

**THE NATIONAL DEFENCE ACT, 1966**  
**ARRANGEMENT OF SECTIONS**

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TRANSITIONAL PROVISIONS RELATING TO CODE OF SERVICE DISCIPLINE



## THE UNITED REPUBLIC OF TANZANIA



No. 24 OF 1966

I ASSENT,

*Julius K. Nyerere*  
President

5TH MARCH, 1966

**An Act to make provision for National Defence and for the maintenance, government and discipline of the Armed Forces**

ENACTED by the Parliament of the United Republic of Tanzania.

1. This Act may be cited as the National Defence Act, 1966 and shall come into operation on such date as the Minister shall, by notice published in the *Gazette*, appoint.

Short title  
and  
commence-  
ment

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

Application

3.-(1) In this Act, unless the context otherwise requires-

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

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

Interpretation

- "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;
- "Chief of the Defence Forces" means the officer so 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 any such 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 proceeding 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 materiel and other things situate in or on any Such 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 66;
- "the 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;

"enroll" 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 by 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;

"materiel" 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 for the time being responsible for defence;

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

"non-public property" means-

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

(ii) 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 such officers, men, units or other elements;

(iii) by-products and refuse and the proceeds of the sale thereof to the extent prescribed under subsection (5) of section 52; and

(iv) 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 (i), (ii) and (iii);

"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 materiel 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;

"Public emergency" means riot or such circumstances, including circumstances brought about by natural disaster, as 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 or the Common Services Organization;

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

"Reserve 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, authorized to give a lawful command to that other officer or man.

"unit" means a body of the Defence Forces that is organized as such pursuant to section 10, and includes the personnel and materiel thereof;

"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 I

### THE DEPARTMENT OF NATIONAL DEFENCE

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

5. 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. Minister

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

7.-(1) There shall be a Defence Forces Committee which shall consist of: - Defence Forces Committee

(a) the Minister;

(b) the Chief of the Defence Forces;

(c) the Principal Secretary for the Department of National Defence;

(d) the Chief of Personnel, Defence Forces;

(e) such other military members as may, from time to time, be appointed by the Minister; and

(f) in the event of some person other than the Principal Secretary for the Department of National Defence being appointed the Accounting Officer for the votes of the Defence Forces, such Accounting Officer.

(2) The Defence Forces Committee shall be responsible for such functions as 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.

Judge  
Advocate  
General  
Cap. 341

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

Boards of  
inquiry

9.-(1) The President, the Minister, and such other authorities as 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 of 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 II

### DEFENCE FORCES-COMPOSITION AND EMPLOYMENT

#### (a) *Composition of the Defence Forces*

Constitution

10. (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, that is to, say-

- (a) the Regular Force;
- (b) the Regular Reserve;
- (c) the Volunteer Reserve; and

Acts 1965  
No. 2

- (d) such other disciplined forces as are ordered to be mobilized for service pursuant to Part III of the Reserve Forces Act, 1965.

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

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

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

Regular  
Force

11.-(1) The Regular Force shall consist of those officers and men who are 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.

12. The Regular Reserve shall consist of-

Regular  
Reserve

- (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.

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

Volunteer  
Reserve

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

14.-(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 numbers of persons in each rank and trade group in the Defence Forces.

(b) Command

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

Chief of  
Defence  
Force

(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 otherwise directs, 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 Tanzania, the Minister, or the Defence Forces Committee shall be issued by or through the Chief of the Defence Forces.

16. (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.

Command  
appointments

(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.

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

Power of  
command

Powers of command of officers of co-operating and other forces

**18.-(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 thereof; 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 such 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 precedence consonant with his rank and, in any case where it is considered necessary or expedient for furthering such association, such authority and powers of command as may be specified therein.

(c) *Active Service and Aid to the Civil Power*

19.-(1) At any time when Tanzania is at war-

(a) the Regular Force; and

(b) such other components of the Defence Forces or any formation, unit or element thereof, as are mobilized,

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.

When Defence Forces deemed on active service

**20.-(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 thereof 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 such time, not exceeding six months, as may be specified in the declaration under this subsection.



(3) If at any time while the Defence Forces or a part thereof 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 thereof 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.

**21.**-(1) Subject to subsection (3), the Defence Forces, any part thereof, 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 such riot or disturbance of the peace is likely to be beyond the powers of the civil authorities to suppress or prevent.

Aid to the  
civil power

(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 mobilized pursuant to section 40, no member of the Regular Reserve shall be required to serve in aid of the civil power without his consent.

**22.** 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.

Officers and  
men have  
powers of  
police officer

**23.**-(1) Subject to subsections (3) and (4), Defence Forces Regulations may authorize the employment of the Defence Forces or any part thereof in rendering assistance to the civil authorities where such 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 such assistance may be rendered.

Other  
assistance  
to the civil  
authorities

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

(3) Unless he has been mobilized pursuant to section 40, no member of the Regular Reserve shall be required to perform any service in rendering assistance authorized by Regulations under this section without his consent.

(4) Unless he has been mobilized pursuant to section 40, 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 authorized by Regulations under this section without his consent.

..... 24. Nothing in this head of 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*

Co-operating 25. The President may, where he considers it appropriate so to do, declare, by notice 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 thereof, and may, if the officer commanding such 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 such officer commanding.

Attachment, etc., to Defence Forces 26. -(1) Where the service authorities having jurisdiction over any force to which this section applies place any member of such force at the disposal of the Defence Forces Committee, such member may be attached or seconded to the Defence Forces, and where any such member of another force is so seconded or attached he shall, during such 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 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 such first-mentioned force shall not, save in respect of any matter specified therein, be subject to the Code of Service Discipline.

(e) *Miscellaneous*

Supply and issue of materiel 27. The materiel supplied to or used by the Defence Forces shall be of such type, pattern and design and shall be issued on such scales and in such manner as the Defence Forces Committee or such authorities of the Defence Forces as are designated by the Committee for that purpose may approve.

Cadet organizations 28.-(1) The Minister may authorize the formation of Cadet organizations 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 such maximum age as may be prescribed by Defence Forces Regulations.

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

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

## PART III

## TERMS OF SERVICE OF MEMBERS OF THE DEFENCE FORCES

(a) *Enrollment and Re-engagement*

- 29.- (1) Persons shall be enrolled in the Defence Forces- Enrollment
- (a) as commissioned officers for indefinite or fixed terms of service;
- (b) as subordinate officers on probationary terms of service; or
- (c) as men for fixed terms of service,
- as may be prescribed in Defence Forces Regulations.
- (2) 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 such recommendation has been approved by the President.
- (3) Every person enrolled as a commissioned officer shall be granted a commission which shall issue under the hand of the President.
- (4) No person under the apparent age of eighteen years shall be enrolled without the consent in writing of one of his parents or his guardian or, where the parents or guardian are dead or unknown, by the Area Commissioner of the district in which such person resides.
30. 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. Re-engagement
31. The enrollment 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. Obligation to serve
32. Every person enrolled in the Defence Forces shall take the oath of allegiance and such other declarations in such manner and in such form as may be prescribed by Defence Forces Regulations. Oaths on enrollment
- 33.- (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 such an officer or man fully enrolled for service. Effect of receipt of pay if not enrolled or if irregularly enrolled
- (2) Where, although there has been an error or irregularity in his enrollment, 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 enrollment 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 forthwith 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*

Entitlement  
to release and  
exceptions

34.-(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 such sentence.

Regulations  
relating to  
release

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

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36. 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 canceled, and he shall thereupon, 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*

Promotion

37.-(1) Subject to subsection (2) of section 14 and to subsection (2) of this section, officers and men may be promoted by such authorities as 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 such 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.

**38.**-(1) Subject to subsections (2) and (3), officers and men may-

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

Reversion  
and  
remustering

with the approval of or by such authorities of the Defence Forces and in such circumstances and such manner as 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*

**39.** The Regular Force, all units and other elements thereof and all officers and men thereof, are at all times liable to Perform any lawful duty either within or outside Tanzania.

Regular  
Force

**40.**-(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 mobilized.

Mobilization  
of the  
Reserves

(2) In any such proclamation the President may give or cause to be given, or may authorize the Defence Forces Committee to give or cause to be given, such directions as may be necessary and proper for mobilizing the said Reserve Forces, or any part thereof, and every such proclamation and the directions given in pursuance thereof shall be obeyed as if enacted herein, and every officer or man of the Reserve Forces subject to such directions shall attend at the time and place fixed by the directions and at that time and place be deemed to be mobilized.

(3) Officers and men of the Reserve Forces shall, when mobilized, 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 mobilized, they shall remain mobilized until demobilized by directions given in Pursuance of a proclamation of the President for the standing down of the relevant Reserve Force or part thereof.

(5) Directions under subsection (4) shall include directions for the demobilization of officers and men of the relevant Reserve Force or part thereof who, since mobilization, have been transferred, attached or seconded to any other component, Unit or element of the Defence Forces which has not then been demobilized.

Other  
service:  
(a) the  
Regular  
Reserve

41.-(1) Except when mobilized pursuant to section 40, 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 service with his consent in aid of the civil power or in rendering assistance to the civil authorities (as provided in sections 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 such reports as are prescribed by Defence Forces Regulations.

Other  
service:  
(b) the  
Volunteer  
Reserve

42.-(1) In addition to his liability to serve on mobilization or when called out in aid of the civil power (as provided in sections 21, 23 and 40), officers and men of the Volunteer Reserve shall be liable to attend and be trained at such part-time local training and such annual camp training as 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.

Election to  
and  
candidature  
for National  
Assembly  
Cap. 505

43.-(1) Notwithstanding the provisions of the Disqualification (National Assembly and Miscellaneous Offices) Act, 1962 the acceptance of a commission or enrollment in the Reserve Forces shall not disqualify a person for election as a member of the National Assembly.

(2) An officer or man of the Regular Reserve or the Volunteer Reserve mobilized or called out for continuing full-time service either with the Regular Forces or the Reserve Forces shall, if a candidate for election to, or a member of, the National Assembly, cease to be mobilized or called out as aforesaid.

(e) *Attachment and Secondment*

Attachment  
and  
secondment

44.-(1) Subject to subsections (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 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 mobilized 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*

45.-(1) The pay and allowances of officers and men shall be at such rates and issued under such conditions as are prescribed by Defence Forces Regulations.

Pay, allowances, forfeitures and deductions

(2) The pay and allowances of officers and men are subject to such forfeitures and deductions as may be prescribed by Defence Forces Regulations.

46. 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.

Personal effects of deserters and absentees

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

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.

48.-(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, such executor the service estate of such 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.

Service estates

(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 such 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 Secretary of the district specified by the officer or man on enrollment 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 Secretary to whom a service estate has been delivered in accordance with paragraph (b) of subsection (2) shall-

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(a) if the estate is one in which the Probate and Administration Ordinance 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 Ordinance 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 on release, belonging to such deceased officer or man and found in camp, quarters or otherwise in the care of the Defence Forces.

Service  
wills

**49.** 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 such law as aforesaid 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,



50.-(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. Oath

(2) Any document purporting to have been signed by any officer authorized 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 such 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*

51. 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. Liability for loss or damage to public property

52.-(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 and men or for any other purpose approved by the Chief of the Defence Forces in the manner and to the extent authorized by him. Non-public property of units

(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 thereof, shall, unless otherwise provided for in Defence Forces Regulations, be non-public property.

(6) Except as authorized 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 therein.

(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.

Cap. 439 (9) Nothing in the Exchequer and Audit Ordinance shall apply to any non-public property, but the accounts of such property shall be audited in accordance with Defence Forces Regulations.

(h) *Miscellaneous*

The Code of Service Discipline

53. Officers and men of the Defence Forces are subject to the Code of Service Discipline as provided therein.

Redress of grievances

54. 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.

Presumption of death

55. Where an officer or man disappears under circumstances that, in the opinion of the Defence Forces Committee or such other authorities as may be prescribed by Defence Forces Regulations, raise beyond a reasonable doubt a presumption that such officer or man is dead, the Committee or any such other authority may issue a certificate declaring that such officer or man is deemed to; be dead and stating the date upon which his death is presumed to have occurred; and such officer or man shall thenceforth, 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 IV**

**MISCELLANEOUS POWERS AND PRIVILEGES RELATING TO THE DEFENCE FORCES**

(a) *Defence Matters*

Maneuvers

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

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

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

(4) Any person who willfully obstructs or interferes with maneuvers authorized 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.

57. When an operational necessity arises during an emergency, the officer in command of any unit of the Defence Forces or any officer duly authorized 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.

Emergency powers of commanding officers relating to property

58.-(1). Any person who suffers loss, damage or injury to property by reason of the exercise of any of the powers conferred by section 56 or 57 shall be compensated in accordance with Defence Forces Regulations and all sums necessary for the payment of such compensation shall be charged on the Consolidated Fund.

Compensation

(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 maneuvers authorized under section 56; or
- (b) the exercise by a commanding officer of a unit, or an officer authorized by him, of the powers conferred by section 57,

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.

59. 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 such precautions for avoiding the enemy as may be directed by any such commanding officer; and if such master or other person fails to obey such 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 such force.

Master of merchant ship to obey convoying officers

Defence establishment regulations

60. 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 materiel, and such Regulations may provide penalties for the breach of such Regulations not exceeding a fine of five thousand shillings or a term of imprisonment of twelve months or both such fine and imprisonment.

(b) *Exemptions and Limitations of Liability*

Exemption from duties or tolls on roads, bridges, etc.

61.-(1) Subject to subsections (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 materiel.

(2) Notwithstanding the provisions of subsection (1), the payment of duties or tolls specified in that subsection may be authorized 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.

Limitation of suits

62. No suit or other civil proceeding shall lie against any person for an act done in pursuance or 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 the ceasing thereof.

Limitation proceeding relating to Code of Service Discipline

63. 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.

Exemption from taking property in execution

64. 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.

Avoidance of assignment of or charge on service pay, pensions etc.

65.-(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 payment thereof 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 V**

REGULATIONS, ORDERS, ETC., AND EVIDENCE

(a) *Regulations, orders, etc.*

**66.**-(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.

Defence  
Force  
Regulation

(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.

**67.**-(1) Any power conferred by or under this Act to make regulations, orders, directions or instructions shall include power to make provision 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 therein.

Powers  
exercisable  
in subsidiary  
legislation  
etc.

(2) Any such regulations, orders, directions and instructions as aforesaid may impose conditions, require acts or things to be performed or done to the satisfaction of any persons named therein, whether or not such persons are members of the Defence Forces, empower such 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 such acts or things shall be performed or done or such conditions shall be fulfilled, and provide for appeal against any such requirement, directions or order.

**68.**-(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 authorized in that behalf by Defence Forces Regulations or according to the custom of the service.

Performance  
of powers

(2) Anything 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.

**69.**-(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.

Publication

(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 such an 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 such officer or man twenty-one days after the same 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 thereby, 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 such regulation, order, direction or notice, it shall be a defence to prove that the same had 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 thereby or of the person charged.

cap. 1 (5) Save as provided in subsection (4), nothing in section 7 of the Interpretation and General Clauses Ordinance shall apply to any subsidiary legislation made under this Act.

(b) Evidence

Method of  
signifying  
orders, etc.  
orders, etc.

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

Authenticity  
of documents

71. 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 thereto or the authority of the person granting, making or issuing it.

General  
provisions as  
to evidence

72. 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 therein recorded 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 sub-paragraph (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 authorized to use or wear any of the things mentioned in paragraph (b) of subsection (1) of section 99,
- shall, if purporting to be issued by or on behalf of the Minister or the Chief of the Defence Forces or by a person authorized 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 therein; and a copy of the record (including the signature thereto) in one of the said service books and a copy of such 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 authorized 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 99 of a description specified in or annexed to the certificate is one supplied or authorized by the President,
- shall be evidence of the matters stated in the certificate; and

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(g) a certificate purporting to be signed by a person's commanding officer or any officer authorized 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 formation 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.

Evidence of proceedings in courts-martial

**73.**-(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 any such 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 thereof, 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 thereof and to be certified by any person purporting to be authorized 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 VI

### CIVIL COURTS AND AUTHORITIES AND THE CODE OF SERVICE DISCIPLINE

#### (a) Civil Courts

Saving of jurisdiction of civil courts

**74.**-(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.

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(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 38 of the Interpretation and General Clauses Ordinance 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.



75. 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

Offences  
committed  
outside  
Tanzania

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.

76. 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 the 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 the court therein.

Certificates  
of civil  
trials

*" Deserters and Absentees without leave*

77.- (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, such person may be arrested without a warrant by a police officer, or if no police officer can be immediately found, by any other person.

Arrest of  
deserters  
and  
absentees

(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 authorizing his arrest.

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

78.- (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 such person surrenders himself at a police

Deserters  
and  
absentees  
without  
leave  
surrendering  
to police

(2) The officer of police in charge of a police station at which a person has surrendered himself as aforesaid, or to which a person who has surrendered himself is brought, shall forthwith 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.

79. - (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

forthwith either cause him to be delivered into military custody in such manner as 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 as the court may specify (not exceeding such time as appears to the magistrate reasonably necessary for the purpose of enabling him to be delivered into military custody) or until sooner delivered into such 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 the purpose aforesaid.

(3) Where the person has 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 such authorities of the Defence Forces, and containing such 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 as aforesaid, 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 77 or 78, the magistrate may examine into 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 77 or 78 shall not be admitted to bail.

Certificate  
of arrest or  
surrender of  
deserter or  
absence

80.-(1) Where a magistrate, in pursuance of section 79, 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 79 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.*

81.-(1) 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.

To receive  
deserters  
and  
absentees

82. 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.

Temporary  
reception of  
serviceman  
in civil  
custody

83.-(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 such sentence), according to the tenor of that warrant and the provisions of the Code of Service Discipline, the offender mentioned therein and delivered into his custody and shall confine such offender until discharged or delivered in due course of law.

Execution of  
warrants

(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 such notice or statement to be forwarded forthwith to the Judge Advocate General.

84.-(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 such Regulations, be served wholly or in part in such establishments.

Arrange-  
ments with  
authorities of  
other  
countries

(2) Provisions shall be made in any such arrangements for classifying such establishments as civil prisons, service prisons or detention barracks and such establishments shall, according to such 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 VII

## THE CODE OF SERVICE DISCIPLINE AND SERVICE TRIBUNALS IN RELATION TO CIVILIANS

Certain  
civilians  
subject to  
Code of  
Service  
Discipline

**85.**-(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.

Command  
over  
civilians  
in special  
cases

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

Witnesses and  
courts-martial

**87.**-(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 any such 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 such witness fees and allowances for expenses of attendance as 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 willful 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 whatsoever displays contempt of that court-martial; or

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

is guilty of an offence and on 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 87, 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 such time and place as shall be therein specified.

(8) When a witness is arrested under a warrant issued pursuant to subsection (7) the civil court may on his furnishing security by recognizance 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 such security, order him to be detained for production at such hearing.

(9) Without prejudice to any of the foregoing 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.

**88.** Any proceeding under this Act, either before a court-martial within the meaning of section 87, or before a board of inquiry, wherein 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.

Court-martial  
to be  
judicial  
proceeding

**PART VIII**  
OFFENCES TRIABLE BY CIVIL COURTS

General

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

(2) No charge against an officer or man in respect of any offence set out in this Part shall, if the complainant is any other officer or man, be tried by a civil court unless the consent thereto in writing of the commanding officer of such first-mentioned officer or man has first been obtained.

(a) *Offences relating to mutiny and desertion*

Inciting to mutiny

**90.** 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 endeavor to make a mutinous assembly,

is guilty of an offence and is liable on conviction to the punishment of death.

Aiding mutiny

**91.** 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,

is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

Assisting or harbouring deserters or absentees

**92.** -(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 thereof 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 such officer or man was a deserter or an absentee without leave,

is guilty of an offence and is liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) A certificate signed by the Judge Advocate General, or such person as 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 the duration of such 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*

93.-Every person who fails to comply with directions given under section 59 is guilty of an offence and is liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Failure to  
comply with  
convoy  
orders

(c) *Offences relating to obstruction or interference*

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

Interruption  
of drill or  
training

95. Every person who without reasonable excuse obstructs or interferes with maneuvers authorized pursuant to section 56 is guilty of offence and is liable on conviction to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

Hampering  
maneuvers

96. Every person who-

(a) wrongfully obstructs, impedes or otherwise interferes with any other person in the execution of any duty that such other 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;

is guilty of an offence and is liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Obstruction  
of duty or  
recruiting

(d) *Offences relating to service property, documents and uniforms*

97.-(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,

is guilty of an offence and is liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Unlawfully  
dealing  
with  
property

(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 there-  
with.

i n t e r p r e t a t i o n  
dealing in  
d o c u m e n t s

**98.**-(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 thereto 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 such official document,
- is guilty of an offence and is liable on conviction to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months or to both such 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.

Unauthorized  
wearing and  
use of  
u n i f o r m s  
e t c .

**99.**-(1) Every person who without lawful authority, the proof of which lies on him-

- (a) wears a 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 therefor;
- (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 thereof, 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 such thing as 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 such decoration, or acts for any person in the sale or pledging thereof unless at the time of such 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,

is guilty of an offence and is liable on conviction to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) No-thing 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 such military badges, or
- (b) the wearing of such uniforms or things as are mentioned in paragraphs (a) and (b) of subsection (1) of this section for purposes of a theatrical performance.



(e) *Offences relating to enrollment and release*

100. Every person who knowingly makes a false answer to any question relating to his enrollment 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 is guilty of an offence and is liable on conviction to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

False  
answer on  
enrollment

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

Unlawful  
consideration  
on enrollment  
or release(f) *Offences relating to medical certificates and selfinjury*

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

False  
medical  
certificate

- (a) the examination of a person for the purpose of enrollment 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,
- is guilty of an offence and is, liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

103. 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 such 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 such other person is, permanently, or temporarily, unfit for service in the Defence Forces, supplies to or for such other person any drug or preparation calculated or likely to render such other person, or lead to belief that such other person is, permanently or temporarily, unfit for such service,
- is guilty of an offence and is liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.'

Aiding  
malingering(g) *Offences relating to personation*

104. 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 is guilty of an offence and is liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Personation

Representa-  
tion of  
desertion

105. Every person who falsely represents himself to any service or civil authority to be a deserter from the Defence Forces is guilty of 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 such fine and imprisonment.

(h) *Offences relating to reserve liability*

Failure to  
attend  
parade

**106.-(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 therefor is guilty of an offence and is liable on conviction 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 such absence occurs, a separate offence.

Neglecting  
personal  
equipment

107. 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, is guilty of an offence and is liable on conviction to a fine not exceeding one hundred shillings for each offence.

**PART DC**

**REPEALS, SAVING AND TRANSITIONAL**

Repeat and  
amendment

108.-(1) Subject to sections 109 and 110, the laws set out in Part I of the Second Schedule to this Act (hereinafter referred to as the "repeated laws") are hereby repealed.

(2) Subject as aforesaid, the provisions of the laws set out in the first, second and third columns of Part 11 of the Second Schedule to this Act are hereby amended in the manner set out opposite thereto in the fourth column of that Part.

Transitional  
provisions  
relating to  
units,  
officers and

109-(1) The provisions of the Third Schedule to this Act shall have effect

- (a) for the constitution as components, formations, units and other elements of the Defence Forces of the forces and units raised, maintained or constituted under the repealed laws;
- (b) for the constitution as members of the Defence Forces of persons commissioned, enlisted or appointed in, or otherwise members of, the forces and units raised, maintained or constituted under the repealed laws;
- (c) for the secondment or attachment to the Defence Forces of persons seconded or attached to the forces and units raised, maintained or constituted under the repealed laws; and
- (d) for such other matters relating to and consequential upon the constitution of the components, formations, units and other elements of, and of the membership of, the Defence Forces as are contained therein.

(2) Defence Forces Regulations may make such provision for the more effective constitution of the Defence Forces, their components, formations, units and other elements, and the membership thereof, as shall be necessary or expedient upon the commencement of this Act, and for facilitating any matter contained in the Third Schedule to this Act.

110.-(1) Subject to the Fourth Schedule to this Act, the continuity of service law and discipline shall not be affected by the substitution of this Act for the repealed laws, and accordingly-

Continuance  
of service  
law and  
discipline

- (a) all things lawfully done under the repealed laws which are of force and effect immediately before the commencement of this Act, including any regulations, rules or orders made or directions given thereunder, and anything done under a court-martial warrant or under any such regulations, rules, orders or directions, shall, so far as the same are consistent with this Act and anything done hereunder, continue of force and effect after the commencement of this Act, and such continuance shall have effect notwithstanding any change in the authorities empowered to do or effect any such thing; and any such regulations, rules, orders or directions shall continue in force until they expire according to their tenor or are revoked by Defence Forces Regulations or orders, directions and instructions given by a competent authority under this Act;
- (b) so much of any written law or public document as refers, whether expressly or by implication, to, or to things done or to be done under or for the purposes of, any provision of the repealed laws shall, so far as the nature of the subject matter of such written law or public document permits, be construed as including, in relation to matters and times governed by corresponding provision in or under this Act, a reference to, or, as the case may be, to things done or deemed to be done or to be done for the purposes of, such corresponding provision.

(2) References in any written law or public document to the Military Forces of the United Republic or to the Military Forces Ordinance (including any other references which, in accordance with the repealed laws are to be read as references to the Military Forces of the United Republic and to the Military Forces Ordinance) shall be read and construed in relation to any time, or to any period commencing, on or after the commencement of this Act as references to the Defence Forces and this Act respectively.

(3) In this section references to the repealed laws and to the Tanganyika Military Forces Ordinance include references to laws repealed by any such repealed laws.

(4) The provisions of this section and the Fourth Schedule are in addition to, and not in substitution for, the provisions of section 10 of the Interpretation and General Clauses Ordinance.

## THE FIRST SCHEDULE

(Sections 53 and 85)

## THE CODE OF SERVICE DISCIPLINE

## PART I

*The Disciplinary Jurisdiction of the Defence Forces*

Interpretation

C.1.-(1) In this Code, unless the context otherwise requires-  
 "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 such forces have not been declared "co-operating forces" pursuant to section 25 of the Act.

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

Persons subject to the Code

C.2.-(1) Subject to the provisions of this section, the following persons, and no others, are subject to the Code of Service Discipline-

- (a) an officer or man of the Regular Force;
- (b) an officer or man of the Regular Reserve or of the Volunteer Reserve who is-
  - (i) mobilized pursuant to section 40 of the Act;
  - (ii) called out for continuing full-time, service with any of the Defence Forces pursuant to section 41 or 42 of the Act or serving, pursuant to either such section, 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 (including the National Services Reserve) mobilized pursuant to section 27 of the Reserve Forces Act, 1965;

- (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 foregoing 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.
- (2) For the purposes of this section but subject to any limitations prescribed in Defence Forces Regulations, a person accompanies a unit of other element of the Defence Forces that is on service if such Person-
- (a) participates with the unit or other element in the carrying out of any of its movements, maneuvers, 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.
- (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 such 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  
accompanying  
Defence  
Force

Status

Persons under engagement	<p>(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.</p>
Commanding officer	<p>(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.</p>
Application to women	<p>(6) The Code of Service Discipline, in its application to female persons, may be limited or modified by Defence Forces Regulations.</p>
Continuing liability under Code after ceasing to be subject there	<p>C.3.-(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 hereinafter contained, such person may, if he is arrested and his trial begins within such 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.</p>
	<p>(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.</p>
	<p><i>Place of commission of offence</i></p>
No limitation	<p><b>C.4.</b> 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.</p>
	<p><i>Place of trial</i></p>
No limitation	<p><b>C.5.</b> 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.</p>
	<p><i>Period of liability under Code of Service Discipline</i></p>
Time bar	<p><b>C.6.-(1)</b> 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.</p>
Exceptions	<p>(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.</p>

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

Exclusion of time

- (a) any time 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.**-(1) A person shall not be charged with, or tried by a service tribunal for, an offence against section C.65 of this Code committed in Tanzania if the corresponding civil offence is murder, treason, treason felony manslaughter, rape or a scheduled offence (within the meaning ascribed to that expression in the Minimum Sentences Act, 1963).

Murder, treason, manslaughter, rape and "scheduled offences" Acts 1963 No. 29

(2) For the purposes of subsection (1), the offence of murder or manslaughter shall be deemed to have been committed at the place of the commission of the act or occurrence of the neglect which caused the death, irrespective of the place of death.

#### Previous trials

**C.8.**-(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.

*Autrefois acquit and autrefois convict*

(2) Nothing in subsection (1) applies to any proceedings quashed when a new trial is ordered, directed or authorized 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.** Where a civil court that tries a person in the circumstances set out in subsection (2) of section 74 of the Act 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.

Remission in certain cases

### PART 11

#### SERVICE OFFENCES AND PUNISHMENT

##### *Responsibility for offences*

**C.10.**(1) Every person is a party to, and guilty of, an offence who-

Parties to offences

- (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 such 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.

ies 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 such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose each of them is deemed to have committed the offence.

*Misconduct of Commanders in presence of enemy*

Offences by  
commanders  
in  
action

C.11. 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 materiel 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, materiel, 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,

is guilty of an offence and on 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.**-(1) Every serviceman who-

- (a) improperly delays or discourages any 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, materiel, post or guard;
- (e) assists the enemy with materiel-
- (f) harbours or protects an enemy not being a prisoner of war;
- (g) improperly casts away or abandons any materiel 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 materiel;
- (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 or of any forces co-operating therewith,

Offences  
by servicemen  
in the  
Presence  
of the  
enemy

is guilty of 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 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 other circumstances, he is unfit to be entrusted with his duty.

Security

**C.13.**-(1) Every serviceman who-

- (a) improperly holds communication with or gives intelligence to the enemy;
- (b) without authority discloses in any manner whatsoever any information relating to the numbers, position, materiel, movements, preparations for movements, operations or preparations for operations of any of the Defence Forces or of any forces co-operating therewith or prisoners of war-,
- (c) without authority discloses in any manner whatsoever 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 therewith;

of f.....  
related  
security

- (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 therewith,

is guilty of 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.

Offences  
relating  
to being  
taken  
prisoner

C.14. Every serviceman who-

- (a) by want of due precaution or through disobedience of orders or willful 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 therewith who has been made a prisoner of war from rejoining the Defence Forces or such co-operating force when such other member is able to do so; or
- (d) having been made a prisoner of war, serves with or aids the enemy,

is guilty of 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.

*Miscellaneous Operational Offences*

Offences  
related to  
operations

C.15. Every serviceman who-

- (a) does violence to any person bringing materiel to any of the Defence Forces or to any forces co-operating therewith;
- (b) irregularly detains any materiel 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 materiel being conveyed to any other unit or element of the Defence Forces or of any forces co-operating therewith;
  - (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 therewith; or
  - (k) when, before the enemy, uses words calculated to create despondency or unnecessary alarm,
- is guilty of an offence and on 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.-(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 any such duty or service; or
- (b) incites any person to join in such a mutiny whether actual or intended,

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

(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, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment or, in the case of a ringleader of such a mutiny, to suffer death or less punishment.

C.17. Every serviceman who-

- (a) causes or conspires with another person to cause a mutiny;
- (b) endeavors to persuade any person to join in a mutiny whether actual or intended;
- (c) being present, does not use his utmost endeavors to suppress a mutiny; or

Mutiny  
with  
violence  
or in  
operations

Mutiny  
without  
violence

Offences  
related to  
mutiny

(d) being aware of an actual or intended mutiny, does not without delay inform his superior officer thereof, is guilty of an offence and on conviction, if such 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.

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C.18. In this Act, 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 such Forces or Services or any forces co-operating with the Defence Forces;
- (b) to disobey such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any duty or service against or in 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 therewith.

#### *Insubordination*

Disobedience  
to a superior officer  
command

C.19. Every serviceman who disobeys a lawful command of a superior officer is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Striking  
or offering  
violence  
to a  
superior  
officer

C.20. 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, is guilty of an offence and on conviction is liable to imprisonment for life or to less punishment.

Insubordinate  
behaviour

C.21. Every serviceman who uses threatening or insulting language to or behaves with contempt toward a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from the Defence Forces or to less punishment.

Quarrels  
and  
disturbances

C.22. 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, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Disorders

C.23. 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 any such officer;
- (b) strikes or uses or offers violence to any person in whose custody he is placed, whether or not such 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, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

*Desertion*

C.24.-(1) Every serviceman who deserts or attempts to desert is guilty of an offence and on 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. Offences

(2) A serviceman deserts who-

Definition

- (a) being on or having been warned for active service, 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, is absent without authority with the intention of missing that vessel, aircraft or vehicle;
- (c) 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) 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, 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.

(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. Presumption

C.25. Every serviceman who-

- (a) being aware of the desertion or intended desertion of any other at serviceman from any of the Defence Forces, does not without reasonable excuse inform his superior officer forthwith; or
  - (b) fails to take any steps in his power to cause the apprehension of a serviceman known by him to be a deserter,
- is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Connivance  
desertion

*Absence without leave*

C.26.-(1) Every serviceman who absents himself without leave is guilty of 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 who-
- (a) without authority leaves his unit or formation or the place where his duty requires him to be,
  - (b) without authority is absent from his unit or formation or the place where his duty requires him to be; or
  - (c) having been authorized 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 authorized.

*Evidence in trials for desertion and absence*

Certificates of arrest C.27. 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 80 of the Act, or under the corresponding provisions of any service law (other than this Act) and to be signed as thereby required, shall be evidence of the matter stated in the document;
- (b) where the proceedings are against a 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 such 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.

False statement in respect of leave C.28. Every serviceman who knowingly makes a false statement in respect of prolongation of leave of absence is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

*Disgraceful conduct*

Scandalous conduct by officers C.29. Every officer who behaves in a scandalous manner unbecoming an officer is guilty of an offence and on conviction shall suffer dismissal with disgrace from the Defence Forces or dismissal from the Defence Forces.

Cruel or disgraceful conduct C.30. Every serviceman who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

Traitorous utterances C.31. Every serviceman who uses traitorous or disloyal words regarding the lawful authority of the United Republic or the President is guilty of an offence and on conviction is liable to imprisonment for a term, not exceeding five years or to less punishment.

**C.32.** Every serviceman who strikes or otherwise ill-treats any other serviceman who, by reason of rank or appointment, is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Ill-treatment  
of  
inferiors

**C.33.** Every serviceman who-

- (a) makes a false accusation against an officer or man, knowing such accusation to be false or not believing it to be true; or
- (b) when seeking redress under section 54 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,

False  
accusations  
or  
statements

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

**C.34.** 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 thereof 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.

Drunkenness

**C.35.** 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 willful disobedience of orders; or
- (c) willfully maims or injures himself or any other person who is a member of the Defence Forces or of any forces co-operating therewith, whether at the instance of that person or not, with intent thereby to render himself or that other person unfit for service, or causes himself to be maimed or injured by any person with intent thereby to render himself unfit for service,

falingering  
or maiming

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

Ill-treatment  
of person  
in custody

**C.37.** Every serviceman who-

- (a) without authority sets free or authorizes or otherwise facilitates the setting free of any person in custody;

Negligent  
or willful  
interference  
with 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,

is guilty of an offence and on conviction, if he acted willfully, 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.

Escape  
from  
custody

C.38. Every serviceman who, being in arrest or confinement or in prison or otherwise in lawful custody, escapes or attempts to escape, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

Obstruction  
of service  
police duties

C.39. Every serviceman who-

(a) resists or willfully 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 any such duty,

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

Obstruction  
of civil  
power

C.40.-(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,

is guilty of 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*

Losing,  
stranding  
or hazarding  
vessels

C.40.-(1) 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,

is guilty of an offence and on conviction, if he acted willfully during a



state of war, is liable to imprisonment for life or to less punishment, or if he acted willfully 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. Every officer who, while serving in a ship or vessel of the Defence Forces involved in the convoying and protection of a vessel-

Offences  
in relation  
to convoys

(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, is guilty of an offence and on conviction is liable to suffer death or less punishment.

*Offences in relation to aircraft*

C.43. Every serviceman who-

Wrongful  
acts in  
relation  
to aircraft

(a) in the use of or in relation to, any aircraft or aircraft materiel, 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 materiel of the Defence Forces or of any aircraft or aircraft materiel 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 or any forces co-operating with the Defence Forces.

is guilty of an offence and on conviction, if he acted willfully 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.44. Every serviceman who signs an inaccurate certificate in relation to an aircraft or aircraft materiel, unless he proves he took reasonable steps to ensure that it was accurate, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less Punishment.

.....  
certificate

C.45. 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 authorized in the circumstances is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two, years or to less punishment.

Low flying

Annoyance  
by flying

**C.46.** 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 is guilty of an offence and on conviction shall be liable to imprisonment for a term not exceeding two years or to less punishment.

Disobedience  
of captain's  
orders

**C.47.** (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, is guilty of 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*

Improper  
driving of  
vehicles

**C.48.**-(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 such vehicle, causes or by willful 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 such a vehicle is impaired by alcohol or a drug,

is guilty of 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.

Unautho-  
rized use

**C.49.** Every Serviceman who-

- (a) uses a vehicle of the Defence Forces for an unauthorized 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,

is guilty of 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. Every serviceman who willfully or negligently or by neglect of or contrary to Defence Forces Regulations, orders or instructions, does any and act or omits to do anything which act or omission,

Dangerous  
substances  
and  
causing  
fire

(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 materiel, defence establishment, work for defence, or in any other public materiel, establishment or work,

is guilty of an offence and on conviction, if he acted willfully 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. (1) Every serviceman who steals is guilty of 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.

Stealing

(2) For the purpose of this section-

Definition

(a) a person who fraudulently and without claim of right takes any thing capable of being stolen, or fraudulently converts to, the use of any person other than the general or special owner thereof 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 authorized 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.
- (3) Every inanimate thing whatever which is the property of any person and which is movable, and every animate thing which is capable of being stolen in accordance with the Penal Code, is capable of being stolen.
- (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 become movable, although it is made movable in order to steal it.
- Receiving**      **C.52.** 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, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding seven years or to less punishment.
- Destruction, loss or improper disposal**      **C.53.** Every serviceman who-
- (a) willfully 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 therewith;
- (b) willfully destroys, damages or improperly sells any property belonging to, another serviceman; or
- (c) sells, pawns or otherwise disposes 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,
- is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.
- Miscellaneous offences**      **C.54.** 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 therewith, or to any mess, institute or canteen operated for the use and benefit of members of such 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 authorized to take or receive on board; or
  - (f) improperly demands or gives directions for the provision of any materiel or orders or procures another person to demand or give such directions,
- is guilty of 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.(1) For the purposes of this section "service tribunal", in addition to the tribunals mentioned the subsection (1) of section 3 of the Act, includes a board of inquiry and a commissioner taking evidence under this Code.

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(2) Every serviceman who-

contempt  
of service  
tribunals,

- (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 court, while that person is acting as a member thereof or is so attending, or insults or threatens any such person as aforesaid 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. is guilty of 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 section 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 any such 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.

False  
evidence

C.56. 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, is guilty of 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*

Billeting  
offences

C.57. 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 materiel 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 materiel is or has been accommodated,

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

*Offences in relation to enrollment*

Failure  
to declare  
circumstances  
of former the  
release

C.58. Every serviceman who, having been released from the Defence Forces, any military forces formerly raised in Tanganyika or Zanzibar, the Police Force, the Prisons Services, the National Service or any such former force or service as aforesaid, by reason of a sentence of a service tribunal or other tribunal having jurisdiction over such person or by reason of misconduct, has afterwards been enrolled in the Defence Forces without declaring the circumstances of his release, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding six months or to less punishment.

False  
answers  
or false  
information

C.59. 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 enrollment; or
- (b) furnishes any false information or false document in relation to his enrollment,

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

*Miscellaneous Offences*

C.60. Every serviceman who negligently performs a service duty imposed upon him is guilty of an offence and on conviction is liable to dismissal with disgrace from the Defence Forces or to less punishment.

Negligent performance of duties

C.61. Every serviceman who-

- (a) willfully 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 such a document, orders the making or signing thereof;
- (b) when signing a document required for official purposes, willfully 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,

Offences in relation documents

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

C.62. Every serviceman who, upon receiving an order to submit to inoculation, re-inoculation, vaccination, re-vaccination, other immunization procedures, immunity tests, blood examination or treatment against any infectious disease, willfully and without reasonable excuse disobeys that order, is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding two years or to less punishment.

C.63. Every serviceman who conspires with any other person, whether or not such other person is subject to this Code, to commit an offence under this Code is guilty of an offence and on conviction is liable to the like punishment as that which may be imposed on a conviction for the substantive offence:

Conspiring

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

*Conduct to the prejudice of good order and discipline*

C.64.-(1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every serviceman convicted thereof is liable to dismissal with disgrace from the Defence Forces or to less punishment.

Offence

(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 this 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.

Offences punishable by ordinary law Definition	<p><b>C.65.</b>-(1) Every serviceman who commits a civil offence, whether in Tanzania or elsewhere, shall be guilty of an offence against this section.</p> <p>(2) "Civil offence" means-</p> <p>(a) an act or omission punishable by the law of that part of Tanzania in which the act was committed or the omission occurred; or</p> <p>(b) an act or omission which had it been committed or occurred in Tanzania would be punishable by the Penal Code of Tanzania or Zanzibar, the Official Secrets Ordinance, the Prevention of Corruption Ordinance or any other provision of this Act.</p> <p>(3) A serviceman convicted by a service tribunal of an offence against this section shall-</p> <p>(a) if the corresponding civil offence is treason or murder, be liable to suffer death;</p> <p>(b) in any other case be liable to suffer-</p> <p style="padding-left: 20px;">(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</p> <p style="padding-left: 20px;">(ii) such punishment less than the maximum punishment which a civil court could so award, as is so provided; or</p> <p>(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.</p>
T. Cap. 16 Z. Cap. 13 T. Caps. 45 and 400	
saving provision	<p>(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 sections C.11 to C.64 of this Code and to impose the punishment for that offence mentioned in the section prescribing that offence.</p>
Offences out of Tanzania	<p><b>C.66.</b>-(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 thereof is liable to suffer punishment as provided in subsection (2).</p>
Punishment	<p>(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.</p>
Saving provisions	<p>(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 set out in section C.11 to C.65 of this Code and to impose the punishment for that offence mentioned in the section prescribing that offence.</p>



(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) such goods may, in accordance with Regulations be forfeited to the President and may be disposed of as provided by those Regulations.

Contravention  
of customs  
laws

*Conviction of cognate Offences*

**C.67.**-(1) A serviceman charged with desertion may be found guilty of attempting to desert or of being absent without leave.

Conviction  
of related  
or less  
serious  
offences

(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.**-(1) The following punishments may be imposed in respect of service offences:-

Scale of  
punishments

- (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*

Conditions  
relating to  
punishment  
of  
imprisonment

**C.69.** 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 provision 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*

Accompany-  
punishment

**C.70.-(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 provision of this Part, impose a Punishment of imprisonment for a term not exceeding two years.

(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.

Consequence of dismissal with disgrace

#### *Detention*

C.71. The punishment of detention is subject to the following conditions: -

Conditions relating to impositions of detention

- (a) detention shall not exceed one year and a person sentenced to of 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.- (1) The punishment of reduction in rank shall apply to officers, warrant officers and non-commissioned officers.

Application

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

Conditions

- (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. 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.

Sentences to specify period of forfeiture

#### *Fine*

C.74. 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 1,000 shillings, and the terms of payment of a fine shall lie within the discretion of the commanding officer of the person so punished.

Conditions relating to fines

#### *Minor punishment*

C.75.-(1) Minor punishments shall be such as are prescribed in Defence Forces Regulations.

Prescribed in regulations

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

*Limitations*

Authority C.76. In addition to the limitations contained in this Code on the authority of service tribunals to impose punishment, such authority may further be limited by Defence Forces Regulations.

*Sentences*

Only one sentence to be passed C.77.-(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, C90 or C.91 of this Code, a sentence shall not contain more than one punishment.

*Incarceration under more than one sentence*

TO be concurrent C.78. 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*

Ignorance no excuse C.79. The fact that a person is ignorant of the provisions of this Act, or of any regulations or of any order or instruction duly notified under this Act, is no excuse for any offence committed by him.

*Civil Defences*

Rules of civil courts applicable C.80. 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 such rules and principles are altered by or are inconsistent with this Act.

*Insanity as a Defence*

Insanity C.91.-(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.

Saying (2) A person may be criminally responsible for an act or omission although his mind is affected by disease, if such 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 delusions 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.

(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. Presumption of sound mind

### PART III

#### ARREST

##### *Authority to Arrest*

**C.82.**-(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. General authority

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

**C.83.**-(1) An officer may, without a warrant, in the circumstances mentioned in section C.82 of this Code, arrest or order the arrest of- Powers of officers

(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.

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

(a) any man of lower rank; and

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

(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 offenders of other components or unity

(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 such person as any commanding officer may designate for that purpose. Arrest of person other than officers or man

**C.84.** Such officers and men as are appointed under Defence Forces Regulations for the purposes of this section may- Appointment and powers of specially appointed personnel

(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 such other powers of arrest, search and detention for carrying out the purposes of this Code as are prescribed in Defence Forces Regulations.

Issue of  
warrants

**C.85.**-(1) Subject to subsection (2), every commanding officer, and every officer to whom the power of issuing a charge summarily has been delegated under subsection (4) of section C.90 of this Code may by a warrant under his hand authorize 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 authorized 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 authorizing 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 other sections of this Act or otherwise under the law of Tanzania to arrest any other person without a warrant.

*Action following Arrest*

Disposal  
of person  
arrested

**C.86.**-(1) A person arrested under this Part may forthwith 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 64 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 such committal, or as soon, as practicable and in any case within twenty-four hours thereafter, 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.

Report 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 twenty-four hours thereafter, 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.-(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.

Report of delay of trial

(2) Every person held in custody in the circumstances mentioned in subsection (1) is, after he has been 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 such authority as 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 otherwise directs or unless a summary trial has been held or a court-martial has been ordered to assemble.

Petition in respect of delay of trial

(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.

Limitation upon re-arrest

PART IV

SERVICE TRIBUNALS

*Application*

C.88.-(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 such other officer as may, in accordance with Defence Forces Regulations, be empowered to act as the commanding officer of the accused person.

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 any such serviceman who is accused of a service offence.

Designation of commanding officer

(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.

Meaning of ranks where specified

*Investigation and Preliminary Disposition of Charges*

C.89.-(1) Where a charge is laid against a serviceman alleging that he has committed a service offence, the charge shall forthwith 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*

Jurisdiction **C.90.**-(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 below the rank of 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 11 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.



(4) A commanding officer may, subject to Defence Forces Regulations and to such extent as 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 authorized to impose punishments other than the following: -

Delegation

- (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.

(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.

Evidence on oath

(6) Such punishments as are, in Defence Forces Regulations specified 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 such Regulations.

Restriction when approval required

#### *Summary Trials by Superior Commanders*

C.91.-(1) An officer of or above the rank of Brigadier or any other officer not below the rank of Lieutenant-Colonel designated by the Minister for that purpose (both of whom are referred to in this section as a "superior commander) may in his discretion try by summary trial an officer below the rank of major or a warrant officer, charged with having committed a service offence, and in an emergency the President may extend the provisions of this section to cases where the accused person is of the rank of major.

Jurisdiction

(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.

Dismissal or other disposition

(3) Subject to the conditions set out in this section and Part 11 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: -

Sentences

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

(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.

Election

(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*

Convening authorities      **C.92.**-(1) The President, and such military authorities as 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 authorize 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*

Jurisdiction      **C.93.**-(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.

Number of members      **C.94.**-(1) A General Court-martial shall consist of not less than five officers and not more than such maximum number of officers as 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.

Judge Advocate      **C.95.** Such authority as is prescribed for that purpose in Defence Forces Regulations shall appoint a person to officiate as Judge Advocate at a General Court-martial.

Ineligibility to serve on a General Court-Martial      **C.96.** 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. 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. Jurisdiction

C.98. 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. A Disciplinary Court-martial shall consist of not less than three officers and not more than such maximum number of officers as may be prescribed in Defence Forces Regulations. Number of members

C.100.-(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. Appointment of president

(2) The president of a Disciplinary Court-martial shall be an officer of or above the rank of Major. Rank of \*\*\*\*\*

C.101. Such authority as may be prescribed for that purpose in Defence Forces Regulations may appoint a person to officiate as Judge Advocate at a Disciplinary Court-martial. Judge Advance

C.102. None of the following persons shall sit as a member of a Disciplinary Court-martial: - Ineligibility to serve on Discipline 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*

- Constitution **C.103.**-(1) The President may, in an emergency, establish Standing Courts-martial and each such 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*

- Defence **C.104.** At any proceedings before a court-martial the accused person has the right to be represented in such manner as shall be prescribed by Defence Forces Regulations.

*Admission to Courts-martial,*

- Trials public **C.105.**-(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 any such 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 such a 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*

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.....  
**C.106.** 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 such rules are inconsistent with this Act or any Defence Forces Regulations.

- Admission an...  
.....  
**C.107.**-(1) Such classes of documents and records as are prescribed in Defence Forces Regulations may be admitted as evidence of the facts therein stated at trials by court-martial and the conditions governing the admissibility of such classes of documents and records or copies thereof shall be as prescribed in those Regulations.

(2) A court-martial may receive, as evidence of the facts therein stated, statutory declarations made in the prescribed, manner subject to the following conditions: -

Statutory  
declaration  
admissible

- (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 the 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 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.

*Witnesses at Courts-martial*

**C.108.**-(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 any such commanding officer, authority who convenes a court-martial or president, to be frivolous or vexatious.

Procurement  
of attendance  
of witnesses

(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.

Procurement  
of attendance  
in exceptional  
cases

(3) Nothing in this section limits the right of the accused person to procure and produce at the trial at his own expense such witnesses as he may desire, if the exigencies of the service permit.

Right of  
accused  
preserved

(4) Nothing in this section shall be construed so as to limit the power to summon civilian witnesses under section 87 of the Act.

Civilian  
witness

*Evidence on Commission*

**C.109.**-(1) Where it appears to the Judge Advocate General, or to  
Commissioner such person as 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 such court-martial,

the Judge Advocate General, or such person as 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- (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.** A court-martial may, where the president considers it necessary, view any place, thing or person.

*Objection to Members of Court-martial*

**C.111.**-(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.

(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.

Replacements

Oaths at Courts-martial

C.112.- (1) At every court-martial an oath shall be administered to each of the following persons: -

Persons required to take oath

- (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.

(2) If a person to whom an oath is required to be administered under subsection (1)

Solemn affirmation

- (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 this Act, a solemn affirmation shall be deemed to be an oath.

Adjournment and Dissolution

C.113. A court-martial may be adjourned whenever the president considers adjournment desirable.

Adjournment

C.114.- (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.

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

(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.

.....  
unable to attend

(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.

Illness of accused

- 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, such 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*

- May be made if no injustice **C.115.**-(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 therewith as being the original charge sheet.

#### *Decisions by Courts-martial*

- Majority vote **C.116.**-(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 such circumstances and subject to such 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, such concurrence and no finding is made, the president of the court-martial shall so report to the convening authority and the court-martial shall thereupon be deemed to be dissolved and the accused may be tried again as if no previous trial had been held.



(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.

Where death  
is not  
imposed

*Similar Offences*

**C.117.** 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 such 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.

May be  
consideration  
in imposing  
sentence

*Pronouncement of Findings and Sentence*

**C.118.** 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 the pronouncement thereof.

Effect

*Recommendation to Clemency*

**C.119.** 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.

Applicable  
in certain  
cases only

*Decision where Accused Insane at Trial*

**C.120.**-(1) Where at any time after a trial by court-martial commences and before the finding of the court-martial is made, 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  
of issue of  
insanity

(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.

Trial  
proceeds  
where  
accused  
sane  
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 for the time being responsible for legal affairs have been obtained, and such 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 such Minister aforesaid have been obtained, and such 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.

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*

Special  
finding

**C.121.**-(1) Where any act or omission is charged against any person as an offence, and it is given in evidence at the trial of such 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 such person is tried that he did the act or made the omission charged but was insane as aforesaid 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 as aforesaid, 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 strict 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 such 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.

Disposal  
outside  
of 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 such Minister aforesaid are obtained, and such 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*

Advice as to  
rights of  
appeal

**C.122.**-(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 such fine, inform that person as to his rights 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.

Form of statement

(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.

Form of proceedings

**PART V**

PROVISIONS APPLICABLE TO FINDINGS AND SENTENCES AFTER TRIAL

*Execution of Punishment of Death*

**C.123.** 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 provision for-

Regulations respecting execution of punishment of death

- (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.**-(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.

Commencement

(2) The only time that shall be reckoned toward 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.

Time counted

**C.125.**-(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.

Service prison 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 thereto 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 therein shall be as prescribed in Defence Forces Regulations.

Corrective disciplinary measures for service prisons and detention barracks

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*

DEATH

**C.126.**-(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 such military authorities as 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.

E f f e c t i v e  
d a t e o f  
d i s m i s s a l

(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*

Authority

**C.127.**-(1) The Minister and such other military authorities as 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.

(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 authorized 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 such new punishment or punishments as he considers appropriate.

Effect upon sentence  
quashing

*Substitution of Findings*

**C.128.**-(1) The Minister and such other military authorities as 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.

Substitution of findings

(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 authorized 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 such new punishment or punishments as he considers appropriate.

Effect upon sentence

*New Trial*

**C.129.**-(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.

New Trial

(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-

Punishment

- (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*

Authority **C.130.** Where a service tribunal has passed a sentence in which is included an illegal punishment, the Minister and such other military authorities as 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 such new punishment or punishments as he considers appropriate.

*Mitigation, Commutation and Remission of Punishments*

Authority **C.131.** The Minister and such other military authorities as 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*

Limitation upon new punishments **C.132.** 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 substitution;
- (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 of 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.** 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.

Ordinary provisions  
.....

*Suspension of Imprisonment or Detention*

**C.134.**-(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 such other military authorities as 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".

Authority

(2) Where, in the case of an offender upon whom 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.

Postponement committal

(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.

Suspension possible at any time

(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 before 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.

Effect of suspension after .....

(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 such 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.

Review and remission

Automatic remission of punishments exceeding 30 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 any time 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 30 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*

Committing authority	<b>C.135.</b> (1) Defence Forces Regulations may prescribe or appoint military authorities for the purposes of this section and any such 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 a 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	(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 such 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 such restraint as is necessary for his safe conduct.



(5) Where a punishment of imprisonment is to be put into execution, the service prisoner shall as soon as practicable be committed to a 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 civil prison

(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.

Committal to detention barracks

*Temporary Removal from Incarceration*

**C.136.** 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 such period as 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.

Authority required

*Rules Applicable to Service Prisoners*

**C.137.** 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 therefrom prior to the expiration of the term of his punishment.

Rules of civil prisons to apply

*Validity of Documents*

**C.138.** 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 such document deviates from the prescribed form; and any such 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 such document.

Errors in form may be corrected and indemnity

*Insanity during Imprisonment or Detention*

**C.139.** 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 such civil Prison by virtue of the sentence of a civil court.

Insane persons in service prisons or detention barracks

C.140. 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*

Transfer of offenders

C.141. 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 such military authorities as 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*

Restitution of property in case of conviction

C.142.-(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 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.

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; or
  - (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.

(4) An order made under this section shall be executed by the persons by whom the process of the service tribunal is ordinarily executed.

Execution of order for restitution  
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 such an order from the person to whom it is delivered or paid.

**PART VI**

APPEAL, REVIEW AND PETITION

*Right to Appeal*

**C.143.** (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-

Cases in which applicable

- (a) to the Court-Martial Appeal Court against the finding or against the legality of the sentence; and
- (b) to such authorities as may be prescribed in section C.145 of this Code, against the severity of any sentence.

(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, and, a reprimand or a fine less than the equivalent of basic pay for one month or such reprimand together with such fine.

When appeal not to lie

*Entry of Appeals*

**C.144.** (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.

Form

(2) A Statement of Appeal is not invalid by reason only of informality or the fact that it deviates from the prescribed form.

Validity

(3) No appeal under this Part shall be entertained unless-

Time limits

- (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 such 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 such alteration is given to the appellant.

(4) All Statements of Appeal shall be forwarded to the Judge Advocate General.

Where Statements sent

*Preliminary Disposition of Appeals*

Where severity of sentence only involved

**C.145.**-(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 relates 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 such findings.

## Court-martial Appeal Court

Court established

**C.146.**-(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.

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

Powers

**C.147.**-(1) Upon the hearing of an appeal respecting the finding of guilty on any charge, the Court-martial Appeal Court, if 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) authorize 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.
- (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.
- (3) Where the Court-martial Appeal Court has set aside a finding of guilty but another finding of guilty remains, the Court shall forthwith refer the proceedings to the Minister, or to such other military authority as may be prescribed in Defence Forces Regulations, who 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 such new punishment or punishments as he considers appropriate.
- (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 forthwith refer the proceedings to the Minister, or to such other military authority as may be prescribed in Defence Forces Regulations, who 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 punishment or punishments as he considers appropriate.
- (5) Where, pursuant to subsection (3) or (4), a new punishment is substituted, the punishment imposed by the court-martial thereupon ceases to have effect, and section C.133 of this Code, applies to the new punishment or punishments.
- C.148. 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 forthwith refer the proceedings to the Minister, or to such other military authority as may be prescribed in Defence Forces Regulations, who shall, subject to section C. 132 of this Code, substitute for the punishment imposed by the court-martial such new punishment or punishments as he considers appropriate and every punishment comprised in the sentence passed by the court-martial thereupon ceases to have force and effect; and section C.133 of this Code, applies to the new punishment or punishments.

Effect of setting aside finding of guilty

Punishment where finding set aside

Substitution of finding

New punishment

Substitution of new punishment where illegal punishment set aside

Special  
power to  
disallow  
appeal

C.149. 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.

Powers of  
service  
authorities  
preserved

C.150. 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.

Summary  
determination  
of appeals

C.151. 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*

Senior Judge  
may make  
rules

C.152.-(1) The senior Judge of the Court-martial Appeal Court, with the approval of the President, may make rules not inconsistent with this 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 such 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 such appeals, and of appeals showing no substantial grounds.

(2) Rules made under this section shall be published in the *Gazette*.

Publication  
in  
*Gazette*  
Appeals  
to be  
final

*No Appeal from Court-martial Appeal Court*

**C.153.** 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.** 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.

Review by  
Judge  
Advocate  
General

**C.155.** 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 such action under this Code as he may deem fit.

Procedure  
where  
illegality  
exists

*Petition for New Trial*

**C.156.** (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.

Where  
applicable

(2) No petition under this section shall be entertained unless it is delivered to an officer designated in Defence Forces Regulations-

Time  
limits

(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.

(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-

Disposal

(a) refuse to grant the petition,

(b) quash the finding made at the original trial and order a new trial;  
or

(c) quash the finding made at the original trial and dispense with the ordering of a new trial.

(4) Where a new trial is ordered pursuant to this section, the petitioner may be tried again as if no trial had been held.

May be  
tried  
again  
saving

**C.157.** 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.** Nothing in this Code shall be construed as restricting or regulating the exercise of the prerogative of mercy conferred on the President by section 22 of the Constitution.

Saving of  
power of  
the President

(Section 108)

## THE SECOND SCHEDULE

## PART I

## LAWS REPEALED

(a) *Laws of Tanganyika and Tanzania*

Cap. 60	The Tanganyika Naval Volunteer Ordinance.
Cap. 402	The Military Forces Ordinance.
Cap. 449	The Tanganyika Military Forces (Constitution and Miscellaneous Provisions) Act.
Cap. 510	The Tanganyika Military Forces (Consequential Provisions) Act.
Acts 1963	The Tanganyika Military Forces Laws (Amendment) Act, 1963.
No. 60	
Acts 1964	The Military Court Act, 1964.
No. 15	
G.N.1964	The Extension and Amendment of Laws (No. 2) Decree, 1964.
No. 385	
<sup>1964</sup>	
No. 581	The Extension and Amendment of Laws (No. 4) Decree, 1964.

(b) *Laws of Zanzibar*

Cap. 52	The Naval Volunteer Decree.
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## PART II

## LAWS AMENDED

(a) *Laws of Tanganyika and Tanzania*

Cap. 16	The Penal Code Section 5	Delete paragraph (iv) in the second series of categories of persons included in the definition "persons employed in the public service" and substitute the following new paragraph: - "(iv) all members of the Regular Force of the Defence Forces, all members of the National Service, and all other members of the Defence Forces when on duty;
	Section 45	Delete paragraph (a) and substitute the following new paragraph:- "(a) to seduce any member of the Police Force, the Prisons Service or the National Service from his duty, and allegiance to the United Republic;"
	Section 46	Delete the last two lines and substitute the following:- "any member of the Police Force, Prisons Service or National Service, is guilty of a misdemeanor."
	Section 47	Delete the last three lines and substitute the following:- "any member of the Police Force, Prisons Service or National Service, is guilty of a misdemeanor and is liable to imprisonment for six months."
Cap. 67	The Cantonments Ordinance	New section I A Add, immediately below section 1, the following new Section: - "Application IA. This Ordinance shall extend to Zanzibar as well as to Tanganyika."



		Section 2	Delete the second, third and fourth lines and substitute the following:- 'Chief of the Defence Forces', 'officer' and 'man' have the meanings respectively ascribed to those expressions in the National Defence Act, 1966;".
		Section 18	Delete the expression the officer in command of the Southern Brigade of the King's African Rifles" wheresoever it occurs and substitute therefor the expression "the Chief of the Defence Forces"
		Generally	Subject to the foregoing amendments to the Cantonments Ordinance, delete the expressions "officer" "native officer" "British non-commissioned officer, and "soldier" wheresoever they occur in the Ordinance and substitute for the first two or either of them the expression "officer" and for the last two or either of them the word "man"
Cap. 263	The Workmen's Compensation Ordinance	Section 4	Delete paragraph (a) and substitute the following new paragraph:- "(a) members of the Defence Forces in their employment as such;".
Cap. 366	The Employment Ordinance		Delete paragraph (a) of the proviso and substitute the following new paragraph: - "(a) members of the Defence Forces in their employment as such;".
Cap. 381	The Trade Unions Ordinance	Section 58A (1)	Delete paragraph (a) and substitute the following new paragraph:- "(a) members of the Regular Force, and other members of the Defence Forces when called out for continuing full time service with the Defence Forces;".
Cap. 484	The Civil Service (Negotiating Machinery) Act	Section 2 (1)	In the definition "civil servant" delete the words and brackets "the military forces of Tanganyika (including the Volunteer Reserve)" and substitute the words "the Defence Forces"
Cap. 487	The Severance Allowance Act	Section 4	Insert, immediately below subsection (3), the following new subsection:- "(3A) For the avoidance of doubts it is hereby declared that the Government is not liable to pay any severance allowance to, or in respect of, a member of the Defence Forces or National Service in respect of his employment as such."
Cap. 494	The Visiting Act	Section 1A	Add, immediately below section 1, the following new section:- "Application IA. This Act shall extend throughout to Zanzibar as well as to Tanzania Tanganyika."
Acts 1964 No. 36	The National Provide Fund 1964	Second Schedule	Delete sub-paragraph (a) of paragraph 4 and substitute the following new sub-paragraph: - • '(a) the Defence Forces in their employment as such;".

Acts 1965 No. 2	The Reserve Forces Act, 1965	Section 2 (1)	Delete the definitions "enlisted member" "member" "Military Council Ordinance" "Military Forces Ordinance", regular forces" and 'the Volunteer Reserve' and insert in the appropriate alphabetical position, the following new definitions:- " 'Defence Forces' and 'Defence Forces Committee' have the meanings respectively assigned to those expressions in the National Defence Act, 1966;"
		Part II Comprising Sections 4 to 24	Is repealed.
		Section 27 (3)	(a) Delete the words "Military Forces Ordinance" where they occur in the third line and substitute the words "Code of Service Discipline set out in the National Defence Act, 1966".
		Section 28	Delete the words and figures "section 30" in the tenth line and "section 31 of the Military Forces Ordinance" in the eleventh line and substitute respectively the words and figures "section C.24 and section C.26 of the said Code of Service Discipline"
		Section 33	is repealed.
		Generally	Subject to the foregoing amendments to the Reserve Forces Act, 1965, delete the expressions "Military Forces Ordinance", "Military Forces", "Military Council" and "court-martial" where they occur in the unrepealed provisions of the Act and substitute therefor the expressions "National Defence Act, 1966", "Defence Forces", "Defence Forces Committee" and "service tribunal" respectively.
		(b) Laws of Zanzibar	
Cap. 13	The Penal Code	Section 5	Delete paragraph (iii) of the definition "person employed in the public service" and substitute the following new paragraph: - "(iii) all members of the Regular Force of the Defence Forces, and all other members of the Defence Forces when on duty;"
		Section 3 (a)	Delete the words "any person serving in the military forces of the State"
		Section 32	Delete the words "any non-commissioned officer or private of the military forces of the Protectorate or" where they occur in the fifth line.
		Section 33	Delete, the words "any non-commissioned officer or private of the said military forces or"

## THE THIRD SCHEDULE

(Section 109)

## TRANSITIONAL PROVISIONS RELATING TO ESTABLISHMENT OF DEFENCE FORCES

1. In this Schedule, unless the context otherwise requires-

Interpretation

"Military Forces of the United Republic" means those forces which were styled as such, or as the Tanzania People's Defence Forces, immediately before the operative date, but does not include any forces raised or maintained under Part VIII of the Military Forces Ordinance, the Reserve Forces Act, 1965 or the Tanganyika Naval Volunteer Ordinance;

"operative date" means the date on which this Act comes into operation;

"repealed laws" means the laws set out in Part I of the Second Schedule.

2.-(1) All units and other elements of the Military Forces of the United Republic which are maintained immediately before the operative date shall, on the operative date, become units and other elements of the Tanzania Peoples, Defence Forces and shall be embodied in the Regular Force.

Components, units and other elements

(2) All units and other elements maintained immediately before the operative date under Part 11 of the Reserve Forces Act, 1965 shall, on the operative date, become units' and other elements of the Tanzania Peoples' Defence Forces and shall be embodied in the Volunteer Reserve.

3.-(1) All officers and men commissioned, appointed or enlisted in the Military Forces of the United Republic and serving therein (or seconded or attached from service therein) immediately before the operative date shall, on the operative date, be deemed to have been enrolled in, and to be members of, the Regular Force.

Officers and men

(2) All reservists (within the meaning ascribed to that expression in the Military Forces Ordinance) who are subject to reserve liability under that Ordinance immediately before the operative date shall, on the operative date, become members of the Regular Reserve.

(3) All officers and men commissioned, appointed or enlisted in the Volunteer Reserve established by the Reserve Forces Act, 1965 and serving therein immediately before the operative date shall, on the operative date, be deemed to have been enrolled in, and to be members of, the Volunteer Reserve.

4.-(1) Every officer and man who becomes a member of the Defence Forces pursuant to paragraph 3 shall become such member in the rank and appointment which he held immediately before the operative date (and, in the case of an officer, any commission issued under the repealed laws shall be deemed to be a commission issued under this Act), and shall serve in the Defence Forces in accordance with the provisions of this Act; but no such officer or man shall be required to serve for a longer specified period than the residue of any specified period of service which he was liable to serve immediately before the operative date.

Terms of service

(2) Any man who, immediately before the operative date, is liable, in accordance with the terms of his enlistment under any of the repealed laws, to serve any term of reserve liability on the termination of his service with the Military Forces of the United Republic shall be liable on the termination of his service with the Regular Force to serve a like term in the Regular Reserve.

- Continuity of service 5. The service of every officer and man who becomes a member of the Defence Forces pursuant to paragraph 3 shall be deemed to be continuous with his former service under the repealed laws (and with any other former service with which, in accordance with the repealed laws, any such latter service is to be aggregated or to be limited as, continuous), and all such former continuous service shall, be taken into account in computing the total service of any officer or man, for the purposes of any pension or gratuity payable to a man, and for the purpose of any pension or gratuity, or any contribution toward any pension or gratuity, payable to an officer.
- Seconded or attached officers and men 6. Every person who is, immediately before the operative date, seconded or attached to any unit or other element which, on the operative date, becomes a unit or element of the Defence Forces shall be deemed, on that date, to have become seconded or attached to the Defence Forces in the corresponding component and unit or other element.
- Non-public property 7. All property which, had the like provision relating to non-public property as is contained in this Act been contained in the repealed laws, would, immediately before the operative date, have been non-public property of any unit or element which becomes a unit or other element of the Defence Forces on the operative date, shall be deemed to be non-public property of such unit or other element.

THE FOURTH SCHEDULE

(Section 110)

TRANSITIONAL PROVISIONS RELATING TO CODE OF SERVICE DISCIPLINE

Interpretation 1. in this Schedule, unless the context otherwise requires-  
"operative date" means the date on which this Act comes into operation.

Trial of service offences contrary to Cap. 402 2.-(1) A service tribunal shall have jurisdiction to try and punish an offence committed, before the operative date, against any section of Part 11 of the Military Forces Ordinance as if the offence were an offence against the Code of Service Discipline; and the provisions of the Code of Service Discipline shall apply in relation to any Such first mentioned offence and to the finding and sentence of a service tribunal, as if such offence were an offence against that Code:

Provided that nothing in this sub-paragraph shall render an offence capable of being tried by a service tribunal if, by reason of the time, place or circumstance, the offence could not have been tried by court-martial or summarily under the Military Forces Ordinance.

(2) Where any person is tried by a service tribunal for an offence against any section of Part 11 of the Military Forces Ordinance, the person charged shall have the like defences as were available to him under that Ordinance, and references to a service offence and a service tribunal in section C.8 of the Code of Service Discipline include references to an offence against Part 11 of the Military Forces Ordinance and a court-martial and a summary trial under that Ordinance, respectively.

Part heard matters 3. Where any proceedings in respect of an offence against Part 11 of the Military Forces Ordinance have been commenced before the operative date, any step in the proceedings taken in accordance with that Ordinance shall be deemed to have been validly taken for the purpose of the corresponding provision of the Code of Service Discipline; and, if the trial of any person for such an offence has been commenced by a court-martial or summarily under that Ordinance but not concluded before the operative date, such trial may be continued and concluded before the made thereon, as if such court-martial the officer trying the offence summarily were a service tribunal under the Code.

4. Where after the operative date a person is alleged-
- (a) to have committed an offence continuing over a period beginning before that date and ending thereon or thereafter; or
  - (b) to have committed an offence between two dates failing within such a period, and the offence would be an offence against the Code of Service Discipline if it had been in operation at all material times, he may be proceeded against as if the Code had so been in operation-

Continuing  
offences

I Passed in the National Assembly on the twenty-fifth day of February, 1966.

  
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Clerk of the National Assembly