LEGAL NOTICE NO. 227

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

THE KENYA DEFENCE FORCES (COMMISSIONING OF OFFICERS) REGULATIONS, 2017

IN EXERCISE of the powers conferred by section 304 (1) (a) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Rules:

THE KENYA DEFENCE FORCES (COMMISSIONING OF OFFICERS) REGULATIONS, 2017

1. These Regulations may be cited as the Kenya Defence Forces (Commissioning of Officers) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires—

   "Act" means the Kenya Defence Forces Act, 2012;

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

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

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

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

4. The Board shall consist of—

   (a) the Chief of the Kenya Defence Forces, or a person deputed by him in writing for the purposes of these Regulations, who shall be chairperson;

   (b) two or more officers of or above the rank of Brigadier or corresponding rank appointed by the Chief of the Kenya Defence Forces;

   (c) the Principal Secretary in the Office of the President, or a person deputed by him in writing for the purposes of these Regulations;

   (d) the Principal Secretary of the Ministry for the time being responsible for defence, or a person deputed by him in writing for the purposes of these Regulations; and
(e) the Principal Secretary of the Ministry for the time being responsible for education, or a person deputed by him in writing for the purposes of these Regulations.

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

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

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

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

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

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

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

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


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.

LEGAL NOTICE NO. 228
THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304(1)(t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:

THE KENYA DEFENCE FORCES (ACTIVE SERVICE PUNISHMENT) REGULATIONS, 2017

1. These Regulations may be cited as the Kenya Defence Forces (Active Service Punishment) Regulations, 2017.
2. In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act; and

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

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

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

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

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

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

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

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

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

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

(a) to prevent his escape; or

(b) to protect himself or others from injury.

(2) An offender shall not be placed under personal restraint except in accordance with the following conditions—
a) the period for which the offender may be kept continuously under personal restraint shall not exceed twenty-four hours:

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

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


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.

LEGAL NOTICE NO. 229

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304(1)(t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Rules:—

THE KENYA DEFENCE FORCES (INTERNAL GRIEVANCE MECHANISM) RULES, 2017

1. These Rules may be cited as the Kenya Defence Forces (Internal Grievances Mechanism) Rules, 2017.

2. In these Rules, unless the context otherwise requires—

“Act” means the Kenya Defence Forces Act;

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

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

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

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

“register” means a register of complaint kept and maintained under regulation 4.
“Service Commander” means a commander of a service of the Kenya Defence Forces.

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

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

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

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

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

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

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

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

5. (1) Where an officer does not obtain the redress which he or she considers he or she is entitled to, the officer may forward the complaint to the Chief of the Kenya Defence Forces through the Commanding Officer, Higher Commander and the Service Commander.
(2) Despite paragraph (1), the higher commander or the Service Commander may grant any redress which appears necessary provided that the officer by reason of his or her redress not being granted to his or her satisfaction may request in writing that the complaint be forwarded to the Chief of the Kenya Defence Forces and the complaint shall be forwarded to the Chief of the Kenya Defence Forces.

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

(a) cause investigation of the complaint by a Board of Inquiry or military police and grant redress as appears necessary;

(b) refer the complaint to the relevant Service Commander other than the Service Commander through whom the complaint was forwarded to deal with it; or

(c) dismiss the complaint if he or she considers the same to be frivolous or without merit.

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

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

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

(a) refer the complaint to the relevant Service Commander for investigation;

(b) cause investigation of the complaint by a Board of Inquiry or military police and award any appropriate redress; or

(c) dismiss the complaint if he considers the same to be frivolous or without merit.

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

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

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

12. Any officer or person expected to handle the complaint under these regulations shall do so expeditiously and within the limits provided in rule 11 above.
13. (1) The Chief of the Kenya Defence Forces shall be the final authority in the internal grievance mechanism.

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


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.

LEGAL NOTICE NO. 230
THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304(1)(t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:—

THE KENYA DEFENCE FORCES (RETIRED OFFICERS AND SERVICE MEMBERS) REGULATIONS, 2017

1. These Regulations may be cited as the Kenya Defence Forces (Retired Officers and Service Members) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires —

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

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

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

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

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

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

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

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

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

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

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

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

9. (1) An application for employment as a retired officer or retired service member shall be made to the Defence Council -

(a) by a serving officer or service member through his Service Headquarters to the Defence Council six months before his due date of retirement; or

(b) by an officer or service member who has already retired from the Defence Forces through his former Service Headquarters to the Defence Council.

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

11. The engagement of a retired re-employed officer or service member shall be on contract as may be prescribed in the terms and conditions of service.
12. An appointment under these Regulations may be terminated by the Defence Council at any time on such grounds as may be prescribed in the terms and conditions of service.

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

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

FIRST SCHEDULE (r. 6 (1))

<table>
<thead>
<tr>
<th>RO Grade</th>
<th>Defence Forces Rank at Retirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>RO 1</td>
<td>Brigadier</td>
</tr>
<tr>
<td>RO 2</td>
<td>Colonel</td>
</tr>
<tr>
<td>RO 3</td>
<td>Lieutenant Colonel</td>
</tr>
<tr>
<td>RO 4</td>
<td>Major</td>
</tr>
</tbody>
</table>

SECOND SCHEDULE (r. 6(2))

<table>
<thead>
<tr>
<th>RSVC Grade</th>
<th>Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>RSVC 1</td>
<td>WOI</td>
</tr>
<tr>
<td>RSVC 2</td>
<td>WOIi</td>
</tr>
<tr>
<td>RSVC 3</td>
<td>SSGT</td>
</tr>
<tr>
<td>RSVC 4</td>
<td>SGT</td>
</tr>
</tbody>
</table>


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.

LEGAL NOTICE No. 231

THE KENYA DEFENCE FORCES ACT

(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304(1)(t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:—

THE KENYA DEFENCE FORCES (CONSTABULARY) REGULATIONS, 2017
1. These Regulations may be cited as the Kenya Defence Forces (Constabulary) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act;

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

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

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

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

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

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

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

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

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

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

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

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

8. For the purposes of the provisions of the Act relating to summary disciplinary proceedings, the trial authority shall be the Commandant of the Constabulary or the commanding officer.
9. (1) References in sections 209 and 210 of the Act to being, continuing to be or ceasing to be subject to the Act shall be construed to mean being, continuing to be or ceasing to be in circumstances in which Parts V to XII apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a fine not exceeding the equivalent of ten days pay;
(b) stoppages up to a maximum of three thousand shillings.
14. The Commandant and the commanding officer shall not deal summarily with a charge under any of the following sections of the Act—

(a) sections 58, 59, 60, 61, 62, 63, 64, 66(1)(b), 67, 68, 69(c) and (d), 70, 71, 72, 73;

(b) sections 87 (a), (b), 88 (a), (b), 91 and 92, where the subject matter exceeds in value ten thousand shillings;

(c) sections 94, 97, 98, 99, 100, 101, 103(1), 106, 107, 109, 110, 111, 114, 115, 117, 118, 119, 120, 122, 124 and 129; and

(d) section 131, 132 and 133, where the Commandant and the commanding officer may not deal summarily with the substantive offence; and

(e) section 133, unless the correspondence civil offence is specified in the Schedule.

SECOND SCHEDULE (r. 14)

Civil Offences Which a Commanding Officer or Commandant May Deal with Summarily

1. Theft, contrary to section 275 of the Penal Code, where the value of the thing stolen does not exceed ten thousand shillings.

2. Common assault, contrary to section 250 of the Penal Code.

3. Careless driving of a motor vehicle, contrary to section 49 of the Traffic Act.

4. Taking and driving away a motor vehicle without the consent of the owner or other lawful authority, contrary to section 65 of the Traffic Act.

5. Reckless or dangerous driving of a bicycle, contrary to section 86 of the Traffic Act.


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.
LEGAL NOTICE NO. 232

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304(1)(t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:

THE KENYA DEFENCE FORCES (MISSING PERSONS) REGULATIONS, 2017

1. These Regulations may be cited as the Kenya Defence Forces (Missing Persons) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires—
   "Act" means the Kenya Defence Forces Act, 2012;
   "beneficiary" means a person designated as such under section 245 (3) of the Act;
   "duty" means routine duty, active service duty and training in the Defence Forces; and
   "Board" means a Board of Inquiry referred to under section 301(1) of the Act.

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

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

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

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

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

      (a) where the findings reveal that the person is deemed missing under circumstances arising out of sections 62, 68, 74 or 75 of the Act, direct that efforts be made to recover or apprehend the person with a view to take appropriate disciplinary action;

      (b) where the findings raise a presumption of death beyond reasonable doubt in respect of the missing person, issue a certificate in accordance with section 298(3) of the Act; or
(c) where the findings do not establish the fact in either (a) or (b) above, declare the person missing.

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

7. Where a person is either declared missing under regulation 5(3)(c) or is presumed dead by a Court of competent jurisdiction, the Service Commander shall upon receipt of the Court Order forward the same together with the report of inquiry and his personal record to Chief of the Kenya Defence Forces for processing of his or her death benefits.

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

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

(a) the person reappears; or

(b) it is ascertained that that person has been captured by and is in the custody and power of the enemy voluntarily; or

(c) the Service Commander makes a presumption of death in respect of the person.

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

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

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

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

(c) be entitled to any medals, awards or decorations that could have been awarded to him or her had he or she been physically in the service during the period he or she has been missing.

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

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

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

(a) that a missing person is dead, whether at the hands of the enemy or otherwise, the Service Commander shall thereupon cause the name of the missing person to be struck off from the list of missing persons; or

(b) that the missing person is in the hands of the enemy voluntarily or that there are reasonable grounds for suspecting him or her of being guilty, by words, act or conduct, of any of the conditions stated in regulation 7(1) (b) (i), (ii) or (iii) of the Kenya Defence Forces (Board of Inquiry) Regulations, 2017 or that he or she has defected to the enemy, then the Service Commander shall thereupon cause the name of the missing person to be struck off from the list of missing persons.

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

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

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

LIST OF MISSING PERSONS

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Svc No.</th>
<th>Rank</th>
<th>Name</th>
<th>Unit</th>
<th>Date Declared Missing</th>
<th>Circumstances the person went missing</th>
<th>Place</th>
<th>Next of Kin</th>
<th>Dependants</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.

LEGAL NOTICE NO. 233

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304 (1) (i) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:

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

2. In these Regulations, unless the context otherwise requires—

   “Act” means the Kenya Defence Forces Act, 2012;

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

   “public property” includes any property of—

   (a) the national or a county government;

   (b) a public body;

   (c) allied forces; or

   (d) public fund authorized by the Chief of the Kenya Defence Forces, Service Commander or the Commanding officer and managed in accordance with the law relating to public finance management; and

   “represented” means represented by an officer or an advocate.

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

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

(a) the order shall specify the composition of the board and the place and time at which the Board shall assemble;

(b) the order may, and where the matter referred to the board is that mentioned in regulation 7 (1) (a) shall, specify the terms of reference of the Board and be published in service orders;

(c) the order may direct the board to express their opinion on any question arising out of any matter referred to the Board; and

(d) the convening authority may at any time revoke, vary or suspend the order.

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

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

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

7. (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 willful neglect of his duty;

(ii) that having been captured he failed to take any reasonable steps available to him to rejoin the Defence Forces; or

(iii) that having been captured he served with or aided the enemy in the prosecution of hostilities or measures
calculated to influence morale or in any other manner whatsoever not authorized by international usage; or

(c) the death of any person subject to the Act, where an inquiry into the death is not required to be held by any civil authority.

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

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

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

(b) a Board has already been convened with reference thereto, the convening authority may stay the proceedings of the Board until such investigation or proceedings have been completed and shall then dissolve the Board if satisfied that such a Board is not necessary.

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

(a) a Board has not yet been convened with reference to the absence and deficiency (if any), the convening authority shall not be required to convene a Board; and

(b) a Board has already been convened with reference thereto, the convening authority may forthwith dissolve the Board.

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

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

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

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

12. (1) A Board shall hear the evidence of the witnesses who have been made available by the convening authority, and may hear the evidence of such other person as they think fit.
(2) While a civilian witness is giving evidence before a Board, he may be represented, but subject to regulation 13 his representative shall not be entitled to be present at any other time.

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

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

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

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

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

Provided that, where a child of tender years as defined in the Children Act called as a witness does not, in the opinion of the Board, understand the nature of an oath, his evidence may be received notwithstanding that it is not given on oath if the Board members are satisfied that the witness is telling the truth to justify the reception of the evidence.

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

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

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

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

(3) Every exhibit shall -

(a) be marked with a number or letter and be signed by the chairperson or have a label affixed to it bearing a number or letter and the signature of the chairperson;

(b) be attached to or kept with a record of the proceedings unless in the opinion of the Board it is not expedient to attach it to or keep it with the record.

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

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

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

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

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

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

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

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

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

Record of a report of a Board of Inquiry into the absence of/capture of/death of/any other matter entered in pursuance of section 301 of the Kenya Defence Forces Act.

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

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

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

............................................................................................................................................................................

...........................................(or any other matter)

*Omit if no such further report is made.

Dated this ..................... day of ....................., 20............

(Signed)...........................................................................

Commanding Officer of
the person referred to in the report


SAITOTI TOROME,
Principal Secretary and
Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and
Chairperson to the Defence Council.
LEGAL NOTICE NO. 234

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304 (1) (t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:

THE KENYA DEFENCE FORCES (GENERAL) REGULATIONS, 2017

1. These Regulations may be cited as the Kenya Defence Forces (General) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires—

“Act” means the Kenya Defence Forces Act;

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

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

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

(a) is in immediate command of the unit to which that member belongs or is attached; or

(b) where that member is serving with a detachment which has not been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that detachment; or

(c) where that member is serving with a unit or detachment which has been placed for disciplinary purposes under the command of the commanding officer of another unit or detachment, is the commanding officer of that other unit or other detachment; or

(d) in any other case not falling within paragraph (a) or paragraph (b), is by the custom of the service the officer entitled to exercise the powers of a commanding officer in relation to that member (otherwise than by delegated authority).

(2) In paragraph (1), the reference to a member of the Kenya Defence Forces belonging or being attached to or serving with a unit or detachment, includes a reference to a civilian employee being employed in the service of that unit or detachment or of any part or member thereof or accompanying that unit or any part thereof.
4. (1) An officer appointed to command a unit shall, irrespective of seniority, exercise command over all other officers serving therein.

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

5. 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.

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

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

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

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

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

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

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

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

12. For the purposes of section 206 (5) of the Act, the prescribed documents are those specified in the Third Schedule to these Regulations.
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 219 of the Act relates, and the time at which such damage or loss was occasioned, shall be investigated—

(a) if personnel belonging to more than one unit are concerned, by a board of inquiry convened under the Act; or

(b) if personnel belonging only to the one unit are concerned—

(i) by a board of inquiry convened as aforesaid; or

(ii) by the commanding officer of the unit concerned, or by an officer appointed by him both of whom may consider evidence, either written or oral, relating to such damage or loss as aforesaid:

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

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

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

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

(a) a board of inquiry convened under section 301 of the Act; or

(b) an examination by the Service Commander, or by an officer authorized by him, of evidence, whether oral or written relating to any matter.

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

Provided that, where in any proceedings before a court martial or an appropriate superior authority a person has been convicted in circumstances involving a finding that he or she was guilty of a wrongful act or negligence which occasioned such loss or damage as aforesaid, it shall not be necessary to give him or her an opportunity of making any such statement as aforesaid.
16. The military police shall be responsible for the transfer of accused persons or prisoners as may be authorized by a commanding officer.

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

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

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

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

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

(a) the number of days shall be reckoned from the time that the absence, or as the case may be, the time spent in hospital, commences;

(b) every period of twenty-four hours shall be reckoned as one day and save as hereinafter provided a part of a day shall be reckoned as one day; and

(c) when the total period of absence or the time spent in hospital is less than six hours no account shall be taken thereof unless the person was, by reason of his or her being absent or in hospital, prevented from performing a service duty which thereby devolved on some other person.
FIRST SCHEDULE (r. 11 (1))

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

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

Service particulars of the officer
or service member referred to above

\[
\begin{align*}
\text{No.} & \quad \text{Rank.} \quad \text{Name} \quad \text{Unit} \\
\end{align*}
\]

Dated this ................. day of ................. 20...

Magistrate

*Delete as appropriate.

SECOND SCHEDULE (r. 11 (2))

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

I certify that .......................................................... (full name) surrendered himself at ............... (place) on the ............... day of ............... 20..., as being illegally absent from his unit at ............... (place) on the ............... day of ............... 20..., and gave the following particulars- No. ............... Rank...........................................

Name...........................................

Unit...........................................

Dated this ......................... day of ............... 20...

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

1. Unit orders book.
2. Unit orders books, box file.
3. Register of deserters.
4. Registers of public animals—horses and mules, camels.
5. Register of guard dogs.
6. Register of recruits.
7. Unit ammunition state.
8. Ledger for clothing and equipment.
10. Account of rations.
11. Account of forage/guard dogs rations.
15. Record of service (officers).
16. Record of service (service members/constabulary)
17. Historical records.
18. Conduct sheets.
20. Record of the report of a board of inquiry into the illegal absence of an officer, serviceman or member of the constabulary.
21. Record of leave.
24. Aircraft and aircraft material servicing forms.
25. Air traffic controller’s watch log.
30. Ship’s Machinery running hours log.
31. Ship’s Navigating Officers handbook.


SAITOTI TOROME,
Principal Secretary and Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and Chairperson to the Defence Council.
LEGAL NOTICE No. 235

THE KENYA DEFENCE FORCES ACT
(No. 25 of 2012)

IN EXERCISE of the powers conferred by section 304 (1) (t) of the Kenya Defence Forces Act, 2012, the Defence Council makes the following Regulations:—

THE KENYA DEFENCE FORCES (EXECUTION OF SENTENCE OF DEATH) REGULATIONS, 2017

1. These Regulations may be cited as the Kenya Defence Forces (Execution of Sentence of Death) Regulations, 2017.

2. In these Regulations, unless the context otherwise requires—

"Act" means the Kenya Defence Forces Act;

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

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

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

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

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

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

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

(a) taken to, kept in custody at and brought back from any place such as aforesaid in civil or service custody;
(b) kept in such custody at any such place as aforesaid in any manner ordered by the High Court.
(4) A person under sentence who is in service custody shall not be transferred to civil custody except in pursuance of an order of the local commander made in the form prescribed in the First Schedule or in a form substantially to the like effect, and every such order shall be duly completed in accordance with the instructions contained in the form.

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

(a) shall be divested of every article which might be dangerous or inexpedient to leave in his possession;

(b) shall be confined in a separate cell and kept apart from all other persons;

(c) shall be kept by day and by night in the constant charge of two persons who are officers, warrant officers or non-commissioned officers;

(d) shall be subject to the Kenya Defence Forces (Imprisonment) Regulations, 2017, so far as they are consistent with these Regulations;

(e) shall not be required to perform any duties other than to keep clean his person and cell;

(f) shall be allowed daily physical exercise;

(g) shall be granted facilities to correspond with his relatives, friends and legal advisors;

(h) shall be permitted to smoke;

(i) shall be visited once daily by an officer of the unit in which he is in custody and once daily by the medical officer of such unit;

(j) may be visited at any time by any person authorised to visit him by written order of the local commander;

(k) may be visited by such of his relatives, friends and legal advisors as he desires to see and as are authorised to visit him by written order of the local commander;

(l) may be visited at any time by a chaplain of his own creed or denomination or, if he so desires a chaplain of another creed or denomination;

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

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

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

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

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

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

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

(a) the officer who is responsible for the due execution of the sentence of death in accordance with these Regulations;

(b) a medical officer of the Kenya Defence Forces;

(c) an officer nominated by the local commander who is able to identify the person under sentence as the person described in the death warrant and as the person who was tried and sentenced by court martial mentioned therein;

(d) a chaplain nominated by the local commander;

(e) such officers, warrant officers and non-commissioned officers as may be detailed for escort and security purpose or to assist at the execution;

(f) such officers, warrant officers and non-commissioned officers as may be detailed for escort and security purpose or to assist at the execution;

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

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

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

(3) A sentence of death passed under the Act shall not be carried into effect until the death warrant has been received by the military officer nominated under regulation 7 (2) or by the officer in charge of the correctional facility where the sentence is to be carried out.
10. (1) As soon as practicable after a sentence of death has been carried out in service custody, the medical officer in attendance shall examine the body and ascertain the fact of death and shall sign a certificate to that effect in the form in the Third Schedule.

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

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

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

FIRST SCHEDULE (r. 3 (4))

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

To the Superintendent or other person in charge of ........................................... (a)

Whereas ........................................... (b) ...........................................

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

Now, therefore, in pursuance of the Kenya Defence Forces Act, I hereby order you to receive into your custody and to detain the said person until the sentence of death is carried out or until you are otherwise ordered by a court or judge of competent jurisdiction or you are given further orders to discharge or deliver over the said person in due course of law, and this shall be authority for so doing. Signed at .................. this ............... day of .............., 20.........

........................................... ........................................... ............. (d)

Rank and appointment.................................................................

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

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

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

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

SECOND SCHEDULE

DEATH WARRANT

To.................................................................................................................. (a)

Whereas............................................................................................... (b) of the................. was by a................................................................. court martial held at...............................................................convicted of the offence(s) of
...........................................................................................

...........................................................................................

...........................................................................................

...........................................................................................

(c), and by a sentence passed on the ............... day of ........................., 20.............., was sentenced to suffer death:

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

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

Now, therefore, I hereby order you to carry into effect the said sentence on.................................................................(d) by.................................................................(e) and for so doing this shall be sufficient authority for your so doing.

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

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

.................................................................

President
RETURN OF WARRANT  

The above sentence passed on ........................................ (a) was carried into effect at ....................................... (b) on the ......................day of .................................................., 20 ................., at..................... hours.

......................................................... (c)

......................................................... (d)

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

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

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

(d) Insert “hanging” or “shooting”.

(e) Only required if sentence carried out in service custody.

(f) Insert the place where the sentence of death was carried into effect.

(g) Signature of military officer responsible for carrying the sentence of death into effect.

(h) Signature of mandatory witness, namely the officer nominated under regulation 7 (3) (c) of the Kenya Defence Forces (Execution of Sentence of Death) Regulations, 2017.
THIRD SCHEDULE (r. 10 (1))

CERTIFICATE OF MEDICAL OFFICER

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

Dated this ....................... day of ......................................................... 20...........

.................................................................................. Rank.................................................................

(a) Only required if sentence carried out in service custody.

(b) Full names of medical officer who attended the execution, stating rank and unit.

(c) Full names of the person upon whom the sentence of death has been carried out into effect, and his number, rank and unit.

(e) Insert the place where the sentence of death was carried into effect.


SAITOTI TOROME,
Principal Secretary and Secretary to the Defence Council.

RAYCHELLE OMAMO,
Cabinet Secretary for Defence and Chairperson to the Defence Council.