

CHAPTER 192

THE NATIONAL DEFENCE ACT

An Act to make provision for national defence, the constitution of military reserve forces and for the maintenance, government and discipline of the armed forces and reserve forces.

[21st May, 1965] *

[G.N. No. 215 of 1965]

[15th April, 1966]

[G.N. No. 116 of 1966]

Acts Nos.

2 of 1965

24 of 1966

32 of 1966

26 of 1967

41 of 1969

2 of 1970

22 of 1975

28 of 1978

13 of 1986

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh192s1]1. Short title

This Act may be cited as the National Defence Act.

[PCh192s2]2. Application

This Act shall extend and apply to Tanzania Zanzibar as well as to Mainland Tanzania, and, in addition, shall apply to the Defence Forces, military reserve forces and to persons subject to the Code of Service of Discipline both within and outside Tanzania.

[PCh192s3]3. Interpretation Acts Nos. 28 of 1978 s. 2; 13 of 1986

(1) In this Act, unless the context requires otherwise—

"active service" means service which, in accordance with section 19 or 20, is, or is deemed to be, active service;

"aircraft" means flying machines and guided missiles that derive their lift in flight chiefly from aerodynamic forces, and flying devices that are supported chiefly by their buoyancy in air, and includes any aeroplane, balloon, kite balloon, airship, glider or kite;

"aircraft material" means engines, fittings, armament, ammunition, bombs, missiles, gear, instruments and apparatus used or intended for use in connection with aircraft or its operation thereof, and components and accessories of aircraft and substances used to provide motive power or lubrication for or in connection with aircraft or its operation thereof;

"board of inquiry" means a board convened in accordance with section 9;

"camp training" means duty performed by an officer or man of the Reserve Forces while undergoing annual training in camp, and includes proceeding to and returning from camp;

"career soldier" means a person enrolled as officer, man or non-commissioned officer of or above the rank of corporal, in any of the supporting units, or in any unit of the Regular Forces engaged in military matters of a specialised or technical nature;

"Chief of the Defence Forces" means the officer appointed in accordance with section 15;

"Chief of Personnel, Defence Forces" means the officer appointed to exercise the functions of chief personnel officer to the Defence Forces;

"civil court" means a court of ordinary criminal jurisdiction but does not, except where otherwise expressly provided, include that court outside Tanzania;

"civil custody" means the holding under arrest or in confinement of a person by the Police or other competent civil authority, and includes confinement in a civil prison, police station or other place provided for the confinement of persons in custody;

"civil offence" has the meaning assigned to it in subsection (1) of section C. 65 of the Code of Service Discipline;

"civil prison" means any prison or other place in Tanzania in which persons sentenced by a civil court in Tanzania to imprisonment can be confined, and if sentenced out of Tanzania, any prison or other place in which a person, sentenced to that term of imprisonment by a civil court having jurisdiction in the place where the sentence was passed, can for the time being be confined;

"Code of Service Discipline" means the Code set out in the First Schedule to this Act;

"commanding officer" has the meaning assigned to it in section C. 88 of the Code of Service Discipline;

"commissioned officer" means an officer other than a subordinate officer, and "commissioned rank" shall be construed accordingly;

"continuing full time service" means full time duty performed by an officer or man of the Reserve Forces which is anticipated to exceed six months, and includes proceedings to and returning from the place of duty; but does not include attendance at courses which form part of the training of the Reserve Forces;

"co-operating forces" means those armed forces of any other country declared to be co-operating forces pursuant to section 25;

"court-martial" includes a General Court-martial, a Disciplinary Court-martial and a Standing Court-martial;

"defence establishment" means any area or structure under the control of the Minister, and the material and other things situate in or on that area or structure;

"Defence Forces Committee" means the Committee established by section 7;

"Defence Forces Regulations" means regulations of the Defence Forces Committee made under section 67;

"Department" means the Department of National Defence;

"detention barracks" means any place designated as such under subsection (1) of section C. 125 of the Code of Service Discipline;

"emergency" includes "war emergency" and "public emergency";

"enemy" includes all persons engaged in armed operations against any of the Defence Forces and includes armed mutineers, armed rebels, armed rioters and pirates;

"enrol" means to cause any person to become a member of the Defence Forces and includes re-engagement;

"equivalent rank" means one of two or more ranks declared to Defence Forces Regulations to be equivalent;

"local training" means duty performed by an officer or man of the Reserve Forces at local headquarters, and includes attendance at drills, parades, demonstrations and exercises;

"man" means any person, other than an officer, who is enrolled in, or who pursuant to law is attached or seconded, otherwise than as an officer, to the Defence Forces;

"matériel" means all movable public property, other than money, provided for the Defence Forces or for any other purpose under this Act, and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided;

"the Minister" means the Minister responsible for defence;

"mutiny" has the meaning ascribed to it in section C. 18 of the Code of Service Discipline;

"National Service" includes the National Service established by the National Service Act, * and any service having similar functions to the National Service which is established in Zanzibar;

"non-public property" means—

(a) all money and property, other than issues of matériel received for or administered by or through messes, institutes or canteens of the Defence Forces;

(b) all money and property contributed to or by officers, men, units or other elements of the Defence Forces for the collective benefit and welfare of the officers, men, units or other elements;

(c) by-products and refuse and the proceeds of their sale to the extent prescribed under subsection (5) of section 53; and

(d) all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for money and property described in paragraphs (a), (b) and (c);

"officer" means a person who has been granted a commission in the Defence Forces by the President and a person who is attached or seconded as an officer to the Defence Forces, and includes a subordinate officer;

"personal equipment" means all matériel issued to an officer or man for his personal wear or other personal use;

"possession" by any person means—

- (i) having in his own personal possession;
- (ii) knowingly having in the actual possession or custody of any other person;

or

(iii) knowingly having in any place, whether belonging to or occupied by himself or not, for the use or benefit of himself or any other person;

"Prisons Services" includes the prisons service established by the Prisons Act * and prison officers serving under the Prisons Decree of Zanzibar *, or any law replacing such Act or Decree;

"public emergency" means riot or any circumstances, including circumstances brought about by natural disaster, which in the opinion of an authority having power to exercise a function in the event of a public emergency are so grave as to be of national concern, real or apprehended;

"public property" means all money and property of or under the control of the Government of Tanzania;

"release" means the termination of service of an officer or man in any manner;

"Reserves Forces" includes both the Regular Reserve and the Volunteer Reserve;

"service custody" means the holding under arrest or in confinement of a person by the Defence Forces, and includes confinement in a service prison or detention barracks;

"service detainee" means a person who is under a sentence that includes a punishment of detention imposed upon him pursuant to the Code of Service Discipline;

"service offence" means an offence against the Code of Service Discipline committed by a person while subject to that Code;

"service prison" means a place designated as such under subsection (1) of section C. 125 of the Code of Service Discipline;

"service prisoner" means a person who is under a sentence that includes the punishment of imprisonment imposed upon him pursuant to the Code of Service Discipline, whether or not he has been released from the Defence Forces;

"service tribunal" means a court-martial and a person presiding at a summary trial;

"subordinate officer" means an officer cadet and a provisional second lieutenant;

"summary trial" means a trial conducted by or under the authority of a commanding officer pursuant to section C. 90 of the Code of Service Discipline, and a trial by a superior commander pursuant to section C. 91 of the Code of Service Discipline;

"superior officer" means any officer or man who, in relation to any other officer or man, is by this Act, or by Defence Forces Regulations, or by custom of the service, authorised to give a lawful command to that other officer or man;

"unit" means a body of the Defence Forces that is organised as such pursuant to section 10, and includes the personnel and their matériel;

"war emergency" means war, invasion or insurrection, real or apprehended.

(2) Defence Forces Regulations may declare any rank in the armed forces of any other country to be equivalent to a rank in the Defence Forces and any ranks so declared to be equivalent shall be deemed to be equivalent ranks.

(3) For the avoidance of doubts it is hereby declared that references, in the main body of the Act, to this Act include references to the Code of Service Discipline and the other Schedules to this Act.

PART II

THE DEPARTMENT OF NATIONAL DEFENCE (ss 4-9)

[PCh192s4]4. Department of Defence

There shall be constituted and maintained a public department to be known as the Department of National Defence.

[PCh192s5]5. Minister Act No. 32 of 1966 s. 2

Subject to the powers and authority conferred on the President and Commander-in-Chief by the Constitution and this Act, the Minister shall have the control and management of the Defence Forces and of all matters relating to national defence, including preparations for civil defence against enemy action, and shall be responsible for the construction and maintenance of all defence establishment and works for the defence of Tanzania.

[PCh192s6]6. Accounting Officer

The Accounting Officer for the votes of the Defence Forces shall be responsible for the control of expenditure.

[PCh192s7]7. Defence Forces Committee Act No. 41 of 1969 Sch.

(1) There shall be a Defence Forces Committee which shall consist of—

- (a) the Minister;
- (b) the Chief of the Defence Forces;
- (c) the Permanent Secretary, Ministry of Defence and National Service;
- (d) the Chief of Personnel, Defence Forces;
- (e) any other members who may, from time to time, be appointed by the

Minister; and

(f) in the event of some person other than the Permanent Secretary, Ministry of Defence and National Service being appointed the Accounting Officer for the votes of the Defence Forces, that Accounting Officer.

(2) The Defence Forces Committee shall be responsible for any functions which are conferred on the Committee by law and, subject to the powers of the President and the Minister, for the review and formulation of policy in all matters relating to the administration and supply of the Defence Forces.

(3) Nothing in this section shall be construed as conferring on the Defence Forces Committee any powers or responsibility for the operational use of the Defence Forces.

(4) The acts of the Defence Forces Committee, including the making of Defence Forces Regulations, may be signified, by command of the Committee, by any person appointed Secretary to the Committee.

[PCh192s8]8. Judge Advocate-General

The President may appoint a person having one of the professional qualifications specified in section 8 of the Advocates Act * to be the Judge Advocate-General of the Defence Forces.

[PCh192s9]9. Board of inquiry

(1) The President, the Minister, and such other authorities which may be prescribed by Defence Forces Regulations, may, where it is expedient that the President or the Minister or such other authority should be informed on any matter connected with the Government, discipline, administration or functions of the Defence Forces or affecting any officer or man, convene a board or inquiry for the purpose of investigating and reporting

on that matter. A board of inquiry shall be constituted and its procedure conducted in accordance with Defence Forces Regulations.

(2) Except in relation to a charge of giving false evidence before a board of inquiry, the minutes of a board of inquiry shall not be admitted as evidence or used at a service tribunal.

PART III

DEFENCE FORCES - COMPOSITION AND EMPLOYMENT (ss 10-28)

(a) Composition of the Defence Forces (ss 10-14)

[PCh192s10]10. Constitution

(1) There shall be raised and maintained in Tanzania Defence Forces to be known as the Tanzania Peoples' Defence Forces, which shall consist of the following components—

- (a) the Regular Force;
- (b) the Regular Reserve;
- (c) the Volunteer Reserve; and
- (d) such other disciplined forces as are ordered to be mobilised for service pursuant to Part IX of this Act *.

(2) There shall be units and other elements of the Defence Forces which are by this Act constituted or which may hereafter be established by the Minister.

(3) A unit or other element of the Defence Forces shall be embodied in a component of the Defence Forces which the Minister may after consultation with the Defence Forces Committee, direct.

(4) Except where the Minister, considering it to be in the national interest directs otherwise, the establishment or disestablishment of any unit or other element shall be published in the Gazette.

[PCh192s11]11. Regular Forces Act No. 28 of 1978 s. 3

(1) The Regular Forces shall consist of those officers and men who are, subject to section 29, enrolled for continuing full-time military service.

(2) The President shall from time to time determine the maximum numbers of officers and men in the Regular Force.

[PCh192s12]12. Regular Reserve Act No. 22 of 1975

The Regular Reserve shall consist of—

(a) those officers and men of the Regular Force who, having been discharged from the Regular Force have volunteered to hold themselves in readiness for service in a war emergency as members of the Regular Reserve; and

(b) those officers and men of the Volunteer Reserve who, in accordance with Defence Forces Regulations, are eligible for membership of the Regular Reserve and are transferred to the Regular Reserve on their undertaking to hold themselves in readiness for service in a war emergency as members of the Regular Reserve; and

(c) members of the National Service Reserve.

[PCh192s13]13. Volunteer Reserve

(1) The Volunteer Reserve shall consist of those officers and men who are enrolled for other than continuing full-time military service.

(2) The President shall from time to time determine the maximum numbers of officers and men in the Volunteer Reserve.

[PCh192s14]14. Authorised ranks

(1) The various ranks of officers and men of the Defence Forces shall be prescribed by Defence Forces Regulations.

(2) The Defence Forces Committee may determine the maximum number of persons in each rank and trade group in the Defence Forces.

(b) Command (ss 15-18)

[PCh192s15]15. Chief of Defence Forces

(1) The President may appoint an officer to be Chief of the Defence Forces.

(2) The Chief of the Defence Forces shall, subject to the powers of the President and the Minister and to the directions of the Defence Forces Committee as respects any matter for which it has responsibility, have the command, direction and general superintendence of the Defence Forces.

(3) Unless the President directs otherwise, all orders and instructions to the Defence Forces which are required to give effect to the decisions and to carry out the directions of the Government of the United Republic, the Minister, or the Defence Forces Committee shall be issued by or through the Chief of the Defence Forces.

[PCh192s16]16. Command appointments

(1) Command appointments to formations, units and other elements of the Defence Forces usually commanded by officers of the rank of Lieutenant-Colonel or above shall be made by the President after consultation with the Chief of the Defence Forces.

(2) Command appointments to formations, units and other elements usually commanded by officers below the rank of Lieutenant-Colonel shall be made by the Chief of the Defence Forces.

[PCh192s17]17. Powers of command

The authority and powers of command of the officers and men of the Defence Forces shall be as prescribed by Defence Forces Regulations.

[PCh192s18]18. Powers of command of officers of co-operating and other forces

(1) Where—

(a) in pursuance of section 25, the President declares that any force is a force acting in co-operation with the Defence Forces or any part of them; or

(b) in pursuance of section 26, any member of a force to which that section applies is attached or seconded to the Defence Forces,

a member of that co-operating force or as the case may be the person so attached or seconded, shall be treated, and shall have the like powers of command and, in the case provided for in paragraph (b), of discipline over the members of the Defence Forces, as if he were a member of the Defence Forces of equivalent rank.

(2) Defence Forces Regulations may provide that a member of the military, naval and air forces of any other country who is acting in association with the Defence Forces shall be accorded courtesy and precedence consonant with his rank and, in any case where

it is considered necessary or expedient for furthering the association, authority and powers of command as may be specified.

(c) Active Service and Aid to the Civil Power (ss 19-24)

[PCh192s19]19. Active service

(1) At any time when Tanzania is at war—

(a) the Regular Force; and

(b) any other components of the Defence Forces or any formation, unit or element of them, which are mobilised,
are on active service.

(2) Without prejudice to subsection (1), any formation, unit or other element of the Defence Forces which is engaged in operations against an enemy is on active service.

(3) An officer or man is on active service if he is serving in or with, or is attached to, any component, formation, unit or other element of the Defence Forces which is, or is deemed to be, on active service.

[PCh192s20]20. When Defence Forces deemed on active service

(1) When it appears to the President that, by reason of the imminence of active service or of the recent existence of active service, it is necessary for the defence of Tanzania that the Defence Forces or a part thereof should be deemed to be on active service, the President may, by proclamation, declare that for such period, not exceeding six months, beginning with the coming into force of the declaration as may be specified therein, the Defence Forces or a part of it shall be deemed to be on active service.

(2) Where it appears to the President that it is necessary for the defence of Tanzania that the period specified in a declaration under subsection (1) of this section should be prolonged or, if previously prolonged under this subsection, should be further prolonged, the President may, by proclamation, declare that the said period shall be prolonged for any time, not exceeding six months, which may be specified in the declaration under this subsection.

(3) If at any time while the Defence Forces or a part of them are deemed to be on active service by virtue of the provisions of this section, it appears to the President that there is no necessity for the Defence Forces or a part of them to continue to be treated as being on active service, the President may, by proclamation, declare that as from the coming into operation of the declaration the same shall cease to be deemed to be on active service.

[PCh192s21]21. Aid to the civil power

(1) Subject to subsection (3), the Defence Forces, any part of them, and any officer or man, are liable to be called out for service in aid of the civil power in any case in which a riot or disturbance of the peace occurs or is, in the opinion of the appropriate civil authority likely to occur, if in the opinion of the appropriate civil authority the riot or disturbance of the peace is likely to be beyond the powers of the civil authorities to suppress or prevent.

(2) Defence Forces Regulations shall provide for the manner of calling out the Defence Forces in aid of the civil power.

(3) Unless he has been mobilised pursuant to section 41, no member of the Regular Reserve shall be required to serve in aid of the civil power without his consent.

[PCh192s22]22. Officers and men have powers of police officer

Officers and men called out for service in aid of the civil power pursuant to section 21 shall, without further authority or appointment and without taking any oath of office, have and may exercise, in addition to their powers and duties as officers and men, all the powers and duties of a police officer; but they shall act only as a military force, and are individually liable to obey the orders of their superior officers.

[PCh192s23]23. Other assistance to the civil authorities

(1) Subject to subsection (3) and (4), Defence Forces Regulations may authorise the employment of the Defence Forces or any part of them in rendering assistance to the civil authorities where the assistance is required to prevent loss of life or serious loss of or damage to property, or for other purposes when the public interest so requires, and may prescribe the circumstances in which and the conditions on which that assistance may be rendered.

(2) Service by officers or men in rendering assistance so authorised shall constitute military duty.

(3) Unless he has been mobilised pursuant to section 41, no member of the Regular Reserve shall be required to perform any service in rendering assistance authorised by Regulations under this section without his consent.

(4) Unless he has been mobilised pursuant to section 41, or called out for service in aid of the civil power pursuant to section 21, no member of the Volunteer Reserve shall be

required to perform any service in rendering assistance authorised by Regulations under this section without his consent.

[PCh192s24]24. General

Nothing in this Part shall be construed as restricting or qualifying the powers and prerogatives relating to the employment of the Defence Forces which are vested in the President and Commander-in-Chief by the Constitution or otherwise.

(d) Co-operation with, and Attachment, etc., of Other Forces (ss 25-26)

[PCh192s25]25. Co-operating forces

The President may, where he considers it appropriate so to do, declare, by notice published in the Gazette, the military, naval or air forces of any other country to be forces acting in co-operation with the Defence Forces or any part of them, and may, if the officer commanding the co-operating forces is senior in rank to all the officers of the part of the Defence Forces concerned, place any part of the Defence Forces under the command of the officer commanding.

[PCh192s26]26. Attachment, etc., to Defence Forces

(1) Where the service authorities having jurisdiction over any force to which this section applies place any member of the force at the disposal of the Defence Forces Committee, that member may be attached or seconded to the Defence Forces, and where the member of another force is so seconded or attached he shall, during the attachment or secondment, be deemed to be a member of the Defence Forces of equivalent rank.

(2) The forces to which this section applies are the naval, military and air forces of any part of the Commonwealth, and of any other country which the President, by notice

published in the Gazette, declares to be a country to which this section applies.

(3) Defence Forces Regulations may provide that any member of a force to which this section applies who is attached to the Defence Forces and who remains subject to the service law of the first-mentioned force shall not, save in respect of any matter specified in it, be subject to the Code of Service Discipline.

(e) Miscellaneous (ss 27-28)

[PCh192s27]27. Supply and issue of material

The material supplied to or used by the Defence Forces shall be of the type, pattern and design and shall be issued on the scales and in the manner which the Defence Forces Committee or the authorities of the Defence Forces which are designated by the Committee for that purpose may approve.

[PCh192s28]28. Cadet organisations

(1) The Minister may authorise the formation of Cadet organisations under the control and supervision of the Defence Forces which shall consist of persons who are not less than twelve years of age and who are of the maximum age which may be prescribed by Defence Forces Regulations.

(2) The training, administration and command of such organisations, and the extent to which they shall be provided with matériel and accommodation, shall be as prescribed in Defence Forces Regulations.

(3) Cadet organisations formed in accordance with this section shall not form part of the Defence Forces.

PART IV

TERMS OF SERVICE OF MEMBERS OF THE DEFENCE FORCES (ss 29-56)

(a) Enrolment and Re-engagement (ss 29-34)

[PCh192s29]29. Enrolment Act No. 28 of 1978 s. 4

(1) Subject to the following provisions of this section, persons shall be enrolled in the Defence Forces—

- (a) as commissioned officers for indefinite or fixed terms of service;
- (b) as subordinate officers on probationary terms of service; or
- (c) as non-commissioned officers,

as may be prescribed in Defence Forces Regulations.

(2) Save in the case of a person enrolled or selected for enrolment as—

- (a) a commissioned officer;
- (b) a subordinate officer; or
- (c) a career soldier,

every person enrolled as man shall serve in the Defence Forces for a period of three years, at the end of which he shall be transferred to the Regular Reserve.

(3) Every person enrolled as man in the Defence Forces in accordance with subsection (2) shall serve on terms similar to the terms of service prescribed under section 34 of the National Service Act * in respect of persons voluntarily registered as members of the Service under section 5(1) of that Act.

(4) No person shall be enrolled as a commissioned officer unless he has been recommended in that behalf by the Defence Forces Committee or by a board appointed by the Defence Forces Committee and that recommendation has been approved by the President.

(5) Every person enrolled as a commissioned officer shall be granted a commission which shall issue under the hand of the President.

(6) No person under the apparent age of eighteen years shall be enrolled without the consent in writing of one of his parents or guardian or, where the parents are dead or unknown, by the District Commissioner of the District in which that person resides.

[PCh192s30]30. Enrolment of career soldiers Act No. 28 of 1978 s. 4

(1) The Minister shall, after consultation with the President, by an order published in the Gazette, establish a committee of not less than five, but not more than ten persons, for the selection and recommendation of persons for enrolment as career soldiers.

(2) The Minister shall in the order made under subsection (1), provide for the tenure of office of members of the committee and the procedure for proceedings of the committee.

(3) In making its recommendations under this section, the committee shall have regard to any matters referred to it by the Defence Forces Committee in relation to any person under consideration for enrolment as a career soldier.

(4) No person shall be enrolled as a career soldier unless he has been selected and recommended for enrolment by the committee established under this section.

[PCh192s31]31. Re-engagement

The re-engagement of an officer or man upon or prior to completion of a fixed term of service shall be governed by Defence Forces Regulations.

[PCh192s32]32. Obligation to serve

The enrolment of a person binds that person to serve in the Defence Forces until he is released in accordance with this Act or Defence Forces Regulations.

[PCh192s33]33. Oaths on enrolment

Every person enrolled in the Defence Forces shall take the oath of allegiance and any other declarations in the manner and in the form which may be prescribed by Defence Forces Regulations.

[PCh192s34]34. Effect of receipt of pay if not enrolled or if irregularly enrolled

(1) Where, although not enrolled, a person has received pay as an officer or man, he is, until he claims his release and is released, deemed to be an officer or man, as the case may be, of the component of the Defence Forces through which he received pay and to be subject to this Act as if he were an officer or man fully enrolled for service.

(2) Where, although there has been an error or irregularity in his enrolment, a person has received pay as an officer or man of the component of the Defence Forces in which he was erroneously or irregularly enrolled, that person is deemed to be an officer or man, as the case may be, regularly enrolled, and is not, except as provided in subsection (3), entitled to be released on the ground of the error or irregularity.

(3) Where a person who, by virtue of subsection (2), is deemed to be an officer or man, claims to be released within three months, reckoned from the date on which his pay

commenced, and establishes the error or irregularity in his enrolment he shall, except during a war emergency or when he is on active service, be released.

(4) Where a person claims his release on the ground that he has not been enrolled or has not been regularly enrolled, his commanding officer shall immediately forward his claim to the authority having power to release him and, if he is entitled to be released, he shall be released with all convenient speed.

(b) Release (ss 35-37)

[PCh192s35]35. Entitlement to release and exceptions

(1) Subject to the provisions of this section and except during an emergency or when he is on active service or as otherwise provided in this Act, an officer or man is entitled to be released at the expiration of the term of service for which he is enrolled.

(2) Except as may be provided in Defence Forces Regulations, all periods during which an officer or man has been absent from his duty by reason of—

- (a) imprisonment;
- (b) desertion; or
- (c) absence without leave,

shall not be reckoned towards the completion of the term of service for which that officer or man is enrolled.

(3) Where the term of service for which an officer or man is enrolled expires during an emergency or when he is on active service, or within six months after the expiration of an emergency or after he has ceased to be on active service, he is liable to

serve until the expiration of six months after the emergency has ceased to exist or after he has ceased to be on active service, as the case may be.

(4) An officer or man shall not be entitled to be released at a time when, as a result of having committed or being suspected of having committed an offence under the Code of Service Discipline, proceedings against him under that Code are or are likely to be taken.

(5) An officer or man undergoing a sentence of imprisonment or detention shall not be entitled to be released while serving the sentence.

[PCh192s36]36. Regulations relating to release

An officer or man may be released at any time for any reasons and on any conditions which may be prescribed by Defence Forces Regulations.

[PCh192s37]37. Re-instatement

Subject to Defence Forces Regulations, where an officer or man has been released from the Defence Forces by reason of a sentence of dismissal or a finding of guilty by a service tribunal or any court, and the sentence or finding ceases to have force and effect as a result of a decision of a competent authority, the release may, with the consent of the officer or man concerned, be cancelled, and he shall then, except as provided in Regulations, be deemed for the purposes of this Act, or any other written law, not to have been so released.

(c) Promotion (ss 38-39)

[PCh192s38]38. Promotion

(1) Subject to subsection (2) of section 14 and to subsection (2) of this section, officers and men may be promoted by the authorities which are prescribed in Defence Forces Regulations.

(2) No person shall be promoted a commissioned officer unless he has been recommended in that behalf by the Defence Forces Committee or by a board appointed under Defence Forces Regulations and that recommendation has been approved by the President.

(3) Every person promoted a commissioned officer shall be granted a commission which shall issue under the hand of the President.

[PCh192s39]39. Reversion and remustering

(1) Subject to subsections (2) and (3), officers and men may—

- (a) revert or remuster; or
- (b) be reverted or remustered,

with the approval of or by authorities of the Defence Forces and in circumstances and the manner which may be prescribed in Defence Forces Regulations.

(2) No commissioned officer shall revert or be reverted to a rank lower than commissioned rank.

(3) No subordinate officer shall be reverted without his consent to a rank lower than officer cadet.

(d) Service Obligations of the Various Components of the Defence Forces (ss 40-44)

[PCh192s40]40. Regular Force

The Regular Force, all units and other elements of it and all its officers and men are at all times liable to perform any lawful duty either within or outside Tanzania.

[PCh192s41]41. Mobilisation of the Reserves

(1) In the event of an emergency, the President may, by proclamation, order the Regular Reserve or the Volunteer Reserve, or any part of either of them, to be mobilised.

(2) In any proclamation the President may give or cause to be given, or may authorise the Defence Forces Committee to give or cause to be given, any directions which may be necessary and proper for mobilising the said Reserve Forces, or any part of them, and every proclamation and the directions given in pursuance of it shall be obeyed as if enacted in this Act, and every officer or man of the Reserve Forces subject to those directions shall attend at the time and place fixed by the directions and at that time and place be deemed to be mobilised.

(3) Officers and men of the Reserve Forces shall, when mobilised, be liable to serve and to perform any lawful duty either within or outside Tanzania and to be transferred, attached or seconded to any other component of the Defence Forces.

(4) Where the Regular Reserve or the Volunteer Reserve, or any part of either of them, has been mobilised, they shall remain mobilised until demobilised by directions given in pursuance of a proclamation of the President for the standing down of the relevant Reserve Force or part of it.

(5) Directions under subsection (4) shall include directions for the demobilisation of officers and men of the relevant Reserve Force or part of it who, since mobilisation,

have been transferred, attached or seconded to any other component, unit or element of the Defence Forces which has not then been demobilised.

[PCh192s42]42. Other service: (a) the Regular Reserve

(1) Except when mobilised pursuant to section 41, an officer or man of the Regular Reserve shall not, without his consent, be liable to perform any service or training.

(2) In addition to serve with his consent in aid of the civil power or in rendering assistance to the civil authorities (as provided in section 21 and 23), an officer or man of the Regular Reserve may, with his consent—

(a) be posted to a Defence Forces training establishment, there to undergo full-time training and instruction for a period not exceeding six months;

(b) be called out for continuing full-time service with the Regular Force or any Reserve Force.

(3) Officers and men of the Regular Reserve shall make reports which are prescribed by Defence Forces Regulations.

[PCh192s43]43. Other service: (b) the Volunteer Reserve

(1) In addition to his liability to serve on mobilisation or when called out in aid of the civil power (as provided in sections 21, 23 and 41), officers and men of the Volunteer Reserve shall be liable to attend and be trained at any part-time local training and any annual camp training which are prescribed in Defence Forces Regulations.

(2) In addition to service with his consent in rendering assistance to the civil authorities (as provided in section 23), an officer or man of the Volunteer Reserve may, with his consent—

(a) be posted to a Defence Forces training establishment, there to undergo full-time training and instruction for a period not exceeding six months;

(b) be called out for continuing full-time service with the Regular Force or any Reserve Force.

[PCh192s44]44. Repealed

[Repealed by Act No. 4 of 1992 s. 23.]

(e) Attachment and Secondment (s 45)

[PCh192s45]45. Attachment and secondment

(1) Subject to subsection (4), (5) and (6), an officer or man may be attached or seconded to a component of the Defence Forces other than that in which he is enrolled; and an officer or man so attached or seconded has like powers of command and discipline over officers and men of the component to which he is attached or seconded as if he were an officer or man of that component.

(2) Subject to subsections (4), (5) and (6), an officer or man may be attached or, with his consent, seconded to—

(a) any unit of any military, naval or air force established in the Commonwealth; or

(b) any unit of any military, naval or air force of a country which the President, by notice published in the Gazette, declares to be a country to which this subsection applies.

(3) Subject to subsections (4), (5) and (6), an officer or man may be attached or, with his consent, seconded to any department or agency of the Government, any public or private institution, private industry or any other body.

(4) No officer or man of the Reserve Forces who is not mobilised shall, without his consent, be attached or seconded pursuant to this section.

(5) Defence Forces Regulations may make provision for the manner in which and the conditions on which an officer or man may be attached or seconded pursuant to this section.

(6) An officer or man attached or seconded pursuant to this section shall for all purposes continue to be an officer or man of the Defence Forces.

(f) Pay, Allowances and Personal Effects (ss 46-51)

[PCh192s46]46. Pay, allowances, forfeitures and deductions Act No. 32 of 1966 s. 3

(1) The pay, pensions, gratuities and , allowances of officers and men shall be at the rates and issued under conditions which are prescribed by Defence Forces Regulations.

(2) There shall be charged on and paid out of the Consolidated Fund all sums of money which may from time to time be granted by way of pension and gratuity under the provisions of the Defence Forces Regulations relating to payment of pensions and gratuities.

(3) The pay and allowances of officers and men are subject to any forfeitures and deductions which may be prescribed by Defence Forces Regulations.

[PCh192s47]47. Personal effects of deserters and absentees

The personal belongings and decorations of an officer or man who is a deserter or who is otherwise absent without leave which are found in camp, quarters or otherwise in the care or custody of the Defence Forces shall vest in the President and shall be disposed of in accordance with Defence Forces Regulations.

[PCh192s48]48. Officer in charge of service estates

(1) The Chief of the Defence Forces shall appoint an officer to be Officer in Charge of Service Estates.

(2) The Officer in Charge of Service Estates shall be responsible for the collection, distribution and transmission of service estates in accordance with the provisions of this Act and Defence Forces Regulations.

[PCh192s49]49. Service estates Act No. 32 of 1966 s. 4

(1) Where any officer or man of the Defence Forces dies having named an executor, the Officer in Charge of Service Estates shall cause to be paid or delivered to the executor the service estate of the officer or man together with the name and address of his next-of-kin and any will made by the deceased officer or man which is in the custody of the Defence Forces.

(2) Where an officer or man of the Defence Forces dies not having named an executor or when the named executor refuses to act or is incapable of acting in that capacity, the Officer-in-Charge of Service Estates shall consult with the Administrator-General and—

(a) if the Administrator-General is willing to undertake the administration of the service estate, shall cause the service estate to be paid or delivered to the

Administrator-General, together with the name and address of the next-of-kin and any will made by the deceased officer or man which is in the custody of the Defence Forces; or

(b) if the Administrator-General is not willing to undertake the administration of the service estate, shall cause the estate to be paid or delivered to the Administrative Officer of the district specified by the officer or man on enrolment as the district in which he ordinarily resides, together with the name and address of the next-of-kin and any will made by the deceased officer or man which is in the custody of the Defence Forces.

(3) The Administrative Officer to whom a service estate has been delivered in accordance with paragraph (b) of subsection (2) shall—

(a) if the estate is one in which the Probate and Administration Act * applies or is an estate of which an administrator has been appointed by a primary court, pay or deliver the same to the legal personal representative of the deceased officer or man; or

(b) if the estate is one to which the Probate and Administration Act * does not apply and no appointment of an administrator has been made by a primary court, himself distribute the same according to law.

(4) For the purposes of this section, "service estate" means—

(a) service pay and allowances or other gratuity due or otherwise payable to the deceased officer or man; and

(b) personal property, including any personal equipment which an officer or man is, under Defence Forces Regulations, permitted to retain or release, belonging to the deceased officer or man and found in camp, quarters or otherwise in the care of the Defence Forces.

[PCh192s50]50. Service wills

A will made by an officer or man of the Defence Forces who has, by the law under which the estate is to be administered, the capacity to make a will, shall be valid for the disposing of any property which shall be due or belonging to him at his death to the extent to which he has power under that law to dispose of the same, if it is in writing and signed, or is attested by his mark, and is acknowledged by him in the presence of, and in his presence attested by one witness, being an officer of the Defence Forces, or if it is executed with the formalities required by any law in that behalf in force in Tanzania.

[PCh192s51]51. Oaths

(1) An officer of the Defence Forces not below the rank of Major serving either within or outside Tanzania, may, in respect of a person subject to the Code of Service Discipline, administer any oath or take any affidavit or statutory declaration which could be administered or taken by a Notary Public and Commissioner for Oaths in Tanzania, and every oath, affidavit or statutory declaration sworn or done by or before any such officer shall be as effectual as if duly administered, sworn or done by or before any person lawfully entitled to practise as a Commissioner for Oaths in Tanzania.

(2) Any document purporting to have been signed by any officer authorised by this section to administer an oath in testimony of any oath, affidavit or statutory declaration taken, or done by or before him, shall be admitted in evidence without proof of the signature being the signature of that person or that he holds that rank, or that the person to whom the matter relates was a person subject to the Code of Service Discipline.

(g) Public and Non-Public Property (ss 52-53)

[PCh192s52]52. Liability for loss or damage to public property

The conditions under which and the extent to which an officer or man is liable in respect of loss of or damage to public property shall be as prescribed in Defence Forces Regulations.

[PCh192s53]53. Non-public property of units

(1) The non-public property of a unit or other element of the Defence Forces shall vest in the officer from time to time in command of that unit or other element and shall be used for the benefit of officers of that unit or other element and shall be used for the benefit of officers and men or for any other purpose approved by the Chief of the Defence Forces in the manner and to the extent authorised by him.

(2) The non-public property of every disbanded unit or other element of the Defence Forces which is vested in the officer in command of that unit or other element shall pass to and vest in the Chief of the Defence Forces, and may be disposed of at his discretion and direction for the benefit of all or any officers and men or former officers and men of the Defence Forces or their dependants.

(3) Where, by reason of a substantial reduction in the number of officers and men serving in a unit or other element of the Defence Forces or by reason of a change in the location or other conditions of service of a unit or other element, the Chief of the Defence Forces considers it desirable so to do, he may direct that the non-public property or any part thereof that is vested in the officer in command of that unit or other element shall pass to and be vested in the Chief of the Defence Forces upon the terms set out in subsection (2).

(4) Non-public property acquired by contribution but not contributed to any specific unit or other element of the Defence Forces shall, subject to any specific directions by the contributor as to its disposal, vest in the Chief of the Defence Forces upon the terms set out in subsection (2).

(5) By-products, refuse and salvage derived from rations and other consumable stores issued to the Defence Forces, and the proceeds of the sale of it, shall, unless otherwise provided for in the Defence Forces Regulations, be non-public property.

(6) Except as authorised by the Chief of the Defence Forces, no gift, sale or other alienation or attempted alienation of non-public property is effectual to pass the property.

(7) The conditions under which and the extent to which an officer or man is liable to make restitution or reimbursement in respect of loss of or damage to non-public property resulting from his negligence or misconduct shall be as prescribed in Defence Forces Regulations.

(8) The Chief of the Defence Forces shall exercise the powers conferred on him by subsections (1), (2), (3) and (4) subject to any directions that may be given to him by the Defence Forces Committee for carrying the purpose and provisions of this section into effect.

(9) Nothing in the Public Finance Act * shall apply to any non-public property, but the accounts of that property shall be audited in accordance with Defence Forces Regulations.

(h) Miscellaneous (ss 54-56)

[PCh192s54]54. The Code of Service Discipline

Officers and men of the Defence Forces are subject to the Code of Service Discipline set out in the Schedule.

[PCh192s55]55. Redress of grievances

Except in respect of a matter that would properly be the subject of an appeal or petition under the Code of Service Discipline, an officer or man who considers that he has suffered any personal oppression, injustice or other ill-treatment or that he has any other cause for grievance, may as a matter of right seek redress from such superior authorities in such manner and under such conditions as shall be prescribed by Defence Forces Regulations.

[PCh192s56]56. Presumption of death

Where an officer or man disappears under circumstances that, in the opinion of the Defence Forces Committee or any other authorities which may be prescribed by Defence Forces Regulations, raise beyond a reasonable doubt a presumption that that officer or man is dead, the Committee or any such other authority may issue a certificate declaring that that officer or man is deemed to be dead and stating the date upon which his death is presumed to have occurred; and that officer or man shall thence, for the purposes of this Act and Defence Forces Regulations, and in relation to his status and service in the Defence Forces, be deemed to have died on that date.

PART V

MISCELLANEOUS POWERS AND PRIVILEGES RELATING TO THE DEFENCE FORCES (ss 57-66)

(a) Defence Matters (ss 57-61)

[PCh192s57]57. Manoeuvres

(1) For the purpose of training the Defence Forces, the Minister may, by directions in writing authorise the execution of military exercises or movements (referred to in this section as "manoeuvres") over and upon any parts of Tanzania and during any periods which are so specified.

(2) Notice of manoeuvres shall be made known in the manner as is customary for the community concerned within the area where the manoeuvres are to be held.

(3) Units and other elements of the Defence Forces may execute manoeuvres on and pass over any areas which are specified in directions given under subsection (1), stop or control all traffic over them whether by water, land or air, and draw water from the sources which are available, where the things are reasonably necessary for the execution of the manoeuvres.

(4) Any person who wilfully obstructs or interferes with manoeuvres authorised under this section, and any animals, vehicle, vessel or aircraft under his control, may be removed with such force as is reasonably necessary by a police officer or by any officer of the Defence Forces, or by any man on the order of any officer of the Defence Forces.

[PCh192s58]58. Emergency powers of commanding officers relating to property

When an operational necessity arises during an emergency, the officer in command of any unit of the Defence Forces or any officer duly authorised by him may, subject to Defence Forces Regulations, enter upon, take, impress, control, use, occupy, alter, remove or cause to be removed, destroy, desolate or lay waste any property imperatively required to be so dealt with immediately for the purpose of meeting the operational necessity.

[PCh192s59]59. Compensation

(1) Any person who suffers loss, damage or injury to property by reason of the exercise of any of the powers conferred by section 57 or 58 shall be compensated in accordance with Defence Forces Regulations and all sums necessary for the payment of that compensation shall be charged on the Consolidated Fund.

(2) No suit or other civil proceeding shall lie for the recovery of damages for loss of, or damage or injury to, or trespass upon, any property by reason of—

(a) the execution of manoeuvres authorised under section 57; or

(b) the exercise by a commanding officer of a unit, or an officer authorised by him, of the powers conferred by section 58,

but nothing in this subsection shall be construed as restricting any proceeding for the recovery of compensation in accordance with subsection (1) and Defence Forces Regulations made in that behalf.

[PCh192s60]60. Master of merchant ship to obey convoying officer

During a war emergency, every master or other person in command of a merchant ship or other vessel under the convoy of a ship or vessel of the Defence Forces shall obey the directions of the commanding officer of the convoy, and the directions of the commanding officer of any ship or vessel of the Defence forces, in all matters relating to the navigation or security of the convoy, and shall take any precautions for avoiding the enemy which may be directed by that commanding officer; and if the master or other person fails to obey those directions, that commanding officer may compel obedience by

force of arms without being liable for any loss of life or property that may result from the use of that force.

[PCh192s61]61. Defence establishment regulations

Defence Forces Regulations may make provision respecting access to, exclusion from, and the safety and conduct of any persons in, on or about any defence establishment, work for defence or matériel, and those Regulations may provide penalties for their breach not exceeding a fine of five thousand shillings or a term of imprisonment of twelve months or both the fine and imprisonment.

(b) Exemptions and Limitations of Liability (ss 62-66)

[PCh192s62]62. Exemption from duties or tolls on roads, bridges, etc. Act No. 26 of 1967 s. 2

(1) Subject to subsection (2) and (3), no duties or tolls, otherwise payable by law in respect of the use of any pier, wharf, quay, landing place, highway, road, right of way, bridge, ferry or canal in Tanzania, shall be paid by or demanded from any unit or other element of the Defence Forces, or an officer or man when on duty, or any person under service escort, or in respect of the movement of any matériel.

(2) Notwithstanding the provisions of subsection (1), the payment of duties or tolls specified in that subsection may be authorised by the Minister for Finance.

(3) Nothing in this section shall affect the liability for payment of duties or tolls lawfully demandable in respect of any vehicles or vessels other than those belonging to or in the service of Tanzania.

(4) For the avoidance of doubt it is hereby declared that for the purposes of this section the term "tolls" includes rates, fees and other charges.

[PCh192s63]63. Limitation of suits

No suit or other civil proceeding shall lie against any person for an act done in pursuance of execution or intended execution of this Act or any Defence forces Regulations, or of any service or departmental duty or authority, or in respect of any alleged neglect or default in the execution of this Act, Defence Forces Regulations or such duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in the case of any continuing injury or damage, within six months after it ceases.

[PCh192s64]64. Limitation of proceedings relating to Code of Service Discipline

No suit or other civil or criminal proceeding shall lie against any officer or man in respect of anything done or omitted by him in the execution of his duty under the Code of Service Discipline, unless he acted or omitted to act maliciously and without reasonable and probable cause.

[PCh192s65]65. Exemption from taking property in execution

No judgment or order given or made against an officer or man by any court in Tanzania shall be enforced by the levying of execution on any arms, ammunition, equipment, instruments or clothing used by him for military purposes.

[PCh192s66]66. Avoidance of assignment of or charge on service pay, pensions, etc.

(1) Every assignment of or charge on, and every agreement to assign or charge, any pay, service award, grant, pension or allowance payable to any person in respect of his or any other person's service in the Defence Forces shall be void.

(2) No order shall be made by any court the effect of which would be to restrain any person from receiving anything which by virtue of this section he is precluded from assigning, or to direct its payment to any other person.

(3) Nothing in this section shall be construed as affecting any written law providing for the payment of any sum to a bankrupt's trustee in bankruptcy for distribution among creditors.

PART VI

REGULATIONS, ORDERS, ETC., AND EVIDENCE (ss 67-74)

(a) Regulations, Orders, etc. (ss 67-70)

[PCh192s67]67. Defence Forces Regulations Act No. 2 of 1965 s. 31

(1) The Defence Forces Committee may, with the approval of the President, make regulations (herein referred to as Defence Forces Regulations) for the better carrying out of the provisions of this Act and for the good government, discipline, order and guidance of the Defence Forces and, without prejudice to the generality of the foregoing, for any matter that, by this Act, is to be or may be prescribed or provided for, or subject to regulation, by or in Defence Forces Regulations.

(2) Before submitting for the approval of the President any Defence Forces Regulations relating to the pay, pensions, gratuities or allowances of officers or men, any pension, gratuity or allowance payable to any other person on account of service, whether

of such other person or of an officer or man, with the Defence Forces, compensation, or the expenditure of, or accounting for, public moneys, the Defence Forces Committee shall consult with the Minister for Finance.

(3) Without prejudice to the generality of the subsection (1) and (2), the Defence Forces Committee may with regard to Reserve Forces make regulations for—

- (a) any matter which by Part IX may be prescribed or is expressed to be subject to regulations;
- (b) the training of any force or service to which Part IX applies;
- (c) declaring which ranks in the forces and services to which Part IX applies correspond to which ranks in the Defence Forces and for the grant of commissions and the making of appointments accordingly.

[PCh192s68]68. Powers exercisable in subsidiary legislation, etc.

(1) Any power conferred by or under this Act to make regulations, orders, directions or instructions shall include power to make provisions for specified cases or classes of cases, and to make different provision for different classes of cases and, for the purposes of any such regulation, order, direction or instruction, classes of cases may be defined by reference to any circumstances specified.

(2) Any such regulations, orders, directions and instructions referred to in subsection (1) may impose conditions, require acts or things to be performed or done to the satisfaction of any persons named in them, whether or not the persons are members of the Defence Forces, empower the persons to issue orders, either orally or in writing, requiring acts or things to be performed or done or prohibiting acts or things from being

performed or done, and prescribe periods or dates upon, within or before which the acts or things shall be performed or done or the conditions shall be fulfilled, and provide for appeal against any requirements, directions or order.

[PCh192s69]69. Performance of powers

(1) Any power or jurisdiction given to, and any act or thing to be done by, to or before any officer or man by or under this Act may be exercised by or done by, to or before any other officer or man for the time being authorised in that behalf by Defence Forces Regulations or according to the custom of the service.

(2) Nothing in this section shall be construed so as to permit a delegation of the authority conferred by or under section 16 of this Act or sections C. 129, C. 151, C. 154, C. 155 or C. 156 of the Code of Service Discipline.

[PCh192s70]70. Publication

(1) All regulations and written orders, directions and instructions issued under this Act or Defence Forces Regulations shall be notified to the Defence Forces in the manner prescribed by Defence Forces Regulations and, when so notified in any unit or other element, they shall be deemed to have been sufficiently notified to all persons whom they concern in or serving with that unit or element.

(2) Regulations and written orders, directions and instructions issued under this Act or Defence Forces Regulations which relate to an officer or man of the Reserve Forces shall be deemed to have been sufficiently notified to that officer or man if sent to him by prepaid registered post at his last known place of abode or business and shall be

deemed to have been received by that officer or man twenty-one days after they were posted to him.

(3) References in subsection (1) to the Defence Forces, and to persons in or serving with a unit or other element, shall be deemed to include references to persons, not being members of the Defence Forces, who are subject to the Code of Service Discipline and who accompany, are in the custody of, or who are serving with, a unit or other element of the Defence Forces.

(4) No regulation, written order, direction or instruction issued under this Act or Defence Forces Regulations shall be binding upon any person not subject to the Code of Service Discipline unless either the same has been published in the Gazette or it is proved that all reasonable steps have been taken for bringing the same to the notice of the public, or of persons likely to be affected by it, or of the person concerned; and, where any person not subject to the Code of Service Discipline is charged with any offence contrary to any regulation, order, direction or notice, it shall be a defence to prove that the same has not been published in the Gazette at the date of the contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the same to the notice of persons likely to be affected by it or of the person charged.

(5) Save as provided in subsection (4), nothing in section 27 of the Interpretation Act * shall apply to any subsidiary legislation made under this Act.

(b) Evidence (ss 71-74)

[PCh192s71]71. Method of signifying orders, etc.

Save as expressly provided by Defence Forces Regulations, any order, direction or instruction required or authorised to be made under this Act or Defence Forces Regulations by any officer authorised in that behalf, and any instrument signifying that order, direction or instruction and purporting to be signed by an officer appearing in it to be so authorised, shall, unless the contrary is proved, be deemed to be signed by an officer so authorised.

[PCh192s72]72. Authenticity of documents

A commission, appointment, warrant, order, direction or instruction in writing purporting to be granted, made or issued under this Act is evidence of its authenticity without proof of the signature or seal affixed to it or the authority of the person granting, making or issuing it.

[PCh192s73]73. General provisions as to evidence

In any proceedings under this Act—

(a) 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 to have the custody of the attestation paper shall be evidence of the enlistment of the person attested;

(b) the attestation paper purporting to be signed by a person on his enlistment shall be evidence of his having given the answer to questions which he is recorded in it as having given;

(c) a letter, return or other document stating that any person—

(i) was or was not serving at any specified time or during any specified period in any part of the Defence Forces or the former Military Forces, King's African

Rifles, or military units raised under the Military Units Ordinance *, or was discharged from any part of those forces at or before any specified time;

(ii) held or did not hold at any specified time any specified rank or appointment in any of the forces mentioned in subparagraph (i) of this paragraph, or had at or before any specified time been attached, posted or transferred to any part of those forces, or at any specified period was or was not serving or held or did not hold any rank or appointment in any particular country or place; or

(iii) was or was not at any specified time authorised to use or wear any of the things mentioned in paragraph (b) of subsection (1) of section 105,

shall, if purporting to be issued by or on behalf of the Minister or the Chief of the Defence Forces or by a person authorised by either of them, be evidence of the matters stated in the document;

(d) a record made in any service book or other document in pursuance of service law or regulations, 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 there; and a copy of the record (including the signature to it in one of the said service books) and a copy of the document, purporting to be certified to be a true copy by a person stated in the certificate to have the custody of the book or the original document, as the case may be, shall be evidence of the record;

(e) a document purporting to be issued by order of the President, the Minister or the Chief of the Defence Forces and to contain instructions or orders given by the

President, the Minister or the Chief of the Defence Forces shall be evidence of the giving of the instructions or making of the orders and of their contents;

(f) a certificate purporting to be issued by or on behalf of the Minister or by a person authorised by him, and stating—

(i) that a decoration of a description specified in or annexed to the certificate is a military, naval or air force decoration; or

(ii) that a badge, wound stripe or other thing mentioned in paragraph (b) of subsection (1) of section 105 of a description specified in or annexed to the certificate is one supplied or authorised by the President,

shall be evidence of the matters stated in the certificate; and

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

(i) any information or unit or other element of the Defence Forces;

(ii) any command or other area, garrison or place; or

(iii) any ship, train, vehicle or aircraft,

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

[PCh192s74]74. Evidence of proceedings in courts-martial

(1) For the purposes of this section "court-martial", in addition to the tribunals mentioned in the Code of Service Discipline, includes a commissioner taking evidence

under this Act; and references in this section to the President or members of a court-martial shall be deemed to include references to that commissioner.

(2) The original proceedings of a court-martial purporting to be signed by the president of the court or the commissioner, and being in the custody of any person having lawful custody to it, shall be admissible in evidence on production from that custody.

(3) A document purporting to be a copy of the original proceedings of a court-martial or any part to it and to be certified by any person purporting to be authorised by the Chief of the Defence Forces, or by any person having the lawful custody of the proceedings, to be a true copy shall be evidence of the contents of the proceedings or the part to which the document relates, as the case may be.

PART VII

CIVIL COURTS AND AUTHORITIES AND THE CODE OF SERVICE DISCIPLINE

(ss 75-85)

(a) Civil Courts (ss 75-77)

[PCh192s75]75. Saving of jurisdiction of civil courts

(1) Subject to subsection (3), nothing in this Act restricts the offences for which persons may be tried by any court or affects the jurisdiction of any civil court to try a person subject to the Code of Service Discipline for any offence.

(2) Where a person is tried by a civil court for an offence, and he has previously been sentenced by a service tribunal for any act or omission constituting (whether wholly or in part) that offence, the provisions of section 48 of the Interpretation Act * or of section 21 of the Penal Code * shall not apply, but the civil court shall, in awarding

punishment, have regard to any punishment imposed by the service tribunal and may pass a sentence of imprisonment to have effect retrospectively from a date which would take into account any period during which the person was incarcerated pursuant to the sentence of the service tribunal.

(3) A civil court has no jurisdiction to try any person for a service offence.

[PCh192s76]76. Offence committed outside Tanzania

Where an offence under this Act is committed outside Tanzania by a person subject to the Code of Service Discipline, any civil court in Tanzania that would have jurisdiction to try the offender for that offence or for the corresponding civil offence if the same had been committed within the territorial jurisdiction of that court, may try the offender for that offence or for the corresponding civil offence.

[PCh192s77]77. Certificates of civil trials

Where any person subject to the Code of Service Discipline has at any time been tried by a civil court, the clerk of that court or other authority having custody of the records of the court shall, if required by any officer of Defence Forces, transmit to that officer a certificate setting forth the offence for which that person was tried, together with the judgment or order of that court.

(b) Deserters and Absentees without Leave (ss 78-81)

[PCh192s78]78. Arrest of deserters and absentees

(1) Upon reasonable suspicion that a person is an officer or man of the Defence Forces who is a deserter or an absentee without leave, that person may be arrested

without a warrant by a police officer, or if no police officer can be immediately found, by any other person.

(2) Any person having authority to issue a warrant for the arrest of a person charged with an offence, if satisfied by evidence on oath that there is, or is reasonably suspected of being, within his jurisdiction an officer or man of the Defence Forces who has deserted or is absent without leave, or is reasonably suspected of having deserted or of being absent without leave, may issue a warrant authorising his arrest.

(3) Any person in custody in pursuance of this section shall as soon as practicable be brought before a magistrate.

[PCh192s79]79. Deserters and absentees without leave surrendering to police

(1) Where a person surrenders himself to a Police Officer as being a deserter or absentee without leave from the Defence Forces, the Police Officer shall (unless that person surrenders himself at a police station) bring him or cause him to be brought to a police station.

(2) The officer of police in charge of a police station at which a person has surrendered himself, or to which a person who has surrendered himself is brought, shall immediately inquire into the case, and if it appears to that officer that the said person is a deserter or absentee without leave as aforesaid, he may cause him to be delivered into military custody without bringing him before a magistrate or may bring him before a magistrate.

[PCh192s80]80. Proceedings before a magistrate where persons suspected of illegal absence

(1) Where a person, who is alleged to be an officer or man of the Defence Forces who has deserted or is absent without leave, is brought before a magistrate, the magistrate shall exercise his jurisdiction in accordance with this section.

(2) (a) If the person admits that he is a deserter or an absentee without leave from the Defence Forces and the magistrate is satisfied of the truth of the admission, then—

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

(ii) notwithstanding that he is in custody for some other cause, the magistrate may,

immediately either cause him to be delivered into military custody in that manner which the magistrate may think 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 which the court may specify (not exceeding any time which appears to the magistrate reasonably necessary for the purpose of enabling him to be delivered into military custody) or until sooner delivered into the custody.

(b) Any time specified by the magistrate may be extended from time to time if it appears to the magistrate reasonably necessary so to do for that purpose.

(3) Where the person had admitted that he is a deserter or absentee without leave from the Defence Forces but the magistrate is not satisfied with the truth of the admission, the magistrate shall remand him for the purpose of obtaining information as to the truth or falsehood of the admission; and for that purpose the magistrate shall transmit a report to the authorities of the Defence Forces, and containing the particulars and in such form, as may be prescribed by Defence Forces Regulations.

(4) Where the person does not admit that he is a deserter or absentee from the Defence Forces, the magistrate shall consider the evidence and any statement of the person, and, if satisfied that he is subject to the Code of Service Discipline and if of the opinion that there is sufficient evidence to justify his being tried by a service tribunal for the offence of desertion or absence without leave, then, unless the person is in custody for some other cause, the magistrate shall cause him to be delivered into military custody or commit him, but otherwise shall discharge him:

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

(5) Where a person is brought before a magistrate pursuant to section 78 or 79, the magistrate may examine the case in like manner as if that person were brought before the magistrate accused of an offence under the Penal Code *.

(6) Notwithstanding the provisions of any other law to the contrary, a person brought before a magistrate pursuant to section 78 or 79 shall not be admitted to bail.

[PCh192s81]81. Certificate of arrest or surrender of deserter or absentee

(1) Where a magistrate, in pursuance of section 80, deals with a person as being a deserter or absentee without leave, then when that person is delivered into military custody there shall be handed over with him a certificate in the prescribed form, signed by the magistrate, containing the prescribed particulars as to his arrest or surrender and the proceedings of the court.

(2) Where a person is delivered into military custody without being brought before a magistrate, whether under the provisions of section 80 or under any other lawful power,

there shall be handed over with him a certificate in the prescribed form, signed by the officer of police who causes him to be delivered into military custody, containing the prescribed particulars relating to his surrender.

(c) Duties of Officers in Charge of Prisons, etc. (ss 82-85)

[PCh192s82]82. To receive deserters and absentees

It shall be the duty of the superintendent or other person in charge of a civil prison, and of the person having charge of any police station or other place provided for the confinement of persons in custody, to receive any person duly committed to his custody by a magistrate as being a deserter or absentee without leave from the Defence Forces and to detain him until, in accordance with the direction of the court, he is delivered into military custody.

[PCh192s83]83. Temporary reception of servicemen in civil custody

Where a person is in service custody charged with, or with a view to his being charged with, an offence against the Code of Service Discipline, it shall be the duty of the superintendent or other person in charge of a civil prison, and of the person having charge of any police station or other place provided for the confinement of persons in custody, upon delivery of an order purporting to be signed by the commanding officer of the person in custody, or other committing authority provided for in section C. 135 of the Code of Service Discipline, to receive such person into his custody for a period not exceeding seven days.

[PCh192s84]84. Execution of warrants

(1) Every superintendent or other person in charge of a civil prison shall take cognizance of any warrant of committal purporting to be signed by a committing authority provided for in section C. 135 of the Code of Service Discipline and shall receive and detain (and in the case of a sentence of death carry out that sentence), according to the tenor of that warrant and the provisions of the Code of Service Discipline, the offender mentioned there and delivered into his custody and shall confine that offender until discharged or delivered in due course of law.

(2) Any person mentioned in subsection (1) to whom a notice of intention to appeal or a statement of appeal is delivered under section C. 144 of the Code of Service Discipline shall cause that notice or statement to be forwarded immediately to the Judge Advocate-General.

[PCh192s85]85. Arrangements with authorities of other countries

(1) The Minister may make arrangements with the authorities of any country whereby sentences of death passed by service tribunals may, in accordance with Defence Forces Regulations, be carried out in establishments under the control of those authorities and sentences of imprisonment imposed by service tribunals may, in accordance with those Regulations, be served wholly or in part in those establishments.

(2) Provision shall be made in those arrangements for classifying those establishments as civil prisons, service prisons or detention barracks and the establishments shall, according to the classification, so be deemed for the purposes of this Act and Defence Forces Regulations, to be civil prisons, service prisons or detention barracks within the meaning of this Act.

PART VIII

THE CODE OF SERVICE DISCIPLINE AND SERVICE TRIBUNALS IN RELATION TO CIVILIANS (ss 86-89)

[PCh192s86]86. Certain civilians subject to Code of Service Discipline

(1) The persons specified in paragraphs (f), (g) and (h) of subsection (1) of section C. 2 of the Code of Service Discipline (being persons not otherwise subject to that Code, who accompany the Defence Forces on service, or who are in custody for a service offence, or who are serving under certain agreements with the Defence Forces) are, in the circumstances and to the extent provided in that section, subject to the Code of Service Discipline.

(2) Notwithstanding that he has ceased to be subject to the Code of Service Discipline, a person shall be liable to be arrested, kept in custody, charged, tried and punished, and otherwise dealt with under that Code in respect of a service offence committed by him while he was so subject, in the circumstances and to the extent provided in section C. 3 of that Code.

[PCh192s87]87. Command over civilians in special cases

Every person subject to the Code of Service Discipline by virtue of the foregoing section and of paragraph (f), (g) or (h) of subsection (1) of section C. 2 of that Code shall, for the purposes of preparation, practice or execution of any plan, arrangement or manoeuvre for the defence or evacuation of any area in the event of attack, be under the command of the commanding officer of the unit or other element of the Defence Forces which he is accompanying, or in whose custody he is, or with which he is serving; and that

commanding officer shall for those purposes be deemed to be a superior officer of that person; but nothing in this section shall be construed as requiring any person to bear arms or to participate in any active operations against the enemy.

[PCh192s88]88. Witnesses and advocates at courts-martial

(1) For the purpose of this section "court-martial" in addition to the tribunals mentioned in the Code of Service Discipline, includes a commissioner taking evidence under this Act; and references in this section to the president or members of a court-martial shall be deemed to include references to that commissioner.

(2) Every person required to give evidence before a court-martial may be summoned under the hand of the authority by whom the court-martial was convened, established or appointed, or the Judge Advocate-General, or under the hand of the President, Judge Advocate or Commissioner.

(3) A person summoned under subsection (2) may be required to bring with him and produce at a court-martial any documents in his possession or under his control relating to the matters in issue before the court-martial.

(4) A witness summoned or attending to give evidence before a court-martial shall be paid witness fees and allowances for expenses of attendance which are prescribed by Defence Forces Regulations.

(5) Any conduct of an advocate before a court-martial that would be liable to censure or be contempt of court if it took place before a civil court is likewise liable to censure or is contempt of court in the case of a court-martial; and the provisions governing the procedure of courts-martial are binding upon an advocate appearing before

courts-martial and wilful disobedience of those provisions shall, if persevered in, be deemed to be contempt of court.

(6) Every person who—

(a) being in attendance as a witness before a court-martial—

(i) refuses to take an oath or affirmation lawfully required of him;

(ii) refuses to produce any document in his power or under his control

lawfully required to be produced by him; or

(iii) refuses to answer any question that lawfully requires an answer;

(b) uses insulting or threatening language before a court-martial or causes any interference or disturbance in its proceedings, or publishes any matter or uses words likely to influence improperly the members of or witnesses before that court-martial or to bring that court-martial into disrepute, or in any other manner displays contempt of that court-martial; or

(c) being in attendance as an advocate before a court-martial, is in contempt of the court within the meaning of subsection (5),

commits an offence and upon conviction by a civil court is liable to imprisonment for six months or to a fine not exceeding two hundred shillings.

(7) Upon receipt of a certificate under the hand of the President of a court-martial that a witness has not appeared in obedience to a summons issued under the provisions of section 88, a civil court shall on proof of the proper service of the summons at a reasonable time before, issue a warrant to bring the witness before the civil court at the time and place which shall be specified there.

(8) When a witness is arrested under a warrant issued pursuant to subsection (7) the civil court may on his furnishing security by recognisance to the satisfaction of the civil court for his appearing before the court-martial at the hearing of the case order him to be released from custody, or shall, on his failure to furnish the security, order him to be detained for production at the hearing.

(9) Without prejudice to any of the preceding provisions of this section, any person in contempt of a court-martial may be removed from the court-martial by order under the hand of the President or the Commissioner.

[PCh192s89]89. Court-martial to be judicial proceedings

Any proceeding under this Act, either before a court-martial within the meaning of section 88, or before a board of inquiry, where evidence is required to be given on oath, or on making a solemn affirmation, shall be deemed to be judicial proceedings for the purposes of sections 102, 106, 108 and 109 of the Penal Code.

PART IX

CONSTITUTION OF OTHER DISCIPLINED FORCES AND SERVICES AS MILITARY RESERVE FORCES (ss 90-95) Act No. 2 of 1965

[PCh192s90]90. Constitution of military reserve forces

The Police Force, the Prisons Services and the National Service (including the National Service Reserve) shall constitute military reserve forces.

[PCh192s91]91. Military training

(1) The Minister shall, after consultation in the case of the Police Force and the Prisons Services with the appropriate Minister, from time to time, prepare a scheme or

schemes for the training of the members of the Police Force, the Prisons Services and the National Service in the use of arms and weapons of war and in military exercises.

(2) Members of the Police Force, Prisons Services and the National Service shall attend and be trained in accordance with the appropriate scheme for the time being in force as part of their duties.

(3) In this section, the appropriate Minister means the Minister responsible for the force or service concerned and in the case of the Prisons Service of Zanzibar means the Minister of the Executive of Zanzibar responsible for that Service.

[PCh192s92]92. Mobilisation of reserve forces

(1) In the event of a state of war being declared, or of insurrection, hostilities or public emergency, the President may, by proclamation—

- (a) order the National Service Reserve or any part of it to be called out;
- (b) order the Police Force, the Prisons Services and the National Service (including the National Service Reserve), or any of them, or any part of them, to be mobilised for service within the Defence Forces.

(2) In any proclamation, the President may give, or may authorise the Defence Forces Committee to give, any directions for the calling out of the National Service Reserve and the mobilisation of the Police Force, Prisons Services and National Service (including the National Services Reserve), or any part of it, and every proclamation and the directions made in pursuance of it shall be obeyed as if enacted there, and every person subject to the directions shall attend at the time and place fixed by the directions and at that time and place be deemed to be mobilised for service with the Defence Forces.

(3) Subject to any regulations made by the Defence Forces Committee, where the Police Force, the Prisons Services or the National Service (including the National Service Reserve) or any part of them are mobilised for service with the Defence Forces—

(a) the force or service, or any part of it, as the case may be, shall be governed by the Code of Service Discipline set out in this Act and the members of that force or service, or of that part of it, shall be subject to the provisions of this Act;

(b) the units of the force or service or any part of it shall form part of, and be deemed to be units of, the Defence Forces; and

(c) the members of the force or service or any part of it shall be liable to be transferred, seconded, or attached to, and to serve in, any of the Defence Forces, and to serve both within and outside Tanzania.

[PCh192s93]93. Failure to attend on mobilisation Act No. 24 of 1966 2nd Sch.

Any member of the Police Force, the Prisons Services or the National Service (including the National Service Reserve) who, without leave lawfully granted or any sickness or other reasonable excuse which may be allowed in the prescribed manner, fails to appear at the time and place appointed for his attendance when the Police Force, Prisons Services or National Service (including the National Service Reserve), as the case may be, or that part of the force or service to which he belongs, are mobilised for service with the Defence Forces, shall be guilty, according to the circumstances, of deserting within the meaning of section C. 24 or of absenting himself without leave within the meaning of section C. 26 of the said Code of Service Discipline and shall, whether subject

to that Code or not, be liable to be taken into military custody and to be tried by service tribunal and to be convicted and punished accordingly.

[PCh192s94]94. Prolongation of service during mobilisation

In addition to any other provision for the prolongation of the service of members of the Police Force, the Prisons Services or the National Service, where the term of service or secondment of a member of the Police Force, the Prisons Services or the National Service (including the National Service Reserve) expires at a time when the force or service to which he belongs or any part of it is ordered to be mobilised for service with the Defence Forces, he may be retained in the force or service to which he belongs (or, if the part of it of which he is a member has been mobilised for that service, in any of the Defence Forces to which he may be transferred in accordance with this Part of this Act) for any further period or periods which the appropriate authority, with the approval of the President, may direct.

[PCh192s95]95. Demobilisation

(1) Where the Police Force, Prisons Services or National Service (including the National Service Reserve), or any part of any such force or service, has been mobilised for service with Defence Forces, it shall remain so mobilised until demobilised by directions made in pursuance of a proclamation of the President for the standing down of the relevant force or service, or of that part of it.

(2) Directions under this section shall include directions for the demobilisation of the members of the relevant force or service or part of it who, since that force, service or

part was mobilised, have been transferred to any of the Defence Forces which are not then demobilised.

PART X

OFFENCES TRIABLE BY CIVIL COURTS (ss 96-114)

[PCh192s96]96. General

(1) Subject to subsection (2), the offences set out in this Part shall be tried in a civil court.

(2) No charge for an offence set out in this Part shall be instituted in a civil court against any officer or man if the complainant is another officer or man except if it has the prior consent in writing of the commanding officer of the officer or man intended to be charged.

(a) Offences relating to Mutiny and Desertion (ss 97-99)

[PCh192s97]97. Inciting to mutiny

Every person who attempts to effect any of the following purposes—

(a) to seduce any officer or man from his duty and allegiance to the United Republic;

(b) to incite any officer or man to commit an act of mutiny or any traitorous or mutinous act; or

(c) to incite any officer or man to make or endeavour to make a mutinous assembly,

commits an offence and upon conviction is liable to the punishment of death.

[PCh192s98]98. Aiding mutiny

Every person who—

- (a) aids, abets or is accessory to, an act of mutiny by any officer or man; or
- (b) incites any officer or man to sedition or to disobedience to a lawful order of

a superior officer,

commits an offence and upon conviction is liable to imprisonment for a term not exceeding ten years.

[PCh192s99]99. Assisting or harbouring deserters or absentees

(1) Every person who—

(a) procures, persuades, or counsels an officer or man to desert or absent himself without leave;

(b) knowing that an officer or man is about to desert or absent himself without leave, aids or assists him in his attempt to desert or absent himself; or

(c) at any time when the Defence Forces or a part of them are on active service, aids, assists, harbours or conceals an officer or man who is a deserter or an absentee without leave and who does not satisfy the court that he did not know that the officer or man was a deserter or an absentee without leave,

commits an offence and upon conviction is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

(2) A certificate signed by the Judge Advocate-General, or any person whom he may appoint for that purpose, that an officer or man was convicted under the Code of

Service Discipline of desertion or absence without leave or had been continuously absent without leave for six months or more, and setting forth the date of commencement and duration of the desertion, absence without leave or continuous absence without leave, is for the purposes of proceedings under this section evidence that the officer or man was a deserter or absentee without leave during the period mentioned in the certificate.

(b) Offences relating to Convoys (s 100)

[PCh192s100]100. Failure to comply with convoy orders

Every person who fails to comply with directions given under section 60 commits an offence and upon conviction is liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding five years or to both the fine and imprisonment.

(c) Offences relating to Obstruction or Interference (ss 101-103)

[PCh192s101]101. Interruption of drill or training

Every person who without reasonable excuse interrupts or hinders the Defence Forces or any member of them at drill, training or while on the march, commits an offence and upon conviction is liable to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both the fine and imprisonment; and in any event may be taken into custody and detained by any person by the order of an officer until the drill, training or march is over for the day.

[PCh192s102]102. Hampering manoeuvres

Every person who without reasonable excuse obstructs or interferes with manoeuvres authorised pursuant to section 57 commits an offence and on conviction is

liable to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both the fine and imprisonment.

[PCh192s103]103. Obstruction of duty or recruiting

Every person who—

(a) wrongfully obstructs, impedes or otherwise interferes with any other person in the execution of any duty that such officer person is required under this Act or Defence Forces Regulations to perform; or

(b) interferes with or impedes, directly or indirectly, the recruiting of the Defence Forces,

commits an offence and upon conviction is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

(d) Offences relating to Service Property, Documents and Uniforms (ss 104-106)

[PCh192s104]104. Unlawfully dealing with property

(1) Every person who—

(a) unlawfully disposes of or removes any service property;

(b) solicits another person to unlawfully dispose of or remove any service property;

(c) when lawfully required, refuses to deliver up any service property that is in his possession; or

(d) except for lawful cause (the proof of which lies upon him), has in his possession any service property, commits an offence and upon conviction is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both the fine and imprisonment.

(2) For the purposes of this section "service property" means any public property under the control of the Minister, non-public property and property of the Defence Forces or of any forces co-operating with them.

[PCh192s105]105. Improper dealing in documents

(1) Every person who—

(a) receives, detains or has in his possession any official document issued for service purposes as a pledge, security for a debt or with a view to obtaining payment from the person entitled to it of a debt due either to himself or to any other person; or

(b) has in his possession without lawful authority or excuse (the proof of which lies on him) any official document, commits an offence and upon conviction is liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

(2) 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.

[PCh192s106]106. Unauthorised wearing and use of uniforms, decorations, etc.

(1) Every person who without lawful authority, the proof of which lies on him—

(a) wears uniform of the Defence Forces or any other uniform that is so similar to the uniform of any of the Defence Forces that it is likely to be mistaken for it;

(b) wears a distinctive mark relating to wounds received or service performed in war, or a military medal, ribbon, badge, chevron or any decoration or order that is awarded for war services, or any imitation of any of them, or any mark or device or thing that is likely to be mistaken for any such mark, medal, ribbon, badge, chevron, decoration or order;

(c) falsely represents himself to be a person who is or has been entitled to use or wear any thing which is mentioned in paragraph (b) of this subsection; or

(d) purchases or takes in pawn any decoration or order awarded to any member of the Defence Forces or solicits or procures any person to sell or pledge any decoration, or acts for any person in the sale or pledging of it unless at the time of purchasing, taking, soliciting, procuring or acting the person to whom the decoration or order was awarded was dead or had otherwise ceased to be a member of the Defence Forces,

commits an offence and upon conviction is liable to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both the fine and imprisonment.

(2) Nothing in this section shall prohibit—

(a) the use or wearing of ordinary military badges for purposes of ornament, or the wearing of brooches or other ornaments representing military badges; or

(b) the wearing of any uniforms or things which are mentioned in paragraphs (a) and (b) of subsection (1) of this section for purposes of a theatrical performance.

(e) Offences relating to Enrolment and Release (ss 107-108)

[PCh192s107]107. False answer on enrolment

Every person who knowingly makes a false answer to any question relating to his enrolment that has been put to him by or by direction of the person before whom he appears for the purpose of being enrolled in the Defence Forces commits an offence and upon conviction is liable to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both the fine and imprisonment.

[PCh192s108]108. Unlawful consideration on enrolment or release

Every person who gives or receives, or is in any way concerned in giving or receiving, any valuable consideration in respect of enrolment, release or promotion in the Defence Forces commits an offence and upon conviction is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

(f) Offences relating to Medical Certificates and Self-Injury (ss 109-110)

[PCh192s109]109. False medical certificate

Every medical practitioner who signs a medical certificate or other document containing a false statement in respect of—

(a) the examination of a person for the purpose of enrolment in the Defence Forces;

(b) the service or release of an officer or man; or

(c) the disability or alleged disability of a person purported to have arisen or to have been contracted during, in the course of, or as a result of, the service of such person as an officer or man, commits an offence and upon conviction is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both the fine and imprisonment.

[PCh192s110]110. Aiding malingering

Every person who—

(a) produces any disease or infirmity in, or maims or injures himself or any other person with a view to enabling himself or that other person to avoid service in the Defence Forces; or

(b) with intent to enable any other person to render himself, or to induce the belief that that other person is, permanently or temporarily, unfit for service in the Defence Forces, supplies to or for that other person any drug or preparation calculated or likely to render that other person, or lead to belief that that other person is, permanently or temporarily, unfit for the service,

commits an offence and upon conviction is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both the fine and imprisonment.

(g) Offences relating to Personation (ss 111-112)

[PCh192s111]111. Personation

Every person who falsely personates any other person in respect of any duty, act or thing required to be performed or done under this Act by the person so personated commits an offence and on conviction is liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both the fine and imprisonment.

[PCh192s112]112. Representation of desertion

Every person who falsely represents himself to any service or civil authority to be a deserter from the Defence Forces commits an offence and is liable on conviction to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding six months or to both the fine and imprisonment.

(h) Offences relating to Reserve Liability (ss 113-114)

[PCh192s113]113. Failure to attend parade

(1) Every officer or man of the Reserve Forces who without lawful excuse neglects or refuses to attend any parade, drill or training at the place and hour appointed commits an offence and upon conviction is liable for each offence, if an officer, to a fine of fifty shillings and, if a man, to a fine of twenty shillings.

(2) Absence from any parade, drill or training is, in respect of each day on which the absence occurs, a separate offence.

[PCh192s114]114. Neglecting personal equipment

Every officer or man of the Reserve Forces who fails to keep in proper order any personal equipment or who appears at drill, parade or on any other occasion with his personal equipment out of proper order, unserviceable or deficient in any respect, commits

an offence and upon conviction is liable to a fine not exceeding one hundred shillings for each offence.

PART XI

REPEALS, SAVING AND TRANSITIONAL (ss 115-117)

[PCh192s115]115. Repeal and amendment of various laws

[Repeal and amendment of various laws.]

[PCh192s116]116. Transitional provisions

[Transitional provisions.]

[PCh192s117]117. Temporary provisions

[Temporary provisions.]

FIRST SCHEDULE

(Sections 53 and 85)

PART I

THE CODE OR SERVICE DISCIPLINE

The Disciplinary Jurisdiction of the Defence Forces

C. 1. Interpretation

(1) In this Code, unless the context requires otherwise—

"incarceration" means imprisonment (either in a civil prison or a service prison) and detention;

"serviceman" means a person (including a civilian) subject to this Code; and references to forces co-operating with the Defence Forces are references to any forces in

fact co-operating with the Defence Forces notwithstanding that those forces have not been declared "co-operating forces" pursuant to section 25.

(2) The provisions of this section are in addition to those of section 3 of the Act.

C. 2. Persons subject to the Code

(1) Subject to the provisions of this section, the following persons, are subject to and no others, the Code of Service Discipline—

(a) an officer or man of the Regular Force and a member of the National Service;

(b) an officer or man of the Regular Reserve or of the Volunteer Reserve who is—

(i) mobilised pursuant to section 41 of the Act;

(ii) called out for continuing full-time service with any of the Defence Forces pursuant to section 42 or 43 of the Act or serving, pursuant to either of those sections, with any unit or other element of the Defence Forces;

(iii) called out pursuant to section 21 of the Act in aid of the civil power;

(iv) employed pursuant to section 23 of the Act in rendering assistance to the civil authorities;

(v) undergoing drill or training, whether in uniform or not, including both camp training and local training;

(vi) in uniform;

(vii) on duty;

(viii) present, whether in uniform or not, at any drill or training of a unit or element of the Defence Forces; or

(ix) in or on any vessel, vehicle or aircraft of the Defence forces, or in or upon any defence establishment or work of defence, except where his presence is on account of his civil employment;

(c) a member of the Police Force, a Prisons Service or the National Service Reserves mobilised pursuant to section 92 of this Act;

(d) save as may be provided in Defence Forces Regulations, a person who is seconded or attached as an officer or man to the Defence Forces;

(e) a person (other than any person mentioned in the preceding provisions of this subsection) who is serving in the position of an officer or man in any force raised and maintained outside Tanzania by the President and commanded by an officer of the Defence Forces;

(f) a person (other than any person mentioned in the foregoing provisions of this subsection) who accompanies any unit or other element of the Defence Forces on service in any place;

(g) a person (other than any person mentioned in the foregoing provisions of this subsection) who, in respect of any service offence committed or alleged to have been committed by him, is in civil custody or service custody; and

(h) a person (other than any person mentioned in the foregoing provisions of this subsection) who is serving with the Defence Forces under an engagement whereby he agreed to be subject to this Code.

Persons accompanying Defence Forces

(2) For the purposes of this section but subject to any limitations prescribed in Defence Forces Regulations, a person accompanies a unit or other element of the Defence Forces that is on service if that person—

(a) participates with the unit or other element in the carrying out of any of its movements, manoeuvres, duties in aid of the civil power, duties in a disaster, or warlike operations;

(b) is accommodated or provided with rations, at his own expense or otherwise, by that unit or other element in any country or at any place designated by the President;

(c) is a dependant of an officer or man of the Defence Forces serving out of Tanzania with that unit or other element and accompanies that officer or man when so serving; or

(d) is embarked on a vessel or aircraft of that unit or other element.

Status

(3) A person mentioned in paragraph (f) of subsection (1) who, while accompanying a unit or other element of the Defence Forces, is alleged to have committed a service offence shall for the purposes of this Code be treated as if he were a man in the rank of private unless he holds from the commanding officer of the unit or other element

of the Defence Forces that he so accompanies, or from any other officer prescribed by Defence Forces Regulations, a certificate revocable at the pleasure of the officer who issued it or of any other officer of equal or higher rank, entitling that person to be treated on the footing of an officer of a particular rank, in which case he shall be treated as an officer of that rank in respect of any offence alleged to have been committed by him while holding that certificate.

Persons under engagement

(4) Every person mentioned in paragraph (h) of subsection (1) who, while serving with a unit or other element of the Defence Forces under an engagement, is alleged to have committed a service offence shall for the purposes of this Code be treated as a man in the rank of private unless by the terms of his engagement he is entitled to be treated as if he were an officer or man of higher rank, in which case he shall be treated in accordance with the rank prescribed in his engagement.

Commanding officer

(5) For the purposes of this Code, the "commanding officer" in relation to any person mentioned in subsection (3) or (4) means the commanding officer of the unit or other element of the Defence Forces that such person accompanies or in which that person is serving as the case may be.

Application to women

(6) The Code of Service Discipline, in its application to female persons, may be limited or modified by Defence Forces Regulations.

C. 3. Continuing liability under Code after ceasing to be subject thereto

(1) A person who was subject to this Code, in accordance with section C. 2 thereof, at a time when he committed or when he is alleged to have committed a service offence, continues to be liable to be arrested and tried under this Code during the period in which, in accordance with section C. 6 of this Code, such offence is triable by a service tribunal notwithstanding that he has since that time ceased to be subject to this Code; and, subject to any modifications in this code contained, such person may, if he is arrested and his trial begins within that period, be arrested, kept in custody, charged, tried, punished and otherwise dealt with for that offence in accordance with this Code as if he were a person subject to this Code.

(2) A person to whom this section refers shall, for the purposes of the Code, be deemed to have the status and the rank which he held immediately before he last ceased to be a person subject to the Code.

Place of Commission of Offence

C. 4. No limitation

Subject to section C. 7 of this Code, every person alleged to have committed a service offence may be charged, dealt with and tried under this Code, whether the alleged offence was committed in Tanzania or out of Tanzania.

Place of Trial

C. 5. No limitation

Every person alleged to have committed a service offence may be charged, dealt with and tried under this Code either in Tanzania or out of Tanzania.

Period of Liability under Code of Service Discipline

C. 6. Time bar

(1) Subject to the provisions of this section, no person is liable to be tried by a service tribunal unless his trial begins before the expiration of a period of three years from the day upon which the service offence was alleged to have been committed.

Exceptions

(2) Every person subject to the Code of Service Discipline at the time of the alleged commission by him of a service offence included in section C. 16, C. 17, C. 24 or C. 26 of the Code, or any service offence for which the highest punishment that may be imposed is death, continues to be liable to be charged, dealt with and tried by a service tribunal at any time under this Code.

Exclusion of time

(3) In calculating the period of limitation referred to in subsection (1) there shall not be included—

- (a) anytime during which a person was a prisoner of war;
- (b) any period of absence in respect of which a person has been found guilty by any service tribunal of desertion or absence without leave; and
- (c) any time during which a person was serving a sentence of imprisonment imposed by any court other than a service tribunal.

Exclusion of jurisdiction

C. 7 Repealed

[Repealed by Act No. 2 of 1970 Sch.]

Previous Trials

C. 8. Autrefois acquit and autrefois convict

(1) Every person in respect of whom a charge of having committed a service offence has been dismissed or who has been found guilty, or not guilty, either by a service tribunal or a civil court on a charge of having committed any such offence, shall not be tried again by a service tribunal under this Code in respect of that offence or any other offence of which he might have been found guilty on that charge by a service tribunal or a civil court.

(2) Nothing in subsection (1) applies to any proceedings quashed when a new trial is ordered, directed, or authorised under section C. 129, C. 147, or C. 156 of this Code, or affects the validity of any such new trial.

(3) Every person who under section C. 117 of this Code has been sentenced in respect of a service offence admitted by him shall not be tried by a service tribunal under this Code in respect of that offence.

C. 9. Remission in certain cases

Where a civil court that tries a person in the circumstances set out in subsection (2) of section 75 acquits the person of an offence, the unexpired term of any punishment (or in the case of a punishment involving incarceration, the unexpired term of such incarceration) imposed by the service tribunal in respect of that offence, shall be deemed to be wholly remitted on the date of the acquittal by that civil court.

PART II

SERVICE OFFENCES AND PUNISHMENT

Responsibility for Offences

C. 10. Parties to offences

(1) Every person is a party to an offence who—

- (a) actually commits it;
- (b) does or omits an act for the purpose of aiding any person to commit the offence;
- (c) abets any person in the commission of the offence; or
- (d) counsels or procures any person to commit the offence.

Intent to commit offences

(2) Every person who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object is guilty of an attempt to commit the offence intended whether under the circumstances it was possible to commit that offence or not.

Finding - when charged with attempt

(3) A person charged before a service tribunal with attempting to commit an offence may be convicted on that charge notwithstanding that it is proved that he actually committed the substantive offence.

Parties to offence - common purpose

(4) When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of that purpose an offence is committed of a nature that its commission was a probable consequence of the prosecution of the purpose each of them is deemed to have committed the offence.

Misconduct of Commanders in Presence of Enemy

C. 11. Offences by commanders when in action

Every serviceman being an officer in command of a vessel, aircraft, defence establishment, formation, unit or other element of the Defence Forces who—

(a) when under orders to carry out an operation of war or on coming into contact with an enemy that it is his duty to engage, does not use his utmost exertion to bring the officers and men under his command or his vessel, aircraft or other matériel into action;

(b) being in action, does not, during the action in his own person and according to his rank, encourage his officers and men to fight courageously;

(c) when capable of making a successful defence, surrenders his vessel, aircraft, defence establishment, matériel, formation, unit or other element of the Defence Forces to the enemy;

(d) being in action, improperly withdraws from the action;

(e) improperly fails to pursue an enemy or to consolidate a position gained;

(f) improperly fails to relieve or assist a known friendly force to the utmost of his power; or

(g) when in action, improperly forsakes his station, commits an offence and upon conviction, if he acted traitorously, shall suffer death, if he acted from cowardice is liable to suffer death or less punishment, and in any other case is liable to dismissal with disgrace from the Defence Forces or to less punishment.

Misconduct of any Serviceman in Presence of Enemy

C. 12. Offences by servicemen in the presence of the enemy

- (1) Every serviceman who—
 - (a) improperly delays or discourages any in the action against the enemy;
 - (b) goes over to the enemy;
 - (c) when ordered to carry out an operation of war, fails to use his utmost exertion to carry the orders into effect;
 - (d) improperly abandons or delivers up any defence establishment, garrison, place, matériel, post or guard;
 - (e) assists the enemy with matériel;
 - (f) harbours or protects an enemy not being a prisoner of war;
 - (g) improperly casts away or abandons any matériel in the presence of the enemy;
 - (h) improperly does or omits to do anything that results in the capture by the enemy of persons or the capture or destruction by the enemy of matériel;
 - (i) when on watch in the presence or vicinity of the enemy, leaves his post before he is regularly relieved or sleeps or is drunk;
 - (j) behaves before the enemy in such manner as to show cowardice; or
 - (k) does or omits to do anything with intent to imperil the success of any of the Defence Forces of any forces co-operating with them,

commits an offence and on conviction, if he acted traitorously shall suffer death, and in any other case, if the offence was committed in action, is liable to suffer death or less punishment or, if the offence was committed otherwise than in action, to imprisonment for life or to less punishment.

(2) For the purpose of this paragraph serviceman shall be treated as being 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 duty.

Security

C. 13. Offences related to security

(1) Every serviceman who—

- (a) improperly holds communication with or gives intelligence to the enemy;
- (b) without authority discloses in any manner any information relating to the numbers, position, matériel, movements, preparation for movements, operations or preparations for operations of any of the Defence Forces or of any forces co-operating with them or prisoners of war;
- (c) without authority discloses in any manner any information relating to a cryptographic system, aid, process, procedure, publication or document of any of the Defence Forces or of any forces co-operating with them;
- (d) makes known the parole, watchword, password, countersign or identification signal to any other person not entitled to receive it;
- (e) gives a parole, watchword, password, countersign or identification signal different to that which he received;

- (f) without authority alters or interferes with any identification or other signal;
- (g) improperly occasions false alarms;
- (h) when acting as a sentry or lookout, leaves his post before he is regularly relieved or sleeps or is drunk;
- (i) forces a safeguard or forces or strikes a sentinel; or
- (j) does or omits to do anything with intent to prejudice the security of any of the Defence Forces or of any forces co-operating with them,

commits an offence and on conviction, if he acted traitorously, shall suffer death, and in any other case is liable to imprisonment for life or to less punishment.

(2) For the purpose of this section a serviceman shall be treated as being drunk if owing to the influence of alcohol or any drug, whether alone or in combination with any circumstances, he is unfit to be entrusted with his duty.

C. 14. Offences relating to being taken prisoner

Every serviceman who—

- (a) by want of due precaution or through disobedience of orders or wilful neglect of duty, is made a prisoner of war;
- (b) having been made a prisoner of war, fails to rejoin the Defence Forces when able to do so;
- (c) having been made a prisoner of war, prevents or discourages any other member of the Defence Forces or of a force co-operating with them who has been made a

prisoner of war from rejoining the Defence Forces or that co-operating force when that other member is able to do so; or

(d) having been made a prisoner of war, serves with or aids the enemy, commits an offence and upon conviction, if he acted traitorously shall suffer death, and in any other case is liable to imprisonment for life or to less punishment.

Miscellaneous Operational Offences

C. 15. Offences related to operations

Every serviceman who—

(a) does violence to any person bringing matériel to any of the Defence Forces or to any forces co-operating with them;

(b) irregularly detains any matériel being conveyed to any unit or other element of the Defence Forces or of any forces co-operating therewith;

(c) irregularly appropriates to the unit or other element of the Defence Forces with which he is serving any matériel being conveyed to any other unit or element of the Defence Forces or of any forces co-operating with them;

(d) without orders from his superior officer, improperly destroys or damages any property;

(e) breaks into any house or other place in search of plunder;

(f) commits any offence against the property or person of any inhabitant or resident of a country in which he is serving;

(g) steals from, or with intent to steal searches, any person killed or wounded in the course of warlike operations;

(h) steals any money or property that has been left exposed or unprotected in consequence of warlike operations;

(i) takes, otherwise than for the public service, any money or property abandoned by the enemy;

(j) spreads, whether orally or otherwise, reports calculated to create despondency or unnecessary alarm in relation to operations of the Defence Forces or of any forces co-operating with them; or

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

commits an offence and upon conviction, if he committed the offence on active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to dismissal with disgrace from the Defence Forces or to less punishment.

Mutiny

C. 16. Mutiny with violence or in operations

(1) Every serviceman who—

(a) takes part in a mutiny involving the use of violence or the threat of the use of violence, or having as its object or one of its objects the refusal or avoidance of any duty or service against, or in connection with operations against, the enemy or the impeding of the performance of that duty or service, or

(b) incites any person to join in that mutiny whether actual or intended,

commits an offence and on conviction is liable to suffer death or less punishment.

Mutiny without violence

(2) Every person who joins in a mutiny that does not fall within subsection (1) of this section or incites any person to join in such a mutiny, whether actual or intended, commits an offence and upon conviction is liable to imprisonment for life or to less punishment or, in the case of a ringleader of the mutiny, to suffer death or less punishment.

C. 17. Offences related to mutiny

Every serviceman who—

- (a) causes or conspires with another person to cause a mutiny;
- (b) endeavours to persuade any person to join a mutiny whether actual or intended;
- (c) being present, does not use his utmost endeavours to suppress a mutiny; or
- (d) being aware of an actual or intended mutiny, does not without delay inform his superior officer of it, commits an offence and upon conviction, if the offence was committed with intent to assist the enemy, is liable to suffer death or less punishment, and in any other case is liable to imprisonment for life or to less punishment.

C. 18. Meaning of mutiny

In this Code, mutiny means a combination between two or more persons, at least two of whom are members of the Defence Forces (or otherwise subject to this Code), the Police Force, the National Service or either of the Prisons Services in Tanzania—

(a) to overthrow or resist lawful authority in any of those Forces or Services or any forces co-operating with the Defence Forces;

(b) to disobey the authority in any circumstances which to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against or in connection with operations against the enemy; or

(c) to impede the performance of any duty or service in the Defence Forces or in any forces co-operating with them.

Insubordination

C. 19. Disobedience of lawful command

Every serviceman who disobeys a lawful command of a superior officer commits an offence and upon conviction is liable to imprisonment for life or to less punishment.

C. 20. Striking or offering violence to a Superior Officer

Every serviceman who strikes or attempts to strike, or draws or lifts up a weapon against, or uses, attempts to use, or offers violence against a Superior Officer, commits an offence and upon conviction is liable to imprisonment for life or to less punishment.

C. 21. Insubordinate behaviour

Every serviceman who uses threatening or insulting language to or behaves with contempt toward a superior officer commits an offence and upon conviction is liable to dismissal with disgrace from the Defence Forces or to less punishment.

C. 22. Quarrels and disturbances

Every serviceman who quarrels or fights with any other serviceman or who uses provoking words or gestures toward another serviceman tending to cause a quarrel or

disturbance, commits an offence and upon conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 23. Disorders

Every serviceman who—

(a) being concerned in a quarrel, fray or disorder, refuses to obey an officer, though of inferior rank, who orders him into arrest, or strikes or uses or offers violence to that officer;

(b) strikes or uses or offers violence to any person in whose custody he is placed, whether or not that other person is his superior officer or a serviceman;

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, station, camp, quarters or ship,
commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Desertion

C. 24. Offence

(1) Every serviceman who deserts or attempts to desert commits an offence and upon conviction, if he committed the offence on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

Definition

(2) A serviceman deserts if–

(a) being on or having been warned for active service, he is absent without authority with the intention of avoiding that service;

(b) having been warned that his vessel is under sailing orders, or having been ordered to join any vessel, aircraft or vehicle for purposes of service outside Tanzania, he is absent without authority with the intention of missing that vessel, aircraft or vehicle;

(c) he absents himself without authority from his unit or formation or from the place where his duty requires him to be, with the intention of not returning to that unit, formation or place;

(d) he is absent without authority from his unit or formation or from the place where his duty requires him to be and at any time during such absence forms the intention of not returning to that unit, formation or place; or

(e) while absent with authority from his unit or formation or the place where his duty requires him to be, he does any act, or omits to do anything, the natural and probable consequence of which is to preclude his return to that unit, formation or place at the time required, with the intention of not returning to that unit, formation or place.

Presumption

(3) A serviceman who has been absent without authority for a continuous period of six months or more shall, unless the contrary is proved, be presumed to have had the intention of not returning to his unit or formation or the place where his duty requires him to be.

C. 25. Connivance at desertion

Every serviceman who—

(a) being aware of the desertion or intended desertion of any other serviceman from any of the Defence Forces, does not without reasonable excuse inform his superior officer immediately; or

(b) fails to take any steps in his power to cause the apprehension of a serviceman known by him to be a deserter,
commits an offence and upon conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Absence without Leave

C. 26. Offence

(1) Every serviceman who absents himself without leave commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Definition

(2) A serviceman absents himself without leave if—

(a) without authority he leaves his unit or formation or the place where his duty requires him to be;

(b) without authority he is absent from his unit or formation or the place where his duty requires him to be; or

(c) having been authorised to be absent from his unit or formation or the place where his duty requires him to be, fails to return to that unit, formation or place at the expiration of the period for which his absence was authorised.

Evidence in Trials for Desertion and Absence

C. 27. Certificates of arrest

In any proceedings for an offence against section C. 24 or C. 26 of this Code—

(a) a document purporting to be certificate under either subsection (1) or subsection (2) of section 81 of this Act, or under the corresponding provisions of any service law (other than this Act) and to be signed as required, shall be evidence of the matter stated in the document;

(b) where the proceedings are against a serviceman who has been taken into service custody on arrest or surrender by the military authorities of a force acting in co-operation with any part of the Defence Forces, a certificate purporting to be signed by a provost officer or any corresponding officer of that force or by any other person in charge of the guard-room or other place where that serviceman 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:

Provided that nothing in this paragraph shall be construed so as to itself confer any power of arrest over officers and men of the Defence Forces on the service authorities of any other force.

C. 28. False statement in respect of leave

Every serviceman who knowingly makes a false statement in respect of prolongation of leave of absence commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Disgraceful Conduct

C. 29. Scandalous conduct by officers

Every officer who behaves in a scandalous manner unbecoming an officer commits an offence and on conviction shall suffer dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces.

C. 30. Cruel or disgraceful conduct

Every serviceman who behaves in a cruel or disgraceful manner commits an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

C. 31. Traitorous utterances

Every serviceman who uses traitorous or disloyal words regarding the lawful authority of the United Republic or the President commits an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

C. 32. Ill-treatment of inferiors

Every serviceman who strikes or otherwise ill-treats any other serviceman who, by reason of rank or appointment, is subordinate to him commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 33. False accusations or statements

Every serviceman who—

(a) makes a false accusation against an officer or man, knowing that accusation to be false or not believing it to be true; or

(b) when seeking redress under section 55 of the Act, knowingly makes a false statement affecting the character of an officer or man or knowingly, in respect of the redress so sought, suppresses any material fact,
commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 34. Drunkenness Act No. 32 of 1966 s. 5(a)

Drunkenness on the part of an officer or man, whether on duty or not on duty, is an offence and every officer or man convicted of it is liable to imprisonment for a term not exceeding two years or to less punishment except that where the offence is committed by an officer or man who is neither on active service nor on duty, no punishment of imprisonment (and in the case of a man no punishment of detention) for a term in excess of ninety days shall be imposed.

C. 35. Malingering or maiming

Every serviceman who—

- (a) malingers or feigns or produces disease or infirmity;
- (b) aggravates, or delays the cure of, disease or infirmity by misconduct or wilful disobedience of orders; or
- (c) wilfully maims or injures himself or any other person who is a member of the Defence Forces or of any forces co-operating with them, whether at the instance of

that person or not, with intent to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent to render himself unfit for service,

commits an offence and on conviction, if he commits the offence on active service or when under orders for active service or in respect of a person on active service or under orders for active service, is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding five years or to less punishment.

Offences in relation to Service Arrest and Custody

C. 36. Ill-treatment of person in custody

Every serviceman who unnecessarily detains any other person in arrest or confinement without bringing him to trial, or fails to bring that other person's case before the proper authority for investigation, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 37. Negligent or wilful interference with custody

Every serviceman who—

- (a) without authority sets free or authorises or otherwise facilitates the setting free of any person in custody;
- (b) allows to escape any person who is committed to his charge, or whom it is his duty to guard or keep in custody; or
- (c) assists any person in escaping or in attempting to escape from custody,

commits an offence and on conviction, if he acted wilfully, is liable to imprisonment for a term not exceeding seven years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 38. Escape from custody

Every serviceman who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes or attempts to escape, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 39. Obstruction of service police duties

Every serviceman who—

(a) resists or wilfully obstructs an officer or man in the performance of any duty pertaining to the arrest, custody or confinement of a serviceman; or

(b) when called upon, refuses or neglects to assist an officer or man in the performance of that duty,

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

C. 40. Obstruction of civil power

(1) Every serviceman who—

(a) neglects or refuses to deliver over an officer or man to the civil police authority, pursuant to a warrant in that behalf;

(b) prevents or obstructs the execution by a civil police authority of a warrant for the arrest of an officer or man; or

(c) neglects or refuses to assist in the lawful apprehension of an officer or man accused of an offence punishable by a civil court, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

(2) Subsection (1) shall also apply in relation to civil police authorities and civil courts in any country outside Tanzania in any case where according to arrangements entered into by or on behalf of Tanzania the civil police authorities and civil courts of that country have jurisdiction over persons subject to this Code.

Offences in relation to Ships and Vessels

C. 41. Losing, stranding vessels or hazarding vessels

Every serviceman who—

(a) loses, strands or hazards, or suffers to be lost, stranded or hazarded any ship or vessel of the Defence Forces; or

(b) during a state of war causes the sequestration by or under the authority of a neutral state, or destruction in a neutral state, of any ship or vessel of the Defence Forces or any forces co-operating with the Defence Forces, commits an offence and on conviction, if he acted wilfully during a state of war, is liable to imprisonment for life or to less punishment, or if he acted wilfully at any other time is liable to imprisonment for a term not exceeding ten years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 42. Offences in relation to convoys

Every officer who, while serving in a ship or vessel of the Defence Forces involved in the convoying and protection of a vessel—

- (a) fails to defend a vessel or goods under convoy;
- (b) refuses to fight in the defence of a vessel in his convoy when it is attacked;

or

- (c) cowardly abandons or exposes a vessel in his convoy to hazards,

commits an offence and on conviction is liable to suffer death or less punishment.

Offences in relation to Aircraft

C. 43. Wrongful acts in relation to aircraft Act No. 32 of 1966 s. 5(b)

Every serviceman who—

(a) in the use of or in relation to any aircraft or aircraft matériel, does any act or omits to do anything, which act or omission causes or is likely to cause loss of life or bodily injury to any person;

(b) does any act or omits to do anything, which act or omission results or is likely to result in damage to or destruction or loss of any aircraft or aircraft matériel of the Defence Forces or of any aircraft or aircraft matériel of any forces co-operating therewith;

or

(c) during a state of war, causes the sequestration by or under the authority of a neutral state or the destruction in a neutral state of any aircraft of the Defence Forces,

commits an offence and on conviction if he acted wilfully is liable to imprisonment for life or less punishment and in any other case is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 44. Inaccurate certificate

Every serviceman who signs an inaccurate certificate in relation to an aircraft or aircraft matériel, unless he proves he took reasonable steps to ensure that it was accurate, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 45. Low flying

Every serviceman who flies an aircraft or, being in command of an aircraft, permits it to be flown at a height less than the minimum height authorised in the circumstances commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 46. Annoyance by flying

Every serviceman who flies an aircraft or, being in command of an aircraft, permits it to be flown so as to cause or to be likely to cause unnecessary annoyance to any person commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 47. Disobedience of captain's orders

(1) Every serviceman who, when in an aircraft, disobeys any lawful command given by the captain of the aircraft in relation to the flying or handling of the aircraft or affecting the safety of the aircraft, whether or not the captain is subject to the Code of

Service Discipline, commits an offence and on conviction is liable to imprisonment for life or to less punishment.

Command in aircraft

(2) For the purpose of this section—

(a) every serviceman whatever his rank shall when he is in an aircraft be under the command, as respects all matters relating to the flying or handling of the aircraft or affecting the safety of the aircraft, of the captain of the aircraft whether or not the latter is subject to the Code of Service Discipline; and

(b) if the aircraft is a glider and is being towed by another aircraft, the captain of the glider shall as long as his glider is being towed be under the command, as respects all matters relating to the flying or handling of the glider or affecting the safety of the glider, of the captain of the towing aircraft, whether or not the latter is subject to the Code of Service Discipline.

Offences in relation to Vehicles

C. 48. Improper driving of vehicles

(1) Every serviceman who—

(a) drives a vehicle of the Defence Forces recklessly or in a manner that is dangerous to any person or property having regard to all the circumstances of the case, or, having charge of and being in or on that vehicle, causes or by wilful neglect permits it to be so driven;

(b) while his ability to drive is impaired by alcohol or a drug, drives or attempts to drive a vehicle of the Defence Forces, whether it is in motion or not; or

(c) having charge of a vehicle of the Defence Forces, knowingly permits it to be driven by a person whose ability to drive that vehicle is impaired by alcohol or a drug, commits an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

Attempt to drive

(2) For the purpose of paragraph (b) of subsection (1), where a person occupies the seat ordinarily occupied by a driver of a vehicle, he shall be deemed to have attempted to drive such vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

C. 49. Unauthorised use

Every Serviceman who—

(a) uses a vehicle of the Defence Forces for an unauthorised purpose;

(b) without authority uses a vehicle of the Defence Forces for any purpose; or

(c) uses a vehicle of the Defence Forces contrary to any regulations, orders or instructions,

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

Offences in relation to Property

C. 50. Dangerous substances and causing fire Act No. 32 of 1966 s. 5(c)

Every serviceman who does any act or omits to do anything which act or omission—

(a) in relation to any thing or substance that may be dangerous to life or property, causes or is likely to cause loss of life, bodily injury, damage to or destruction of property; or

(b) causes or is likely to cause fire to occur in any defence matériel, defence establishment, work for defence, or in any other public matériel, establishment or work, commits an offence and upon conviction, if he acted wilfully is liable to imprisonment for life or to less punishment, and in any other case is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 51. Stealing

(1) Every serviceman who steals, commits an offence and on conviction, if at the time of the commission of the offence he was, by reason of his rank, appointment or employment or as a result of any lawful command, entrusted with the custody, control or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to less punishment, and in any other case is liable to imprisonment for a term not exceeding seven years or to less punishment.

Definition

(2) For the purpose of this section—

(a) a person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person other than its general or special owner anything capable of being stolen, is said to steal that thing;

(b) a person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents, that is to say—

(i) an intent permanently to deprive the general or special owner of the thing of it;

(ii) an intent to use the thing as a pledge or security;

(iii) an intent to part with it on a condition as to its return which the person taking or converting it may be unable to perform;

(iv) an intent to deal with it in such a manner that it cannot be returned in the condition in which it was at the time of the taking or conversion;

(v) in the case of money, an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner;

(c) the term "special owner" includes any person who has any charge or lien upon the thing in question, or any right arising from or dependent upon holding possession of the thing in question;

(d) when a thing stolen is converted, it is immaterial whether it is taken for the purpose of conversion or whether it is at the time of conversion in the possession of the person who converts it. It is also immaterial that the person who converts the thing in question is the holder of a power of attorney for the disposition of it, or is otherwise authorised to dispose of it;

(e) when a thing converted has been lost by the owner and found by the person who converts it, the conversion is not deemed to be fraudulent if at the time of conversion the person taking or converting the thing does not know who is the owner and believes on reasonable grounds that the owner cannot be discovered;

(f) a person shall not be deemed to take a thing unless he moves the thing or causes it to move.

Things capable of being stolen

(3) Every inanimate thing which is the property of a person and which is movable, and every animate thing which is capable of being stolen in accordance with the Penal Code, is, for the purposes of this Code, capable of being stolen.

Inanimate thing made movable

(4) Every inanimate thing which is the property of any person and which is capable of being made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

C. 52. Receiving

Every serviceman who receives or retains in his possession any property obtained by the commission of any service offence, knowing such property to have been so obtained, commits an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

C. 53. Destruction, loss or improper disposal

Every serviceman who—

(a) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of the Defence Forces or of any forces co-operating with them;

(b) wilfully destroys, damages or improperly sells any property belonging to another serviceman; or

(c) sells, pawns or otherwise dispose of any cross, medal, insignia or other decoration granted by or with the approval of the President or any clothing, arms, ammunition or other equipment issued to him for military purposes, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 54. Miscellaneous offences in relation to property

Every serviceman who—

(a) connives at the exaction of an exorbitant price for property purchased or rented by a person supplying property or services to the Defence Forces;

(b) improperly demands or accepts compensation, consideration or personal advantage in respect of the performance of any military duty or in respect of any matter relating to the Department or the Defence Forces;

(c) receives directly or indirectly, whether personally or by or through any member of his family or person under his control, or for his benefit, any gift, loan, promise, compensation or consideration, either in money or otherwise, from any person, for assisting or favouring any person in the transaction of any business relating to the Defence Forces, or to any forces co-operating with them, or to any mess, institute or canteen operated for the use and benefit of members of those forces;

(d) demands or accepts compensation, consideration or personal advantage for conveying a vessel entrusted to his care;

(e) being in command of a vessel or aircraft, takes or receives on board goods or merchandise that he is not authorised to take or receive on board; or

(f) improperly demands or gives directions for the provision of any matériel or orders or procures another person to demand or give such directions, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Offences in relation to Service Tribunals

C. 55. Service tribunal

(1) For the purposes of this paragraph "service tribunal" in addition to the tribunals mentioned in subsection (1) of section 3 of this Act, includes a board of inquiry and a Commissioner taking evidence under this Code.

Contempt of service tribunals Act No. 32 of 1966 s. 5(d)

(2) Every serviceman who—

(a) being duly summoned or ordered to attend as a witness before a service tribunal, makes default in attending;

(b) refuses to take an oath or make a solemn affirmation lawfully required by a service tribunal to be taken or made;

(c) refuses to produce any document in his power or control lawfully required by a service tribunal to be produced by him;

(d) refuses when a witness to answer any question to which a service tribunal may lawfully require an answer;

(e) uses insulting or threatening language before or causes any interruptions or disturbances in the proceedings of a service tribunal;

(f) insults or threatens any person being a member of a service tribunal or a witness or any other person whose duty it is to attend on or before the service tribunal, while that person is acting as a member or is so attending, or insults or threatens that person while that person is going to or returning from the proceedings of the service tribunal; or

(g) commits any other contempt of a service tribunal, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment; and where an offence under this paragraph is committed at or in relation to a court-martial, the court-martial may, under the hand of the president of the court-martial, issue an order that the offender undergo, for a period not exceeding thirty days, a term of imprisonment or detention; and where that order is issued the offender is not liable to any other proceedings under the Code of Service Discipline in respect of the contempt in consequence of which the order is issued.

C. 56. False evidence

Every serviceman who, when examined on oath or solemn affirmation before a service tribunal mentioned in section C. 55 of this Code knowingly gives false evidence, commits an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.

Offences in relation to Billeting

C. 57. Billeting offences

Every serviceman who—

(a) ill-treats, by violence, extortion or making disturbance in billets or otherwise, any occupant of a house in which any serviceman is billeted or of any premises in which accommodation for matériel has been provided; or

(b) fails to comply with Defence Forces Regulations in respect of payment of the just demands of the person on whom he or any officer or man under his command is or has been billeted or the occupant of premises in which matériel is or has been accommodated,

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

Offences in relation to Enrolment

C. 58. Failure to declare circumstances of former release

Every serviceman who, having been released from the Defence Forces, any military forces formerly raised in Tanganyika or Zanzibar, the Police Forces, the Prisons Services, the National Service or any of those former forces or services, by reason of a sentence of a service tribunal or other tribunal having jurisdiction over that person or by reason of misconduct, has afterwards been enrolled in the Defence Forces without declaring the circumstances of his release, commits an offence and on conviction is liable to imprisonment for a term not exceeding six months or to less punishment.

C. 59. False answers or false information

Every serviceman who knowingly—

(a) makes a false answer to any question set forth in any document required to be completed in relation to his enrolment; or

(b) furnishes any false information or false document in relation to his enrolment,

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

Miscellaneous Offences

C. 60. Negligent performance of duties

Every serviceman who negligently performs a service duty imposed upon him commits an offence and on conviction is liable to dismissal with disgrace from the Defence Forces or to less punishment.

C. 61. Offences in relation to documents

Every serviceman who—

(a) wilfully or negligently makes a false statement or entry in a document made or signed by him that is required for official purposes, or who, being aware of the falsity of a statement or entry in that a document, orders the making or signing of it;

(b) when signing a document required for official purposes, wilfully leaves in blank any material part for which his signature is a voucher; or

(c) with intent to injure any person or with intent to deceive, suppresses, defaces, alters or makes away with any document or file kept, made or issued for any service or departmental purpose,

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

C. 62. Refusing vaccination

Every serviceman who, upon receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunisation procedures, immunity tests, blood examination or treatment against any infectious disease, wilfully and without reasonable excuse disobeys that order, commits an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C. 63. Conspiring

Every serviceman who conspires with any other person, whether or not that other person is subject to this Code, to commit an offence under this Code commits an offence and on conviction is liable to the like punishment as that which may be imposed on a conviction for the substantive offence:

Provided that where the punishment for the substantive offence is death that person shall be liable to imprisonment for life or to less punishment.

Conduct to the Prejudice of Good Order and Discipline

C. 64. Offence

(1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every serviceman convicted of it is liable to dismissal with disgrace from the Defence Forces or to less punishment.

General

(2) Without prejudice to the generality of subsection (1), it is hereby declared that an act, conduct, disorder or neglect to the prejudice of good order and discipline includes the contravention by any serviceman of—

- (a) any of the provisions of the Act;
- (b) any regulations, orders or instructions published for the general government, information and guidance of the Defence Forces; or
- (c) any general, garrison, unit, station, standing, local or other orders.

C. 65. Offences punishable by ordinary law

(1) Every serviceman who commits a civil offence, whether in Tanzania or elsewhere, commits an offence against this section.

Definition

- (2) "Civil offence" means—
- (a) an act or omission punishable by the law of any part of the United Republic in which the act was committed or the omission occurred; or
 - (b) an act or omission which had it been committed or occurred in Tanzania would be punishable under the Penal Code of Tanzania * or of Zanzibar *, the National Security Act, * the Prevention of Corruption Act * or any other provision of the Act.

Punishment

- (3) A serviceman convicted by a service tribunal of an offence against this section shall—
- (a) if the corresponding civil offence is treason, treasonable felony or murder, be liable to suffer death;
 - (b) in any other case be liable to suffer—

(i) any punishment or punishments which a civil court could award for the corresponding civil offence if committed in Tanzania, being a punishment or punishments provided by this Code; or

(ii) any punishment less than the maximum punishment which a civil court could so award, which is so provided; or

(c) where a civil court could not award imprisonment for the corresponding civil offence, be liable to dismissal from the Defence Forces or to less punishment.

Saving provision Act No. 2 of 1970 Sch.

(4) Nothing in this section is in derogation of the authority conferred by other sections of this Code to charge, deal with and try a person alleged to have committed any offence set out in section C. 11 to C. 64 of this Code and to impose the punishment for that offence mentioned in the section prescribing that offence.

(5) Notwithstanding the provisions of this section a person shall not be charged with, or tried by a service tribunal for, a civil offence—

(a) if the civil offence is an offence in respect of which the Minister responsible for legal affairs has directed that it be triable by a civil court only; or

(b) if the Minister responsible for legal affairs directs that that person be tried by a civil court only.

C. 66. Offences out of Tanzania

(1) An act or omission that takes place out of Tanzania and would, under the laws applicable in the place where the act or omission occurred, be an offence if committed by a

person subject to that law, is an offence under this section, and every serviceman who is found guilty of it is liable to suffer punishment as provided in subsection (2).

Punishment

(2) Where a service tribunal finds a serviceman guilty of an offence under subsection (1), the service tribunal shall impose a punishment in the scale of punishments that it considers appropriate having regard to the punishment prescribed by the law applicable in the place where the act or omission occurred and the punishment prescribed for the same or a similar offence in this Act or any other law in force in Tanzania.

Saving provisions

(3) Nothing in this section is in derogation of the authority conferred by other sections of this Code to charge, deal with and try a person alleged to have committed any offence and to impose the punishment for that offence mentioned in the section prescribing that offence.

Contravention of customs laws

(4) Where an act or omission constituting an offence under subsection (1) contravenes the customs laws applicable in the place where the offence was committed, any officer appointed under Defence Forces Regulations may seize and detain any goods by means of or in relation to which he reasonably believes the offence was committed, and if any person is convicted of the offence under subsection (1) the goods may, in accordance with Regulations be forfeited to the President and may be disposed of as provided by those Regulations.

Conviction of Cognate Offences

C. 67. Conviction of related or less serious offences

(1) A serviceman charged with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A serviceman charged with attempting to desert may be found guilty of being absent without leave.

(3) A serviceman charged with any one of the offences specified in section C. 20 of this Code may be found guilty of any other offence specified in that section.

(4) A serviceman charged with any one of the offences specified in section C. 21 of this Code may be found guilty of any other offence specified in that section.

(5) A serviceman charged with a service offence may, on failure of proof of an offence having been committed under circumstances involving a higher punishment, be found guilty of the same offence as having been committed under circumstances involving a lower punishment.

(6) Where a serviceman is charged with an offence under section C. 65 of this Code and the charge is one upon which, if he had been tried by a civil court in Tanzania for the corresponding civil offence, he might have been found guilty of any other offence, he may be found guilty of that other offence.

Punishments

C. 68. Scale of punishments

(1) The following punishments may be imposed in respect of service offences—

(a) death;

- (b) imprisonment for more than two years;
- (c) dismissal with disgrace from the Defence Forces;
- (d) imprisonment for a term not exceeding two years;
- (e) dismissal from the Defence Forces;
- (f) detention;
- (g) reduction in rank;
- (h) forfeiture of seniority;
- (i) severe reprimand;
- (j) reprimand;
- (k) fine; and
- (l) minor punishments,

and each of the above punishments shall be deemed to be a punishment less than every punishment preceding it in the above scale, in this Act referred to as the "scale of punishments".

Definition of less punishment

(2) Where a punishment is specified by this Code as a penalty for an offence, and it is further provided in the alternative that on conviction the offender is liable to less punishment, the expression "less punishment" means any one or more of the punishments lower in the scale of punishments than the specified punishment.

Imprisonment

C. 69. Conditions relating to punishment of imprisonment

The punishment of imprisonment for more than two years or imprisonment for a term not exceeding two years is subject to the following conditions—

(a) every person who, on conviction of a service offence, is liable to imprisonment for life or for a term of years or other term may be sentenced to imprisonment for a shorter term;

(b) a sentence that includes a punishment of imprisonment for more than two years imposed upon an officer shall be deemed to include a punishment of dismissal with disgrace from the Defence Forces, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;

(c) a sentence that includes a punishment of imprisonment for a term not exceeding two years imposed upon an officer shall be deemed to include a punishment of dismissal from the Defence Forces, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal;

(d) where a service tribunal imposes a punishment of imprisonment for more than two years upon a man, the service tribunal may in addition, notwithstanding any other provision of this Part, impose a punishment of dismissal with disgrace from the Defence Forces;

(e) where a service tribunal imposes a punishment of imprisonment for a term not exceeding two years upon a man, the service tribunal may in addition, notwithstanding any other provisions of this Part, impose a punishment of dismissal from the Defence Forces; and

(f) in the case of a warrant officer or non-commissioned officer, a sentence that includes a punishment of imprisonment shall be deemed to include a punishment of reduction in rank to the lowest rank to which, under Defence Forces Regulations, he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.

Dismissal with Disgrace

C. 70. Accompanying punishment

(1) Where a service tribunal imposes a punishment of dismissal with disgrace from the Defence Forces upon an officer or man, the service tribunal may in addition, notwithstanding any other provisions of this Part, impose a punishment of imprisonment for a term not exceeding two years.

Consequence of dismissal with disgrace

(2) A person upon whom a punishment of dismissal with disgrace from the Defence Forces has been carried out shall not, except in an emergency or unless that punishment is subsequently set aside or altered, be eligible to serve the Government of Tanzania again in any military or civil capacity.

Detention

C. 71. Conditions relating to imposition of detention

The punishment of detention is subject to the following conditions—

(a) detention shall not exceed one year and a person sentenced to detention shall not be subject to detention for more than one year consecutively by reason of more than one conviction;

(b) no officer may be sentenced to detention;

(c) in the case of a warrant officer or non-commissioned officer, a sentence that includes a punishment of detention shall be deemed to include a punishment of reduction in rank to the lowest rank to which, under Defence Forces Regulations, he can be reduced, whether or not the last mentioned punishment is specified in the sentence passed by the service tribunal.

Reduction in Rank

C. 72. Application

(1) The punishment of reduction in rank shall apply to officers, warrant officers and non-commissioned officers.

Conditions

(2) The punishment of reduction in rank shall not—

(a) involve reduction to a rank lower than that to which, under Defence Forces Regulations, the offender can be reduced;

(b) in the case of a commissioned officer, involve reduction to a rank lower than commissioned rank; and

(c) in the case of a subordinate officer, involve reduction to a rank lower than officer cadet.

Forfeiture of Seniority

C. 73. Sentences to specify period of forfeiture

Where an officer or man has been sentenced to forfeiture of seniority, the service tribunal imposing the punishment shall in passing sentence specify the period for which seniority is to be forfeited.

Fine

C. 74. Conditions relating to fines

A fine shall be imposed in a stated amount and shall not exceed, in the case of an officer or man the equivalent of three months' basic pay, and in the case of any other person the sum of one thousand shillings, and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.

Minor Punishment

C. 75. Prescribed in regulations

(1) Minor punishments shall be as prescribed in Defence Forces Regulations.

(2) Minor punishments shall not be imposed by a court-martial.

Limitations

C. 76. Authority

In addition to the limitations contained in this Code on the authority of service tribunals to impose punishment, that authority may further be limited by Defence Forces Regulations.

Sentences

C. 77. Only one sentence to be passed

(1) Subject to subsection (2), only one sentence shall be passed on an offender at a trial under this Code and, where the offender is convicted of more than one offence, the sentence shall be good if any one of the offences would have justified it.

Only one punishment

(2) Save as provided in section C. 68 (2), C. 69, C. 70, C. 71, C. 90 or C. 91 of this Code, a sentence shall not contain more than one punishment.

Incarceration under more than one Sentence

C. 78. To be concurrent

Where a person is under a sentence imposed by a service tribunal that includes a punishment involving incarceration and another service tribunal subsequently passes a new sentence that also includes a punishment involving incarceration, both punishments of incarceration shall, from the date of pronouncement of the new sentence, run concurrently but the punishment higher in the scale of punishment shall be served first.

Ignorance of Law

C. 79. Ignorance no excuse

The fact that a person is ignorant of the provisions of the Act, or of any regulations or of any order or instruction duly notified under the Act, is no excuse for any offence committed by him.

Civil Defences

C. 80. Rules of civil courts applicable

All rules and principles from time to time followed in civil courts in criminal proceedings that would render any circumstances a justification or excuse for any act or

omission or a defence to any charge, shall be applicable to any defence to a charge under this Code except insofar as those rules and principles are altered by or are inconsistent with this Act.

Insanity as a Defence

C. 81. Insanity

(1) A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is, through any disease affecting his mind, incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission.

Saving

(2) A person may be criminally responsible for an act or omission although his mind is affected by disease, if the disease does not in fact produce upon his mind one or other of the effects mentioned in subsection (1) in reference to that act or omission.

Specific delusions

(3) In respect of a person labouring under specific delusion but in other respect sane, subsection (1) shall not apply unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act or omission.

Presumption of sanity

(4) Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

PART III

ARREST

Authority to Arrest

C. 82. General authority

(1) Every person who has committed, is found committing, or is suspected of being about to commit, or is suspected of or charged under this Code with having committed a service offence, may be placed under arrest.

Reasonable force authorised

(2) Every person authorised to effect arrest under this Part may use such force as is reasonably necessary for that purpose.

C. 83. Powers of officers

(1) An officer may, without a warrant, in the circumstances mentioned in section C. 82 of this Code, arrest or order the arrest of—

- (a) any man;
- (b) any officer of equal or lower rank; and
- (c) any officer of higher rank who is engaged in a quarrel, affray or disorder.

Powers of men

(2) A man may, without a warrant, in the circumstances mentioned in section C. 82 of this Code, arrest or order the arrest of—

- (a) any man of lower rank; and
- (b) any man of equal or higher rank who is engaged in a quarrel, affray or disorder.

Arrest of offenders of other components or units

(3) An order given under subsection (1) or subsection (2) shall be obeyed although the person giving the order and the person to whom and the person in respect of whom the order is given do not belong to the same component, unit or other element of the Defence Forces.

Arrest of persons other than officers or men

(4) Every person who is not an officer or man, but who was subject to the Code at the time of the alleged commission by him of a service offence, may without a warrant be arrested or ordered to be arrested by any person whom any commanding officer may designate for that purpose.

C. 84. Appointment and powers of specially appointed personnel

The officers and men who are appointed under Defence Forces Regulations for the purposes of this section may—

(a) detain or arrest without a warrant any person who is subject to this Code, regardless of the rank or status of that person, who has committed, is found committing, is suspected of being about to commit, or is suspected of or charged under this Code with having committed a service offence; and

(b) exercise any other powers of arrest, search and detention for carrying out the purposes of this Code which are prescribed in Defence Forces Regulations.

C. 85. Issue of warrants

(1) Subject to subsection (2), every commanding officer, and every officer to whom the power of trying a charge summarily has been delegated under subsection (4) of

section C. 90 of this Code may by a warrant under his hand authorise any person to arrest any other person triable under this Code who has committed, or is suspected of or charged under this Code with having committed a service offence.

Limitation

(2) An officer authorised to issue a warrant under this section shall not, unless he has certified on the face of the warrant that the exigencies of the service so require, issue a warrant authorising the arrest of any officer of rank higher than he himself holds.

Contents of warrants

(3) In any warrant issued under this section the offence in respect of which the warrant is issued shall be stated, and the names of more persons than one in respect of the same offence, or several offences of the same nature, may be included.

Saving provision

(4) Nothing in this section shall be deemed to be in derogation of the authority that any person, including an officer or man, may have under any other section of the Act or otherwise under the law of Tanzania to arrest any other person without a warrant.

Action following Arrest

C. 86. Disposal of person arrested

(1) A person arrested under this Part may immediately on his apprehension be placed in civil custody or service custody or be taken to the formation, unit or other element with which he is serving or to any other formation, unit or element of the Defence Forces; and such force as is reasonably necessary for the purposes of this section may be used.

Delivery into custody

(2) An officer or man commanding a guard, guard-room or safeguard, or an officer or man appointed under section C. 84 of this Code shall receive and keep a person who is under arrest pursuant to this Code and who is committed to his custody, but it shall be the duty of the officer, man or other person who commits a person into custody to deliver at the time of that committal, or as soon as practicable and in any case within the next twenty-four hours to the officer or man into whose custody that person is committed an account in writing, signed by himself, in which is stated the reason why the person so committed is to be held in custody.

Reports of custody

(3) An officer or man who, pursuant to subsection (2), receives a person committed to his custody shall, as soon as practicable and in any case within the next twenty-four hours give in writing to the officer or man to whom it is his duty to report, the name of that person and an account of the offence alleged to have been committed by that person so far as is known and the name and rank of the officer, man or other person by whom the person so committed was placed in custody, accompanied by any account in writing which has been submitted pursuant to subsection (2).

Limitations in respect of Custody

C. 87. Report of delay of trial

(1) Where a person triable under this Code has been placed under arrest for a service offence and remains in custody for eight days without a summary trial having been held or a court-martial for his trial having been ordered to assemble, a report stating the

necessity for further delay shall be made by his commanding officer to the authority who is empowered to convene a court-martial for the trial of that person, and a similar report shall be forwarded in the same manner every eighth day until a summary trial has been held or a court-martial has been ordered to assemble.

Petition in respect of delay of trial

(2) Every person held in custody in the circumstances mentioned in subsection (1) is, after he has so held for a total of twenty-eight days without a summary trial having been held or a court-martial having been ordered to assemble, entitled to direct to the Minister, or to any authority which the Minister may prescribe or appoint for that purpose, a petition to be freed from custody or for a disposition of the case, and in any event that person shall be so freed when he has been so held for a total of ninety days from the time of his arrest unless the Minister directs otherwise or unless a summary trial has been held or a court-martial has been ordered to assemble.

Limitation upon re-arrest

(3) A person who has been freed from custody pursuant to subsection (2) shall not be subject to re-arrest for the offence with which he was originally charged except on the written order of an authority having power to convene a court-martial for his trial.

PART IV

SERVICE TRIBUNALS

Application

C. 88. Commanding officer

(1) Every reference in this Part to a commanding officer shall be deemed to be a reference to the commanding officer of the accused person, or to any other officer who may, in accordance with Defence Forces Regulations, be empowered to act as the commanding officer of the accused person.

Designation of commanding officer

(2) Without prejudice to the generality of subsection (1), the Chief of the Defence Forces may designate any officer to be a commanding officer in respect of any serviceman and any officer so designated shall for the purposes of this Code be deemed to be the commanding officer of that serviceman who is accused of a service offence.

Meaning of ranks where specified

(3) Every reference in this Part to the rank of an officer or man shall be construed in accordance with Defence Forces Regulations and every such reference shall be deemed to include a person who holds any equivalent rank, whether that person is enrolled in, or is attached, or seconded to the Defence Forces.

Investigation and Preliminary Disposition of Charges

C. 89. Immediate investigation required

(1) Where a charge is laid against a serviceman alleging that he has committed a service offence, the charge shall immediately be investigated in accordance with Defence Forces Regulations.

Dismissal or other disposition

(2) Where, after investigation, a commanding officer considers that a charge should not be proceeded with, he shall dismiss the charge, but otherwise shall cause it to be proceeded with as expeditiously as circumstances permit.

Summary Trials by Commanding Officers

C. 90. Jurisdiction Act No. 13 of 1986 Sch.

(1) A commanding officer may in his discretion try an accused person by summary trial, but only if all of the following conditions are satisfied—

(a) the accused person is either a subordinate officer or a man, whether or not he is a warrant officer;

(b) having regard to the gravity of the offence, the commanding officer considers that his powers of punishment are adequate;

(c) the commanding officer is not precluded from trying the accused person by reason of his election, under Defence Forces Regulations, to be tried by court-martial; and

(d) the offence is not one that, in accordance with Defence Forces Regulations, the commanding officer is precluded from trying.

Sentences

(2) Subject to the conditions set out in this section and in Part II of this Code relating to punishments, a commanding officer at a summary trial may pass a sentence in which any one or more of the following punishments may be included—

(a) detention for a period not exceeding ninety days, subject to the following provisions;

(i) a punishment of detention imposed by a commanding officer on a non-commissioned officer shall not be carried into effect until approved by an approving authority and only to the extent so approved; and

(ii) where a commanding officer imposes more than thirty days' detention, the portion in excess of thirty days shall be effective only if approved by, and to the extent approved by, an approving authority;

(b) reduction in rank, but a punishment of reduction in rank imposed by a commanding officer shall be effective only if approved by, and to the extent approved by, an approving authority;

(c) forfeiture of seniority;

(d) severe reprimand;

(e) reprimand;

(f) a fine not exceeding the equivalent of basic pay for one month; and

(g) minor punishments.

Definition of approving authority

(3) In subsection (2), "approving authority" means—

(a) any officer not below the rank of Brigadier; or

(b) an officer not below the rank of Lieutenant-Colonel designated by the

Minister as an approving authority for the purposes of this section.

Delegation

(4) A commanding officer may, subject to Defence Forces Regulations and to the extent which the commanding officer deems fit, delegate his powers under this section to any officer under his command, but an officer to whom powers are so delegated may not be authorised to impose punishments other than—

- (a) detention not exceeding fourteen days;
- (b) severe reprimand;
- (c) reprimand;
- (d) a fine not exceeding the equivalent of basic pay for fifteen days; and
- (e) minor punishments,

or to try a subordinate officer.

Evidence on oath

(5) Where a commanding officer tries an accused person by summary trial, the evidence shall be taken on oath if the commanding officer so directs, or the accused person so requests, and the commanding officer shall inform the accused person of his right so to request.

Restriction when approval required

(6) Any punishments which are specified in Defence Forces Regulations as requiring approval before they may be imposed by a commanding officer, shall not be so imposed until approval has been obtained in the manner prescribed in the Regulations.

Summary Trials by Superior Commanders

C. 91. Jurisdiction Act No. 13 of 1986 Sch.

(1) An officer of or above the rank of Brigadier, or any other officer not below the rank of Lieutenant-Colonel designated in that behalf by the Minister (both of whom are referred to in this section as a "superior commander"), may in his discretion try by summary trial and officer below the rank of Lieutenant-Colonel who is charged with the commission of a service offence; save that in an emergency the President may extend the provisions of this section to cases where the accused person is of the rank of Lieutenant-Colonel.

Dismissal or other disposition

(2) A superior commander may, with or without hearing the evidence, dismiss a charge if he considers that it should not be proceeded with, but otherwise shall cause it to be proceeded with as expeditiously as possible.

Sentences

(3) Subject to the conditions set out in this paragraph and Part II of this Code relating to punishments, a superior commander at a summary trial may pass a sentence in which any one or more of the following punishments may be included—

- (a) forfeiture of seniority;
- (b) severe reprimand;
- (c) reprimand; and
- (d) fine.

Election

(4) A superior commander shall not try an accused person who, by reason of an election under Defence Forces Regulations, is entitled to be tried by court-martial.

Evidence on oath

(5) Where a superior commander tries an accused person by summary trial, the evidence shall be taken on oath if the superior commander so directs or the accused person so requests, and the superior commander shall inform the accused person of his right so to request.

Convening of Courts-martial

C. 92. Convening authorities

(1) The President, and any military authorities who may be prescribed in Defence Forces Regulations may convene General Courts-martial and Disciplinary Courts-martial.

Officers who can act as members

(2) An authority who convenes a court-martial under subsection (1) may appoint or authorise the appointment as members of the court-martial officers of the Defence Forces or officers of any navy, army or air force who are attached or seconded to the Defence Forces.

General Courts-martial

C. 93. Jurisdiction

(1) A General Court-martial may try any person who under Part I of this Code is liable to be charged, dealt with and tried upon a charge of having committed any service offence.

Punishments

(2) A General Court-martial may, subject to sections C. 75, C. 76 and C. 77 of this Code, impose any punishment specified in the scale of punishments.

C. 94. Number of members

(1) A General Court-martial shall consist of not less than five officers and not more than a maximum number of officers which may be prescribed in Defence Forces Regulations.

Appointment of president

(2) Subject to subsection (3), the president of a General Court-martial shall be an officer of or above the rank of Lieutenant-Colonel and shall be appointed by the authority convening the General Court-martial or by an officer empowered by that authority to appoint the president.

Trial of Colonel, etc.

(3) Where the accused person is of or above the rank of Colonel, the president of a General Court-martial shall, insofar as is possible, be an officer of or above the rank of the accused person, and at least three members of the court-martial shall be of or above the rank of Lieutenant-Colonel.

Trial of Lieutenant-Colonel

(4) Where the accused person is a Lieutenant-Colonel, at least two of the members of a General Court-martial shall be of or above the rank of the accused person.

C. 95. Judge Advocate

Any authority which is prescribed for that purpose in Defence Forces Regulations shall appoint a person to officiate as Judge Advocate at a General Court-martial.

C. 96. Ineligibility to serve on a General Court-martial

None of the following persons shall sit as a member of a General Court-martial—

- (a) the officer who convened the court-martial;
- (b) the prosecutor;
- (c) a witness for the prosecution;
- (d) the commanding officer of the accused person;
- (e) a provost officer;
- (f) an officer who is under the age of twenty-one years;
- (g) an officer below the rank of Captain; or
- (h) any person who prior to the court-martial participated in any investigation

respecting the matters upon which a charge against the accused person is founded.

Disciplinary Court-martial

C. 97. Jurisdiction

A Disciplinary Court-martial may try any person below the rank of Major who under Part I of this Code is liable to be charged, dealt with and tried upon a charge of having committed any service offence.

C. 98. Punishment

A Disciplinary Court-martial shall not pass a sentence including a punishment higher in the scale of punishments than dismissal with disgrace from the Defence Forces.

C. 99. Number of members

A Disciplinary Court-martial shall consist of not less than three officers and not more than a maximum number of officers which may be prescribed in Defence Forces Regulations.

C. 100. Appointment of president

(1) The president of a Disciplinary Court-martial shall be appointed by the authority convening the Disciplinary Court-martial or by an officer empowered by that authority to appoint the president.

Rank of president

(2) The president of a Disciplinary Court-martial shall be an officer of or above the rank of Major.

C. 101. Judge Advocate

Any authority which may be prescribed for that purpose in Defence Forces Regulations may appoint a person to officiate as Judge Advocate at a Disciplinary Court-martial.

C. 102. Ineligibility to serve on Disciplinary Court-martial

None of the following persons shall sit as a member of a Disciplinary Court-martial:

- (a) the officer who convened the court-martial;
- (b) the prosecutor;
- (c) a witness for the prosecution;
- (d) the commanding officer of the accused person;

- (e) a provost officer;
- (f) an officer who is under the age of twenty-one years; or
- (g) any person who prior to the court-martial participated in any investigation respecting the matters upon which a charge against the accused person is founded.

Standing Courts-martial

C. 103. Constitution

(1) The President may, in an emergency, establish Standing Courts-martial and each court-martial shall consist of one officer, to be called the president, who is or has been an advocate and who shall be appointed by or under the authority of the Minister.

Powers

(2) Subject to any limitations prescribed in Defence Forces Regulations, a Standing Court-martial may try any person under the rank of Major who under Part I of this Code is liable to be charged, dealt with and tried upon a charge of having committed a service offence, but a Standing Court-martial shall not pass a sentence including any punishment higher in the scale of punishments than imprisonment for a term not exceeding two years.

Representation of Accused

C. 104. Defence

At any proceedings before a court-martial the accused person has the right to be represented in the manner which shall be prescribed by Defence Forces Regulations.

Admission to Courts-martial

C. 105. Trials public

(1) Subject to subsections (2) and (3), courts-martial shall be public and, to the extent that accommodation permits, the public shall be admitted to the trial.

Exception

(2) Where the authority who convenes a court-martial or the president of a court-martial considers that it is expedient in the interest of public safety, defence or public morals that the public should be excluded during the whole or any part of a trial, either of them may make an order to that effect, and that order shall be recorded in the minutes of the proceedings of the court-martial.

Witnesses

(3) A witness, other than the prosecutor and the accused person and his representative, shall not be admitted to a trial until he is called upon to give evidence or by specific leave of the president of the court-martial, and the court may at any time require that witness to withdraw after having given his evidence.

Clearing court

(4) The president may, on any deliberation among the members cause a court-martial to be cleared of any persons.

Rules of Evidence

C. 106. Rules of evidence

The rules of evidence at a trial by court-martial shall be the same as those observed in criminal proceedings before civil courts in Tanzania, except insofar as those rules are inconsistent with the Act or any Defence Forces Regulations.

C. 107. Admission of documents and records

(1) The classes of documents and records which are prescribed in Defence Forces Regulations may be admitted as evidence of the facts stated of them at trials by court-martial and the conditions governing the admissibility of those classes of documents and records or their copies shall be as prescribed in those Regulations.

Statutory declarations admissible

(2) A court-martial may receive, as evidence of the facts stated in them, statutory declarations made in the prescribed manner subject to the following conditions—

(a) where the declaration is one that the prosecutor wishes to introduce, a copy shall be served upon the accused person at least seven days before trial;

(b) where the declaration is one that the accused person wishes to introduce, a copy shall be served on the prosecutor at least three days before trial;

(c) at any time before the trial, the party upon whom the copy of the declaration has been served under paragraph (a) or (b), may notify the opposite party that he will not consent to the declaration being received by the court-martial, and in that event the declaration shall not be received; and

(d) where, in the opinion of the president of a court-martial, a witness whose evidence has been taken by way of statutory declaration, should in the interests of justice appear and give evidence before the court-martial and such witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

Witnesses at Courts-martial

C. 108. Procurement of attendance of witnesses

(1) The commanding officer of the accused person, the authority who convenes a court-martial or, after the assembly of the court-martial, the president, shall take all necessary action to procure the attendance of the witnesses whom the prosecutor and the accused person request to be called and whose attendance can, having regard to the exigencies of the service, reasonably be procured, but nothing in this subsection shall require the procurement of the attendance of any witnesses, the request for whose attendance is deemed by that commanding officer, authority who convenes a court-martial or president, to be frivolous or vexatious.

Procurement of attendance in exceptional cases

(2) Where a request by the accused person for the attendance of a witness is deemed to be frivolous or vexatious, the attendance of that witness, if his attendance, having regard to the exigencies of the service, can reasonably be procured, shall be procured if the accused person pays in advance the fees and expenses of the witness at the rates prescribed in Defence Forces Regulations, and if at the trial the evidence of the witness proves to be relevant and material the president of the court-martial or the authority who convened the court-martial shall order the accused person to be reimbursed in the amount of the fees and expenses of the witness so paid.

Rights of accused preserved

(3) Nothing in this section limits the right of the accused person to procure and produce at the trial at his own expense the witnesses whom he may desire, if the exigencies of the service permit.

Civilian witnesses

(4) Nothing in this section shall be construed so as to limit the power to summon civilian witnesses under section 87 of the Act.

Evidence on Commission

C. 109. Appointment of Commissioner

(1) Where it appears to the Judge Advocate-General, or to any person whom he may appoint for that purpose—

(a) that the attendance at a trial by court-martial of a witness for the prosecution is not readily obtainable because the witness is ill or is absent from the country in which the trial is held, or that the attendance of a witness for the accused person is not readily obtainable for any reason; or

(b) that the attendance of a witness for the prosecution at a trial by court-martial in any place out of Tanzania is not readily obtainable and under the law of that place there is no provision for compulsory attendance of that witness at the court-martial,

the Judge Advocate-General, or the person whom he may appoint for that purpose, may appoint any officer or other qualified person (in this section referred to as a "Commissioner") to take the evidence of the witness under oath.

Admissibility of evidence on Commission

(2) The document containing the evidence of a witness, taken under subsection (1) and duly certified by the Commissioner, is admissible in evidence at a court-martial to the same extent and subject to the same objections as if the witness had given the evidence in person at the trial.

Personal attendance of witness

(3) Where, in the opinion of the president of a court-martial, a witness whose evidence has been taken on commission should in the interest of justice appear and give evidence before the court-martial and that witness is not too ill to attend the trial and is not outside the country in which the trial is held, the president may require the attendance of that witness.

Cross-examination

(4) At any proceedings before a Commissioner the accused person and the prosecutor are entitled to be represented and the persons representing them have the right to examine and cross-examine any witness.

Copy to accused

(5) The accused person shall, at least twenty-four hours before it is admitted at the court-martial, be furnished without charge with a copy of the document mentioned in subsection (2).

View by Court-martial

C. 110. President may authorise viewing

A court-martial may, where the president considers it necessary, view any place, thing or person.

Objection to Members of Court-martial

C. 111. Right of accused

(1) When a court-martial is assembled, the names of the president and other members shall be read over to the accused person who shall be asked if he objects to being

tried by any of them, and if he objects the court-martial shall decide whether the objection shall be allowed.

Replacements

(2) The procedure for the replacement of a president of a court-martial or any other members of a court-martial in respect of whom an objection has been allowed shall be as prescribed in Defence Forces Regulations.

Oaths at Courts-martial

C. 112. Persons required to take oath

(1) At every court-martial an oath shall be administered to each of the following persons:

- (a) the president and other members of the court-martial;
- (b) the Judge Advocate;
- (c) court reporters;
- (d) interpreters; and
- (e) witnesses,

in the manner and in the forms prescribed in Defence Forces Regulations.

Solemn affirmation

(2) If a person to whom an oath is required to be administered under subsection (1)–

(a) objects to take the oath and the president of the court-martial is satisfied of the sincerity of the objection; or

(b) is objected to as incompetent to take the oath and the president of the court-martial is satisfied that the oath would have no binding effect on the conscience of that person,

the president shall require that person, instead of being sworn, to make a solemn affirmation in the form prescribed in Defence Forces Regulations and, for the purposes of the Act, a solemn affirmation shall be deemed to be an oath.

Adjournment and Dissolution

C. 113. Adjournment

A court-martial may be adjourned whenever the president considers adjournment desirable.

C. 114. Dissolution when numbers reduced

(1) Where, after the commencement of a trial, a court-martial is by death or otherwise reduced below the minimum number of members prescribed in this Code, it shall be deemed to be dissolved.

President unable to attend

(2) Where, after the commencement of a trial, the president of a court-martial dies or for any other reason cannot attend and the court-martial is not thereby reduced below the minimum number of members prescribed in this Code, the authority who convened the court-martial may appoint the senior member of the court-martial to be the president and the trial shall proceed; but if the senior member of the court-martial is not of sufficient rank to be appointed president, the court-martial shall be deemed to be dissolved.

Illness of accused

(3) Where, on account of the illness or other incapacity of the accused, it is impossible to continue the trial within a reasonable time the authority who convened the court-martial shall dissolve the court-martial.

Injustice to accused

(4) Where, at any time it appears to the authority who convened the court-martial that the accused would suffer an injustice if the court-martial was not to be dissolved, the authority shall dissolve the court-martial.

Effect of dissolution

(5) Where a court-martial is dissolved pursuant to this section, the accused person may be dealt with as if the trial had never commenced.

Amendment of Charges

C. 115. Amendment

(1) Where, at any time during a trial by court-martial it appears to the president that there is a technical defect in a charge, the president, if he is of the opinion that the accused person will not be prejudiced in the conduct of his defence by an amendment, shall make such order for the amendment of the charge as he considers necessary to meet the circumstances of the case.

Procedure

(2) Where an amendment to the charge has been made, the president of the court-martial shall, if the accused person so requests, adjourn the court-martial for such period as the president considers necessary to enable the accused person to meet the charge so amended.

Minute of amendment

(3) Where a charge is amended, a minute of the amendment shall be endorsed upon the charge sheet and signed by the president of the court-martial; and the charge sheet so amended shall be treated for the purposes of the trial and all proceedings in connection with it as being the original charge sheet.

Decisions by Courts-martial

C. 116. Majority vote

(1) Subject to this section, the finding and the sentence of a court-martial and the decision in any other matter or question arising after the commencement of the trial shall be determined by the vote of a majority of the members.

Equality on finding

(2) In the case of an equality of votes on the finding, the accused shall be found not guilty.

Equality on sentence

(3) In the case of an equality of votes on the sentence or on any other matter arising after the commencement of the trial, except the finding, the president of the court-martial shall have a second or casting vote.

Questions of law

(4) Where a Judge Advocate has been appointed to officiate at a court-martial, he may, in those circumstances and subject to the conditions and procedures as are prescribed in Defence Forces Regulations, determine questions of law arising before or after the commencement of the trial.

Unanimous finding where punishment of death is mandatory

(5) Where the only punishment that a court can impose for an offence is death, a finding of guilty shall not be made except with the concurrence of all the members, and where there is no concurrence and no finding is made, the president of the court-martial shall so report to the convening authority and the court-martial shall then be deemed to be dissolved and the accused may be tried again as if no previous trial had been held.

Where death not mandatory

(6) Where the imposition of a punishment of death is not mandatory, the punishment of death shall not be imposed except with the concurrence of all the members of the court-martial.

Similar Offences

C. 117. Similar offences may be considered in imposing sentence

A court-martial may, at the request of the offender and in its discretion, take into consideration, for the purposes of sentence other service offences similar in character to that of which the offender has been found guilty that are admitted by him, as if he had been charged with, tried for and found guilty of those offences; but the sentence of the court-martial shall not include any punishment higher in the scale of punishments than the punishment that might be imposed in respect of any offence of which the offender has been found guilty.

Pronouncement of Findings and Sentence

C. 118. Effect

The finding and sentence of a court-martial shall at the conclusion of the trial be pronounced to the offender in open court and he shall be under the sentence as of the date of its pronouncement.

Recommendation to Clemency

C. 119. Applicable in certain cases only

Where a court-martial has found a person guilty of an offence prescribed in sections C. 11, C. 12, C. 13, C. 14 or C. 65 of this Code for which or in circumstances in which the punishment of death is mandatory, or in section C. 29 of this Code, for which the punishment of dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces is mandatory or for an offence under section C. 65 of this Code for which a minimum sentence is prescribed, the court-martial may recommend clemency and the recommendation shall be attached to and form part of the minutes of the proceedings of the trial.

Decision where Accused Insane at Trial

C. 120. Trial of issue of insanity

(1) Where at any time after a trial by court-martial commences and before the finding of the court-martial is made, it appears that there is sufficient reason to doubt whether the accused person is then, on account of insanity, capable of conducting his defence, an issue shall be tried and decided by that court-martial as to whether the accused person is or is not then, on account of insanity, unfit to stand or continue his trial.

Trial proceeds where accused sane

(2) Where the decision of the court-martial on an issue mentioned in subsection (1) is that the accused person is not then unfit to stand or continue his trial, the court-martial shall proceed to try that person as if no such issue had been tried.

Disposal of accused in Tanzania

(3) Where the decision of a court-martial held in Tanzania is that the accused person is unfit to stand or continue his trial on account of insanity, the court martial shall order the accused person to be kept in strict custody, and he shall be kept in custody until the directions of the Minister responsible for legal affairs have been obtained, and the Minister may make an order for the safe custody of such person as if the same decision had been made in respect of him by a civil court in Tanzania.

Disposal of accused outside Tanzania

(4) Where the decision of a court-martial held out of Tanzania is that the accused person is unfit to stand or continue his trial on account of insanity, the court-martial shall order that person to be kept in strict custody and he shall be transferred as soon as conveniently may be, to Tanzania and upon transfer he shall be kept in custody until the directions of the Minister responsible for legal affairs have been obtained, and then Minister may make an order for the safe custody of those person as if the same decision had been made in respect of him by a civil court in Tanzania.

Saving of jurisdiction

(5) No decision of a court-martial that an accused person is unfit to stand or continue his trial by reason of insanity prevents that person being afterwards tried in respect of the offence or of any other offence of which he might have been found guilty on

the same charge; and the period during which he is unfit to stand or continue his trial by reason of insanity shall not be taken into account in applying to him in respect of that offence the provisions of section C. 6 of this Code.

Decision where Accused Insane when Offence Committed

C. 121. Special finding

(1) Where any act or omission is charged against any person as an offence, and it is given in evidence at the trial of that person for that offence that he was insane so as not to be responsible for his action at the time when the act was done or omission made, then if it appears to the court-martial before which that person is tried that he did the act or made the omission charged but was insane as at the time when he did or made the same, the court-martial shall make a special finding to the effect that the accused committed the act or made the omission charged but, by reason of his insanity, is not guilty of the offence.

Disposal of accused in Tanzania

(2) Where a court-martial held in Tanzania makes a special finding under subsection (1) that an accused person was insane, it shall order that person to be kept in custody and he shall be kept in custody until the directions of the Minister for the time being responsible for legal affairs are obtained, and the Minister may make an order for the safe custody of the person as if the finding has been made in respect of him by a civil court in Tanzania.

Disposal of accused outside Tanzania

(3) Where a court-martial held out of Tanzania makes a special finding under subsection (1) that an accused person was insane, it shall order that person to be kept in

strict custody and he shall be transferred, as soon as conveniently may be to Tanzania and upon transfer to Tanzania he shall be kept in custody until the directions of the Minister responsible for legal affairs aforesaid are obtained, and the Minister may make an order for the safe custody of such person as if the finding had been made in respect of him by a civil court in Tanzania.

Procedure at Conclusion of Court-martial

C. 122. Advice as to rights of appeal

(1) Where a court-martial has found a person guilty, the court-martial, at the conclusion of the trial, shall, unless the sentence imposed in respect of the finding of guilty is a severe reprimand, reprimand or a fine less than the equivalent of basic pay for one month or any such reprimand together with that fine, inform that person as to his rights of appeal.

Form of Statement of Appeal

(2) A person mentioned in subsection (1) shall as soon as practicable after the conclusion of the trial have delivered to him the form of Statement of Appeal mentioned in section C. 144 of this Code.

Delivery of minutes of proceedings

(3) Where a person mentioned in subsection (1) informs the appropriate military authorities that he intends to appeal against the legality of any or all of the findings or the legality of the sentences, a copy of the minutes of the proceedings of the court-martial in respect of which the appeal is to be made shall be delivered to such person without charge as soon as practicable after he has made known his intention to appeal as aforesaid.

PART V

PROVISIONS APPLICABLE TO FINDINGS AND SENTENCES AFTER TRIAL

Execution of Punishment of Death

C. 123. Regulations respecting execution of punishment of death

The execution of a punishment of death under this Act, whether the sentence was passed in Tanzania or elsewhere, shall be as prescribed in Defence Forces Regulations and, without limiting the generality of the foregoing, the Regulations may make provisions for—

(a) the custody and treatment of the person under sentence and his removal from one place or establishment to another between the passing of the sentence and the execution of the punishment; and

(b) the manner in which, the person by whom and the country or territory, place and kind of establishment where, the punishment is to be executed.

Imprisonment and Detention

C. 124. Commencement

(1) Subject to sections C. 133 and C. 134 of this Code, the term of punishment of imprisonment or detention shall commence on the date upon which the service tribunal pronounces sentence upon the offender.

Time counted

(2) The only time that shall be reckoned towards the completion of a term of punishment of imprisonment or detention shall be the time that the offender spends in civil custody or service custody while under the sentence in which that punishment is included.

C. 125. Service prison and detention barracks

(1) Such places, either in or outside Tanzania, as are designated by the Minister for the purpose shall be service prisons and detention barracks, and any hospital or other place for the reception of sick persons to which a person who is a service prisoner or service detainee has been admitted shall, as respects that person, be deemed to be part of the place to which he has been committed.

Corrective disciplinary measures for service prisons and detention barracks

(2) The nature of and the manner of imposing corrective measures for breach of Defence Forces Regulations, orders and rules applicable in respect of service prisons and detention barracks by a person committed there as the result of a sentence passed upon him, and the terms and conditions of remission for good conduct of any part of a punishment involving incarceration which is to be served there shall be as prescribed in Defence Forces Regulations.

Limitation

(3) Corrective measures referred to in subsection (2) shall not include any corporal punishment or any of the punishments referred to in paragraphs (a) to (k) of subsection (1) of section C. 68 of this Code and such corrective measures shall not be imposed so as to increase any sentence involving a term of incarceration.

Punishments requiring Approval

C. 126. Death

(1) A punishment of death imposed by a court-martial is subject to approval by the President and shall not be carried out unless so approved.

Dismissal

(2) A punishment of dismissal with disgrace from the Defence Forces or of dismissal from the Defence Forces, whether it is expressly included in the sentence passed by a service tribunal or whether it is deemed to be included in the sentence pursuant to paragraph (b) or (c) of section C. 69 of this Code, is subject to approval by the Minister or any military authorities which are prescribed in Defence Forces Regulations and shall not be carried out unless so approved; but any punishment of imprisonment or detention included in the sentence shall commence and be carried out under section C. 124 of this Code as if the sentence had not included a punishment of dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces, as the case may be.

Effective date of dismissal

(3) A punishment of dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces shall be deemed to be carried out as of the date upon which the release of the offender from the Defence Forces is effected.

Substitution where punishment not approved

(4) An authority mentioned in section C. 130 of this Code has power to substitute a new punishment for—

- (a) a punishment of death that has not been approved under subsection (1);

(b) a punishment of dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces that has not been approved under subsection (2); or

(c) a punishment, imposed by a commanding officer at a summary trial, that has not been approved under subsection (2) or (6), as the case may be, of section C. 90 of this Code.

Quashing of Findings

C. 127. Authority

(1) The Minister and any other military authorities which may be prescribed in Defence Forces Regulations, may quash any finding of guilty made by a service tribunal.

Effect upon sentence of complete quashing

(2) Where, after a finding of guilty has been quashed, no other finding of guilty remains, the whole of the sentence passed by the service tribunal ceases to have force and effect.

Effect upon sentence of partial quashing

(3) Where, after a finding of guilty has been quashed another finding of guilty remains, and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorised by this Code in respect of the findings of guilty which remain, or is, in the opinion of the authority who quashed the finding, unduly severe, he shall, subject to the conditions set out in section C. 132 of this Code, substitute that new punishment or punishments which he considers appropriate.

Substitution of Findings

C. 128. Substitution of findings

(1) The Minister and any other military authorities which may be prescribed in Defence Forces Regulations, may—

(a) substitute a new finding for any finding of guilty made by a service tribunal that is illegal or cannot be supported by the evidence, if the new finding could validly have been made by the service tribunal on the charge and if it appears that the service tribunal was satisfied of the facts establishing the offence specified or involved in the new finding;

(b) substitute for the finding of guilty made by a service tribunal a new finding of guilty of some other offence, if the tribunal could have found the offender guilty of that other offence on any alternative charge that was laid, and it appears that the facts established proved him guilty of that other offence.

Effect upon sentence

(2) Where a new finding has been substituted for a finding made by a service tribunal and any punishment included in the sentence passed by the service tribunal is in excess of the punishment authorised by this Code in respect of the new finding or is, in the opinion of the authority who substituted the new finding, unduly severe, he shall, subject to the conditions set out in section C. 132 of this Code, substitute the new punishment or punishments which he considers appropriate.

New Trial

C. 129. New trial

(1) Where a service tribunal has found a person guilty of an offence and the Judge Advocate-General certifies that in his opinion a new trial is advisable by reason of an irregularity in law in the proceedings before the service tribunal, the Minister may set aside

the finding of guilty and may if he thinks fit direct a new trial, in which case that person shall be tried again for that offence as if no previous trial had been held.

Punishment

(2) Where at a new trial held pursuant to this section or section C. 147 or C. 156 of this Code, a person is found guilty—

(a) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in the first instance;

(b) if the new punishment includes a term of incarceration, there shall be deducted from that term any time during which the offender had been incarcerated following the pronouncement of the previous sentence; and

(c) if the new punishment is in the same paragraph in the scale of punishments as the punishment imposed by the service tribunal in the first instance, the new punishment shall not be in excess of the previous punishment.

Substitution of Punishments

C. 130. Authority

Where a service tribunal has passed a sentence in which is included an illegal punishment, the Minister and any other military authorities which may be prescribed in Defence Forces Regulations may, subject to the conditions set out in section C. 132 of this Code, substitute for the illegal punishment any new punishment or punishments which he considers appropriate.

Mitigation, Commutation and Remission of Punishments

C. 131. Authority

The Minister and any other military authorities which may be prescribed in Defence Forces Regulations, may, subject to the conditions set out in section C. 132 of this Code, mitigate, commute or remit any or all of the punishments included in a sentence passed by a service tribunal.

Conditions Applicable to New Punishments

C. 132. Limitation upon new punishments

The following conditions apply where, under this Code, a new punishment, by way of substitution or commutation, replaces a punishment imposed by a service tribunal—

(a) the new punishment shall not be any punishment that could not legally have been imposed by the service tribunal on the charges of which the offender was found guilty and in respect of which the findings have not been quashed or set aside by way of substitutions;

(b) the new punishment shall not be higher in the scale of punishments than the punishment imposed by the service tribunal in the first instance and, if the sentence passed by the service tribunal included a punishment of incarceration, the new punishment shall not involve a period on incarceration exceeding the period comprised in that sentence;

(c) where the new punishment is detention and the punishment that it replaces is imprisonment, the term of detention from the date of alteration shall in no case exceed the term of imprisonment remaining to be served, and in any event shall not exceed a term of one year; and

(d) where the offence of which a person has been found guilty by a service tribunal is an offence prescribed in sections C. 11, C. 12, C. 13, C. 14 or C. 65 of this

Code for which the punishment of death is mandatory, or in section C. 29 of this Code, for which the punishment of dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces is mandatory, or an offence under section C. 65 of this Code for which a minimum sentence is prescribed, the punishment may, subject to this section, be altered to any one or more of the punishments lower in the scale of punishments than the punishment provided for in the enactment prescribing the offence.

Effect of New Punishments

C. 133. Ordinary provisions to apply

Where under the authority of this Code, a new punishment, by reason of substitution or commutation, replaces a punishment imposed by a service tribunal, the new punishment has force and effect as if it had been imposed by the service tribunal in the first instance and the provisions of this Code shall apply accordingly; but where the new punishment involves incarceration, the term of the new punishment shall be reckoned from the date of substitution or commutation as the case may be.

Suspension of Imprisonment or Detention

C. 134. Authority Act No. 32 of 1966 s. 5(f)

(1) Where an offender has been sentenced to imprisonment or detention, the carrying into effect of the punishment may be suspended by the Minister or any other military authorities which may be prescribed in Defence Forces Regulations and the Minister or any authority so prescribed is referred to in this section as a "suspending authority".

Postponement of committal

(2) Where, in the case of an offender upon who any punishment mentioned in subsection (1) has been imposed, suspension of the punishment has been recommended, the authority empowered to commit the offender to a civil prison, service prison or detention barracks, as the case may be may postpone committal until directions of a suspending authority have been obtained.

Suspension possible at any time

(3) A suspending authority may, in the case of an offender upon whom any punishment mentioned in subsection (1) has been imposed, suspend the punishment whether or not the offender has already been committed to undergo that punishment.

Effect of suspension before committal

(4) Where a punishment is suspended before the offender has been committed to undergo the punishment, he shall, if in custody, be discharged from custody and the term of the punishment shall not commence until the offender has been ordered to be committed to undergo that punishment.

Effect of suspension after committal

(5) Where a punishment is suspended after the offender has been committed to undergo the punishment, he shall be discharged from the place in which he is incarcerated and the currency of the punishment shall be arrested from the day on which he is so discharged, until he is again ordered to be committed to undergo that punishment.

Review and remission

(6) Where a punishment has been suspended, it may at any time, and shall at intervals of not more than three months, be reviewed by a suspending authority and if on

the review it appears to the suspending authority that the conduct of the offender since the punishment was suspended has been such as to justify a remission of the punishment, he may remit it.

Automatic remission of punishments exceeding thirty days' detention

(7) A punishment, except a punishment referred to in subsection (10), that has been suspended shall be deemed to be wholly remitted on the expiration of a period, commencing on the day suspension was ordered, equal to the term of the punishment less any time during which the offender has been incarcerated following pronouncement of the sentence, unless the punishment has been put into execution prior to the expiration of that period.

Committal after suspension

(8) A suspending authority may, at anytime while a punishment is suspended, direct the authority who is empowered to commit the offender, to commit him, and from the date of the committal order that punishment ceases to be suspended.

Term where suspended punishment put into execution

(9) Where a punishment that has been suspended under this section is put into execution, the term of the punishment shall be deemed to commence on the date upon which it is put into execution, but there shall be deducted from the term any time during which the offender has been incarcerated following pronouncement of the sentence.

Punishment not exceeding thirty days' detention

(10) A punishment of detention not exceeding thirty days that has been suspended shall be deemed to be wholly remitted upon the expiration of three months commencing

on the day the suspension was ordered, unless the punishment has been put into execution prior to the expiration of that period.

Committal to Imprisonment or Detention

C. 135. Committing authority

(1) Defence Forces Regulations may prescribe or appoint military authorities for the purposes of this section and that authority is referred to in this section as a "committing authority".

Warrants for committal and indemnity

(2) A committal order, in such form as is prescribed in Defence Forces Regulations, made by committing authority is a sufficient warrant for the committal of a service prisoner or service detainee to any lawful place of confinement.

Authority for transfer Act No. 32 of 1966 s. 5(g)

(3) A committing authority may from time to time by warrant order that a service prisoner or service detainee shall be transferred from the place to which he has been committed to undergo his punishment to any other place in which that punishment may lawfully be put into execution.

Custody pending committal and during transfer

(4) Until he is delivered to the place where he is to undergo his punishment or while he is being transferred from one place to another such place, a service prisoner or a service detainee may be held in any place, either in service custody or in civil custody or at one time in service custody and at another time in civil custody, as occasion may require,

and may be transferred from place to place by any mode of conveyance under any restraint which is necessary for his safe conduct.

Committal to civil prisons

(5) Where a punishment of imprisonment is to be put into execution, the service prisoner shall as soon as practicable be committed to a civil prison there to undergo his punishment according to law; except that a committing authority may, in accordance with Defence Forces Regulations, order that a service prisoner be committed to a service prison or detention barracks there to undergo his punishment or part of his punishment.

Committal to detention barracks

(6) Where a punishment of detention is to be put into execution, the service detainee shall as soon as practicable be committed to a detention barracks there to undergo his punishment.

Temporary Removal from Incarceration

C. 136. Authority required

A service prisoner or a service detainee may, by an order made by a committing authority mentioned in section C. 135 of this Code, be removed temporarily from the place to which he has been committed for the period which may be specified in that order but, until his return to that place, he shall be retained in service custody or civil custody, as occasion may require, and no further committal order is necessary upon his return to that place.

Rules Applicable to Service Prisoners

C. 137. Rules of civil prisons to apply

While a service prisoner is undergoing punishment in civil prison, he shall be dealt with in the same manner as other prisoners in the place where he is undergoing punishment, and all rules applicable in respect of a person sentenced by a civil court to imprisonment (including the rules for remission for good conduct) shall, insofar as circumstances permit, apply accordingly, but an authority mentioned in section C. 131 or C. 134 of this Code may order that he be discharged prior to the expiration of the term of his punishment.

Validity of Documents

C. 138. Correction of errors in form and indemnity

The custody of a service prisoner or service detainee is not illegal by reason only of informality or error in or in respect of a document containing a warrant, order or direction issued in pursuance of this Code, or by reason only that that document deviates from the prescribed form; and that document may be amended appropriately at any time by the authority who issued it in the first instance or by any other authority empowered to issue documents of the same nature; and no action shall lie in respect of anything done by any person in pursuance of a service sentence of imprisonment or detention pursuant to that document.

Insanity during Imprisonment or Detention

C. 139. Insane persons in civil prisons

A service prisoner who, having been released from the Defence Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a civil

prison shall be treated in the same manner as if he were a person undergoing a term of imprisonment in the civil prison by virtue of the sentence of a civil court.

C. 140. Insane persons in service prisons or detention barracks

A service prisoner or service detainee who, having been released from the Defence Forces, is or becomes insane, mentally ill or mentally deficient while undergoing punishment in a service prison or detention barracks, shall be treated in the same manner as if he were a person undergoing a term of imprisonment in a civil prison who is or becomes insane, mentally ill or mentally deficient and until directions are received relating to his removal to a place of safe keeping he shall be kept in strict custody whether or not his term of imprisonment or detention has expired.

Transfer of Offenders

C. 141. Transfer of offenders

A serviceman who has been found guilty of an offence by a civil or military tribunal of any country other than Tanzania and sentenced to a term of incarceration may, with the approval of the Minister or any military authorities who may be prescribed in regulations made for that purpose, be transferred to the custody of the appropriate civil or military authorities of Tanzania for incarceration under this Act, and any person so transferred may, in lieu of the incarceration to which he was sentenced, be imprisoned or detained for the term or the remainder of the term of incarceration to which he was sentenced as though he had been sentenced for that term by a service tribunal of Tanzania, and the provisions of this Part are applicable in respect of every person so transferred as though he had been so sentenced.

Restitution of Property

C. 142. Restitution of property in case of conviction

(1) Where a person is convicted of an offence under this Code, the service tribunal shall order that any property obtained by the commission of the offence be restored to the person apparently entitled to it, if at the time of the trial the property is before the service tribunal, or has been detained, so that it can be immediately restored to that person under the order.

Restitution when no conviction

(2) Where an accused is tried for an offence but is not convicted, and it appears to the service tribunal that an offence has been committed, the service tribunal may order that any property obtained by the commission of the offence shall be restored to the person apparently entitled to it, if at the time of the trial the property is before the service tribunal, or has been detained, so that it can be immediately restored to that person under the order.

Exception

(3) An order shall not be made under this section in respect of—

(a) property to which a purchaser in good faith for value has acquired lawful title;

(b) a valuable security that has been paid or discharged in good faith by a person who was liable to pay or discharge it;

(c) a negotiable instrument that has, in good faith, been taken by transfer or delivery for valuable consideration by a person who had no notice and no reasonable cause to suspect that an offence had been committed.

Execution of order for restitution

(4) An order made under this section shall be executed by the persons by whom the process of the service tribunal is ordinarily executed.

No bar to recovery

(5) 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 in pursuance of that an order from the person to whom it is delivered or paid.

PART VI

APPEAL, REVIEW AND PETITION

Right to Appeal

C. 143. Cases in which applicable

(1) Subject to subsection (2) of this section and subsection (3) of section C. 144 of this Code, every person found guilty of an offence by a court-martial may appeal—

(a) to the Court-martial Appeal Court against the finding or against the legality of the sentence; and

(b) to any authorities which may be prescribed in section C. 145 of this Code, against the severity of any sentence.

When appeal not to lie

(2) No appeal shall lie to the Court-martial Appeal Court where the sentence imposed by the court-martial consists only of a severe reprimand, a reprimand or a fine

less than the equivalent of basic pay for one month or that reprimand together with that fine.

Entry of Appeals

C. 144. Form

(1) An appeal under this Part shall be stated on a form to be known as a Statement of Appeal, which shall contain particulars of the grounds upon which the appeal is founded and shall be signed by the appellant.

Validity

(2) A Statement of Appeal is not invalid by reason only of informality or the fact that it deviates from the prescribed form.

Time limits

(3) No appeal under this Part shall be entertained unless—

(a) a notice of intention to appeal is delivered to a superior officer or to any person by whom the appellant is held in custody within seven days of the receipt by him of the form of Statement of Appeal; and

(b) where the notice of intention has been given, the Statement of Appeal is delivered to a superior officer or to any person by whom the appellant is held in custody—

(i) within twenty-one days after delivery to the appellant pursuant to section C. 122 of this Code of a copy of the minutes of the proceedings; or

(ii) where the finding or sentence in respect of which the appellant intends to appeal has been altered under sections C. 126, C. 128, C. 130 or C. 131 of this

Code, within twenty-one days after the date upon which notice of the alteration is given to the appellant.

Where Statements sent

(4) All Statements of Appeal shall be forwarded to the Judge Advocate-General.

Preliminary Disposition of Appeals

C. 145. Where severity of sentence only involved

(1) Where an appeal relates only to the severity of the sentence mentioned in paragraph (b) of subsection (1) of section C. 143 of this Code, the Judge Advocate-General shall forward the Statement of Appeal to an authority who under section C. 131 of this Code, has power to mitigate, commute or remit punishments, and that authority may dismiss the appeal or, subject to Part V of this Code, may mitigate, commute or remit the punishments comprised in the sentence.

Illegal sentences

(2) Where an appeal related to the legality of the sentence, the Statement of Appeal shall be referred by the Judge Advocate-General to the court-martial Appeal Court, unless the Judge Advocate-General certifies that there is no finding in respect of which any sentence could legally be passed, in which case the sentence shall be null and void.

Illegal findings

(3) In any other case provided for in paragraph (a) of subsection (1) of section C. 143 of this Code, the Statement of Appeal shall be referred by the Judge Advocate-General to the court-martial Appeal Court provided for in this Part, unless the

Chief of the Defence Forces acting on the certificate of the Judge Advocate-General that all of the findings in respect of which an appeal has been made are illegal or unsupported by the evidence, quashes the findings.

Court-martial Appeal Court

C. 146. Court established

(1) There shall be a Court-martial Appeal Court, which shall hear and determine all appeals referred to it under this Part.

Judges

(2) The judges of the High Court shall be the judges of the Court-martial Appeal Court.

Sittings and hearings

(3) The Court-martial Appeal Court may sit and hear appeals at any place or places, and the senior judge of the Court shall arrange for sittings and hearings as may be required.

Quorum and decisions

(4) Three judges of the Court-martial Appeal Court constitute a quorum, and the decision on any appeal shall be determined by the vote of the majority of the judges present, and in the event of an equality of votes, the appeal shall be dismissed.

Superior Court of Record

(5) The Court-martial Appeal Court is a Superior Court of Record.

Evidence

(6) The Court-martial Appeal Court may hear evidence, including new evidence, as it may deem expedient, and the Court may sit in camera or in public.

Registrar and staff

(7) The Registrar of the High Court is ex officio the Registrar of the Court-martial Appeal Court and the officers, clerks and employees appointed to the High Court shall perform the duties of their respective offices in relation to the court-martial Appeal Court.

Disposition of Appeals by Court-martial Appeal Court

C. 147. Powers

(1) Upon the hearing of an appeal respecting the finding of guilty on any charge, the Court-martial Appeal Court, if it allows the appeal, shall set aside the finding and—

- (a) direct a finding of not guilty to be recorded in respect of that charge; or
- (b) authorise a new trial on that charge, in which case the appellant may be tried again as if no trial on that charge had been held.

Effect of setting aside finding of guilty

(2) Where the Court-martial Appeal Court has set aside a finding of guilty and no other finding of guilty remains, the whole of the sentence ceases to have force and effect.

Punishment where finding set aside

(3) Where the Court-martial Appeal Court has set aside a finding of guilty but another finding of guilty remains, the Court shall then refer the proceedings to the Minister, or to any other military authority which may be prescribed in Defence Forces Regulations, which shall—

(a) confirm the punishment imposed by the court-martial if the court-martial could legally have imposed that punishment upon the finding of guilty that remains; or

(b) subject to section C. 132 of this Code, substitute for the punishment imposed by the court-martial any new punishment or punishments which it considers appropriate.

Substitution of finding

(4) Where an appellant has been found guilty of an offence and the court-martial could have found him guilty under section C. 67 of this Code of some other offence, or could have found him guilty of some other offence on any alternative charge that was laid, and on the actual finding it appears to the Court-martial Appeal Court that the facts proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of guilty made by the court-martial a finding of guilty of that other offence, and the Court shall then refer the proceedings to the Minister, or to any other military authority which may be prescribed in Defence Forces Regulations, which shall—

(a) confirm the punishment imposed by the court-martial if the court-martial could legally have imposed that punishment upon the substituted finding of guilty; or

(b) subject to section C. 132 of this Code, substitute for the punishment imposed by the court-martial such new punishments which it considers appropriate.

New punishments

(5) Where, pursuant to subsection (3) or (4), a new punishment is substituted, the punishment imposed by the court-martial then ceases to have effect, and section C. 133 of this Code, applies to the new punishment or punishments.

C. 148. Substitution of new punishment where illegal punishment set aside

Upon the hearing of an appeal respecting the legality of a sentence passed by a court-martial, the Court-martial Appeal Court, if it allows the appeal, shall then refer the proceedings to the Minister, or to any other military authority which may be prescribed in Defence Forces Regulations, which shall, subject to section C. 132 of this Code, substitute for the punishment imposed by the court-martial any new punishment or punishments which he considers appropriate and every punishment comprised in the sentence passed by the court-martial then ceases to have force and effect; and section C. 133 of this Code, applies to the new punishment or punishments.

C. 149. Special power to disallow appeal

Notwithstanding anything in this Part, the Court-martial Appeal Court may dismiss an appeal if, in the opinion of the Court, to be expressed in writing, there has been no failure of justice.

C. 150. Powers of service authorities preserved

Where a punishment included in a sentence has been dealt with pursuant to subsection (3) or (4) of section C. 147 or section C. 148 of this Code, the new punishment shall be subject to mitigation, commutation, remission or suspension in the same manner and to the same extent as if it had been passed by the court-martial that tried the appellant.

C. 151. Summary determination of appeals

Where it appears to the Judge Advocate-General that no substantial grounds of appeal have been shown, or that the appellant has abandoned his appeal, the Judge Advocate-General may refer the appeal to the Court-martial Appeal Court for summary determination, and where an appeal is referred to the Court under this section, the Court may, if it considers—

- (a) that the appeal has been abandoned; or
 - (b) that no substantial grounds of appeal have been shown and the appeal can be determined without being adjourned for a full hearing,
- dismiss the appeal summarily without calling on any person to appear.

Rules of Appeal Procedure

C. 152. Senior judge may make rules

(1) The senior Judge of the Court-martial Appeal Court, with the approval of the President, may make rules not inconsistent with the Act respecting—

- (a) the practice and procedure to be observed at hearings;
- (b) the conduct of appeals;
- (c) the production of the minutes of the proceedings of any court-martial in respect of which an appeal is taken;
- (d) the production of all other documents and records relating to an appeal;
- (e) the extent to which new evidence may be introduced;

(f) the circumstances in which the appellant may attend or appear before the Court on the hearing of his appeal, but no rule shall deprive an appellant of the right to be present on the hearing of his appeal from a sentence of death;

(g) provision for and payment of fees of counsel for the appellant; and

(h) the circumstances in which an appeal may be considered to be abandoned for want of prosecution, and the summary disposition by the Court of the appeals, and of appeals showing no substantial grounds.

Publication in Gazette

(2) Rules made under this section shall be published in the Gazette.

No Appeal from Court-martial Appeal Court

C. 153. Appeals to be final

Any determination by the Court-martial Appeal Court of any appeal or other matter which it has power to determine under the provisions of this Part shall be final and no appeal shall lie from the Court-martial Appeal Court to any other court.

Review after Expiration of Right to Appeal

C. 154. Review by Judge Advocate-General

Upon the expiration of the period mentioned in subsection (3) of section C. 144 of this Code, within which an appeal may be made, the proceedings of every court-martial shall be reviewed by the Judge Advocate-General in respect of any matter mentioned in section C. 143 of this Code, except any matter relating to severity of sentence as mentioned in paragraph (b) of subsection (1) of the said section C. 143, on which an appeal has not been made.

C. 155. Procedure where illegality exists

Where, upon the review mentioned in section C. 154 of this Code, the Judge Advocate-General certifies that any finding is illegal or not supported by the evidence, or any punishment is illegal, he shall refer the minutes of the proceedings of the court-martial to the Chief of the Defence Forces for any action under this Code which he may deem fit.

Petition for New Trial

C. 156. Where applicable

(1) Every person who has been tried and found guilty by a court-martial has a right to petition for a new trial on grounds of new evidence discovered subsequent to his trial.

Time limits

(2) No petition under this section shall be entertained unless it is delivered to an officer designated in Defence Forces Regulations—

- (a) within one year after the date of the pronouncement of the finding; or
- (b) within one year after any punishment of incarceration, undergone by the petitioner in consequence of his trial, has been carried out, whichever is the later.

Disposal

(3) Every petition under this section shall be forwarded to the Judge Advocate-General who shall refer the petition with his recommendation to the Chief of the Defence Forces, who may—

- (a) refuse to grant the petition;
- (b) quash the finding made at the original trial and order a new trial;

(c) quash the finding made at the original trial and dispense with the ordering of a new trial.

Petitioner may be tried again

(4) Where a new trial is ordered pursuant to this section, the petitioner may be tried again as if no trial had been held.

C. 157. Saving

Nothing in this Part is in derogation of the powers conferred under Part V of this Code to quash findings or alter findings and sentences.

C. 158. Saving of powers of the President

Nothing in this Code shall be construed as restricting or regulating the exercise of the prerogative of mercy conferred on the President by section 45 of the Constitution *.

SECOND, THIRD AND FOURTH SCHEDULES

[Omitted.]