

SPECIAL ISSUE

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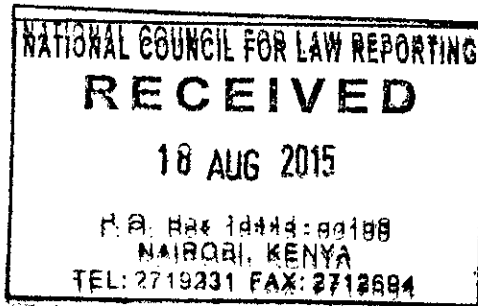
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2015

NAIROBI, 24th July, 2015

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U.S. DEPARTMENT OF THE INTERIOR
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**THE KENYA DEFENCE FORCES (AMENDMENT)
BILL, 2015**

A Bill for

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

ENACTED by Parliament of Kenya, as follows—

1. This Act may be cited as the Kenya Defence Forces (Amendment) Act, 2015, and shall come into operation on such date as the Cabinet Secretary may by notice in the Gazette, appoint.

Short title and commencement.

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

Amendment of section 2 of No.25 of 2012.

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

- (a) “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of—
- (i) obtaining information or a confession from the person or from a third person;
 - (ii) punishing the person for the act which that person or a third person has committed or is suspected of having committed;
 - (iii) intimidating or coercing that person or a third person; or
 - (iv) for any reason based on discrimination of any kind, when such pain or suffering is afflicted by or at the instigation of or with the consent or acquiescence of a public

official or other person acting in an official capacity.

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

Amendment of section 8 of No. 25 of 2012.

4. Section 10 of the principal Act is amended—

Amendment of section 10 of No. 25 of 2012.

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

(d) perform such functions as may be delegated by the President.

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

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

(h) submit an annual report, in writing, to the President and Parliament, on the expenditure, work and accomplishment of the Ministry, the Service and the Defence Council during the period covered by the report together with such recommendations as he or she may consider appropriate.

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

Amendment of section 11 of No. 25 of 2012.

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

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

Amendment of section 12 of No. 25 of 2012.

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

Amendment of section 13 of No. 25 of 2012.

(a) in paragraph (a), by deleting the words “through the Service Commanders” and substituting

therefor the words “in line with the chain of command”; and

(b) by deleting paragraph (b).

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

Amendment of section 16 of No. 25 of 2012.

9. Section 17(1) of the principal Act is amended by deleting paragraph (b).

Amendment of section 17 of No. 25 of 2012.

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

Amendment of section 20 of No. 2012.

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

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

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

Amendment of section 24 of No. 25 of 2012.

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

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

Amendment of section 28 of No. 25 of 2012.

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

Amendment of section 31 of No. 25 of 2012.

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

(a) reasons for such deployment;

(b) place where the Defence Forces is being deployed;

- (c) period for which the Defence Forces is expected to be deployed.

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

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

Amendment of section 32 of No. 2012.

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

15. Section 33 of the principal Act is amended—

Amendment of section 33 of No. 2012.

- (a) by deleting subsection (2); and
- (b) in subsection (3)—
- (i) by deleting the words “command, control”; and
- (ii) by deleting the expression “(2)” and substituting therefor the expression “(1)”.

16. Section 34 of the principal Act is amended—

Amendment of section 34 of No. 25 of 2012.

- (a) in subsection (1), by inserting the words “and other authorities” immediately after the words “National Police Service”; and
- (b) in subsection (2), by inserting the words “and other authorities” immediately after the words “National Police Service”.
- (c) in subsection (4) —
- (i) by adding the words “and other authorities as contemplated under Article 241(3)(1) of the Constitution” immediately after the words “National Police Service”;
- (ii) by deleting paragraph (a);
- (iii) by deleting paragraph (b).

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

Amendment of section 96 of No. 25 of 2012.

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

Amendment of section 112 of No. 25 of 2012.

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

Amendment of section 113 of No. 25 of 2012.

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

Amendment of section 115 of No. 25 of 2012.

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

Amendment of section 123 of No. 25 of 2012.

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

Amendment of section 126 of No. 25 of 2012.

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

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

Prohibition of torture or cruel treatment.

133A. (1) A member of the Defence Forces shall not subject any person to torture, cruel, inhuman or degrading treatment.

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

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

- 24.** Section 142(6) of the principal Act is amended by deleting the word “Act” and substituting therefor the word “Code”. Amendment of section 142 of No. 25 of 2012.
- 25.** Section 157 of the principal Act is amended in subsection (2) by adding the following words at the end of the subsection— Amendment of section 157 of No. 25 of 2012.
- “who shall be the final authority in deciding whether the charges should be dealt with by court martial or be referred back to summary trial”.
- 26.** Section 160(3)(b) of the principal Act is amended by inserting the words “who is available at the time” immediately after the expression “Defence Forces”. Amendment of section 160 of No. 25 of 2012.
- 27.** Section 196 of the principal Act is amended by inserting the word “martial” immediately after the words “rules of court”. Amendment of section 196 of No. 25 of 2012.
- 28.** Section 199 of the principal Act is amended by deleting the word “Act” and substituting therefor the word “Code”. Amendment of section 199 of No. 25 of 2012.
- 29.** Section 210 of the principal Act is amended — Amendment of section 210 of No. 25 of 2012.
- (a) by deleting subsections (1), (2) and (3); and
- (b) in subsection (4)(b), by deleting the words “and the Director of Public Prosecutions consents to the trial” and substituting therefor the words “which may be tried summarily or by court martial”.
- 30.** Section 213 of the principal Act is amended— Amendment of section 213 of No. 25 of 2012.
- (a) in subsection (2)(a), by deleting the words “of at least the rank of Brigadier” and substituting therefor the words “not below the rank of Major”.
- (b) in subsection (3), by inserting the following new paragraphs immediately after paragraph (b) —
- (ba) notwithstanding the provisions of section 157, have power to decide whether to prosecute or not to prosecute in relation to any offence under this Act wherein the accused person elects to be tried by court martial, or a commanding officer, or an

appropriate superior authority remands the case for trial by court martial.

(bb) amend or substitute a charge referred to him or her by the Commanding Officer or appropriate superior authority at any time before a Court Martial is convened.

(bc) refer a charge or substituted charge to the Commanding Officer or appropriate superior authority with direction that the same be tried summarily or be dismissed.

(c) in subsection (6), by deleting the words “shall be a separate office from that of a legal department in the Defence Forces or Ministry” and substituting therefor the words “shall be an independent office within the Defence Forces”.

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

Amendment of section 243 of No. 25 of 2012.

32. Section 245 of the principal Act is amended—

Amendment of section 245 of No. 25 of 2012.

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

“protection of members on duty”;

(b) in subsection (8)—

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

(ii) by deleting the words “notwithstanding that the duration of such treatment may extend beyond that member’s service contract”;

(c) by deleting subsection (9); and

(d) by deleting subsection (10).

33. Section 249 of the principal Act is amended by deleting subsection (7) and substituting therefor the following new subsection—

Amendment of section 249 of No. 25 of 2012.

(7) An officer or service member may by notice in writing to the Service Commander or Defence Council as applicable request to be

discharged from service or resign his or her commission and the Service Commander or Defence Council, as the case may be, shall determine the request and communicate the decision within reasonable time.

34. The principal Act is amended by inserting the following new section immediately after section 260—

Insertion of new section 260A in No. 25 of 2012.

Auxiliary reserve force.

260A. (1) The members of the disciplined forces of the Kenya Forest Service, the Kenya Wildlife Service and the National Youth Service shall form auxiliary reserve forces of the Kenya Defence Forces.

(2) The President may in situations of emergency or disaster or during war, insurrection, unrest, hostilities or disaster, order that the auxiliary reserve forces or any part thereof be employed to serve with the Defence Forces or otherwise in the defence of the nation whether within or outside Kenya.

(3) Where any part of the auxiliary reserve forces is in pursuance of an order made under sub section (2) of this section, serving with the Defence Forces or otherwise in the defence of the nation whether within or outside Kenya, such reserve force shall for all purposes be deemed to be part of the Defence Forces and shall be governed by and subject to all the laws relating to and governing the Defence Forces in all respects as if such were part of the Defence Forces.

(4) Where any part of the reserve forces is, pursuant to an order made under sub section (2) of this section, serving with and as part of the Defence Forces, the Chief of the Defence Forces shall make standing orders declaring which ranks of the auxiliary reserve force shall correspond to which ranks of the Defence Forces and relating to the command of such part of the

auxiliary reserve force by members of the Defence Forces.

(5) The standing orders made under subsection (4) shall not be published in the Gazette.

(6) Sections 261 to 267 (both inclusive) of the Kenya Defence Forces Act shall apply to the auxiliary reserve forces.

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

Amendment of section 262 of No. 25 of 2012.

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

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

Repeal of section 270 of No. 25 of 2012.

37. The principal Act is amended in section 285 by deleting subsection (2).

Amendment of section 285 of No. 25 of 2012.

38. The principal Act is amended by repealing section 289.

Repeal of section 289 of No. 25 of 2012.

39. The principal Act is amended by repealing section 290.

Repeal of section 290 of No. 25 of 2012.

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

Amendment of section 304 of No. 25 of 2012.

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

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

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

Standing Orders.

305A. The Chief of the Defence Forces or the Commander of a Service of the Defence forces or the Commandant of the Constabulary may make general, special, routine and standing order with

respect to all or any of the following matters in respect of the Forces, Service or Constabulary, as the case may be—

- (a) discipline, control, good order and guidance;
- (b) organization, administration and duties;
- (c) distribution, posting, transfer, attachment and inspection of personnel;
- (d) administration, control and command of the reserves;
- (e) exit and re-integration of the members of the auxiliary reserve forces back to their respective services, which shall not be inconsistent with this Act and shall not be published in the Gazette.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Kenya Defence Forces Act (No. 25 of 2012) so as to ensure smooth implementation of the Act.

Clause 1 of the Bill sets out the short title and commencement of the proposed Act.

Clause 2 of the Bill proposes to amend section 2 of the Act by inserting the definitions of the words “cruel, inhuman or degrading treatment or punishment” and “torture” appearing in section 270 which is proposed to be deleted and replaced with proposed section 133A.

Clause 3 of the Bill proposes to amend section 8 of the Act by deleting subsections (3) and (4) which have been moved to section 31 of the Act.

Clause 4 of the Bill proposes to amend section 10(g) of the Act for orderly and efficient governance of the Kenya Defence Forces.

Clause 5 of the Bill proposes to amend section 11 by deleting subsection (1) of the Act since the Cabinet Secretary cannot delegate civilian functions to the Chief of Staff and vice versa.

Clause 6 of the Bill proposes to amend section 12(l) of the Act to capture the intended meaning of granting powers to the Chief of Defence Forces to monitor implementation of policies, operations and directions issued to the Service Commanders.

Clause 7 of the Bill proposes to amend section 13(1)(a) and (b) to enable the CDF to delegate without restriction and also address the idea of delegation to civilian employees which is undesirable.

Clause 8 of the Bill proposes to amend section 16 of the Act to by deleting the expression “(1)” to correct an error.

Clause 9 of the Bill proposes to amend section 17 of the Act by deleting paragraph (b) to exclude persons who are not under the command of the Service Commander from exercising delegated powers.

Clause 10 of the Bill proposes to amend section 20(1) of the Act so as to set a criteria in enforcement of the provisions of Article 232(1)(g),(h) and (i) of the Constitution in relation to Kenya Defence Forces.

Clause 11 of the Bill proposes to amend section 24 of the Act so as to give the President the authority to extend the terms of office of the Chief of the Defence Forces, the Vice Chief of the Defence Forces and the Service Commanders.

Clause 12 of the Bill proposes to amend section 28(3) of the Act so as to ensure easy access to recruitment in all counties.

Clause 13 of the Bill proposes to amend section 31 of the Act by adding new subsections (2) and (3) to enable the National Assembly retain the oversight role in deployment operations.

Clause 14 of the Bill proposes to amend section 32(1) of the Act to create a mandatory obligation on the Defence Council to deploy the Kenya Defence Forces upon approval by the National Assembly.

Clause 15 of the Bill proposes to amend section 33 of the Act by deleting subsection (2) which already appears in section 32. Further amendment to subsection (3) is to enable the Chief of Defence Forces to exercise command over the Defence Forces deployed in accordance with sections 35(4)(c) and 37(7).

Clause 16 of the Bill proposes to amend section 34 of the Act to capture the mandate of the Kenya defence Forces to fully cooperate with other authorities.

Clause 17 of the Bill proposes to amend section 96(1)(a) of the Act for clarity.

Clause 18 of the Bill proposes to amend section 112 of the Act to insert the punitive provision which was lacking.

Clause 19 of the Bill proposes to amend section 113 of the Act to specify the kind of court being referred to.

Clause 20 of the Bill proposes to amend section 115 of the Act to specify the kind of court being referred to.

Clause 21 of the Bill proposes to amend section 123 of the Act for clarity.

Clause 22 of the Bill proposes to amend section 126(3) of the Act for clarity.

Clause 23 of the Bill proposes to amend the Act by inserting a new section 133A to ensure respect for human rights.

Clause 24 of the Bill proposes to amend section 142(6) of the Act to correct an error.

Clause 25 of the Bill proposes to amend section 157(2) of the Act to deal with the mischief of persons opting for court martial trial for petty offences that can be tried summarily.

Clause 26 of the Bill proposes to amend section 160(3)(b) of the Act to address the missing requirement of having a second lieutenant as a member of a court martial.

Clause 27 of the Bill proposes to amend section 196 of the Act to insert the missing word.

Clause 28 of the Bill proposes to amend section 199 of the Act to correct an error.

Clause 29 of the Bill proposes to amend section 210 of the Act to ensure accountability for offences committed.

Clause 30 of the Bill proposes to amend section 213(2) and (3) of the Act to relax the restrictiveness of requirement of a Brigadier. Further, the amendment of subsection (3) makes it clear on the issue of disposal of charges.

Clause 31 of the Bill proposes to amend section 243(1) of the Act to increase the age at which a person can be disqualified to join the regular force.

Clause 32 of the Bill proposes to amend section 245 of the Act to avoid the separation of the office from both the ministry and legal department which work in a command structure of the Defence Forces. Further, the amendment addresses the issue of financial viability of retaining persons on the payroll beyond their retirement age and compensation of family members of the Defence Forces personnel who suffer disabilities or death while on training.

Clause 33 of the Bill proposes to amend section 249(7) of the Act to address the ambiguity as to when a resignation is approved and takes effect.

Clause 34 of the Bill proposes to amend the Act by inserting a new section 260A to provide for an auxiliary reserve force.

Clause 35 of the Bill proposes to amend section 262(1)(b) of the Act to set out the purpose of reservists.

Clause 36 of the Bill proposes to repeal section 270 of the Act which has been addressed under Clause 2 and proposed section 133A.

Clause 37 of the Bill proposes to amend section 285 by deleting subsection (2).

Clause 38 of the Bill proposes to repeal section 289 of the Act as Kenya Defence Forces do not hold accounts separate from those held by the Ministry of Defence.

Clause 39 of the Bill proposes to repeal section 290 of the Act to avoid the publication of Defence Council matters would be prejudicial to national security.

Clause 40 of the Bill proposes to amend section 304 of the Act to effect Article 66(1) of the Constitution that allows the State to regulate the use of land in the interest of defence.

Clause 41 of the Bill proposes to amend the Act by inserting a new section 305A to provide for Standing Orders that may be made under the Act.

This Bill is a Bill not concerning county governments.

The enactment of this shall not occasion any additional expenditure of public funds.

Dated the 22nd July, 2015.

ADEN DUALE,
Leader of the Majority Party.

Section 8 of Act No. 25 of 2012, which it is proposed to amend—

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

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

(4) If the National Assembly is not in session during the first seven days after the deployment of the Defence Forces as contemplated in subsection (3), the Defence Council shall, through the President, provide the information required in that subsection (3) to the Speaker of the National Assembly.

Section 10 of Act No. 25 of 2012, which it is proposed to amend—

10. The Cabinet Secretary shall—

- (d) perform such functions, in particular those necessary for the control and administration of the Defence Forces, as may be delegated to the Cabinet Secretary, by—
 - (i) the President over the Defence Forces;
 - (ii) Parliament over the Ministry;
- (g) monitor compliance with policies and directions issued to the Chief of the Defence Forces and report thereon to the President and Parliament;
- (h) submit an annual report, in writing, to the President and Parliament on the expenditures, work, and accomplishments of the Ministry during the period covered by the report, together with—
 - (i) a report by the Chief of the Kenya Defence Forces on each Service of the Defence Forces indicating the expenditures, work and accomplishments of the Service;
 - (ii) itemized statements showing the utilization, savings of public funds, and the eliminations of unnecessary duplications;
- (iii) such recommendations as he or she may consider appropriate;

Section 11 of Act No. 25 of 2012, which it is proposed to amend—

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

- (a) the Chief of the Kenya Defence Forces; and
- (b) any member of the Defence Forces with the approval of the Chief of the Kenya Defence Forces and through the Service Commanders.

Section 12 of Act No. 25 of 2012, which it is proposed to amend—

12. The Chief of the Defence Forces shall—

(1) monitor the implementation of the policy, operations and directions of the Defence Forces;

Section 13 of Act No. 25 of 2012, which it is proposed to amend—

13. (1) The Chief of the Kenya Defence Forces may, where appropriate and in writing, delegate any power or assign any duty conferred on him or her under this Act or any other written law to—

- (a) any member of the Defence Forces, through the Service Commanders; or
- (b) any employee of the Ministry, with the approval of the Cabinet Secretary.

Section 17 of Act No. 25 of 2012, which it is proposed to amend—

17. (1) A Service Commander may, in writing, delegate any power or assign any duty conferred upon him or her under this Act or any other written law to—

- (a) any member of the Service for which he or she is responsible for; or
- (b) any employee of the Ministry, with the approval of the Cabinet Secretary and the Chief of the Defence Forces.

Section 28 of Act No. 25 of 2012, which it is proposed to amend—

28. (3) The Defence Council shall advertise the chances allocated per county at least thirty days before recruitment.

Section 32 of Act No. 25 of 2012, which it is proposed to amend—

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

Section 33 of Act No. 25 of 2012, which it is proposed to amend—

(2) The Defence Forces may, with the approval of the National Assembly, be deployed to restore peace in any part of Kenya

(3) Whenever the Defence Forces is deployed pursuant to subsection (2), the Inspector-General of the National Police Service shall be responsible for the administration, command, control and overall superintendence of the operation.

Section 34 of Act No. 25 of 2012, which it is proposed to amend—

34. (1) In the event of the Defence Forces being deployed in support of the National Police Service, such deployment shall comply with constitutional standards relating to human rights and fundamental freedoms.

(2) Where the deployment of the Defence Forces in support of the National Police Service is approved as contemplated in Article 241(3) of the Constitution and section 33(1), the Cabinet Secretary shall, within twenty four hours, issue a notice in the *gazette* of the commencement of such deployment.

(4) Service in support of the National Police Service—

(a) may only be performed in such area or at such place as the National Security Council may determine;

Section 35 of Act No. 25 of 2012, which it is proposed to amend—

35. (1) Whenever the Defence Forces or any portion or member thereof has been deployed under section 33, that member of the Defence Forces shall have the same powers and exercise the same duties as those conferred or imposed upon a member of the National Police Service.

Section 96 of Act No. 25 of 2012, which it is proposed to amend—

96. (1) A person who is subject to this Act commits an offence if that person—

(a) loses, or by negligence damages any public property or non-property of which the person has the charge or which has been entrusted to the person's care, or which forms part of property of which the person has the charge or which has been entrusted to the person's care, or any service decoration granted to the person;

Section 112 of Act No. 25 of 2012, which it is proposed to amend—

112. A person subject to this Act commits an offence if that person, when before a recruiting officer for the purpose of being attested under this Act knowingly makes a false answer to any question contained in the

attestation paper and put to the person by or by the direction of the recruiting officer.

Section 113 of Act No. 25 of 2012, which it is proposed to amend—

113. Any person subject to this Act who knowingly—

- (a) makes a false answer to any question set out in any document required to be completed, or
- (b) furnishes any false information or false document, in relation to the enrolment of that person,

commits an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

Section 115 of Act No. 25 of 2012, which it is proposed to amend—

115. A person subject to this Act who—

- (a) willfully or negligently makes a false statement or entry in a document made or signed by that person and required for official purposes or who, being aware of the falsity of a statement or entry in a document so required, orders the making or signing thereof;
- (b) when signing a document required for official purposes, leaves in blank any material part for which the signature is a voucher;
- (c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any military or departmental purpose,

commits an offence and on conviction is liable to imprisonment for a term not exceeding three years or to less punishment.

Section 123 of Act No. 25 of 2012, which it is proposed to amend—

123. A person subject to this Act who negligently or deliberately fires or discharges ammunition from a weapon in the person's charge or entrusted to the person's care, or which forms part of property within the person's charge or issued to the person for use for service purposes, commits an offence and shall be liable, on conviction by a court-martial, be liable to imprisonment—

- (a) for a term not exceeding two years or any lesser punishment provided for by this Act in the case of negligent firing or discharge ammunition; or

- (b) for a term not exceeding seven years or any lesser punishment provided for by this Act in the case of deliberate firing or discharge of ammunition.

Section 126 of Act No. 25 of 2012, which it is proposed to amend—

126. (3) Where the offence is committed in time of emergency, general mobilization or war, the person shall on conviction by a court-martial to imprisonment for a term not exceeding ten years or to a lesser punishment provided for in this Act.

Section 142 of Act No. 25 of 2012, which it is proposed to amend—

142. (6) The provisions of the Criminal Procedure Act (Cap. 75) relating to the constitution and procedure of Magistrates' Courts, powers of adjournment and remand of persons accused, and relating to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to proceedings under this section.

Section 157 of Act No. 25 of 2012, which it is proposed to amend—

(2) If an accused opts to be tried by a court martial, the commanding officer or appropriate superior authority, as the case may be, shall refer the charge to the Director of Military Prosecutions

Section 160 of Act No. 25 of 2012, which it is proposed to amend—

(3) At least one of the members provided for in subsections (1) shall be—

- (a) of equivalent rank as the accused person where the accused is an officer ; or
- (b) of the lowest ranking officer in the Defence Forces where the accused person is a service member.

Section 196 of Act No. 25 of 2012, which it is proposed to amend—

196. In the case of an appeal, under this Part, it shall be the duty of the Defence Court Administrator to furnish the Registrar, in accordance with rules of court, with a record of the proceedings of the court-martial.

Section 199 of Act No. 25 of 2012, which it is proposed to amend—

196. Subject to this Part and to any rules of court, the provisions of the Criminal Procedure Act (Cap. 75) relating to the hearing of appeals from subordinate courts shall apply to the hearing and determination of appeals under this Part.

Section 210 of Act No. 25 of 2012, which it is proposed to amend—

210. (1) A person shall not be tried by a court-martial for an offence under this Act, other than an offence under section 72 73, or 74(1)(a),

unless the trial is begun within three years after the commission of the offence, subject to subsections (2) and (3).

(2) When calculating a period contemplated in subsection (1), any period during which a person was illegally absent or a prisoner of war shall be disregarded.

(3) In applying subsection (1)—

- (a) in the case of an offence under section 133, if 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
- (b) subject to any time limit applicable by virtue of paragraph (a), a person may be tried by a court-martial for a civil offence committed outside Kenya despite the fact that it was committed more than three years before the beginning of the trial, if the Director of Public Prosecutions consents to the trial.

(4) A person shall not be tried by a court-martial for an offence under Part VI, other than an offence under section 72, 73 or 74(1)(a), unless—

- (a) the trial is begun within three months after the person ceases to be subject to this Act; or
- (b) the trial is for a civil offence committed outside Kenya and the Director of Public Prosecutions consents to the trial.

Section 213 of Act No. 25 of 2012, which it is proposed to amend—

(2) A person appointed as the Director of Military Prosecutions shall be—

- (a) an officer not below the rank of Brigadier; and
- (b) an advocate of the High Court of Kenya of not less than ten years standing.

(6) The office of the Director of Military Prosecutions shall be a separate office from that of the legal department in the Defence Forces or Ministry.

Section 243 of Act No. 25 of 2012, which it is proposed to amend—

(1) The regular force consists of persons not younger than eighteen years of age and not older than sixty two years and is organized in the manner prescribed.

Section 245 of Act No. 25 of 2012, which it is proposed to amend—

(8) A member of the Defence Forces who, through no misconduct on his or her part, sustains a wound or injury or contracts an illness while on military service or undergoing training is, under such conditions and for

such period as may be prescribed, entitled to be provided with medical, dental and psychological or other necessary treatment for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond that member's service contract.

(9) A member who is receiving the treatment referred to in subsection (8) shall receive his or her pay and allowances on their becoming due and such period of treatment shall for all purposes be regarded as duty.

(10) The Government shall compensate members or families of members of the Defence Forces, as the case may be, who lose their lives or suffer disabilities while exercising military service or training.

Section 249 of Act No. 25 of 2012, which it is proposed to amend—

249. (7) An officer may by notice in writing to the Defence Council, request to be relieved of his or her commission and, unless otherwise determined by the Defence Council, the request shall take effect on the date indicated in the notice.

Section 262 of Act No. 25 of 2012, which it is proposed to amend—

(1) At any time the President, by notice in the *Gazette*, may temporarily call out reservists, whether by class or by name to—

- (a) strengthen the Defence Forces in time of war; or
- (b) support the civil power in the maintenance of order in the event of disturbances, insurrection, hostilities or public emergency for a period not exceeding twenty-eight days.

Section 270 of Act No. 25 of 2012, which it is proposed to amend—

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

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

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

In this section—

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

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

- (i) obtaining information or a confession from the person or from a third person;
- (ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed;
- (iii) intimidating or coercing that person or a third person; or
- (iv) for any reason based on discrimination of any kind,

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Section 285 of Act No. 25 of 2012, which it is proposed to amend—

(2) The Funds of the Defence Forces shall be in a separate vote.

Section 289 of Act No. 25 of 2012, which it is proposed to repeal—

289. (1) The Defence Forces shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Defence Forces.

(2) Within a period of three months after the end of each financial year, the accounting officer in the Ministry shall submit to the Auditor-General the accounts of the Defence Forces in respect of that year for audit together with—

- (a) statement of the income and expenditure for that year; and
- (b) cash flow statement.

(3) The annual accounts of the Defence Forces shall be prepared, audited and reported upon in accordance with the provisions of Articles 225 and 228 of the Constitution and the Public Audit Act, 2003 (Act No. 12 of 2003).

Section 290 of Act No.25 of 2012, which it is proposed to repeal—

290. (1) The Defence Council shall cause an annual report to be prepared for each financial year.

(2) The Defence Council shall submit the annual report to the President and Parliament within three months after the end of the year to which it relates.

(3) The Defence Council shall cause the annual report to be published and publicised in such manner as the Defence Council may determine.