicable.

(B)

Page 2

SWEARING

The presiding officer, members of the court and judge advocate are duly sworn.

The (following) officers under instruction (listed on page ..... ) are duly sworn.<sup>2</sup>

Q. Do you object to.....as shorthand writer?<sup>2</sup>

A. ....  
..... is duly sworn as shorthand writer.

Q. Do you object to.....as interpreter?<sup>2</sup>

A. ....  
..... is duly sworn as interpreter.

SPECIAL PLEAS AND OBJECTIONS

The accused offers a plea to the jurisdiction under rule 35. The proceedings relating to his plea are recorded on page .....<sup>2</sup>

The accused objects to the.....charge(s) under rule 36. The proceedings relating to his objection(s) are recorded on page.....<sup>2</sup>

The accused offers a plea(s) in bar of trial under rule 37 in respect of the .....charge(s). The proceedings relating to his plea(s) are recorded on page.....<sup>2</sup>

The accused.....applies under rule 38 to be tried separately. The proceedings relating to his application are recorded on page.....<sup>2</sup>

The accused applies under rule 39 to have charges ..... and ..... tried separately. The proceedings relating to his application are recorded on page.....<sup>2</sup>

NOTES

<sup>1</sup> If there is an objection the proceedings relating to it should be recorded on a separate numbered page and the fact that this has been done should be recorded in this space with the number of the page.

<sup>2</sup> Strike out if not applicable.

(C. 1)

Page .....

ARRAIGNMENT

The charge-sheet is read to the accused and he is arraigned on each charge.

The charge-sheet is signed by the presiding officer and inserted in the record immediately before this page, as page(s) .....

Q. Are you guilty or not guilty of the first <sup>1</sup> charge against you, which you have heard read?

[Subsidiary]

- A .....
- Q. Are you guilty or not guilty of the second charge against you which you have heard read? <sup>2</sup>
- A .....
- Q. Are you guilty or not guilty of the third charge against you, which you have heard read? <sup>2</sup>
- A .....
- Q. Are you guilty or not guilty of the fourth charge against you, which you have heard read? <sup>2</sup>
- A .....
- Q. Are you guilty or not guilty of the fifth charge against you, which you have heard read? <sup>2</sup>
- A .....
- Q. Are you guilty or not guilty of the sixth charge against you, which you have heard read? <sup>2</sup>
- A .....
- The accused pleaded guilty to the .....

.....charge(s).  
 Rule 41 is duly complied with in respect of this (these) charge(s).<sup>2</sup>  
 The accused's pleas to the remaining charges are recorded overleaf. <sup>2</sup>

NOTES

- <sup>1</sup> Strike out "first" if there is only one charge.
- <sup>2</sup> Strike out if not applicable.

(C.2)

Page.....

- Q. Are you guilty or not guilty of the seventh charge against you, which you have heard read? <sup>1</sup>
- A.....
- Q. Are you guilty or not guilty of the eighth charge against you, which you have heard read? <sup>1</sup>
- A.....
- Q. Are you guilty or not guilty of the ninth charge against you, which you have heard read? <sup>1</sup>
- A.....
- Q. Are you guilty or not guilty of the tenth charge against you, which you have heard read? <sup>1</sup>
- A.....
- Q. Are you guilty or not guilty of the eleventh charge against you, which you have heard read? <sup>1</sup>
- A.....
- Q. Are you guilty or not guilty of the twelfth charge against you, which you have heard read? <sup>1</sup>
- A.....

NOTE

- <sup>1</sup> Strike out if not applicable.

(D.1)

Page.....

PROCEEDING ON PLEA(S) OF NOT GUILTY<sup>1</sup>

Q. Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

A. ....

The prosecutor (makes an opening address shortly outlining the facts) (makes an opening address which is read, signed by the presiding officer, marked ..... and attached to the record).

NOTES

Remove this page if there are no pleas of not guilty.

If the accused asks for an adjournment, the proceedings relating to his application should, if necessary, be recorded on a separate page and a record made here that this has been done.

(D. 2)

Page.....

The witnesses for the prosecution are called.

.....

Being duly sworn<sup>1</sup> says—

Continued on page.....

First witness for the prosecution.

NOTES

When a witness affirms the words “having duly affirmed” should be substituted for the words “being duly sworn”, and when a witness is a child who is too young to give evidence on oath the words “without being sworn” should be substituted for the words “being duly sworn”.

(D. 3)

Page.....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY<sup>1</sup>

(continued)

The prosecution is closed.

The accused submits under rule 57 that there is no case for him to answer in respect of the .....charge(s). The proceedings relating to this submission are recorded on pages .....

[Subsidiary]

DEFENCE

Rule 58 is complied with.

Q. Do you apply to give evidence yourself on oath or do you wish to make a statement without being sworn?

A. ....

Q. Do you intend to call any other person as a witness in your defence?

A. ....

Q. Is he a witness as to fact or to character only?

A. ....

(Where the accused intends to call a witness as to fact, other than himself).<sup>2</sup>

Q. Do you wish to make an opening address?<sup>2</sup>

A. ....

The accused<sup>2</sup> (makes an opening address which is summarized below) (hands in a written address which is read, signed by the President, marked..... and attached to the record).

NOTES

1 Remove the page if there are no pleas of not guilty.

2 Strike out if the accused does not intend to call witness as to fact, other than himself.

(D.4)

Page.....

(Where the accused makes a statement without being sworn).<sup>1</sup>

The accused (makes a statement, which is recorded on page.....) (hands in a written statement which is read, marked..... signed by the presiding officer, and attached to the record).

(Where evidence on oath is given for the defence).<sup>1</sup>

The witnesses for the defence (including the accused, if sworn are called).

.....

being duly sworn<sup>2</sup> says-

First witness for the defence.

Continued on page.....

NOTES

<sup>1</sup> Strike out this paragraph if not applicable.

<sup>2</sup> When a witness or the accused affirms, the words "having duly affirmed" should be substituted for the words "being duly sworn" and when a witness is a child who is too young to give evidence on oath, the words "without being sworn" should be substituted for the words "being duly sworn".

(D.5)

Page.....

PROCEEDINGS ON PLEA(S) OF NOT GUILTY<sup>1</sup>

(continued)

The ..... (makes a closing address which is summarized on page.....) (hands in a closing address which is read, marked....., signed by the presiding officer, and attached to the record).

The ..... (makes a closing address which is summarized on page.....) (hands in a closing address which is read, marked ..... signed by the presiding officer, and attached to the record).

The note of the summing-up of the judge advocate is recorded on page.....

FINDING(S)

The court close to deliberate on their finding(s).

The court find that the accused<sup>3</sup> ..... is<sup>4</sup>

ANNOUNCEMENT OF FINDING(S)

The court being re-opened the accused is again brought before them.

The finding(s) (is) (are) read and (with the exception of the finding(s) of “not guilty”)<sup>2</sup> (is) (are) announced as being subject to confirmation.

PROCEEDINGS ON ACQUITTAL ON ALL CHARGES<sup>2</sup>

The accused is released.

Signed at ..... this..... day of....., 19.....

Judge Advocate

President

NOTES

<sup>1</sup> Strike out this page if not applicable.

<sup>2</sup> Strike out if not applicable.

<sup>3</sup> Insert number, rank, name and unit of the accused as given on the charge sheet.

<sup>4</sup> Set out the finding on each charge in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.

(E)

Page.....

PROCEEDINGS ON PLEA(S) OF GUILTY<sup>1</sup>

The accused<sup>2</sup> ..... is found guilty of<sup>3</sup>

The finding(s) (is) (are) read in open court and (is) (are) announced as being subject to confirmation.

(The abstract of evidence is read to the court by the prosecutor, marked....., signed by the presiding officer and attached to the record) (the prosecutor informs the court of the facts contained in the abstract of evidence which is marked ..... signed by the presiding officer and attached to the record).<sup>4</sup>

[Subsidiary]

## NOTES

- <sup>1</sup> Strike out this page is not applicable.
- <sup>2</sup> Insert the number, name, rank and unit of the accused as given on the charge-sheet.
- <sup>3</sup> Record the finding on each charge of which the accused is found guilty in the appropriate form set out in the Fourth Schedule to the Rules of Procedure.
- <sup>4</sup> Strike out if not applicable. If this paragraph is struck out, rule 44 (2) must be complied with.

(F.1)

Page.....

## PROCEEDINGS ON CONVICTION

*NOTE.* – F.2 should be completed before F.1, if the accused has pleaded not guilty to all charges. F.1 should normally be completed before F.2 if the accused has pleaded guilty to any charge but the presiding officer may in his discretion complete F.2 before F.1 if there is no danger of the accused making an inconsistent plea.

Q. Do you wish to give evidence yourself or to call other witnesses as to your character or in mitigation of punishment?

A. ....

The evidence for the defence as to the accused's character and in mitigation of punishment is recorded on pages .....<sup>1</sup>

Q. Do you wish to address the court in mitigation of punishment?

A. ....

The ..... (makes an address in mitigation of punishment, which is summarized (below) (on page.....)) (hands in an address in mitigation of punishment, which is read, marked....., signed by the presiding officer and attached to the record).<sup>1</sup>

The list of offences which the court have, at the request of the accused, agree to take into consideration is read to the accused, signed by him, marked....., signed by the presiding officer and attached to the record.<sup>2</sup>

Final question addressed to the accused personally.\*

Q. Is there anything further that you wish to say to the court?\*

A. ....\*

The accused makes a statement which is recorded on page.....\*

The court close to deliberate on sentence.\*

\*Strike out if F.1 completed before F.2.

## NOTES

- <sup>1</sup> Strike out this paragraph if not applicable.
- <sup>2</sup> Strike out this paragraph if the accused has not requested other offences to be taken into consideration.



(F.2)

Page.....

PROCEEDINGS ON CONVICTION

Note. - F.2 should be completed before F.1 if the accused has pleaded not guilty to all charges.

The prosecutor calls evidence as to the accused's character and record.

..... is duly sworn

Q. Do you produce the Service Record of the accused?

A I produce .....

Q. Have you compared it with the service books?

A. ....

Q. Do the entries in it correspond with the entries in the service books?

A. ....

The ..... is read, marked ....., signed by the presiding officer and attached to the record.

The accused (declines) (elects) to cross-examine this witness (and the cross-examination is recorded on pages .....

The prosecutor adduces evidence under rule 69 (3) which is recorded on pages .....<sup>1</sup>

Final question addressed to the accused personally.\*

Q. Is there anything further you wish to say to the court?\*

A. ....\*

The accused makes a statement which is recorded on page.....\*

The court close to deliberate on sentence.\*

\*Strike out if F.2 is completed before F.1

NOTE

<sup>1</sup> Strike out this paragraph if the prosecutor does not adduce evidence under rule 69 (3)

(G)

Page.....

SENTENCE <sup>1</sup>

The court sentence the accused.....<sup>2</sup>

.....<sup>3</sup>

[Subsidiary]

## ANNOUNCEMENT OF SENTENCE

The court being re-opened, the accused is again brought before them.

The sentence (and recommendation to mercy)<sup>4</sup> (is) (are) announced in open court; the sentence is announced as being subject to confirmation.

The presiding officer announces that the trial is concluded.

Signed at.....this.....day of.....,19.....

.....  
*Judge Advocate*

.....  
*Presiding Officer*

## NOTES

<sup>1</sup> Remove this page is not applicable.

<sup>2</sup> Insert accused's rank, name, etc., as given on the charge-sheet.

<sup>3</sup> Record the sentence in the appropriate form of words set out in the Fifth Schedule to the Rules of Procedure. Any recommendation to mercy (*see* rule 72 (4)), restitution order (*see* section 104 of the Act), or order determining a suspended sentence and directing whether the sentences are to run concurrently or consecutively (*see* section 135 of the Act) made by the court, should be entered on the record immediately after the sentence.

<sup>4</sup> Strike out if not applicable.

(H)

Page.....

CONFIRMATION <sup>1</sup>

## NOTE

<sup>1</sup> For minutes of confirmation *see* Fourth Schedule to Rules of Procedure. Promulgation should be recorded immediately below the minute of confirmation in accordance with rule 93 (7) (b).

FORM VI

(r. 65 (3))

## FINDINGS

*Acquittal on all Charges*

Not guilty of (the charge) (all the charges).

Not guilty of (the charge) (all the charges), and honourably acquit him thereof.

*Acquittal on some but not all Charges*

Not guilty of the .....<sup>1</sup> charge(s) but is guilty of the .....<sup>1</sup> charge(s).

\_\_\_\_\_

Not guilty of the.....<sup>1</sup> charge(s) and honourably acquit him thereof but is guilty of the.....<sup>1</sup> charges(s).

*Conviction on all Charges*

Guilty of (the charge) (all the charges).

*Special Findings*

Guilty of the .....<sup>1</sup> charge (with the exception of the words .....<sup>2</sup>) (with the exception that .....<sup>2</sup>).

\_\_\_\_\_

Not guilty of the offence charged but is guilty of.....<sup>3</sup>

*No Finding on Alternative Charge*

Guilty of the.....charge; the court record no finding on the ..... (alternative charge).

*Where the accused is unfit to stand his trial by reason of insanity.*

By reason of insanity unfit to stand his trial.

*Accused guilty but insane at the time when the offence was committed.*

Guilty but insane.

NOTES

<sup>1</sup> Insert the number of the charge or charges as numbered in the charge-sheet.

<sup>2</sup> Specify the exception in detail. This form is appropriate when a special finding is made under rule 64 (3).

<sup>3</sup> State the offence of which the accused is found guilty. This form is applicable when a special finding is made under section 96 (2), (5) or (6) of the Act.

[Subsidiary]

FORM VII

(r. 78 (5) (c))

RECORD OF RECONSIDERATION OF FINDING

The Judge Advocate advises the court that the finding(s) on the .....<sup>1</sup>charge(s) (is) (are) contrary to the law relating to the case, and that in his opinion the following finding(s) (is) (are) open to them-

.....<sup>2</sup>

The Court are closed for reconsideration of finding.

The Court on reconsideration find that the accused is <sup>3</sup>.....

.....  
.....  
.....

The finding(s) on reconsideration (is) (are) read in open court and (with the exception of the finding(s) of "not guilty"<sup>4</sup>) (is) (are) announced as being subject to confirmation.

NOTES

<sup>1</sup> Insert the number of charge as numbered in the charge-sheet.

<sup>2</sup> Insert the advice given by the judge advocate.

<sup>3</sup> Set out the finding(s) of the court in the appropriate form(s).

<sup>4</sup> Strike out the words relating to findings of "not guilty" if there is no such finding.

FORM VIII

(r. 69 (2))

SERVICE RECORD OF ACCUSED

No. .... Rank .....

Name .....

Unit ..... Trade .....

1. The date of his enlistment is .....  
and he was commissioned on .....

2. He is serving on a .....  
(Insert nature and length of engagement)

3. His present age is .....

4. He is { married }  
          { unmarried } and has ..... children under the age of 16 years.  
          { divorced }  
          { widowed }

[Subsidiary]

- 5. His gross basic rate of pay (including additional pay) payable on a continuous basis is ..... but he is .....  
.....  
.....  
(insert forfeitures, deductions and allotments affecting his pay)
- 6. The service which he is allowed to reckon towards discharge or transfer to reserve is .....
- 7. He is entitled to reckon ..... service for the purpose of determining his pension and/or gratuity, etc.
- 8. He is entitled to the following decorations or awards ..... and ..... acts of gallantry or distinguished conduct by him are recorded in his conduct sheets.
- 9. He holds the substantive rank of ..... with seniority from ..... He continuously since ..... held the acting rank of .....
- 10. The highest rank for which he is qualified is .....
- 11. He has been awaiting his trial for ..... days of which ..... days were spent in civil custody. .... days were spent in close arrest. and ..... days were spent in open arrest.
- 12. He is not under sentence at the present time.  
OR  
At the present time he is under sentence of ..... beginning on the ..... day of ....., 19 ..... but suspended on the ..... day of ....., 19.....  
and { not yet put into operation again } ..... day of { Put into operation again on the } ..... , 19.....
- 13. According to his conduct sheets he has been found guilty by his commanding officer, or by the commandant of a service establishment, of the following offences-

<i>Offence</i>	<i>In last 12 months</i>	<i>Since Enlistment</i>
	<i>times</i>	<i>times</i>
	<i>times</i>	<i>times</i>
	<i>times</i>	<i>times</i>

OR

There are no entries in his conduct sheets.

[Subsidiary]

14. Schedule of offences of which he has been convicted by a court martial, of or which he has been found guilty during his service by a civil court, offences taken into consideration by such courts and offences of which he has been found guilty by an appropriate superior authority are set out below -

<i>Description of court appropriate superior authority</i>	<i>Date and place of trial or summary award by appropriate superior authority</i>	<i>Charges upon which found guilty and offences taken into consideration</i>	<i>Sentence of the court award of appropriate superior authority</i>	<i>Punishment remitted (this should not include punishment automatically remitted for good conduct)</i>

I HEREBY CERTIFY that the particulars in this Schedule are true extracts from the service books in my custody.

Signed this ..... day of ....., 19 .....

Signature.....  
(Name, rank and appointment)

FORM IX

(r.94 (1))

RECORD OF PROCEEDINGS ON REVISION  
UNDER SECTION 110 OF THE ACT

At .....<sup>1</sup> on the ..... day of ....., 19....  
at..... hours the court reassembled by order of  
.....<sup>2</sup> the confirming officer for the purpose of reconsidering  
their finding(s) on the .....<sup>3</sup> charge(s).

Present <sup>4</sup> .....  
.....  
.....

The order directing the reassembly of the court and giving the reasons  
therefor is read, marked ....., signed by the  
presiding officer and attached to the record.

The court having considered the observation of the confirming officer and  
the whole of the record of the proceedings do now revoke their finding(s) on the  
.....<sup>3</sup> charge(s) and find that the accused<sup>5</sup> .....  
..... is <sup>6</sup> .....  
.....  
and (adhere to their sentence) (sentence the accused to <sup>7</sup> .....  
.....  
in substitution for the original sentence).

or

The court having considered the observation of the confirming officer  
respectfully adhere to their finding(s) on the .....<sup>3</sup> charge(s)  
(and to their sentence) (but sentence the accused .....<sup>5</sup>  
to<sup>7</sup> ..... in substitution for the original sentence).

or

The court having considered the observation of the confirming  
officer and the whole of the record of the proceedings do now revoke their  
finding(s) on the .....<sup>3</sup> charge(s) and find the accused  
.....<sup>5</sup> not guilty of (that) (those) charge(s).

Signed at .....<sup>1</sup> this ..... day of ....., 19....

.....  
*Judge Advocate*

.....  
*Presiding Officer*

[Subsidiary]

NOTES

- <sup>1</sup> Insert the name of the place.
- <sup>2</sup> Insert the rank, appointment, etc. of the confirming officer.
- <sup>3</sup> Specify the number(s) of the charge(s) concerned, e.g., the 5<sup>th</sup> charge.
- <sup>4</sup> Give the names of the presiding officer and members of the court who are present.  
If the presiding officer is absent the senior members must report to the confirming officer. If a member is absent and the court is thereby reduced below the legal minimum the presiding officer must report to the confirming officer.
- <sup>5</sup> Insert the accused's number, rank, name and unit as given in the charge-sheet.
- <sup>6</sup> Set out the finding in the appropriate form set out in the Fourth Schedule.
- <sup>7</sup> Set out the new sentence in accordance with the appropriate form set out in the Fifth Schedule.

FORM X

(r. 93 (1))

CONFIRMATION

*Note.*— These forms are for guidance only and do not constitute an exhaustive list of all the possible variations and should be adapted to the circumstances of each case.

\_\_\_\_\_

Confirmed.

I confirm the court's finding(s), sentence and order under section 104 of the Armed Forces Act, but (remit .....<sup>1</sup>) (commute .....<sup>2</sup>).

\_\_\_\_\_

I confirm the court's finding(s), sentence and order under section 104 of the Armed Forces Act, but mitigate the sentence so that it shall be as follows-  
<sub>3</sub>

\_\_\_\_\_

I vary the sentence so that it shall be as follows .....  
..... and confirm the finding and sentence as so varied. <sup>4</sup>

\_\_\_\_\_

I confirm the finding(s) and sentence but (postpone the carrying out of the sentence of ..... until .....<sup>5</sup>) (suspend the sentence of .....).

\_\_\_\_\_

I confirm the finding(s) but substitute the sentence of ..... for the sentence of the court. <sup>6</sup>

\_\_\_\_\_

I substitute a finding of ..... for the finding of the court and confirm the sentence but (remit .....<sup>1</sup>) (commute .....<sup>2</sup>).

\_\_\_\_\_

I substitute a finding of ..... for the finding of the court on the ..... charge and confirm the finding(s) on the other charge(s) and the sentence.



Not confirmed (on the grounds that .....).<sup>7</sup>

\_\_\_\_\_

I confirm the finding(s) of the court on the ..... charge(s) but do not confirm their finding(s) on the ..... charge(s) (on the grounds that .....).<sup>7</sup> I confirm the sentence but (remit .....<sup>1</sup>) (commute .....<sup>2</sup>).

\_\_\_\_\_

I refer the finding(s) and sentence to .....<sup>3</sup> for confirmation.

\_\_\_\_\_

I confirm the finding(s) of the court on the ..... charge(s) and refer the finding(s) on the ..... charge(s) and the sentence to .....<sup>8</sup> for confirmation.

\_\_\_\_\_

I confirm the finding(s) of the court but refer the sentence to .....<sup>8</sup> for confirmation.

\_\_\_\_\_

(r. 95 (3))

(The record) (Part of the record) of the proceedings of the trial by court martial which tried ..... at ..... on the ..... day of ....., 19....., having been lost, I do not confirm the finding(s) of the court.

\_\_\_\_\_

Signed at ..... this ..... day of ....., 19.....

.....  
(Signature, rank and appointment of  
Confirming Officer)

NOTES

- <sup>1</sup> State what part of the sentence is remitted.
- <sup>2</sup> State what the sentence is commuted to.
- <sup>3</sup> This form of words may be used when it is impracticable to use either "remit" or "commute".
- <sup>4</sup> This form of words is appropriate when the court has expressed the sentence informally or incorrectly and the confirming officer desires to put it into the correct legal form.
- <sup>5</sup> Insert the date or event to which the carrying out of the sentence is postponed.
- <sup>6</sup> This form of words is appropriate when the court have passed an illegal sentence on the accused and the confirming officer desires to substitute a legal sentence.
- <sup>7</sup> Where a confirming officer withholds confirmation because he disapproves of the decision of the court on a plea to the jurisdiction or in bar of trial or on any confirmation for this reason. In other cases the confirming officer is not bound to give his reasons.
- <sup>8</sup> Insert the appointment of the higher authority to whom the matter is to be referred.
- <sup>9</sup> The rank and appointment of the confirming officer should be clearly stated after or under his signature.

[Subsidiary]

## FORM XI

DETERMINATION BY A REVIEWING AUTHORITY OF A  
SUSPENDED SENTENCE AND DIRECTION THAT SENTENCES ARE  
TO RUN CONCURRENTLY OR CONSECUTIVELY<sup>1</sup> UNDER SECTION  
135 (6) OF THE ACT

I ..... the reviewing authority hereby order the accused to be committed to imprisonment under the sentence passed on him by the court martial held at ..... on the ..... day of ....., 19....., and direct that that sentence and the sentence passed on the accused by (this court martial) (court martial held at ..... on ..... day of ....., 19.....) shall run (concurrently) (consecutively).

Dated ....., 19.....  
(Signature)

## NOTE

<sup>1</sup> When the determination is made by the reviewing authority it should follow the minute of promulgation.

## FORM XII

RESTITUTION ORDER<sup>1</sup> UNDER SECTION 104 OF THE ACT

In accordance with subsection ..... of section 104 of the Armed Forces Act, I .....<sup>2</sup> hereby order that .....<sup>3</sup> be (delivered) (paid) to .....

Dated ....., 19.....  
(Signature)

*Confirming Officer.\**  
*Reviewing Authority.\**

\*Strike out if not applicable.

## NOTES

<sup>1</sup>(a) When the confirming officer is making the order this form of words should be inserted in the record of the proceedings of the court martial in the confirming officer's minute of confirmation; when made by a reviewing authority it should follow the minute of promulgation.

(b) Where the conditions set out in section 104 (10) of the Act are satisfied, the officer or authority making the order may add at the end of the order: "and I direct that this order shall be carried out forthwith".

<sup>2</sup> Insert rank, name and appointment of confirming officer or reviewing authority as the case may be.

<sup>3</sup> Insert description of article or amount of money, as the case may be.

<sup>4</sup> Insert name of person to whom restitution is being made.

## FORM XIII

(r. 93 (8))

## PROMULGATION

Promulgated and extracts taken at (place) .....  
this ..... day of ....., 19.....

.....  
*(Signature, rank and appointment of  
Officer making the promulgation)*

FIFTH SCHEDULE

SENTENCES

Part I. Sentences.  
Part II. Restitution Order.

PART I—SENTENCE (r. 72 (1))

Note.- The words in the margin should be entered in the right-hand margin of the record of the proceedings of a court martial opposite the record of the sentence.

	<i>Officers</i>	
To suffer death.	_____	Death.
To be imprisoned for.	.....	Imprisonment.
To be dismissed from the armed forces.	_____	Dismissed.
To be reduced to the rank of .....	_____	Reduction in rank.
To take seniority in the rank of ..... as if his appointment to that rank bore date the ..... day of ....., 19.....	_____	Forfeiture of seniority of rank.
To be fined .....	_____	Fine.
To be (severely reprimanded) (reprimanded).	_____	Severe reprimand or reprimand.
To be admonished.	_____	Admonition.
To be put under stoppages of pay until he has made good the sum of ..... <sup>1</sup> in respect of ..... <sup>2</sup>		Stoppages.

[Subsidiary]

*Servicemen*

To suffer death.	Death.
To be imprisoned for ..... (and to be reduced to the ranks).	Imprisonment (and reduction to the ranks).
To be dismissed from the armed forces.	Dismissal.
To undergo active service punishment for ..... days.	Active service punishment.
To be reduced (to the ranks) (to the rank of .....)	or reduction in rank. or reduction in rank.
To take seniority in the rank of ..... as is his appointment to that rank bore date the ..... day of ....., 19.....	Forfeiture of seniority of rank.
To be fined .....	Fine.
To be (severely reprimanded) (reprimanded).	Severe reprimand or reprimand.
To be admonished.	Admonition.
To be put under stoppages of pay until he has made good the sum of ..... <sup>1</sup> in respect of ..... <sup>2</sup> .	Stoppages.

## NOTES

<sup>1</sup> Insert the amount which has to be made good by stoppages in respect of the charge or article specified.

<sup>2</sup> Specify the charge or article in respect of which the stoppages is to be imposed. If stoppages are being imposed in respect of more than one charge or article the amount which has to be made good in respect of each charge or article must be stated separately.

PART II—RESTITUTION ORDER<sup>1</sup>1. *By the Commanding Officer or Appropriate Superior Authority*

In accordance with subsection ..... of section 104 of the Armed Forces Act, I, ..... <sup>2</sup> hereby order that ..... <sup>3</sup> be (delivered) (paid) to .....<sup>4</sup>

.....  
(*Commanding Officer*)  
(*Appropriate Superior Authority*)

2. *By the Court*

In accordance with subsection ..... of section 104 of the Armed Forces Act, the court hereby order that .....<sup>3</sup> be (delivered) (paid) to .....

NOTES

- <sup>1</sup>(a) This form of words should be inserted in the record of the proceedings.
- (b) Where the conditions set out in section 104 (10) of the Act are satisfied, “the commanding officer or the court may add at the end of the order: “and direct that this order shall be carried out forthwith”.
- <sup>2</sup> Insert name and rank of commanding officer, or appropriate superior authority.
- <sup>3</sup> Insert the description of the article or the amount of money as the case may be.
- <sup>4</sup> Insert name of person to whom restitution is to be made.
- <sup>5</sup> Delete as required.

SIXTH SCHEDULE

OATHS AND AFFIRMATIONS

- PART I. Oaths at Investigations by Commanding officers and Appropriate Superior Authorities.
- PART II. Oaths at Courts Martial.
- PART III. Manner of Administering the Oath.
- PART IV. Solemn Affirmations.

PART I—OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS AND APPROPRIATE SUPERIOR AUTHORITIES

(r. 33 (1))

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter being investigated.

*Witness*

I swear by Almighty God that the evidence which I shall give at this investigation shall be the truth, the whole truth and nothing but the truth.

PART II—OATHS AT COURTS MARTIAL

(r. 33 (1))

*Presiding Officer and Members*

I swear by Almighty God that I will well and truly try the (accused) (accused persons) before the court according to the evidence, and that I will duly administer justice according to the Armed Forces Act, without partiality, favour or affection, and I do further swear that I will not on any account at

[Subsidiary]

any time whatsoever disclose or discover the vote or opinion of the presiding officer or any member of this court martial, unless thereunto required in due course of law.

*Judge Advocate*

I swear by Almighty God that I will to the best of my ability carry out the duties of judge Advocate in accordance with the Armed Forces Act, and the rules made there under and without partiality, favour or affection, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion on any matter of the presiding officer or any member of this court martial, unless thereunto required in due course of law.

*Officer under Instruction*

I swear by Almighty God that I will not on any account, at any time whatsoever disclose or discover the vote or opinion of the presiding officer or any member of this court martial, unless thereunto required in due course of law.

*Shorthand Writer*

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given to this court martial and such other matters as may be required, and will, when required, deliver to the court a true transcript of the same.

*Interpreter*

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this court martial.

*Witness*

I swear by Almighty God that the evidence which I shall give before this court martial shall be the truth, the whole truth, and nothing but the truth.

PART III—MANNER OF ADMINISTERING THE OATH

Persons taking the oath shall say to or repeat after the person administering the oath the words of the oath with such variations in the opening words of the oath as the person taking the oath shall have declared to be effective to make the oath binding on his conscience in accordance with his religious beliefs.

PART IV—SOLEMN AFFIRMATIONS

The person making a solemn affirmation shall say to or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words “I swear by Almighty God” he shall substitute the words “I (name in full), do solemnly, sincerely and truly declare and affirm” and for the word “swear” wherever it occurs, the words “solemnly, sincerely and truly declare and affirm”.

SEVENTH SCHEDULE

PETITIONS

PART I. Petitions.

PART II. List of Persons to whom Petitions may be Presented under rule 99.

PART I—PETITIONS

(r. 99 (1))

Petition to confirming officer (before confirmation) under section 106 of the Act and rule 99 (1).

To THE CONFIRMING OFFICER

I .....<sup>1</sup> having been convicted by court martial on .....<sup>2</sup> at .....<sup>3</sup> and having been sentenced to ..... hereby petition against the finding(s) on the ..... charge(s)<sup>4</sup> (and the sentence) on the following grounds-

.....  
.....  
.....

Signed .....<sup>8</sup>

Date .....

Petition to the reviewing authority<sup>5</sup> (after confirmation and promulgation), under section 106 of the Act and rule 99 (2).

(r. 99 (2))

To .....<sup>6</sup>

I .....<sup>1</sup> having been convicted by court martial on .....<sup>2</sup> at .....<sup>3</sup> and having had the finding(s) and sentence promulgated to me on .....<sup>7</sup> hereby petition against the finding(s) on the ..... charge(s)<sup>4</sup> (and the sentence) on the following grounds-

.....  
.....  
.....

Signed .....<sup>8</sup>

Date .....

Petition to the commander (after confirmation and promulgation), under section 112 of the Act and rule 99(3).

[Subsidiary]

TO THE COMMANDER

I .....<sup>1</sup> having been convicted by court martial on .....<sup>2</sup> at .....<sup>3</sup> and having been sentenced to ..... and having had the finding(s) and sentence promulgated to me on ..... hereby petition for reconsideration of the sentence on the following grounds-

.....  
 .....

Signed .....

Date .....

## NOTES

<sup>1</sup> Insert the accused's number, rank, name and unit.

<sup>2</sup> Insert the date when accused was convicted.

<sup>3</sup> Insert the place where the trial was held.

<sup>4</sup> The words "the finding(s) on the ..... charge(s) should be omitted if the accused is only petitioning against sentence.

<sup>5</sup> The reviewing authority will be either the Defense Council or any officer superior in command to the confirming officer; *see* section 111 (2) of the Act.

<sup>6</sup> Here state the reviewing authority whom it is desired to petition.

<sup>7</sup> Insert the date when the findings and sentence were promulgated.

<sup>8</sup> Petitions should be signed by the accused personally but may if necessary, be signed on his behalf by his representative.

<sup>9</sup> Insert Kenya Air force, Kenya Army or Kenya Navy as the case may be.

PART II—LIST OF PERSON TO WHOM PETITIONS  
 MAY BE PRESENTED (r. 99 (4))

<i>Circumstances</i>	<i>Person to whom a petition may be presented</i>
1. Petitioner serving in or in custody on board a ship of the Kenya Navy.	Captain of the ship.
2. Petitioner in custody on board a ship other than a ship of the Kenya Navy.	Officer commanding forces on board.
3. Petitioner serving with a unit of the Armed forces.	Officer commanding the unit.
4. Petitioner confined in a civil prison.	Officer in charge of the prison.
5. Petitioner who is a civilian and is outside Kenya.	Officer commanding at the nearest Armed Forces headquarters.



[Subsidiary]

**THE ARMED FORCES (COURT MARTIAL APPEALS)  
RULES**

L.N. 255/1969.

1. These Rules may be cited as the Armed Forces (Court Martial Appeals) Rules. Citation.
2. In these Rules, except where the context otherwise requires— Interpretation.
- “court” means the High Court;
- “exhibits” means all documents and things which have been produced and used in evidence at a trial by court martial, whether they are attached to the proceedings of the court martial or not;
- “Registrar” means the Registrar of the High Court, and includes a senior deputy registrar, a deputy registrar, and a district registrar of the High Court.
3. An application by a person convicted for leave to appeal to the court under section 116 of the Act shall be in Form 1 in the Schedule, and shall contain answers to the questions and comply with the requirements set forth therein. Application for leave to appeal.
4. A notice of application to the High Court for an extension of time within which to make application for leave to appeal shall be in Form 2 in the Schedule, and shall be sent to the Registrar. Extension of time.
5. An appeal by the Attorney-General under section 115 (2) of the Act shall be in Form 3 in the Schedule. Form of appeal by Attorney-General.
6. (1) A person convicted, at any time after he has made application for leave to appeal, or the Attorney-General, may abandon his appeal by giving to the Registrar notice of abandonment thereof in Form 4 in the Schedule. Abandonment of appeal.
- (2) Where it is contended that the person convicted is insane a notice of abandonment may be given and signed by his legal representative.
- (3) Subject to paragraph (2), a notice of abandonment shall be signed by the person convicted himself.
7. (1) An application for leave to appeal and any notice required or authorized to be given to the court under these Rules, other than a notice of abandonment, shall be signed by the person convicted or by his legal representative, or by the Attorney-General, as the case may be. Notices.
- (2) An application for leave to appeal and any notice required or authorized to be given to the court under these Rules shall be addressed to the Registrar.
- (3) Where a person convicted, or any other person required or authorized to make an application or give any notice for the purpose of these Rules, is unable to write, he may affix his mark thereto in the presence of witness, who

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shall attest the mark, and thereupon such application or notice shall be deemed to be signed by that person.

Court martial proceedings.

8. (1) The Registrar, on receipt of an application for leave to appeal, shall request the Commander to forward to him the proceedings of the court martial and any petition presented by the person convicted praying that his conviction be quashed.

(2) After an application is finally refused or is withdrawn, or the appeal is determined or abandoned, the proceedings of the court martial and any petition shall, subject to any order which the court may make, be returned by the Registrar to the Commander.

(3) A copy of any document which is required for the use of the court shall be made by such person and in such manner as the Registrar may direct.

Copies of proceedings.

9. (1) At any time after the Registrar has received an application for leave to appeal, the person convicted or the Attorney-General may, subject to these Rules, obtain from the Registrar copies of any document in the possession of the Registrar for the purpose of the appeal.

(2) Copies of any document shall be supplied by the Registrar at the charges following-

(a) for making and certifying a copy of any document or certifying a copy not prepared by court or court martial-

	<i>Sh. cts.</i>
(i) for first folio or part thereof .. ..	5 00
(ii) for each subsequent folio or part thereof .. .. . . .	2 50

(b) for making uncertified copy of any document-

	<i>Sh. cts.</i>
(i) for first four folios or part thereof .. .. .	3 00
(ii) for each subsequent folio or part thereof .. .. . . .	75

Provided that, if such uncertified copy later requires to be certified, the certifying fees shall be the difference between fees and the fees under subparagraph (a);

(c) for making copies by photostat process ..  
Actual cost

Documents and exhibits.

10. (1) The Registrar may, on application made to him by the person convicted or by the Attorney-General, or where he considers it necessary for the proper determination of any appeal or application, and shall, where so directed by the court, obtain and keep available for use by the court any document or exhibit; and, subject to rule 11, pending the determination of the appeal or

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application such document and exhibit and the proceedings of the court martial shall be open, as and when the Registrar may arrange, for inspection by the person convicted or by the Attorney-General.

(2) Subject to rule 11, the court may, at any stage of an appeal, whenever it thinks it necessary or expedient in the interests of justice so to do, order any document, exhibit or other thing connected with the proceedings to be produced to the Registrar or before the court by any person having the custody or control thereof.

(3) After an application is finally refused or is withdrawn, or the appeal is determined or abandoned, documents and exhibits shall, subject to any order which the court may make, be returned by the Registrar to the person who produced or forwarded them.

(4) Service of any order made under this rule shall be personal service unless the court otherwise orders.

11. If the Minister certifies that, for reasons of security, the whole or part of the proceedings, or any document, exhibit or other thing, ought not to be disclosed otherwise than to the court, or ought only to be disclosed subject to certain conditions specified by the person who so certifies, the Registrar shall, notwithstanding these Rules, not permit inspection nor supply a copy thereof without an order of the court, which may direct upon what conditions, if any, inspection shall be permitted or a copy supplied.

Security of documents, etc.

12. Nothing in these Rules shall affect any rule of law which authorizes or requires the withholding of any document or the refusal to answer any question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Public interest.

13. (1) An order of the court that a witness shall attend and be examined shall be in Form 5 in the Schedule, and shall specify the time and place at which such witness shall attend.

Witnesses.

(2) Such an order may be made on the application at any time of the person convicted or of the Attorney-General, but if the person convicted is in custody and is not legally represented the application shall be made by him in Form 6 in the Schedule.

(3) Service of any order required by this rule to be given to any witness shall be personal service, unless the court otherwise orders.

14. (1) The Registrar shall keep a register of all cases in which he receives an application for leave to appeal under the Act and such register shall be open for public inspection in such place and at such hours as the Registrar determines.

Register and cause list.

(2) The Registrar shall also publish a list of appeals and applications which the court may consider on the days on which the court, as constituted for the hearing and determination of appeals under the Act, shall sit; and shall cause such list to be published at such times and in such places and in such a

## [Subsidiary]

manner as he, subject to the approval of the court, thinks convenient for giving due notice to any parties interested therein of the hearing of the cases in such list by the court.

## Presence of person convicted at hearing.

15 (1) Where the person convicted is in custody and has obtained the leave of the court to be present at the hearing and determination of his application or appeal, or at any stage thereof, the Registrar shall notify the person convicted, the person in charge of the place where he is confined, and the Commander or the Commissioner of Prisons, as the case may be, of the probable date thereof.

(2) The court may direct that the person convicted be brought before the court in any case where in the opinion of the court his presence is advisable for the proper determination of the appeal.

## Notifying results of appeals, etc.

16. (1) On the final determination of any appeal or of any application, the Registrar shall, unless it appears to him unnecessary to do so, give to the person convicted, the Attorney-General and, where the person convicted is in custody, the person in charge of the place where he is confined written notice of the determination.

(2) In the case of an appeal against a conviction involving sentence of death, the Registrar shall, on receiving an application for leave to appeal, send a copy thereof to the President and, where leave to appeal is refused and on the final determination of an appeal, shall forthwith give written notice to the person convicted and to the President and to the person in charge of the place the person convicted is confined.

## Restitution order.

17. (1) Where any property or money has been ordered to be restored or handed over under section 104 of the Act, and the operation of the order has been suspended under subsection (9) of that section, unless the property is in the custody of the Registrar the authority which made the order shall cause it to be kept in safe custody or the period during which the operation of the order is suspended.

(2) Any person in whose favour or against whom an order has been made under section 104 of this Act, and with the leave of the court any other person, shall, on the final hearing by the court of the appeal against the conviction on which such order was made, be entitled to have any representations that he may make considered by the court before any order is made under subsection (9) (ii) of that section.

## Right of audience.

18. In any proceedings before the court, any of the following persons may address the court-

- (a) an advocate retained by or on behalf of the person convicted;
- (b) the person convicted, if he has the leave of the court; and
- (c) the Attorney-General or his representative.

## Non-compliance with

19. (1) Non-compliance with these Rules by a person convicted shall not prevent the further prosecution of his appeal, unless the court otherwise

directs.

Rules. [Subsidiary]

(2) The Registrar shall forthwith notify the person convicted, or the Attorney-General, as the case may be, of directions given by the court under this rule, where he was not present at the time when such directions were given.

20. The performance of any duty imposed upon any person under Part IX of the Act or these Rules may be enforced by order of the court.

Enforcement of duties.

SCHEDULE

Form 1

(r. 3)

APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION OR SENTENCE

To The Registrar of the High Court, Nairobi, Kenya.

Name of person convicted .....
Number ..... Unit..... Rank.....
Convicted by court martial held at .....
Offence of which convicted .....
Sentence .....
Date when conviction pronounced or finding promulgated.....
Date when petition presented.....
Date when notified that petition refused.....
Name of prison or place of detention (a) .....

(a) If person convicted not in custody, insert his address.

(b) Set out clearly and concisely the reasons why you consider your conviction should be quashed or the sentence varied.

I, the above-named person, hereby apply for leave to appeal to the High Court against my [conviction] [and] [sentence] on the following grounds (b) ...

(c) This notice must be signed by the person convicted or his legal representative. If the person convicted cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.

(Signed) ..... (c)

[Subsidiary]

Dated the (d) ..... day of ....., 19...

(d) If this form is lodged more than forty days after the person convicted has become entitled to apply for leave to appeal he must also fill in Form 2 and send it with this form.

(e) The person convicted must answer these questions.

Questions (e)

Answers

- 1. Is any advocate or other person  
Now acting for you? .....
- If so, give his name and address. ....
- 2. Do you desire to be present  
when the High Court considers  
your appeal? .....
- 3. Do you desire to apply for leave to call any  
witness on your appeal? .....

If your answer to this question is "Yes", you must fill in Form 6 and send it with this form .....

Form 2

(r. 4)

NOTICE OF APPLICATION FOR EXTENSION OF THE WITHIN WHICH TO APPLY FOR LEAVE TO APPEAL AGAINST CONVICTION AND/OR SENTENCE

To The Registrar of the High Court,  
Nairobi,  
Kenya.

(a) Insert name, number, rank and unit.

(b) State shortly the offence or offences.

(c) Set out address in full.

(d) Here set out clearly and concisely the reasons for the delay in giving notice, and the

I, (a) ..... having been convicted of the offence of (b)..... and sentenced to..... by court martial held at ..... on the ....., 19....., and being now at (c)....., give you notice that I hereby apply to the High Court for an extension of the time within which I may give notice of application for leave to appeal, on the grounds following (d) .....

Dated the..... day of ....., 19.....

(Signed)..... (e)

[Form 1 must be filled up and sent with this notice to the Registrar.]

[Subsidiary] grounds on which you submit the High Court should extend the time. (e) This notice must be signed by the person convicted or his legal representative. If the person convicted cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.

Form 3

(r. 5)

APPEAL BY THE ATTORNEY-GENERAL AGAINST A PERSON'S ACQUITTAL OR SENTENCE

To The Registrar of the High Court, Nairobi, Kenya.

Name of person acquitted or sentenced .....

Number ..... Unit ..... Rank .....

Tried by court martial held at .....

Offence for which tried.....

Acquitted [or] sentenced to .....

Date when acquitted or sentenced or finding promulgated.....

Name of prison or place of detention (a) .....

(a) If person convinced not in custody, insert his address.

The Attorney-General hereby appeals against the acquittal [or] sentence specified above of the person named above, on the following grounds—

Dated the ..... day of ....., 19 ....

..... Attorney-General

[Subsidiary]

Form 4

(r. 6)

NOTICE OF ABANDONMENT OF APPEAL

To The Registrar of the High Court,
Nairobi,
Kenya.

Name of person convicted .....
Number ..... Unit ..... Rank .....
Convicted by court martial held at .....
Offence of which convicted .....
Name of prison or place of detention (a) .....
or present address of person convicted.....

(a) If person
convicted not in
custody, insert his
address.

I, the above-named person, having been convicted and sentenced and
having applied to the Registrar for leave to appeal (b)

(b) Delete as
appropriate.

I, ....., Attorney-General (b) HEREBY GIVE
NOTICE that I do not intend to proceed with the appeal in this matter, as from
the date hereof.

Dated the ..... day of ....., 19 ....

(Signed).....(c)

(c) If this notice is
presented by or on
behalf of a person
convicted it must be
signed by him in the
presence of a witness.

This notice was signed by the person convicted on the day above stated
in my presence.

Signature of Witness .....

Address of Witness .....

Occupation of Witness.....

Form 5

(r. 13)

ORDER TO WITNESS TO ATTEND FOR EXAMINATION

To The Registrar of the High Court,
Nairobi,
Kenya.



[Subsidiary]

To (a) .....

(a) Name and address of witness.

WHEREAS, on good cause shown to the High Court of Kenya, you have been ordered to attend and be examined as a witness [before the court upon the appeal of (b) .....] (c) [before the court upon an appeal brought by the Attorney-General following the proceedings at the court martial of (b).....] (c)

(b) Name, number and rank of person convicted or acquitted as appropriate.

I NOW give you notice to attend before the court at ..... o'clock in the ..... noon on the.....day of ....., 19....., at (d) .....

(c) Delete as appropriate. (d) Insert location of court.

I ALSO REQUIRE YOU to have with you at the said time and place the following books, papers and other things relating to the appeal-

Dated the ..... day of ....., 19.....

..... Registrar of the High Court

Form 6

(r. 13)

APPLICATION TO CALL FURTHER EVIDENCE MADE BY A PERSON CONVICTED WHILST IN CUSTODY

To The Registrar of the High Court, Nairobi, Kenya.

I, (a)..... having applied for leave to appeal to the High Court, hereby give notice that I desire the court to order the following witness(es) to attend before the court and be examined on my behalf.

(a) Insert name, number, rank and unit.

Dated the ..... day of ....., 19.....

(Signed) .....

You are requested to complete the following form (b)-

- 1. Name and address of witness .....
2. Was the witness examined at your court martial? .....
3. If not, state the reason why he was not examined.....
4. State shortly the evidence you think he can give.....

(b) If more than one witness is desired, the information must be given in respect of each witness.