

THE ARMED FORCES ACT 1968

No. 60 of 1968

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Date of Commencement: By Notice

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SCHEDULES

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

ENACTED by the Parliament of Kenya, as follows:—

PART I—PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Armed Forces Act 1968, and shall come into operation on such day as the Minister, by notice in the Gazette, appoints.

Interpretation.

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

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

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

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

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

“aircraft material” includes—

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

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

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

“arrest” includes open arrest;

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

“billeting order” means a billeting order made under section 15J of this Act;

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

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

Cap. 90

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

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

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

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

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

“confirming officer” means a person who by virtue of section 110 of this Act has power to confirm the conviction and sentence of a court martial;

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

“convening officer”, in relation to a court martial, means the officer convening that court martial, and includes his successor or any person for the time being exercising his or his successor’s functions;

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

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

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

“court martial” means a court martial held under Part VIII of this Act;

“damage” includes destruction;

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

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

“Defence Council” means the Defence Council established by section 5 of this Act;

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

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

“foreign country” means a country other than Kenya;

“Kenya Air Force”, “Kenya Army” and “Kenya Navy” mean respectively the Kenya Air Force, the Kenya Army and the Kenya Navy established by section 3 of this Act;

“Kenya Military Forces” means the Kenya Military Forces maintained under the Kenya Military Forces Act (hereby repealed); Cap. 198.

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

“officer” means—

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

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

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

- (a) the unit is engaged in operations against an enemy; or
- (b) the President, considering that—
 - (i) the armed forces or a part of the armed forces has recently been on active service or is imminently likely to be on active service; and

- (ii) it is necessary for the preservation of public security that the armed forces or part of the armed forces should be treated as being on active service,

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

Cap. 57.

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

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

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

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

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

“the registrar” means the registrar of the High Court;

“requisitioning order” means a requisitioning order made under section 159 of this Act;

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

“reservist” means a member of the reserve;

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

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

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

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

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

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

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

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

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

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

Cap. 63

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

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

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

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

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

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

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

(a) to a particular rank are to that rank in the Kenya Army;

(b) to a person holding a particular rank include references to a person acting in that rank:

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

PART II—ESTABLISHMENT AND COMMAND OF ARMED FORCES

Establishment
and employ-
ment of
armed forces.

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

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

(3) The President shall be responsible for the operational use of the armed forces.

(4) The Minister, after consultation with the Defence Council, may order that any unit of the armed forces shall be employed outside Kenya.

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

(6) Nothing in this section prevents the Commander from ordering any aircraft or ship to any place outside Kenya in the ordinary course of duty in time of peace.

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

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

5. (1) There is hereby established a Defence Council, which shall consist of—

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

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

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

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

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

(4) The Defence Council may make standing instructions providing for—

- (a) the organization of the work of the Council and the manner in which it may perform its functions, subject to any assignment of responsibilities by the chairman under subsection (5) of this section;
- (b) the procedure to be followed by the Council in conducting its business; and

Constitution
of armed forces.

Defence
Council,
Chief of
Defence
Staff and
Commanders.

(c) all matters which the Council may consider it necessary or desirable to provide for, in order to secure the better performance of the functions of the Council.

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

(6) The President, on the advice of the Defence Council, may appoint—

(a) an officer to be Chief of Defence Staff; and

(b) for each service of the armed forces, an officer to be Commander of that service.

Command of
armed forces.

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

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

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

(4) The Chief of Defence Staff and each of the Commanders may delegate to an officer under his command any of his powers under this Act, except a power of delegation and a power for the exercise of which specific rank seniority or qualifications (which the officer does not hold) are stipulated by this Act.

PART III—APPLICATION OF ACT

Persons
subject to
Act.

7. The following persons are subject to this Act—

(a) officers and servicemen who are not reservists;

(b) reservists who have been called out under section 184, section 185 or section 186 of this Act;

- (c) any person who is serving with the armed forces under an engagement whereby he agrees to be subject to this Act, and who is not otherwise subject to this Act; and
- (d) any person to whom Parts IV to XI (inclusive) of this Act for the time being apply by virtue of section 8 or section 9 of this Act.

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

Application of
Act to
constabulary.

(2) The modifications referred to in subsection (1) of this section are—

- (a) the punishments which may be awarded by a court martial shall include dismissal, reduction in rank and a fine, and stoppages where the offence has occasioned loss or damage, but shall not include any other punishment less than imprisonment;
- (b) the only punishment which may be awarded for an offence where the charge is dealt with summarily shall be dismissal, reduction in rank and a fine not exceeding the equivalent of one month's pay, and stoppages where the offence has occasioned loss or damages;
- (c) the following provision shall have effect in place of subsections (2) and (3) of section 70 of this Act, that is to say, a member of the constabulary may be arrested by a provost officer or by a warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer, or by a member of the constabulary who is senior to him in rank;
- (d) the provisions of this Act relating to the investigation and summary trial of offences shall apply as they apply to servicemen, except as otherwise expressly provided;
- (e) for the purposes of the provisions of this Act relating to the investigation and summary trial of offences, the commanding officer shall be the Commandant of the Constabulary and also the officer commanding the unit with which the member is serving; and

(f) references in sections 141 and 142 of this Act to being, continuing to be or ceasing to be subject to this Act shall be replaced by references to being, continuing to be or ceasing to be in circumstances in which Part IV to XI (inclusive) of this Act apply, and section 141 (3) of this Act shall not apply.

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

Application
of Act to
civilians.

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

(a) is employed in the service of that unit or of any part or member thereof, or accompanies that unit or any part thereof; and

(b) is not otherwise subject to this Act,

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

(2) The modifications referred to in subsection (1) of this section are—

(a) the punishments which may be awarded by a court martial shall include a fine, and stoppages where the offence has occasioned loss or damage, but shall not include any other punishment less than imprisonment;

(b) the punishment which may be awarded where a charge is dealt with summarily shall, in the case of any offence, be a fine not exceeding the equivalent of one month's pay and no other punishment;

(c) the following provision shall have effect in place of subsections (2) and (3) of section 70 of this Act, that is to say, a person may be arrested by a provost officer, or by a warrant officer or non-commissioned officer legally exercising authority under a provost officer or on his behalf, or by order of any officer, or by a member of the constabulary;

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

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

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

PART IV—CO-OPERATION WITH FORCES OF OTHER COUNTRIES

10. (1) The Defence Council may, subject to anything to the contrary in the conditions applicable to his service, place any officer or serviceman at the disposal of the service authorities of any country to which this section applies, for the purpose of his being attached temporarily by those authorities to the military, air or naval forces of that country.

Attachment
to other
forces.

(2) For the purposes of gratuities and pensions on discharge, any person so attached shall retain his rights, and his service under attachment shall be taken into account, to the same extent as if he had not been so attached.

(3) A person shall not cease to be subject to this Act by reason only of attachment under this section.

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

Secondment or attachment to armed forces.

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

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

(b) be subject to this Act.

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

Saving for members of British forces.

12. (1) Notwithstanding section 11 (1) of this Act, a person who is—

(a) a person subject to the Army Act, the Air Force Act or the Naval Discipline Act; and

(b) seconded or attached to the armed forces,

shall remain subject to the Army Act, the Air Force Act or the Naval Discipline Act, as the case may be, and shall not be a person subject to this Act, but in other respects section 11 (1) of this Act shall apply to him.

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

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

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

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

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

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

Co-operation
with other
forces.

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

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

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

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

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

PART V—SERVICE OFFENCES

Treachery, Cowardice and Offences Arising out of Service

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

Aiding
enemy.

(a) abandons or delivers up any place or post which it is his duty to defend, or abandons his place of duty, or induces any person to abandon or deliver up any place or post which it is that person's duty to defend,

or induces any person to abandon that person's place of duty; or

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

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

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

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

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

Communication
with enemy.

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

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

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

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

Misconduct
in action
by person
in command.

- (a) fails to use his utmost exertions to bring into action any aircraft, ship or vehicle which it is his duty to bring into action; or

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

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

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

Misconduct
in action
by others.

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

Cowardice.

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

- (a) leaves the post, position or other place where it is his duty to be; or
- (b) throws away his arms, ammunition or tools; or

(c) does any of the acts specified in paragraph (f), (g) and (h) of section 14 (1) of this Act,

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

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

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

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

Neglect of duty.

20. Any person subject to this Act who—

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

(b) when before the enemy, uses words calculated to create despondency or unnecessary alarm,

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

Offences against morale.

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

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

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

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

Offences
by or in
relation to
sentries, etc.

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

(a) sleeps at his post; or

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

(c) is drunk; or

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

shall be guilty of an offence.

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

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

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

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

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

(a) is posted or ordered to patrol, or has adopted the position of sentry at a post or has undertaken the patrol; or

(b) is a member of a guard or other party mounted or ordered to patrol, for the purpose of protecting any persons, premises or place, or of controlling access to or egress from any premises or place, or of regulating traffic by road or rail or on any inland navigation; or

(c) has been ordered to keep a specific watch.

23. Any person subject to this Act who—

Looting.

- (a) steals from, or with intent to steal searches, the person of anyone killed or wounded in the course of warlike operations; or
- (b) steals any property which has been left exposed or unprotected in consequence of warlike operations; or
- (c) takes otherwise than for the public service any aircraft, ship, vehicle, equipment or stores abandoned by the enemy,

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

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

Offences
against
civil
population.

Mutiny and Insubordination

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

Mutiny.

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

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

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

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

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

Failure to
suppress
mutiny.

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

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

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

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

Insubordinate
behaviour.

27. Any person subject to this Act who—

- (a) strikes or otherwise uses violence against, or offers violence to, his superior officer; or
- (b) uses threatening or insubordinate language to his superior officer,

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

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

active service and did not involve striking or otherwise using violence against, or offering violence to, a superior officer exercising authority as such.

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

Disobedience
to particular
orders.

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

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

29. Any person subject to this Act who—

(a) obstructs; or

(b) when called on refuses to assist,

Obstruction
of provost
officers,
etc.

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

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

Disobedience
to standing
orders.

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

Desertion and Absence without Leave

Desertion.

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

(a) deserts; or

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

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

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

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

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

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

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

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

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

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

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

32. Any person subject to this Act who—

(a) absents himself without leave; or

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

Absence
without
leave.

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

33. Any person subject to this Act who—

(a) knowingly assists any person subject to this Act to desert or absent himself without leave; or

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

Assisting
desertion
or absence
without
leave.

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

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

Failure
to perform
military
duties.

Malingering, Drunkenness and Quarrelling

35. Any person subject to this Act who—

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

(b) injures himself with intent thereby to render himself unfit or temporarily unfit for service, or causes himself to be injured by any person with that intent;
or

(c) injures another person subject to this Act, at the instance of that person, with intent thereby to render that person unfit or temporarily unfit for service; or

Malingering.

- (d) with intent to render or keep himself unfit or temporarily unfit for service, does or fails to do anything (whether at the time of the act or omission he is in hospital or not) whereby he produces, or prolongs or aggravates, any sickness or disability,

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

Drunkenness.

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

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

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

Quarrelling.

37. Any person subject to this Act who—

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

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

Offences relating to Property

Offences concerning public property.

38. Any person subject to this Act who—

- (a) steals or fraudulently misapplies any public property, or is concerned in or connives at the stealing or fraudulent misapplication of any public property; or
 (b) receives or retains any public property, knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied; or

(c) wilfully damages, or is concerned in the wilful damage of, any public property; or

(d) by wilful neglect causes damage by fire to any public property,

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

39. Any person subject to this Act who—

(a) steals or fraudulently misapplies any property belonging to a person subject to this Act, or is concerned in or connives at the stealing or fraudulent misapplication of any such property; or

(b) receives or retains any such property, knowing or having reason to believe it to have been stolen or to have been fraudulently misapplied; or

(c) wilfully damages, or is concerned in the wilful damage of, any such property,

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

Offences concerning property of persons subject to Act.

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

Loss or hazarding of aircraft, ship or vehicle.

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

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

Improper carriage of goods.

(a) receives or permits to be received on board the aircraft, ship or vehicle any goods or merchandise intended for disposal or delivery by way of trade or business (whether on his own account or on account of any other person), not being merchandise received in the course of salvage; or

(b) agrees to carry any goods or merchandise on board the aircraft, ship or vehicle in consideration of the

payment of freight, or demands or receives any payment in respect of such carriage,
shall be guilty of an offence and liable, on conviction by court martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act.

Miscellaneous
offences
relating to
property.

42. Any person subject to this Act who—

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

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

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

*Offences relating to Billeting and Requisitioning of
Vehicles*

Billeting
offences.

43. Any person subject to this Act who—

- (a) obtains billets, or orders or procures another person to obtain them, knowing that no billeting order is in force authorizing him to demand those billets or that he is otherwise not authorized to demand them; or

- (b) takes, agrees to take or demands from a person on whom he or any other person or any vehicle is or is to be billeted in pursuance of a billeting order any money or thing as consideration for not requiring, or for ceasing to require, accommodation for himself or the said other person or standing room for the vehicle; or
- (c) commits any wrongful act against the person or property of the occupier of premises in which he is billeted in pursuance of a billeting order or of any other person who is in those premises, or against any other property in those premises, or wilfully or by wilful neglect damages those premises or any such property as aforesaid,

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

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

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

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

Offences in relation to requisitioning of vehicles.

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

Flying Offences

Dangerous flying.

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

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

Low flying.

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

(a) while taking off or landing; or

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

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

Annoyance by flying.

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

Offences relating to Custody

Irregular arrest and confinement.

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

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

(b) fails to release, or effect the release of, that other person when it is his duty to do so, shall be guilty of an offence.

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

(a) at the time of the committal; or

(b) if it is not practicable so to do at the time of the committal, then within twenty-four hours thereafter, to the person to whose custody the prisoner was committed a report in writing signed by himself of the offence which the prisoner is alleged to have committed shall be guilty of an offence.

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

(a) a written statement containing, so far as known to him, the prisoner's name and alleged offence and the name and rank or other description of the person by whom the prisoner is alleged to have committed the offence; and

(b) if he has received it, the report required by subsection (2) of this section,

he shall be guilty of an offence.

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

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

Permitting
escape, and
unlawful
release of
prisoners.

(2) Any person subject to this Act who—

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

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

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

Resistance
to arrest.

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

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

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

Escape from
custody.

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

*Offences concerning Courts Martial and other
Authorities*

Offences
concerning
courts
martial.

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

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

(b) refuses to swear an oath when duly required by a court martial to do so; or

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

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

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

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

False
evidence.

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

Obstruction
of police
officer.

54. Any person subject to this Act who prevents or obstructs any other person—

- (a) in executing a warrant for the arrest of a person subject to this Act who has committed or is suspected of having committed an offence triable by a civil court; or
- (b) in lawfully arresting without a warrant a person subject to this Act,

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

Prize Offences

Prize
offences
by person
in command.

55. Any person subject to this Act who is in command of an aircraft or ship and who—

- (a) having taken any aircraft or ship as prize, fails to send to the High Court, or to some other prize court having jurisdiction in the case, all the aircraft's papers or ship's papers, as the case may be, found on board; or
- (b) unlawfully makes any agreement for the ransoming of any aircraft, ship or goods taken as prize; or
- (c) in pursuance of any such agreement as aforesaid, or otherwise by collusion, restores or abandons any aircraft, ship or goods taken as prize,

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

Prize
offences
by others.

56. Any person subject to this Act who—

- (a) strikes or otherwise illtreats any person who is on board an aircraft or ship taken as prize, or who unlawfully takes from any such person any thing in his possession; or
- (b) removes out of any aircraft or ship taken as prize (otherwise than for safe keeping or for the necessary use of the armed forces) any goods not previously adjudged by a prize court to be lawful prize; or
- (c) breaks bulk on board any aircraft or ship taken as prize, or detained in exercise of any belligerent right

or under any law, with intent to embezzle or fraudulently misapply any thing therein,

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

Miscellaneous Offences

57. Any person subject to this Act who—

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

Political activities.

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

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

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

Making false statement on enlistment.

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

Falsely obtaining or prolonging leave.

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

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

Inaccurate certification.

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

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

Making
false
document.

61. Any person subject to this Act who—

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

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

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

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

Scandalous
conduct of
officer.

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

Ill-treatment of
subordinate.

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

Disgraceful
conduct.

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

65. Any person subject to this Act who—

False
accusation.

(a) makes an accusation against any other person subject to this Act which he knows to be false or does not believe to be true; or

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

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

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

Attempt to
commit
offence.

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

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

Aiding and
abetting.

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

Conduct to
prejudice
of good
order and
discipline.

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

Civil
offences.

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

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

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

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

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

PART VI—ARREST

Power to
arrest
offenders.

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

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

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

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

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

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

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

(6) In this section, "provost officer" includes an officer or serviceman lawfully exercising authority under a provost officer or on his behalf.

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

Power to
arrest
deserter
or absentee.

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

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

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

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

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

Provisions for
avoiding delay
after arrest.

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

(a) a special report on the necessity for further delay shall be made by his commanding officer to the prescribed authority in the prescribed manner; and

(b) a similar report shall be made to the prescribed authority and in the prescribed manner every eight

days until a court martial sits or the offence is dealt with summarily or he is released from arrest:

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

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

Proceedings
before civil
court where
suspected
deserter
or absence
arrested.

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

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

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

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

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

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

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

delivered into service custody or commit him as aforesaid, but otherwise shall discharge him :

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

(5) The provisions of the Criminal Procedure Code relating to the constitution and procedure of subordinate courts holding preliminary inquiries and conferring powers of adjournment and remand on such courts so acting, and those relating to evidence and the issue and enforcement of summonses or warrants to secure the attendance of witnesses, shall apply to proceedings under this section.

Cap. 75.

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

Deserter or
absentee
surrendering
to police.

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

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

Certificate
of arrest
or surrender
of deserter
or absentee.

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

(3) In any proceedings for an offence under section 31 or section 32 of this Act—

(a) a document purporting to be a certificate under subsection (1) or subsection (2) of this section, or under the corresponding provisions of any service

law other than this Act, and to be signed as thereby required, shall be evidence of the matter stated in the document;

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

Superintendent
of prison
to receive
deserters and
absentees

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

Temporary
reception
of person
in service
custody into
civil custody.

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

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

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

PART VII—PRELIMINARY INVESTIGATION AND SUMMARY
TRIAL OF CHARGES

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

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

but subject in either case to any prescribed limitations.

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

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

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

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

Certain charges may be dealt with summarily.

Appropriate superior authority.

Commanding
officer to
investigate
all charges.

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

Charges
against
officers.

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

- (a) if the charge is one which he has power to deal with summarily and he considers that the charge should be so dealt with, deal summarily with the charge; or
- (b) in any other case, refer the charge in the prescribed manner to the appropriate superior authority:

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

(2) Where the commanding officer deals with a charge summarily and records a finding of guilty, the punishments which he may award to an officer of the rank of captain or corresponding rank or below are, subject to the limitations hereinafter provided, those set out in the following scale—

- (a) forfeiture of up to six months' seniority of rank in the prescribed manner;
- (b) a fine not exceeding half a month's pay;
- (c) severe reprimand;
- (d) reprimand;
- (e) admonition;
- (f) where the offence has occasioned any expense, loss or damage, stoppages.

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

- (a) if the charge is one which he has power to deal with summarily and he considers that the charge should be so dealt with, deal summarily with the charge; or
- (b) in any other case, take the prescribed steps with a view to the charge being tried by court martial:

Provided that the appropriate superior authority may refer the charge back to the accused's commanding officer with a direction that it shall be dismissed or dealt with summarily,

but without prejudice to the bringing of another charge if the appropriate superior authority so directs or if the commanding officer thinks fit.

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

- (a) forfeiture of seniority of rank in the prescribed manner;
- (b) a fine not exceeding one month's pay;
- (c) severe reprimand;
- (d) reprimand;
- (e) admonition;
- (f) where the offence has occasioned any expense, loss or damage, stoppages.

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

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

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

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

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

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

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

Charges
against
servicemen.

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

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

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

(a) if the charge is one which he considers should be so dealt with, take the prescribed steps with a view to the charge being tried by court martial; or

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

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

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

(a) if the accused is a warrant officer or a non-commissioned officer—

(i) dismissal from the armed forces;

(ii) reduction in rank to private or corresponding rank, or any less reduction in rank;

(iii) forfeiture of seniority of rank in the prescribed manner;

(iv) a fine of a sum not exceeding one month's pay;

(v) severe reprimand;

(vi) reprimand;

(vii) such minor punishments as may be prescribed;

(viii) admonition;

(ix) where the offence has occasioned any expense, loss or damage, stoppages;

(b) if the accused is a serviceman other than a warrant officer or non-commissioned officer—

(i) imprisonment for a term not exceeding forty-two days or, if the accused is on active service, active

service punishment for a period not exceeding forty-two days:

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

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

(5) The punishment of—

(a) dismissal;

(b) reduction in rank of a warrant officer; and

(c) reduction in rank of senior sergeant or sergeant or corresponding rank to private or corresponding rank,

are subject to confirmation by the Commander.

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

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

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

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

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

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

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

(2) Where on a review under this section it appears to the reviewing authority expedient, by reason of any mistake

of law in the proceedings on the summary dealing with the charge or of anything occurring in those proceedings which in the opinion of the authority involved substantial injustice to the accused, to do so, the authority may quash the finding; and if the finding is quashed the authority shall also quash the award.

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

(a) a punishment awarded was invalid or was too severe; or

(b) where the award included two or more punishments, those punishments or some of them could not validly have been awarded in combination or are, taken together, too severe,

the authority may vary the award by substituting such punishment or punishments as the authority thinks proper, being a punishment or punishments which could have been included in the original award and which in the opinion of the authority are not more severe than the punishment or punishments included in the original award.

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

(a) any officer superior in command to the officer who dealt summarily with the charge; or

(b) the Commander; or

(c) the Chief of Defence Staff, if the Commander was involved in the summary proceedings; or

(d) the Defence Council.

PART VIII—COURTS MARTIAL

Constitution of Courts Martial

Trial by
court martial.

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

Officers
having power
to convene
court martial.

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

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

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

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

Constitution
of court
martial.

Provided that a court martial shall consist of a president and not less than four other members if—

- (i) an officer is to be tried; or
- (ii) the only punishment or the maximum punishment which can be awarded in respect of the charge before the court is death.

(2) The president of a court martial shall be a person who—

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

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

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

appointed in writing by the convening officer.

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

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

Disqualifications
for member-
ship of
court martial.

(2) An officer who, at any time between the date on which the accused was charged with the offence and the date of the trial, has been the accused's commanding officer, and any other officer who has investigated the charge against the accused, or who under service law has held or been one of the persons holding an inquiry into matters relating to the

subject-matter of the charge against the accused, shall not be a member of the court martial which tries that accused, nor shall he be judge advocate at the court martial.

Place for sitting of court martial.

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

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

Appointment of judge advocate

89. There shall be a judge advocate at each court martial, who shall be a magistrate, an advocate or a person having magisterial experience, appointed by the Chief Justice.

Provisions Relating to Trial

Challenge.

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

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

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

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

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

Oaths and affirmations.

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

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

Provided that—

- (i) if a child called as a witness does not in the opinion of the court understand the nature of the oath, his evidence may be received unsworn if in the opinion of the court he is sufficiently intelligent to justify his evidence being received and understands the duty of speaking the truth, but where his evidence is given unsworn on behalf of the prosecution the accused may not be convicted upon that evidence unless it is corroborated by some other material evidence supporting it and implicating the accused; and
- (ii) if a person objects to being sworn on the ground either that he has no religious belief or that the taking of an oath is contrary to his religious belief, or if it is not reasonably practicable to administer an oath to a person in the manner appropriate to his religious belief, he shall make an affirmation instead.

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

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

*Court martial
to sit in
open court.*

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

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

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

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

Evidence

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

(2) Notwithstanding subsection (1) of this section, a statutory declaration shall, in a trial by court martial, be admissible as evidence of the facts declared in it in a case where, and to the extent to which, oral evidence to similar effect would be admissible in that trial:

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

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

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

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

Privileges
of witnesses
and others.

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

Contempt of
court martial
by civilian.

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

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

Power to
convict of
offence other
than that
charged.

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

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

(3) An accused charged before a court martial with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the offence.

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

(5) Where an accused is charged before a court martial with an offence under section 69 of this Act, and—

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

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

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

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

Dissolution
of court
martial.

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

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

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

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

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

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

(b) if he is not, the convening officer shall dissolve the court.

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

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

Decision of
court martial.

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

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

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

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

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

Finding and
sentence.

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

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

Finding of Insanity

Where
accused
incapable
of making
defence.

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

(2) A finding under subsection (1) of this section shall not have effect until it is—

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

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

Where
accused
insane.

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

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

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

Punishments

102. (1) The punishments which may be awarded to an officer by sentence of a court martial are, subject to the limitations hereinafter provided, those set out in the following scale—

Punishment
of officers.

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

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

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

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

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

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

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

Punishment of
servicemen.

103. (1) The punishments which may be awarded to a serviceman by sentence of a court martial are, subject to the limitations hereinafter provided, those set out in the following scale—

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

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

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

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

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

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

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

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

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

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

Restitution or
compensation
for theft, etc.

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

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

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

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

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

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

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

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

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

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

- (i) it shall not take effect if the conviction is quashed on appeal;
- (ii) the High Court may by order annul or vary the order although the conviction is not quashed;
- (iii) the prescribed steps shall be taken for the safe custody, during the period during which the operation of the order is suspended, of the property ordered to be restored or the money ordered to be paid.

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

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

Promulgation—Petitions

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

Promulgation
of finding
or sentence.

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

Petition
against
finding or
sentence.

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

Confirmation, Revision and Review

Conviction
and sentence
to be
confirmed.

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

Powers of
confirming
officer.

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

- (a) by withholding confirmation, if he is of opinion that the finding of the court is unreasonable, or cannot be supported, having regard to the evidence, or involves a wrong decision on a question of law, or that on any ground there was a miscarriage of justice; or
- (b) by confirming the conviction or sentence; or
- (c) by referring the conviction or sentence or both for confirmation to a higher confirming officer; or
- (d) by directing that a court martial shall revise the conviction under section 110 of this Act.

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

- (a) some other conviction could have been validly made by the court martial on the charge before it; and
- (b) he is of opinion that the court martial must have been satisfied of the facts necessary to justify that other conviction,

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

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

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- (4) In confirming a sentence, a confirming officer may—
- (a) remit in whole or in part any punishment awarded by the court martial; or
 - (b) commute any such punishment for one or more of the punishments provided by this Act, being less than the punishment commuted.

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

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

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

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

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

Confirming
officers.

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

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

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

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

(4) Where a person is convicted by a court martial held on board a ship and is disembarked before the conviction or sentence has been confirmed, it may be confirmed by any officer having command over the person or over the area in which he then is, being an officer having power to confirm convictions and sentences of courts martial of the same kind.

Revision of
conviction of
court martial.

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

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

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

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

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

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

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

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

Provided that the decision of the court on the revision shall not be required to be announced in open court.

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

Review of findings and sentences of court martial.

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

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

- (a) the Defence Council; or
- (b) any officer superior in command to the confirming officer.

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

Provided that—

- (i) this subsection does not affect the keeping of the accused in custody pending confirmation, revision or approval, or pending the disposal of a petition or appeal; and
- (ii) a sentence of death passed on a person on active service and the conviction in consequence of which it was passed need not be reviewed if in the opinion

of the confirming officer it is essential in the interests of discipline and for securing the safety of the force with which the person sentenced is present that the sentence should be carried out at once, and the confirming officer records that opinion on confirming the sentence.

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

- (a) in so far as the review is of a conviction, quash the conviction and, if the sentence relates only to the conviction quashed, the sentence; or
- (b) in so far as the review is of a sentence, quash the sentence; or
- (c) in any case, exercise the like powers of substituting convictions and findings, substituting sentences and remitting or commuting punishment as are conferred on a confirming officer by subsections (2), (3) and (4) of section 108 of this Act,

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

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

Reconsideration
of sentences of
imprisonment.

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

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

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

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

Death sentence requires President's approval.

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

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

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

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

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

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

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

Provided that, where the proceedings relate to two or more charges and the person tried was acquitted on one or more of the charges and convicted on another or others, the prescribed period shall be the period of five years beginning

with the date of the promulgation of the conviction or convictions and the sentence thereon or of the withholding of confirmation of that conviction or those convictions.

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

PART IX—APPEALS FROM COURTS MARTIAL

Appeal to
High Court.

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

(a) the person convicted may, with the leave of the High Court given pursuant to section 116 of this Act, appeal to the High Court against the conviction, or against the sentence, or against both;

(b) the Attorney-General may, in any case, within forty days of the promulgation of the conviction, appeal to the High Court against the sentence.

(2) Subject to this Part, where a person has been acquitted of a charge by a court martial, the Attorney-General may, within forty days of the promulgation of the acquittal, appeal to the High Court against the acquittal.

Application
for leave
to appeal.

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

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

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

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

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

117. An appellant may, if he so desires, present his case in writing in the prescribed form.

Appellant may present case in writing.

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

Determination of appeal in ordinary cases.

(a) is unreasonable; or

(b) cannot be supported, having regard to the evidence; or

(c) involves a wrong decision on a question of law, or that on any ground there was a miscarriage of justice, and otherwise it shall dismiss the appeal:

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

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

(a) the evidence was such that the person acquitted should have been convicted; or

(b) the acquittal involves a wrong decision on a question of law,

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

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

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

Powers of Court in special cases.

(a) was not properly convicted on a particular charge brought against him before the court martial which tried him; but

(b) was properly convicted on some other charge so brought, then, if the sentence passed by the court martial on the appellant was not one which could

lawfully be passed for the offence of which he was convicted on that other charge, the High Court shall pass on the appellant such sentence as it thinks proper, in substitution for the sentence passed on him by the court martial.

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

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

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

(3) Where—

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

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

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

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

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

Court may
appoint
assessor.

121. A determination by the High Court of an appeal or other matter which it has power to determine under this Part shall be final, and no appeal shall lie from the High Court to any other court.

Appeal to
be final.

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

Proceedings
to be heard
in absence
of appellant.

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

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

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

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

Defence on
appeal.

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

(a) the sentence shall not be executed until after the expiration of the period within which an application

Person
sentenced
to death
to have
opportunity
to appeal.

for leave to appeal to the High Court against the conviction may be lodged; and

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

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

Removal of
prisoner.

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

Composition
of Court.

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

Furnishing
of documents.

127. In the case of an appeal, or an application for leave to appeal, under this Part, it shall be the duty of the Commander to furnish to the registrar, in accordance with rules of court, a record of the proceedings of the court martial (including any proceedings with respect to the confirmation, revision or review of the conviction and sentence of the court martial, and any petition presented by the person convicted.

Duties of
registrar.

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

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

and instructions so furnished to be placed at the disposal of persons imprisoned who desire to make application for leave to appeal under this Part.

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

Saving of prerogative of mercy.

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

Procedure
Cap. 75.

PART X—PROVISIONS CONCERNING TRIAL AND PUNISHMENT

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

Commencement of sentence of imprisonment.

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

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

Duration of sentence of imprisonment.

Provided that, if he satisfies the prescribed authority that during any part of such time he was in the custody of a civil authority otherwise than on account of an offence committed

by him while unlawfully at large, such part shall not be disregarded in calculating the period for which he is liable to be imprisoned in pursuance of the sentence.

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

(3) A person who—

- (a) is serving a sentence of imprisonment in a civil prison in respect of an offence under Part V of this Act; and
- (b) after being temporarily released under some law, is at large at any time during the period for which he is liable to be imprisoned in a civil prison in pursuance of his sentence,

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

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

(5) A person who is—

- (a) released as mentioned in subsection (4) of this section for any period; or
- (b) otherwise allowed out of service custody, in pursuance of regulations made under this Act, for any period or subject to any condition,

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

Service of
sentence of
imprisonment.

133. Where a sentence of imprisonment is passed on or awarded to a person for an offence under Part V of this Act, the person's commanding officer shall cause him to be sent to a prison and the superintendent or other person in charge of

the prison shall receive him and imprison him until he has served his sentence or the person is otherwise lawfully required to be delivered from the prison.

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

Committal to
civil prison.

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

Suspension of
sentence or
punishment.

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

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

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

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

(6) Where, while a person's sentence or punishment is suspended under this section, the person receives a sentence or punishment for a fresh offence, the suspended sentence or punishment shall be reviewed; and, if the reviewing authority terminates the suspension it shall direct whether the two sentences are to run concurrently or consecutively.

(7) Without prejudice to the further suspension of the earlier sentence or punishment, termination under subsection (5) of this section of the suspension of that sentence or punishment shall not be affected by the latter sentence or punishment not being confirmed or by its being quashed.

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

Sentence of imprisonment passed outside Kenya.

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

Indemnity for person acting under warrant.

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

Proof of certain facts by documentary evidence.

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

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

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

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

(a) was or was not serving at any particular time or during any particular period in the armed forces or in any particular service of the armed forces or part thereof, or was discharged therefrom at or before any particular time; or

- (b) held or did not hold at any particular time any particular rank or appointment in any particular service of the armed forces, or had at or before any particular time been attached, posted or transferred to the armed forces or any particular service of the armed forces or part thereof, or at any particular time or during any particular period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or
- (c) was or was not at any particular time authorized to use or wear any particular decoration, badge, wound stripe or emblem,

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

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

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

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

- (a) that a decoration of a description specified in or annexed to the certificate is a service decoration; or
- (b) that a badge, wound stripe or emblem of a description specified in or annexed to the certificate is one

supplied or authorized by the President or the Chief of Defence Staff,

shall be evidence of the matters stated in the certificate.

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

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

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

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

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

Proof of
outcome of
civil trial.

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

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

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

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

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

Evidence of proceedings of court martial.

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

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

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

(2) Where a person—

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

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

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

- (a) if he holds any rank in the armed forces, as to a person having that rank;

(b) in any other case, as to a person having the rank which he held when he was last actually subject to this Act:

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

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

Limitation
of time
for trial
of offences.

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

Provided that—

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

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

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

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

Trials by
civil courts

(2) Where a person—

- (a) is tried by a civil court for a civil offence; and
- (b) has already been sentenced to or awarded punishment for an offence under Part V of this Act consisting of an act or omission that constitutes (whether wholly or in part) the civil offence,

section 63 of the Interpretation and General Provisions Act shall be construed as if the words "but shall not be liable to be punished twice for the same offence" were omitted therefrom, but the civil court shall, in sentencing the person, have regard to the punishment imposed in respect of the offence under Part V of this Act.

Cap. 2.

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

- (a) has been tried for an offence by a competent civil court or under Part V of this Act, or has had an offence committed by him taken into consideration by any such court or by a court martial in sentencing him; or
- (b) has been charged with an offence under Part V of this Act, and has had the charge dismissed, or has been found guilty on the charge, by his commanding officer or the appropriate superior authority; or
- (c) has had an offence condoned by his commanding officer,

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

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

(2) For the purposes of this section—

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

- (b) a person shall not be deemed to have had an offence committed by him taken into consideration by a court martial in sentencing him if confirmation of the sentence of the court martial is withheld or the sentence is quashed;
- (c) a case shall be deemed to have been dealt with summarily by the commanding officer or appropriate superior authority notwithstanding that the finding of that officer or authority has been quashed, or the award of that officer or authority quashed or varied on the review thereof;
- (d) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorized by him in relation to the alleged offence has with knowledge of all relevant circumstances informed him that he will not be charged therewith;
- (e) a person ordered under section 52 (2) of this Act to be imprisoned for an offence under that section shall be deemed to have been tried by court martial for the offence.

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

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

PART XI—FORFEITURE AND DEDUCTIONS

Forfeitures and deductions: general provisions.

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

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

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

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

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

Forfeiture
of pay for
absence
from duty

(a) for any day of absence in circumstances which constitute an offence under section 31 or section 32 of this Act or, if the Chief of Defence Staff or an officer authorized by him so directs, for any day of other absence without leave (other than absence by reason of having been captured by the enemy);

(b) for any day of imprisonment or active service punishment to which he is sentenced by a court martial or which is awarded by his commanding officer or the appropriate superior authority, or imprisonment of any description to which he is liable by virtue of a sentence or order of a civil court;

(c) where he is convicted or found guilty of an offence under Part V of this Act, for any day (whether before or after he is convicted or found guilty) on which he is in hospital on account of sickness or injury certified by a medical officer to have been occasioned by the offence.

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

(a) he was captured through disobedience of orders or wilful neglect of his duty; or

(b) having been captured he failed to take any reasonable steps available to him to rejoin the armed forces; or

(c) while in captivity he served with or aided the enemy in the prosecution of hostilities or in the taking of

measures calculated to influence morale, or in any other way whatsoever not authorized by international usage.

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

Deductions
for penalties.

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

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

Compensation
for loss
occasioned by
wrongful act
or negligence.

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

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

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

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

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

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

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

Deductions
for barrack
damage.

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

150. A forfeiture or deduction imposed under any of sections 146, 147, 148 and 149 of this Act or under regulations made under this Act may be remitted by the Commander, or by such authority as may be prescribed.

Remission of
forfeitures
and deductions.

PART XII—BILLETING AND REQUISITIONING OF VEHICLES

Billeting

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

Billeting
orders.

152. (1) Billets for persons may be required to be provided—

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

Premises in
which billets
may be
required.

(c) in any dwelling, outhouse, warehouse, barn or stables, but not in any other premises.

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

Billeting.

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

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

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

Accommodation
to be provided,
and payment
therefor.

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

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

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

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

Provided that no payment shall be required in respect of

vehicles billeted otherwise than in a building unless the land on which they are billeted—

- (i) has its surface made up for the passage or parking of vehicles; and
 - (ii) is not land where vehicles are normally allowed to stand free of charge irrespective of the persons by whom they are owned or driven.
- (5) Payment for billeting shall be made—
- (a) at least once in every seven days, where the billeting continues for more than seven days; and
 - (b) before the persons billeted finally leave, or the vehicles are finally removed from, the premises where they are billeted.

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

Where no occupier.

156. (1) Any person who—

(a) is aggrieved by having an undue number of persons billeted upon him in pursuance of a billeting order; or

(b) claims that by reason of special circumstances he should be exempted from having persons so billeted on him, either generally or on a particular occasion,

may apply to a tribunal consisting of a person or persons appointed by the Minister.

Appeals against billeting.

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

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

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

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

Compensation for damage.

(2) Where any person, other than the recipient of compensation under subsection (1) of this section, has any interest

in the premises, being an interest the value of which is depreciated by the damage, he shall be entitled to recover from the recipient such part of the compensation as may be just.

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

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

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

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

Requisitioning of Vehicles

Requisitioning
orders.

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

Requisitioning
of vehicles.

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

(a) in so far as the requisitioning order authorizes the requisitioning of specified vehicles, of all or any of those vehicles;

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

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

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

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

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

- (a) is satisfied that a person who has been directed to furnish a vehicle under subsections (1) and (2) of this section has refused or failed to furnish it in accordance with that direction; or
- (b) has reasonable grounds for believing that it is not practicable without undue delay to give such a direction to the person having possession of the vehicle,

he may take, or authorize any officer or serviceman to take, possession of the vehicle; and, where possession is taken of a vehicle in pursuance of this subsection, this sub-Part shall, with the necessary modifications, apply as if the vehicle had been furnished by the person having possession of the vehicle in accordance with a direction to furnish it immediately at the place where it is, and, in particular, payment shall be made therefor as if it had been so furnished.

(4) The police officer in charge of police for any area specified in a requisitioning order shall, on being so requested by or on behalf of the officer to whom the requisitioning order was issued, give instructions for securing that so far as practicable police officers will be available, if required, for accompanying officers or servicemen requisitioning vehicles in pursuance of the requisitioning order.

161. Where a vehicle has been furnished in pursuance of a requisitioning order, it may be retained, so long as section 159 of this Act is in operation, for any period for which it is required for any purpose connected with the needs of the armed forces.

Period for which
vehicles to be
requisitioned.

Provision of
vehicles for
purchase.

162. A requisitioning order may require any person to furnish a vehicle for the purpose of its being purchased by the Government.

Payment for
vehicles
requisitioned.

163. (1) The person by whom a vehicle is furnished in pursuance of a requisitioning order, otherwise than for the purpose of its being purchased, shall be entitled to be paid—

(a) a sum for the use of the vehicle calculated, by reference to the period for which possession of the vehicle is retained, at the rate of payment commonly recognized or generally prevailing in the area at the time at which the vehicle is furnished or, if no such rate is readily ascertainable, at such rate as may be just; and

(b) a sum equal to the cost of making good any damage caused to the vehicle, not being damage resulting in its total loss or damage attributable to fair wear and tear, which may have occurred during the period for which possession of the vehicle is retained and which has not been made good during that period by the Government; and

(c) if, during the said period, a total loss of the vehicle occurs, a sum equal to the value of the vehicle immediately before the occurrence of the damage which caused the loss,

and in paragraph (b) of this subsection "fair wear and tear" means such fair wear and tear as might have been expected to occur but for the fact that the vehicle was requisitioned.

(2) The person by whom a vehicle is furnished in pursuance of a requisitioning order for the purpose of its being purchased shall be entitled to be paid the value of the vehicle at the time at which it is furnished.

(3) Where a vehicle is furnished in pursuance of a direction under section 160 (2) (b) of this Act—

(a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section (if that subsection applies), the period for which possession of the vehicle is retained shall be deemed to begin at the time when the direction is given, and for the purposes of subsection (2) of this section (if that subsection applies) the vehicle shall be deemed to have been furnished at that time;

(b) in addition to the payments provided for by subsection (1) or subsection (2) of this section, the person by whom the vehicle is furnished shall be

entitled to be paid the amount of any expenditure reasonably incurred by him in complying with the direction.

(4) Where a direction to furnish a vehicle is given under section 160 (2) (b) of this Act, and after the giving of the direction any damage occurs to the vehicle (whether or not resulting in its total loss), if the damage prevents the vehicle being furnished in accordance with the requisitioning order the foregoing provisions of this section shall apply as if the vehicle had been furnished and had been furnished otherwise than for the purpose of its being purchased (notwithstanding that it may have been required to be furnished for the purpose of its being purchased), subject however to the following modifications, that is to say—

(a) paragraphs (a), (b) and (c) of subsection (1) of this section shall have effect as if for the period therein mentioned there were substituted the period beginning with the giving of the direction and ending immediately after the occurrence of the damage;

(b) paragraph (b) of subsection (3) of this section shall have effect as if “in complying with” there were replaced by “by reason of anything done for the purpose of complying with”.

(5) Where a person is required by a direction to furnish a vehicle—

(a) he shall notify the details of the requisitioning and of any payment thereof to any person whom he knows to have an interest in the vehicle; and

(b) any person having such an interest shall be entitled to recover from him such part (if any) of the payment received by him for the vehicle as may be just.

(6) Where, during the period for which possession of a vehicle is retained, a total loss of the vehicle occurs, then—

(a) for the purposes of paragraphs (a) and (b) of subsection (1) of this section, that period shall be deemed to have come to an end immediately after the occurrence of the loss; and

(b) no claim shall be made for the return of the vehicle (if it still exists), or for any payment in respect thereof other than such as is provided for by subsection (1) of this section.

164. In deciding which, of alternative vehicles, is to be specified in a requisitioning order or is to be the subject of a direction under section 160 (1) (b) of this Act, the person

Avoidance of hardship in requisitioning vehicles.

issuing the direction given shall act in such manner as will in his opinion cause least hardship.

Issue of
search warrant.

165. If a magistrate is satisfied that a person has failed to afford facilities for inspection which he has been required to afford by or under regulations made under section 227 (1) (r) of this Act, he may issue a search warrant authorizing a named police officer to enter any premises within which the facilities are required, accompanied by that person, at any time between six o'clock in the morning and nine o'clock in the evening, and to inspect anything which may be found therein.

Damage by
vehicles being
delivered for
requisitioning.

166. The person using a vehicle for the purpose of its being furnished in pursuance of a direction under section 160 (2) (b) of this Act shall be deemed, as respects any claim in respect of injury or damage to any other person or property, to be so using the vehicle as a servant of the Government, and section 4 of the Insurance (Motor Vehicles Third Party Risks) Act shall not apply to the use of a vehicle for that purpose.

Cap. 405.

Application
to aircraft,
ships, horses,
etc., food,
forage and
stores.

167. (1) Subject to this section, the foregoing provisions of this sub-Part, except those provisions which relate only to mechanically-propelled vehicles and trailers normally drawn thereby, apply to and in respect of aircraft, ships, boats, horses, mules, donkeys, camels, food, forage, fuel and stores as they apply to and in respect of vehicles.

(2) Where stores are required for, and can be conveyed with, a vehicle with respect to which a direction is given under section 160 (2) (b) of this Act, such a direction may be given as well in relation to the stores as in relation to the vehicle, and the foregoing provisions of this sub-Part shall apply accordingly:

Provided that section 163 (4) of this Act shall not apply, but, if after the direction is given the furnishing of the stores is prevented by damage to them or to the vehicle, such payment (if any) shall be made in respect of the stores as may be just in all the circumstances.

(3) In this section, "stores" means any chattel (other than a vehicle, aircraft, ship, boat, horse, mule, donkey or camel, or food, forage or fuel) which is required for, or for use in connexion with—

(a) persons, vehicles, aircraft, ships or boats billeted or to be billeted in pursuance of a billeting order or otherwise temporarily accommodated or to be temporarily accommodated; or

- (b) vehicles, aircraft, ships, boats, horses, mules, donkeys or camels furnished or to be furnished in pursuance of a requisitioning order.

Supplemental

168. Whenever it appears to the Minister that the public interest so requires, he may, by order, direct that either or both of sections 151 and 159 of this Act shall come into operation for a specified period, either generally or in respect of a specified area, and that section or those sections, as the case may be, shall thereupon come into operation and remain in operation for the specified period.

Bringing into operation sections 151 and 159.

PART XIII—COMMISSIONING OF OFFICERS AND ENLISTMENT OF SERVICEMEN

169. (1) The Defence Council may, in the name of the President, grant a commission in the armed forces to a citizen of Kenya who has been recommended for a commission in that service by a commissions board established by regulations made under this Act.

Grant of commissions.

(2) Every person who is granted a commission shall, on being granted the commission, take an oath of allegiance in the form in the Second Schedule to this Act.

170. (1) A commission may be either—

- (a) a regular commission; or
(b) a short service commission, that is to say a commission for a term of years not exceeding five in the first instance.

Term of commission.

(2) An officer holding a regular commission who retires from the armed forces with a pension or gratuity shall thereupon be transferred to the reserve, and shall serve in it until the age of—

- (a) fifty-five years in the case of an officer retiring with the rank of colonel or corresponding rank or above; or
(b) the age of fifty years in the case of a person retiring with the rank of lieutenant-colonel or corresponding rank or below.

(3) An officer holding a short service commission who completes the term of his commission with a pension or gratuity shall on such completion be transferred to the regular reserve and shall remain in it for a period of three years.

No. 60

Termination of
commission.

171. (1) The Commander may terminate the commission of any officer during the first eighteen months of the officer's actual commissioned service.

(2) The Defence Council may terminate the commission of any officer of the rank of major or corresponding rank or below.

(3) The President may terminate the commission of any officer above the rank of major or corresponding rank or above.

Recruiting
officers.

172. Any person authorized in that behalf by the Defence Council may recruit servicemen into the armed forces in the prescribed manner.

Enlistment.

173. (1) A person offering to enlist in the armed forces shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the enlistment, and a recruiting officer shall not recruit any person unless that person satisfies him that he has been given such a notice, understands it and wishes to enlist.

(2) A recruiting officer shall not recruit a person under the apparent age of eighteen years unless written consent to the enlistment has been given by his parents or guardian or, where his parents or guardian are dead or unknown, by the District Commissioner of the district in which the person resides.

(3) A recruiting officer shall not recruit a person who is not a citizen of Kenya.

(4) A person on attestation shall take an oath of allegiance in the form in the Second Schedule to this Act.

Term of
enlistment.

174. (1) The term for which a person who has apparently attained the age of eighteen years may enlist shall be one of the prescribed periods of colour service (not exceeding twelve years) beginning on the date of his attestation.

(2) The period for which a person who has not apparently attained the age of eighteen years may enlist shall be a period of colour service ending the prescribed number of years after he attains the age of eighteen years (the prescribed number not being greater than twelve).

(3) In reckoning the service of a serviceman, there shall be excluded therefrom—

(a) all periods during which he has been absent from his duty by reason of—

(i) imprisonment; or

(ii) desertion; or

(iii) absence without leave exceeding seven days; and

(b) any period ordered by a court martial to be forfeited.

(4) A serviceman who is of good character, may, within two years before completing his period of colour service, with the approval of the competent service authority, re-engage for such further period of colour service as may be prescribed:

Provided that, except as provided by subsection (5) of this section, the further period of colour service, together with the previous period of colour service, shall not exceed a total continuous period of twenty-one years' colour service from the date of his original attestation or the date upon which he apparently attained the age of eighteen years, whichever is the later.

(5) A serviceman who has completed a period of twenty-one years' colour service may, with the approval of the competent service authority, continue to serve from year to year in all respects as if his period of colour service were still unexpired:

Provided that he may at any time give to his commanding officer three months' notice that he wishes to be discharged, and on the expiration of that notice he may claim to be discharged.

(6) A serviceman who completes his period of colour service (and any period by which his service is prolonged under subsection (5) of this section or under section 175 of this Act) or is otherwise discharged (other than under section 176, section 177 or section 178 of this Act) shall thereupon be transferred to the reserve, and shall serve in it for a period of three years (or for any longer period which may be provided for in his terms of enlistment or re-engagement), but not in any case after he has completed twenty-one years' colour service or has reached the age of forty-five years.

Prolongation
of service.

175. Any officer who is due to retire or who completes the term of his commission, and any serviceman whose period of colour service expires, during a state of war, insurrection, hostilities or public emergency or at a time when he is on active service may be retained in the armed forces and his service prolonged for such further period as the competent service authority with the approval of the Minister may determine.

Discharge.

176. A serviceman may be discharged by the competent service authority at any time during his period of colour service—

- (a) if, within two years after the date of his attestation, his commanding officer considers that he is unlikely to be an efficient member of the armed forces; or
- (b) for activities or behaviour likely to be prejudicial to the preservation of public security; or
- (c) if he is convicted of a civil offence; or
- (d) if he is pronounced by a medical officer to be mentally or physically unfit for further service; or
- (e) on reduction of establishment; or
- (f) at his own request on compassionate grounds; or
- (g) if for any reason his services are no longer required; or
- (h) if he is granted a commission; or
- (i) if he is sentenced by court martial to be dismissed from the armed forces.

Right to
purchase
discharge.

177. A serviceman may claim to be discharged at any time within three months after the date of his attestation on payment of the sum of two hundred shillings:

Provided that—

- (i) subsections (2) and (5) of section 180 of this Act shall not apply to a serviceman discharged under this section;
- (ii) no serviceman may claim to be discharged during a state of war, insurrection, hostilities or public emergency or at a time when he is on active service.

Right to
discharge on
reduction to
ranks.

178. A warrant officer who is reduced to the rank of private or corresponding rank may thereupon claim to be discharged, except during a state of war, insurrection, hostilities or public emergency or at a time when he is on active service

179. (1) Notwithstanding anything in this Part, a serviceman is not entitled to be discharged or transferred to the reserve at a time when he has become liable, as a person subject to this Act, to be proceeded against for an offence under Part V of this Act.

Postponement of discharge or transfer pending proceedings for offences, etc.

(2) Notwithstanding anything in this Part, a serviceman who is serving a sentence of imprisonment in respect of an offence under Part V of this Act is not entitled to be discharged or transferred to the reserve during the currency of the sentence.

180. (1) Subject to this Part, every serviceman becoming entitled or liable to be discharged shall be discharged with all convenient speed, but until discharged he shall remain subject to this Act.

Mode of discharge.

(2) When a serviceman who is entitled or liable to be discharged is serving outside Kenya, he shall be returned to Kenya free of cost with all convenient speed and shall be discharged on his arrival there or, if he consents to his discharge being delayed, within six months after his arrival.

(3) A serviceman shall not be discharged unless his discharge has been authorized by order of the competent service authority.

(4) Every serviceman shall be given on his discharge a certificate of discharge containing the prescribed particulars.

(5) A serviceman who is discharged in Kenya shall be entitled to be conveyed free of cost from the place where he is discharged to the place stated in his attestation paper to be the place where he was attested, or to any place in Kenya at which he intends to reside and to which he can be conveyed at no greater cost.

181. (1) Where a person has made the prescribed declaration upon his attestation and has thereafter received pay as a serviceman—

Validity of attestation and enlistment.

- (a) the validity of his enlistment shall not be called in question on the grounds of any error or omission in his attestation paper;
- (b) after the expiration of three months from the date on which he made the declaration, he shall be deemed to have been validly enlisted notwithstanding any

non-compliance with the requirements of this Act or any other matter whatsoever (not being an error or omission in his attestation paper), and he shall be a serviceman until his discharge.

(2) Where a person has received pay as a serviceman without having previously made the prescribed declaration upon his attestation—

(a) he shall be a serviceman until discharged;

(b) he may claim to be discharged at any time within three months after the first day in respect of which he has received pay.

(3) Nothing in this section shall prejudice the determination of any question as to the term for which a person enlisted or prevent the discharge of a person who has not claimed his discharge.

PART XIV—THE RESERVES

Transfer to
reserve.

182. (1) Every officer and every serviceman who is liable to be transferred to the regular reserve shall until transferred remain subject to this Act.

(2) When an officer or a serviceman who falls to be transferred to the regular reserve is serving outside Kenya, he shall be returned to Kenya free of cost with all convenient speed and shall be transferred to the regular reserve on his arrival there or, if he consents to his transfer being delayed, within six months after his arrival.

(3) A serviceman who is transferred to the regular reserve in Kenya shall be entitled to be conveyed free of cost from the place where he is transferred to the place stated in his attestation paper to be the place where he was attested, or to any place in Kenya at which he intends to reside and to which he can be conveyed at no greater cost.

Volunteer
reserve.

183. (1) The volunteer reserve, if the Defence Council decides in pursuance of section 4 of this Act that there shall be one, shall consist of such officers and servicemen as the Defence Council determines.

(2) Commissions in the volunteer reserve shall be granted and may be terminated in the same manner as is provided in relation to the regular force by sections 169 and 171 of this Act.

(3) Servicemen may be enlisted into the volunteer reserve, and when enlisted shall serve in the volunteer reserve, in the same manner as is provided in relation to the regular forces by sections 172, 173, 175, 176, 177, 178, 179, 180 and 181 of this Act, and those sections shall apply *mutatis mutandis* in relation to enlistment and servicemen enlisted into the volunteer reserve as they apply to enlistment and servicemen enlisted into the regular forces.

184. (1) Every reservist is liable to be called out for training for a period not exceeding, or for periods not exceeding in the aggregate, twenty-eight days in any one year.

Calling out
reservists for
annual training.

(2) A reservist, during any training for which he is called out, may be posted or attached to and trained with any unit of the armed forces.

185. (1) The President may, by notice in the Gazette, at any time when he considers it necessary, call out reservists (whether by class or by name) temporarily—

Calling out
reservists
temporarily.

(a) to strengthen the regular force in time of war; or

(b) to support the civil power in the maintenance of order in the event of disturbances, for a period not exceeding twenty-eight days.

(2) The President in such notice may give or authorize the Minister to give such directions as may seem necessary or proper for facilitating the calling out of the reservists.

(3) Every such notice and all such directions shall be obeyed, and every reservist called out by the notice shall attend at the place and time appointed by the notice or the directions, and after that time shall be deemed to be called out on temporary service.

186. (1) At any time when Part III of the Preservation of Public Security Act is in operation (whether generally or in a part of Kenya), the President may, by proclamation, call out reservists (whether by class or by name) on permanent service, either generally or (as the case may be) in that part of Kenya.

Calling out
reservists on
permanent
service.
Cap. 57.

(2) The President in such proclamation may give or authorize the Minister to give such directions as may seem necessary or proper for facilitating the calling out of the reservists.

(3) Every reservist who is an officer called out on permanent service is liable to serve until his services are no longer required, but in any case not beyond the age limits specified in section 170 (2) of this Act, irrespective of whether he held a regular commission or a short service commission, together with such further period as the Minister may determine.

(4) Every reservist who is a serviceman called out on permanent service is liable to serve as a serviceman until his services are no longer required, but in any case not longer than the remainder of his period of service in the reserve together with such further period as the Minister may determine.

Punishment for non-attendance.

187. (1) Any reservist who, without leave lawfully granted or other reasonable excuse, fails to report when called out under this Part shall—

(a) if called out under section 184 or section 185 of this Act, be guilty of absence without leave within the meaning of section 32 of this Act;

(b) if called out under section 186 of this Act, be guilty, according to the circumstances, of desertion within the meaning of section 31, or of absence without leave within the meaning of section 32, of this Act.

(2) Section 70 of this Act applies to reservists who commit an offence under this section as it applies to persons otherwise subject to this Act.

Record of illegal absence.

188. Where a reservist fails to report when called out and his absence continues for not less than twenty-one days, an entry of such absence shall be made by an officer in the service books, and such entry shall be prima facie evidence of the fact of such absence.

Release from reserve on completion of service.

189. A reservist who has completed his period of service in the reserve shall be released from the reserve, unless—

(a) he is on active service; or

(b) the reserve has been called out on permanent service; or

(c) at the expiration of the period he stands charged as a person subject to this Act with the commission of, or is a serviceman undergoing punishment for, an offence under this Act;

and, if he stands so charged or is such a serviceman, his service shall be prolonged and his release deferred until he

has been tried and undergone any punishment awarded in respect of the offence with which he is charged, or until his punishment is completed, as the case may be.

190. A reservist may be released from the reserve by the competent service authority at any time if—

Release from reserve during service.

(a) he is pronounced by a medical officer to be mentally or physically unfit for further service; or

(b) his services for any reason are no longer required.

PART XV—THE ARMED FORCES CONSTABULARY

191. There is hereby established a force, to be known as the Armed Forces Constabulary, which shall be part of the armed forces, and which shall consist of a Commandant and such other ranks as the Minister determines.

Armed Forces Constabulary.

192. The Commandant shall, subject to the directions of the Minister, be responsible for the general control, discipline and administration of the constabulary.

Commandant.

193. Every member of the constabulary shall on joining the constabulary make before an officer of the armed forces or before the Commandant an oath of allegiance in the form in the Second Schedule to this Act.

Declaration by members.

194. The functions of the constabulary shall be to maintain the security, protection (including protection against fire and other damage) and orderly regulation of all establishments of the armed forces and of public property in the charge of the armed forces.

Functions of constabulary.

195. In the exercise of their functions under this Act, all members of the constabulary have the like powers and privileges as are by law accorded to police officers, including the power to carry arms:

Powers and privileges of members.

Provided that such powers and privileges do not apply in relation to a member of the constabulary when he is beyond the limits of an establishment of the armed forces, except when that member—

(i) is performing his functions in respect of public property under the control of the armed forces; or

(ii) is in control or fresh pursuit of a person who is reasonably suspected of having committed an offence—

(a) in relation to public property under the control of the armed forces; or

(b) in relation to a member of the constabulary, or to an officer or serviceman, or to a person employed in the service of a unit of the armed forces.

Powers of
arrest.

196. (1) Where any person is found committing, or is reasonably suspected of committing or having committed, an offence of the kind described in paragraph (ii) of the proviso to section 195 of this Act, a member of the constabulary may demand his name and address, and if he refuses or fails to give his name and address to the satisfaction of such member, or if such member has reasonable grounds for believing that unless arrested the person will escape or cause an unreasonable amount of delay, trouble or expense in being brought before a court, such member may without warrant arrest him forthwith.

(2) A person making an arrest under subsection (1) of this section shall—

(a) without unnecessary delay make over the arrested person to a police officer, who shall take him to the nearest police station without unnecessary delay; or

(b) in the absence of a police officer, take the arrested person to the nearest police station.

(3) Where any person has been arrested under subsection (1) of this section, the officer in charge of the police station to which he has been brought shall deal with the case in accordance with section 36 of the Criminal Procedure Code.

Cap. 75.

Use of arms.

197. A member of the constabulary may use arms against any person who by force prevents or attempts to prevent the lawful arrest of himself or of any other person in any establishment of the armed forces:

Provided that—

(i) resort shall not be had to the use of arms under this section unless the member has reasonable ground to believe that he or any other person is in danger of grievous bodily harm, and that he cannot otherwise effect such arrest; and

- (ii) the use of arms under this section shall be, as far as possible, to disable and not to kill.

PART XVI—CIVIL OFFENCES CONCERNING THE
ARMED FORCES AND THE CONSTABULARY

198. Any person who—

Obstructing
constabulary.

- (a) assaults, resists or wilfully obstructs a member of the constabulary in the performance of his duties under this Act, or any person acting in the aid of such a member; or

this Act, or any person acting in the aid of such a member of the constabulary to neglect or to act contrary to his duty as such member; or

- (c) induces or does any act calculated to induce a member of the constabulary to commit any breach of discipline or any act whereby any lawful order given to a member of the constabulary or any written law with which it is the duty of a member of the constabulary to comply may be evaded or infringed,

shall be guilty of an offence and liable to imprisonment for a term not exceeding three years, and may be arrested without a warrant by any member of the constabulary or any police officer.

199. Any person who—

Procuring and
assisting
desertion.

- (a) procures or persuades a person to desert or to absent himself without leave from the armed forces or the constabulary; or

- (b) knowing that a person is about to desert or absent himself without leave from the armed forces or the constabulary, assists him in so doing; or

- (c) knowing a person to be a deserter or absentee without leave from the armed forces or from the constabulary, conceals him or assists him in concealing himself or assists in his rescue from custody,

shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding one year.

No. 60

Pretending to
be a deserter.

200. Any person who falsely represents himself to any service authority or civil authority to be a deserter or absentee without leave from the armed forces or from the constabulary shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

Obstructing
person in
execution of
duty.

201. Any person who wilfully obstructs or otherwise interferes with an officer or serviceman acting in the execution of his duty shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

Aiding
malingering.

202. Any person who—

(a) produces in an officer or serviceman any sickness or disability; or

(b) supplies to or for him any drug or preparation calculated or likely to render him, or lead to the belief that he is, permanently or temporarily unfit for service,

with a view to enabling him to avoid service in the armed forces, whether permanently or temporarily, shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding one year.

Unlawful
purchase, etc.,
of military
stores.

203. (1) Any person who acquires any service stores, or solicits or procures any person to dispose of any service stores, or acts for any person in the disposing of any service stores, shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding two years, unless he proves either—

(a) that he did not know, and could not reasonably be expected to know, that the chattels in question were service stores; or

(b) that the chattels in question had (by the transaction with which he is charged or by some earlier transaction) been disposed of by order or with the consent of the Government or of some other person or authority who had, or whom he had reasonable cause to believe to have, power to give the order or consent; or

- (c) (that the chattels in question had become the property of an officer who had retired or ceased to be an officer, or of a serviceman who had been discharged, or of the personal representatives of an officer or serviceman who had died.

(2) A police officer may arrest without warrant any person who is reasonably suspected of having committed an offence under this section, and may seize any property which is reasonably suspected of having been the subject of the offence.

(3) Any person having authority to issue a warrant for the arrest of a person charged with a crime may, if satisfied by evidence on oath that a person within his jurisdiction has, or is reasonably suspected of having, in his possession any property which has been the subject of an offence under this section, issue a warrant to search for such property as in the case of stolen goods; and any property reasonably suspected of having been the subject of such an offence which is found on such a search shall be seized by the officer charged with the execution of the warrant, and that officer shall bring the person in whose possession or keeping the property is found before a court.

(4) In this section—

“acquire” means buy, take in exchange, take in pawn or otherwise receive (whether apart from this section the receiving is lawful or not);

“dispose of” means sell, offer or expose for sale, give in exchange, pledge or otherwise hand over (whether apart from this section the handing over is lawful or not);

“service stores” means any chattels or goods of any description belonging to the Government, which have been issued for use for the purposes of the armed forces, or are held in store for the purpose of being so issued when required, and any chattels or goods which had belonged, and had been issued or held, as aforesaid at some past time.

(5) For the purposes of subsection (3) of this section, property shall be deemed to be in the possession of a person if he has it under his control, and whether he has it for his own use or benefit or for the use or benefit of another.

Refusal to
receive persons
billeted, etc.

204. Any person who—

- (a) refuses to receive any person billeted upon him in pursuance of a billeting order, or without reasonable excuse fails to furnish him with the accommodation properly required for him; or
- (b) gives or agrees to give to any person billeted upon him in pursuance of a billeting order any money or reward in place of receiving any person or vehicle or of furnishing accommodation properly required for him; or
- (c) obstructs the billeting in his building or on any land or water under his control of any vehicle, aircraft, ship or boat,

shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

Enforcement of
requisitioning.

205. (1) Any person who—

- (a) fails to furnish any vehicle or specified thing which he is directed to furnish in pursuance of a requisitioning order, or fails to furnish any such vehicle or specified thing at the time and place at which he is directed to furnish it; or
- (b) fails to comply with any regulations made under section 227 (1) (t) of this Act; or
- (c) obstructs any officer or other person in the exercise of his functions under Part XII of this Act in relation to the inspection or requisitioning of vehicles or specified things,

shall be guilty of an offence and liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

(2) In subsection (1) of this section, "specified thing" means one of the things, animals and commodities specified in section 167 (1) of this Act.

Illegal dealings
in documents
relating to pay,
pensions,
mobilization,
etc.

206. (1) Where any official document is issued in connexion with any pay, pension, allowance, gratuity or other money payable to any person in respect of his or any other person's service in the armed forces, any person who receives, detains or has in his possession that document—

- (a) as a pledge or a security for a debt; or

- (b) with a view to obtaining payment, from the person entitled to the pay, pension, allowance, gratuity or other money, of a debt due either to himself or to any other person,

shall be guilty of an offence.

(2) Any person who has in his possession without lawful authority or reasonable excuse (the proof whereof shall lie on him) any such document as aforesaid, or any official document issued in connexion with the mobilization or demobilization of the armed forces or any part or member thereof, shall be guilty of an offence.

(3) Any person who is guilty of an offence under this section shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding six months.

(4) For the purposes of this section, a document shall be deemed to be in the possession of a person if he has it under his control and whether he has it for his own use or benefit or for the use or benefit of another.

207. (1) Any person who—

(a) without authority, uses or wears any service decoration, or any badge, insignia of rank, wound stripe or emblem supplied or authorized by the President or the Defence Council; or

(b) uses or wears any decoration, badge, insignia of rank, wound stripe or emblem so nearly resembling any service decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorized as aforesaid, as to be calculated to deceive; or

(c) falsely represents himself to be a person who is or has been entitled to use or wear any service decoration or any badge, insignia of rank, wound stripe or emblem supplied or authorized as aforesaid,

shall be guilty of an offence:

Provided that this subsection shall not prohibit the wearing of brooches or ornaments representing service badges.

(2) Any person who purchases or takes in pawn any service decoration awarded to any member of the armed forces, or solicits or procures any person to sell or pledge any such decoration, or acts for any person in the sale or pledging thereof, shall be guilty of an offence, unless he proves that

Unauthorized
use of and
dealing in
decorations, etc

at the time of the alleged offence the person to whom the decoration was awarded was dead or had ceased to be a member of the armed forces.

(3) Any person who is guilty of an offence under this section shall be liable, on conviction by a civil court, to imprisonment for a term not exceeding three months.

PART XVII—VISITING FORCES

Interpretation
of Part.

208. In this Part—

“appropriate authority”, in relation to a country, means such authority as is appointed by the government of that country for the purposes of this Part;

“civilian component” means the civilian personnel accompanying a visiting force, who are employed in the service of the visiting force or are employed by an authorized service organization accompanying a visiting force, and who are not stateless persons or citizens of Kenya or person ordinarily resident in Kenya;

“dependant” means a person who is not ordinarily resident in Kenya and who—

(a) is the wife or husband of a member of a visiting force;
or

(b) is wholly or mainly maintained or employed by such a member; or

(c) is in the custody, charge or care, or is part of the family, of such a member;

“designated country” means a country designated under section 209 of this Act;

“forces”, in relation to a country, means the naval, military or air forces of that country;

“member”, in relation to a visiting force, includes a member of the civilian component of that visiting force, and a dependant;

“sentence” includes any punishment awarded or imposed by a service court;

“service court”, in relation to a country, means a court established under the service law of that country, or any authority empowered by that service law to investigate or try charges, or any authority empowered by that service law to review the proceedings of such a court or authority;

“service law”, in relation to a country, means the laws governing the forces of that country;

“visiting force” means any body of the forces of a designated country which for the time being is lawfully present in Kenya in time of peace under a treaty, agreement or arrangement to which the Government is a party.

209. (1) Where it appears to the President that it is expedient that this Part should have effect in relation to any particular country, he may, by order, designate that country as a country to which this Part applies.

Power to
apply Part.

(2) An order under subsection (1) of this section may provide that it shall have effect subject to limitations or conditions, or that this Part shall apply with modifications or adaptations.

210. (1) Subject to sections 15 and 16 of the Constitution, the service courts and service authorities of a designated country may, within Kenya or on board any ship or aircraft belonging to the Government, exercise over members of a visiting force which belongs to that country all such powers as are exercisable by them according to the law of the country.

Powers of
service courts
of visiting
forces.

(2) Where a sentence has been passed, whether within or outside Kenya, by a service court of a designated country upon a member of a visiting force then, for the purposes of proceedings in a court of Kenya—

(a) the service court shall be deemed to have been properly constituted; and

(b) the sentence shall be deemed to have been within the jurisdiction of the service court and to have been in accordance with the law of the designated country; and

(c) the sentence, if executed according to the tenor of the sentence, shall be deemed to be lawfully executed.

(3) Any person who is detained in custody in pursuance of a sentence as respects which subsection (2) of this section has effect is in lawful custody.

(4) Notwithstanding the foregoing provisions of this section, a sentence of death passed by a service court of a designated country shall not be carried out in Kenya unless under the law of Kenya a sentence of death could have been passed in a similar case.

No. 60

Restrictions
on prosecutions
for civil
offences.

211. (1) A member of a visiting force shall not be prosecuted for a civil offence unless—

(a) the Attorney-General certifies that—

(i) the offence is one in relation to which the courts of Kenya have the exclusive or the primary right to exercise jurisdiction under a treaty, agreement or arrangement to which the Government is a party; and

(ii) the Minister has not waived that right in respect of that offence; or

(b) the Attorney-General certifies that, although the offence is one in respect of which a service court of the country to which the visiting force belongs has the primary right to exercise jurisdiction under a treaty, agreement or arrangement to which the Government is a party, that right has been waived in respect of the offence by the service authorities of the visiting force or by the government of that country:

Provided that a person may be arrested, and a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that a certificate has not been given under this subsection.

(2) Where a member of a visiting force has been tried by a service court of the country to which the force belongs under the powers conferred by section 210 (1) of this Act—

(a) he shall not be tried for the same offence by a court of Kenya; and

(b) if he is subsequently convicted by a court of Kenya and it appears to that court that the conviction is wholly or partly in respect of acts or omissions in respect of which he was convicted by the service court, the court of Kenya in sentencing him shall have regard to any sentence passed by the service court.

Proof of
certain facts.

212. (1) For the purposes of this Part, a certificate issued by or on behalf of the appropriate authority of a designated country—

(a) that a body of the forces of that country is or was at a particular time present in Kenya shall, in

proceedings in a court of Kenya, be conclusive evidence of the fact certified;

(b) that a named person at a particular time either was or was not a member (whether as a member or as a member of the civilian component or as a dependant) of a visiting force of that country shall, in proceedings in a court of Kenya, be sufficient evidence of the fact, unless the contrary is proved;

(c) that a named person—

(i) on a particular date was sentenced by a service court of that country to a particular punishment; or

(ii) is, or was at a particular time, detained in custody in pursuance of a sentence passed upon him by a service court of that country; or

(iii) at a particular time and place was tried by a service court of that country for a particular offence,

shall, in proceedings in a court of Kenya, be conclusive evidence of the fact certified.

(2) Where—

(a) in a certificate issued for the purposes of this section reference is made to a person by name; and

(b) in proceedings in a court of Kenya reference is made to a person by that name (whether as a party to the proceedings or otherwise),

the reference in the certificate and the reference in the proceedings shall be presumed to be references to the same person, unless the contrary is proved.

(3) A document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of a particular authority, shall be presumed to be a certificate issued by or on behalf of that authority, unless the contrary is proved.

(4) Where a document purporting to be a certificate issued for the purpose of this section—

(a) is one which under this section may be issued by or on behalf of the appropriate authority of a designated country; and

(b) purports to be signed by or on behalf of an authority of that country,

that authority shall, in any proceeding in a court of Kenya, be presumed to be the appropriate authority of that country for the purposes of this section, unless the contrary is proved.

(5) Where in proceedings in a court of Kenya it is admitted or proved (whether by means of a certificate or otherwise) that a body of the forces of a designated country is or was at a particular time present in Kenya, it shall be presumed in those proceedings that the body is or was at that time lawfully present in Kenya, unless the contrary is proved.

PART XVIII—MISCELLANEOUS

Precedence and command of members of armed forces.

213. (1) Officers, warrant officers, non-commissioned officers and servicemen below the rank of non-commissioned officer shall stand in relation to each other in the order of precedence in which they are named in this subsection.

(2) Officers, warrant officers and non-commissioned officers of the same rank shall, as between themselves, stand in order of precedence and command according to any order which may be made by the President, and where no such order is in force then according to their seniority reckoned by the date of their respective appointments to their current rank.

Exemptions from tolls, etc.

214. Duties or tolls for embarking from or disembarking on any pier, wharf, quay or landing place, or for passing over any road, ferry or bridge, shall not be payable in respect of—

(a) members of the armed forces or of any co-operating forces or of the constabulary, when on duty;

(b) vehicles of the armed forces or of any co-operating forces;

(c) horses or other animals of the armed forces.

Exemption from execution against public property.

215. No judgment, decree or order given or made against a member of the armed forces by any court shall be enforced by the levying of execution on any property in the possession of the person against whom it is given or made which is public property used by him for service purposes.

No assignment of or charge on service pay, etc.

216. (1) Save as expressly provided by this Act, no pay, service award, grant, pension or allowance payable to any person in respect of his or any other person's service in the

armed forces shall be capable of being assigned or charged, and a purported assignment or charge of the same, or an agreement to assign or charge the same, shall be void.

(2) Save as expressly provided by this Act, no order shall be made by any court if its effect would be to prevent any person from receiving money which he is precluded by this section from assigning and to direct payment thereof to another person.

(3) This section does not prevent—

(a) a court from ordering that a sum of money due from a member of the armed forces be recovered from money which he is precluded by this section from assigning; or

(b) a sum being paid, out of money which a person is precluded by this section from assigning, to that person's trustee in bankruptcy for distribution among creditors under the law relating to bankruptcy.

217. (1) A person subject to this Act may make a statutory declaration under the Oaths and Statutory Declarations Act outside Kenya before any officer of the rank of major or corresponding rank or above (in this section referred to as an authorized officer).

Certain officers may take statutory declarations. Cap. 15.

(2) A statutory declaration purporting to have been made before an authorized officer, and containing in the attestation a statement of the date on which and the place at which the declaration was made and of the full name and rank of that officer, shall be admitted in evidence without proof that the signature is the signature of that officer.

218. (1) Every officer on being commissioned and every serviceman on enlistment shall give particulars of the place and district in which he ordinarily resides and the name and address of his next of kin, and those particulars shall be recorded at the headquarters of his unit.

Residence and next of kin to be recorded.

(2) The record shall be verified periodically, and it shall be the duty of the officer or serviceman to report any alteration which may occur in the recorded particulars.

219. A will made by a member of the armed forces who has at law the capacity to make a will shall be validly executed if it is in writing and is signed by him in the presence of an officer, who subscribes his name as witness in the member's presence, or if it is executed with the formalities prescribed by any other written law for the execution of a will.

Execution of wills.

Administration
of estates.

220. (1) Where a member of the armed forces dies leaving a valid will, the paymaster or any officer having in his charge or control any pay, accumulation of pay, gratuity or other money or any other movable property belonging to the member shall pay or deliver it to the executor of the member.

(2) Where a member of the armed forces dies without leaving a valid will, the paymaster or any officer having in his charge or control any pay, accumulation of pay, gratuity or other money or any movable property belonging to the member shall pay or deliver it to the Public Trustee together with a copy of the record specified in section 218 of this Act, and the Public Trustee shall administer and distribute the money or property in accordance with the Public Trustee Act, or may grant a certificate as provided in section 4 of that Act.

Cap 168.

Uniforms and
decorations
not part of
estate.

221. Uniforms and decorations shall not be treated as part of the estate of a deceased member of the armed forces in relation to claims or creditors or for any of the purposes of administration under this Act or otherwise, and they shall be delivered to the Commander and thereafter disposed of in the prescribed manner.

Property of
deserter.

222. In every case of desertion, the movable property of the deserter in the charge or control of the paymaster or any other officer (including any money belonging or due to the deserter) shall be disposed of in the prescribed manner.

Board of
inquiry.

223. (1) The Commander, or any officer authorized by regulations made under this Act, may convene a board of inquiry to investigate and report on the facts relating to—

- (a) the absence of any person subject to this Act; or
 - (b) the capture of any such person by the enemy; or
 - (c) the death of any person where an inquiry into the death is not required to be held by a civil authority;
- or

(d) any other matter of a prescribed class,

and a board of inquiry shall, if directed so to do, express their opinion on any question arising out of any matters referred to the board.

(2) The Defence Council, the Commander or the commanding officer may convene a board of inquiry to investigate and report on any other matter.

(3) A board of inquiry shall consist of the prescribed number of persons, being persons subject to this Act, and the president of the board shall be an officer not below the rank of lieutenant or corresponding rank.

(4) Evidence given before a board of inquiry shall not be admissible against any person in proceedings before a court martial, appropriate superior authority or commanding officer other than proceedings for an offence under section 53 of this Act, or for an offence under section 69 of this Act where the corresponding civil offence is perjury.

224. (1) Where a board of inquiry inquiring into the absence of an officer or serviceman reports that he has been absent without leave or other sufficient cause for a period specified in the report, not being less than twenty-one days, a record of the report shall be entered in the service books.

Report of inquiry into absence to be recorded.

(2) A record entered in pursuance of subsection (1) of this section shall, unless the absentee subsequently surrenders or is arrested, or the report of the board of inquiry is annulled by the Defence Council or a subsequent board of inquiry, have the like effect as a conviction by court martial for desertion.

225. (1) If an officer thinks himself wronged in any matter by a superior officer or authority and on application to his commanding officer does not obtain the redress to which he thinks he is entitled, he may make a complaint in writing to the Defence Council through his commanding officer and the Commander.

Complaints by officers.

(2) On receiving such a complaint, the Defence Council shall investigate the complaint and grant any redress which appears to it to be necessary.

226. (1) If a serviceman thinks himself wronged in any matter by an officer (other than his commanding officer) or by a serviceman, he may make a complaint to his commanding officer.

Complaints by servicemen.

(2) If a serviceman thinks himself wronged in any matter by his commanding officer, either by reason of redress not being given to his satisfaction on a complaint under subsection (1) of this section or for any other reason, he may make a complaint in writing to the Commander through his commanding officer.

(3) If a serviceman is dissatisfied with the decision of the Commander under subsection (2) of this section, he may make a complaint in writing to the Chief of Defence Staff through his commanding officer and the Commander.

(4) On receiving a complaint under this section, the commanding officer, the Commander or the Chief of Defence Staff, as the case may be, shall investigate it and grant any redress which appears to him to be necessary.

Regulations.

227. (1) The Minister, on the advice of the Defence Council, may make regulations for better carrying out the provisions and purposes of this Act and generally for the good government of the armed forces and the constabulary, and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to—

- (a) the commissioning and appointment of officers, and their terms of service, retirement, resignation and precedence, and similar matters;
- (b) the enlistment of recruits, including the administration of oaths and affirmations;
- (c) the promotion of officers and servicemen;
- (d) the persons, being members of the armed forces, in whom command over any service of the armed forces or any part or member thereof is vested, and as to the circumstances in which such command is vested;
- (e) the attachment and secondment of officers and servicemen under Part IV of this Act;
- (f) with the consent of the Treasury, the pay, allowances, pensions and gratuities of members of the armed forces, including the manner of reckoning service before the commencement of this Act for pensions and gratuities;
- (g) the seniority in rank, and the pension and other benefits, of a person who resigns his commission or is discharged from the armed forces to facilitate his being granted a commission or his enlisting in another service of the armed forces;
- (h) the periods and terms of service in the volunteer reserve, and other matters concerning service in the volunteer reserve;

- (i) the distribution, organization and duties of the armed forces;
- (j) the government, discipline, pay and conditions of service of cadet forces;
- (k) the distribution, posting, transfer, attachment and inspection of personnel;
- (l) the description, supply, use and disposal of arms, accoutrements, clothing and other stores, including investigation into losses thereof;
- (m) the proper administration and control of establishments of the armed forces, including prohibiting, regulating or controlling entry into, presence within, meetings in and traffic within such establishments;
- (n) the discipline, good order and guidance of the armed forces;
- (o) forfeiture of pay and deductions from pay (but not so as to permit a penal deduction, that is to say a deduction to be made by reason of the commission of an offence or other wrongful act or in consequence of negligence), and the determination of questions concerning forfeiture of pay and deductions from pay;
- (p) the delegation of any or all of the functions of a commanding officer under this Act, in specified cases and to a specified extent, to officers of a specified class;
- (q) the execution of sentences of death under this Act, including the manner and place where such executions are to be carried out and the custody, treatment and removal of persons under sentence of death;
- (r) the execution of sentences of imprisonment under this Act, including the prisons in which they are to be served, and the classification, treatment, employment, discipline, control, removal and temporary release on compassionate grounds of persons serving such sentences, and the appointment, powers and duties of inspectors, visitors, governors and members of the staff of service prisons, and the removal of prisoners;

- (s) active service punishment;
- (t) billeting and requisitioning, including requiring persons to furnish particulars of the motor vehicles, and of the trailers normally drawn by motor vehicles, and of the ships, boats, horses, mules, donkeys, camels, food, forage, fuel and stores in their possession and to afford proper facilities for their inspection;
- (u) the government, discipline and pay of the reserve, including calling out reservists and requiring reservists to report themselves from time to time and to obtain the permission of the competent service authority before leaving Kenya;
- (v) the government, discipline, pay and conditions of service of the constabulary;
- (w) the convening, constitution and procedure of boards of inquiry, the rules of evidence to be observed and the taking of evidence by such boards, including the administration of oaths and affirmations to witnesses;
- (x) fees and forms;
- (y) prescribing anything which may be prescribed under this Act, other than a matter which may be prescribed under section 228 (2) (m) of this Act.

(2) Subject to this Act, any regulations made under subsection (1) of this section may empower the Chief of Defence Staff, or the Commander in respect of his service, or the Commandant of the constabulary in respect of the constabulary, to make (subject to restrictions or exceptions) general, special, routine and standing orders with respect to all or any of the following matters, that is to say—

- (a) discipline, control, good order and guidance;
- (b) organization, administration and duties;
- (c) promotion, pay and allowances;
- (d) the distribution, posting, transfer, attachment and inspection of personnel;
- (e) the description, supply, use and disposal of arms, accoutrements, clothing and other stores,

but such orders shall not be inconsistent with this Act and shall not be published in the Gazette.

228. (1) The Minister, on the advice of the Defence Council, may make rules, called rules of procedure, with respect to the matters specified in subsections (2), (3) and (4) of this section.

(2) Rules of procedure may make provision with respect to the investigation and trial of, and awarding of punishment for, offences triable by court martial, commanding officers and appropriate superior authorities, and with respect to the confirmation and revision of findings and sentences of courts martial, and, without prejudice to the generality of the foregoing, rules of procedure may make provision with respect to—

- (a) the procedure to be observed in bringing charges before commanding officers and appropriate superior authorities;
- (b) the manner in which charges so brought are to be investigated, and the taking of evidence (whether orally or in writing, whether on oath or not and whether in full or in abstract form) for the purpose of investigating or dealing summarily with such charges or otherwise as a preliminary to their trial by court martial, and in any case making provision for the application of section 91 of this Act in any case where the accused requires that evidence shall be taken on oath;
- (c) adding to a charge which has been investigated, or replacing it with, a new charge for an offence disclosed by evidence taken on the investigation, and treating the investigation as the investigation of the new charge;
- (d) the convening and constitution of courts martial;
- (e) the sittings, adjournment and dissolution of courts martial;
- (f) the procedure to be observed in trials by court martial;
- (g) the representation of the accused at such trials;
- (h) procuring the attendance of witnesses before courts martial and at the taking of evidence in the circumstances described in paragraph (b) of this subsection;
- (i) applying in relation to proceedings before commanding officers and appropriate superior authorities, and otherwise in relation to proceedings preliminary to trial by court martial, all or any of the provisions of sections 93, 94 and 95 of this Act;
- (j) empowering a court martial or the convening officer, in specified cases and to a specified extent, to amend a charge which is being tried by the court, but so

that the power shall not be exercisable in circumstances substantially different from those in which indictments are amendable by a civil court, and shall not be exercisable except subject to the same conditions (as nearly as circumstances admit) as those subject to which indictments may be amended;

- (k) empowering a court martial, where the particulars proved or admitted at the trial differ from those alleged in the charge but are sufficient to support a finding of guilty of the like offence as that charged, to make a finding of guilty subject to specified exceptions or variations, if it appears to the court that the difference is not so material as to have prejudiced the accused in his defence;
- (l) the forms of orders and other documents to be made for the purposes of any provision of this Act or the rules of procedure relating to the investigation or trial of, or award of punishment for, offences which may be tried by courts martial, commanding officers or appropriate superior authorities or to the confirmation and revision of the findings and sentences of courts martial;
- (m) any matter which may be prescribed in relation to the matters mentioned in this subsection.

(3) Rules of procedure may make provision with respect to the exercise by a judge advocate of his functions at a trial by court martial, and, without prejudice to the generality of the foregoing, as to the effect of advice or rulings given to a court martial by a judge advocate on questions of law (including questions as to the joinder of charges and as to the trial of persons jointly or separately), for requiring or authorizing the president of a court martial in specified cases to direct that any such questions of law shall be determined by a judge advocate in the absence of the president and other members of the court and any officers under instruction, and for applying to the judge advocate and his proceedings on any such determination any specified provisions of this Act relating to the court or its members and the proceedings thereof.

(4) Rules of procedure may make provision for determining the cases in which and the extent to which courts martial may, in sentencing an accused for any offence of which he is convicted, at the request of the accused take into consideration other offences under Part V of this Act which he

has committed, and in such case may also make provision for conferring on the court taking one or more offences into consideration power to direct the making of such deductions from the offender's pay as the court would have had power to direct if he had been found guilty of the offence or offences taken into consideration as well as of the offences of which he was in fact found guilty.

229. The Defence Council may make rules with respect to—

Rules by
Defence
Council.

- (a) the organization of the work of the Defence Council and the manner in which it may perform its functions subject to any delegation under section 5 (2) and to any assignment of responsibility under section 5 (3) of this Act;
- (b) the procedure to be followed by the Defence Council in conducting its business; and
- (c) all such matters which the Defence Council may consider it necessary or desirable to provide for in order to secure the better performance of its functions.

230. The Chief Justice may make rules prescribing the practice and procedure in appeals under Part IX of this Act.

Rules of
Court.

231. (1) Any power conferred by this Act to make regulations, rules, orders or other instruments shall include power to make provision for specified cases or classes of cases, and to make different provision for different cases or classes of cases, and classes of cases may be defined by reference to any circumstances specified in the instrument.

Powers
exercisable
in subsidiary
legislation.

(2) Any regulations, rules, orders or other instruments made under this Act may—

- (a) impose conditions, or require acts or things to be performed or done to the satisfaction of any person named therein, whether or not he is a member of the armed forces or the constabulary;
- (b) empower such a person to issue directions, either orally or in writing, requiring acts or things to be performed or done, or prohibiting acts or things from being performed or done; or
- (c) prescribe periods or dates within, upon or before which such acts or things shall be performed or done or such conditions shall be fulfilled, and providing for appeal against any such imposition, requirement, or directions.

Execution of orders, instruments, etc.

232. Save as expressly provided by this Act, any direction, requirement, order or determination which under this Act may be given or made by an officer or a service authority may be signified under the hand of any officer duly authorized in that behalf; and any instrument signifying such direction, requirement, order or determination and purporting to be signed by an officer stated therein to be so authorized shall, unless the contrary is proved, be presumed to have been signed by an officer so authorized.

Amendment of Act.

233. The Act cited in the first column of the Third Schedule to this Act is amended, in relation to the provision specified in the second column of that Schedule, in the manner specified in relation thereto in the third column of that Schedule.

Repeal of Caps. 198, 198A and 199.

234. The Kenya Military Forces Act, the Kenya Military Forces (Military Council) Act, the Kenya Military Forces (Reserve of Officers) Act and the Military Forces Pensions Act (hereinafter called the repealed Acts) are repealed.

Transitional provisions.

235. (1) The army units of the Kenya Military Forces existing immediately before the commencement of this Act shall on such commencement become units of the Kenya Army.

(2) The air force units of the Kenya Military Forces existing immediately before the commencement of this Act shall on such commencement become units of the Kenya Air Force.

(3) The naval units of the Kenya Military Forces existing immediately before the commencement of this Act shall on such commencement become units of the Kenya Navy.

(4) Every person who, immediately before the commencement of this Act, was a member of the Kenya Military Forces shall on such commencement become a member of the Kenya Army, the Kenya Air Force or the Kenya Navy (as the case may be, according to the arm in which he was serving) of the same rank, and—

(a) officers shall be deemed to have been commissioned under this Act; and

(b) servicemen shall be deemed to have enlisted under this Act,

and, subject to section 175 of this Act, he shall not be required to serve in the armed forces for a longer period than that for

which they were required to serve in the Kenya Military Forces.

(5) Every person who, immediately before the commencement of this Act was attached or seconded to the Kenya Military Forces or any unit thereof shall on such commencement be attached or seconded, as the case may be, under this Act to the armed forces or to the corresponding unit thereof.

(6) Every person who, immediately before the commencement of this Act, was a member of the reserve of the Kenya Military Forces shall on such commencement become a member of the Kenya Army Reserve, the Kenya Air Force Reserve or the Kenya Naval Reserve (as the case may be, according to the arm in which he was serving), and, subject to section 186 (3) and (4) of this Act, he shall not be required to serve in the reserve for a longer period than that for which he was required to serve in the reserve of the Kenya Military Forces.

(7) All regulations, rules, orders, directions, requirements and determinations made or given under the repealed Acts shall continue in force after the commencement of this Act in relation to members of the armed forces as if made or given under this Act, so far as they are not inconsistent with this Act, until revoked under the corresponding section of this Act.

(8) Any proceedings for an offence alleged to have been committed under the Kenya Military Forces Act (including an appeal or petition) may be instituted, continued and completed under that Act, but any punishment awarded for such an offence shall be carried out in accordance with the corresponding provisions of this Act.

Cap. 198.

(9) Any person who, immediately before the commencement of this Act, holds any colours, badges, trophies, plate, record or other regimental or mess property, or any mess, welfare, band or other regimental funds, for or on behalf of any unit of the Kenya Military Forces shall from such commencement hold them for and on behalf of the corresponding unit of the armed forces.

(10) The Defence Council may, by order in writing, make such further transitional provisions as may, in its opinion, be necessary or expedient for the purposes of facilitating the transition from the arrangement subsisting under the repealed Acts to those provided for by this Act.

FIRST SCHEDULE

(s. 96)

ALTERNATIVE OFFENCES OF WHICH ACCUSED MAY BE CONVICTED BY
COURT MARTIAL

<i>Offence Charged</i>	<i>Alternative Offence</i>
1. Striking his superior officer.	1. Using violence to his superior officer otherwise than by striking him. Offering violence to his superior officer.
2. Using violence to his superior officer otherwise than by striking him.	2. Offering violence to his superior officer.
3. Using threatening language to his superior officer.	3. Using insubordinate language to his superior officer.
4. Disobeying, in such a manner as to show wilful defiance of authority, a lawful command given or sent to him personally.	4. Disobeying a lawful command wilfully or through neglect.
5. Desertion.	5. Absence without leave.
6. Attempting to desert.	6. Absence without leave.
7. Stealing property.	7. Fraudulently misapplying property.
8. An offence under section 38 of this Act involving wilfulness.	8. The corresponding offence involving negligence.
9. An offence under section 49 (1) of this Act.	9. Any offence under section 49 (2) of this Act.
10. Any offence under section 50 of this Act involving striking.	10. The corresponding offence involving the use of violence other than striking. The corresponding offence involving the offering of violence.
11. Any offence under section 50 of this Act involving the use of violence other than striking.	11. The corresponding offence involving the offering of violence.

SECOND SCHEDULE (ss. 169 (2), 173 (4) and 193)

OATH OF ALLEGIANCE

I,
do hereby swear by Almighty God [*or do hereby solemnly and sincerely affirm*] that—

- (i) I will be faithful and bear true allegiance to the President and to the Republic of Kenya;
- (ii) I will faithfully serve the President and the Republic of Kenya as an Officer [*or Serviceman*] of the Armed forces of the Republic of Kenya [*or as a member of the Armed Forces Constabulary*];
- (iii) I will obey all laws, and all orders, regulations, directions and instructions, concerning the Armed Forces of the Republic of Kenya [*or the Armed Forces Constabulary*]; and
- (iv) I will discharge all the duties of an Officer [*or Serviceman*] of the Armed Forces of the Republic of Kenya [*or as a member of the Armed Forces Constabulary*] according to the law, without fear, favour, affection or ill-will.

.....
*Signature or thumb-print of person
making the oath*

Sworn [*or affirmed*] by the said
.....
after the oath had been read over and
explained to him in the
language, which he acknowledged to under-
stand, at this
..... day of 19.....

THIRD SCHEDULE

(s. 233)

<i>Act</i>	<i>Provision</i>	<i>Amendment</i>
The Interpretation and General Provisions Act (Cap. 2)	s. 3 (1)	Replace the definition of "armed forces" with— "armed forces" has the same meaning as in the Armed Forces Act 1968;.