

Seychelles

## Defence Force (Offences) Act Act 32 of 1980

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# Seychelles

## Defence Force (Offences) Act Act 32 of 1980

Commenced on 1 January 1981

*[This is the version of this document at 30 June 2012 and includes any amendments published up to 30 June 2014.]*

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Defence Force (Offences) Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**court-martial**" means a court-martial under this Act;

"**disciplinary offence**" has the meaning assigned by [section 6\(b\)](#);

"**disciplinary officer**" means a senior or a junior disciplinary officer;

"**junior disciplinary officer**" means a person appointed as such under paragraph 3(b) of Part B of the Second Schedule;

"**offence against this Act**" has the meaning assigned by [section 6](#);

"**on duty**", in relation to a member of the Defence Force, has the meaning assigned by [section 4](#);

"**senior disciplinary officer**" means a person appointed as such under paragraph 3(a) of Part B of the Second Schedule;

"**serious offence**" has the meaning assigned by [section 6\(a\)](#);

"**Regulations**" means regulations made under [section 22](#).

- (2) Except when the context otherwise requires, and in particular except in the case of the expressions "Regulations" and "this Act", any expression defined in section 2 of the Defence Act, has the meaning given in that section when used in this Act.
- (3) For the purposes of this Act, the superiority or otherwise with respect to rank of a member of the Defence Force shall be determined as provided in section 20 of the Defence Act.

#### 3. Persons subject to this Act

A person is subject to this Act if, and only if, he is—

- (a) a member of the Defence Force; and
- (b) on duty.

#### 4. Meaning of "on duty"

For the purposes of this Act, a member of the Defence Force Serving—

- (a) in a Regular Force is deemed to be on duty at all times; or

- (b) in a Reserve Force or the Militia is deemed to be on duty only—
  - (i) when bound to render service as provided in section 28 of the Defence Act;
  - (ii) while affected by an order made under section 29 of that Act; or
  - (iii) while in custody or undergoing a sentence of imprisonment pursuant to this Act.

## 5. Certificate

- (1) The Commander-in-Chief may give a certificate to the effect that a person identified in the certificate is or is not, or was or was not on a date or during a period so identified—
  - (a) an officer or a non-commissioned member of a stated rank and either—
    - (i) a member of the Defence Force; or
    - (ii) serving in Seychelles pursuant to an arrangement under section 21 of the Defence Act, and
  - (b) on duty.
- (2) A certificate given under subsection (1) shall be received as conclusive evidence of any matter certified pursuant to that subsection in the certificate.

## 6. Offences against the Act

An offence specified in Part A of the First or Second Schedule is an offence against this Act, and

- (a) an offence so specified in the First Schedule is referred to in this Act as a "serious offence"; and
- (b) an offence so specified in the Second Schedule is referred to in this Act as a "disciplinary offence".

## Part II – Jurisdiction in respect of offences against this Act

### 7. Proceedings in respect of offences against this Act

- (1) Subject to Paragraph 6(4) of Part A of the First Schedule, any proceedings in respect of a serious offence shall be taken before a court-martial in accordance with Part B of the First Schedule and not otherwise.
- (2) Paragraphs 17 and 18 of Part B of the First Schedule apply with respect to appeals from courts-martial.
- (3) Any proceedings in respect of a disciplinary offence shall be taken before a disciplinary officer in accordance with Part B of the Second Schedule and not otherwise.
- (4) Paragraph 8 of Part B of the Second Schedule applies with respect to the review of disciplinary proceedings.

### 8. Offences against this Act and civil offence

- (1) Subject to subsection (2), where a person is alleged to have committed an offence against paragraph 6 of Part A of the First Schedule, proceedings shall be taken in respect of that offence and not in respect of the civil offence concerned.
- (2) The Commander-in-Chief may give a certificate to the effect that proceedings in respect of an offence against paragraph 6 of Part A of the First Schedule will not be taken; and in that event proceedings may be taken in respect of the civil offence concerned but shall not be taken in respect of the offence against paragraph 6.

- (3) In this section, "civil offence concerned" means the offence the alleged commission of which in a particular case constitutes an offence under paragraph 6 of Part A of the First Schedule.

## 9. Persons ceasing to be subject to this Act

Proceedings may be taken under this Act in respect of an offence against this Act notwithstanding that the person who is alleged to have committed the offence has ceased (whether temporarily or permanently) to be subject to this Act.

## Part III – Arrest and custody, etc.

### 10. Arrest without warrant

- (1) Subject to subsections (2) and (3), a member of the Defence Force who is on duty may, without a warrant, arrest—
- (a) any person whom he suspects upon reasonable grounds of having committed an offence against this Act;
  - (b) any person who commits an offence against this Act in his presence; or
  - (c) any person for whom he has reasonable cause to believe a warrant of arrest has been issued under [section 11](#).
- (2) A non-commissioned member shall not arrest an officer.
- (3) A member of the Defence Force shall not arrest another member of the higher rank than himself, except, subject to subsection (2), in the case referred to in sub-section (1) (b) where the offence concerned involves violence (whether actual or threatened) to property or to the person.
- (4) A member of the Defence Force making an arrest pursuant to subsection (1) may call upon—
- (a) a member of the Defence Force of lower rank than himself; or
  - (b) a member of the Police Force,
- to assist him in making the arrest, and any person so called upon shall do so.

### 11. Warrants of arrest

- (1) The Commander-in-Chief may issue a warrant for the arrest of a person suspected on reasonable grounds of having committed an offence against this Act.
- (2) A warrant under subsection (1) may be directed to all or any, or to any class, of the following, namely—
- (a) members of the Defence Force; or
  - (b) members of the Police Force,

and may be executed accordingly.

### 12. Use of force, etc.

- (1) Every person making, or assisting in the making of, an arrest pursuant to [section 10](#) or [11](#) may use such force as is reasonably necessary in the circumstances for that purpose, having regard to the gravity of the offence concerned.
- (2) Every person referred to in subsection (1) has, for the purpose of making or assisting in the making of an arrest, the same powers as those of a police officer under sections 11 and 12 of the Criminal Procedure Code.

### 13. Custody

A person arrested pursuant to section 10 or 11 shall, without unnecessary delay, be placed in civil or service custody, or taken to the unit or element of the Defence Force to which he belongs, and detained in service custody or otherwise dealt with in the manner prescribed in Regulations or in orders made by the Commander-in-Chief.

### 14. Proceedings to be commenced expeditiously

Where a person is arrested pursuant to section 10 or 11, proceedings in respect of any offence against this Act alleged to have been committed by him shall be commenced without unnecessary delay; and if he is detained in custody—

- (a) he may at any time petition the Commander-in-Chief for his release; and
- (b) he shall be released at the end of the period of 90 days following his arrest if the proceedings have not then been brought before a court-martial or a disciplinary officer.

### 15. Power of search

- (1) Whenever a person is arrested pursuant to section 10 or 11, the person making the arrest or any member of the Defence Force into whose custody he is delivered pursuant to section 13, may search him and place in safe custody all articles, other than necessary wearing apparel, found upon him.
- (2) A person searched pursuant to subsection (1) shall be searched by a person of the same sex unless, in a particular case, the need to search the person is too urgent in that case to allow the delay which would be necessary to comply with that requirement.
- (3) A member of the Defence Force authorised for the purpose by a senior disciplinary officer—
  - (a) may search any place that is or has been occupied by, or has been under the control of, the Defence Force; and
  - (b) seize and place in safe custody any service property found in or on the place, and any other thing in or on the place that is suspected upon reasonable grounds of having been unlawfully obtained or that may furnish evidence of the commission of an offence against this Act or any other law.
- (4) In subsection (3) (b), "service property" means any property used by, or under the control of, the Defence Force, or any property issued to a person subject to this Act in his capacity as such.

### 16. Investigation

- (1) Subject to this section, an allegation that a person has committed an offence against this Act shall be investigated without unnecessary delay.
- (2) The Commander-in-Chief, in relation to a serious offence, or a disciplinary officer, in relation to a disciplinary offence in respect of which he would have jurisdiction, may in writing order that an allegation that such an offence has been committed shall not be investigated or that an investigation which has been commenced shall not be continued.
- (3) Where an order is made under subsection (2), the person against whom the allegation is made shall, if in custody, be forthwith released unless he is also in custody on other lawful grounds.
- (4) Where an order is made under subsection (2) by a disciplinary officer, he shall forthwith give in writing particulars of the order to the Commander-in-Chief or to a member of the Defence Force designated by the Commander-in-Chief.

## Part IV – Miscellaneous

### 17. Person not to be twice criminally responsible for the same offence

Where, in respect of a particular offence against this Act, proceedings have been taken under this Act against any person and he has been found guilty or not guilty of that offence in those proceedings, no subsequent proceedings shall be taken under this Act or any other law against him in respect of—

- (a) that particular offence; or
- (b) any other offence against this Act or any other law for which proceedings might then have been taken instead of proceedings for that particular offence.

### 18. Dismissal

The Commander-in-Chief may dismiss a member of the Defence Force who has been—

- (a) convicted of an offence under this Act and has had a punishment of dismissal under paragraph 2(1) (a) or (b) of the Second Schedule imposed on him; or
- (b) convicted by a court of an offence against any law.

### 19. Time for commencing proceedings

- (1) A person shall not be tried for—
  - (a) a serious offence (other than an offence under paragraph 2, 3, or 6 of Part A of the First Schedule) unless the trial begins within 3 years after the commission of the offence;
  - (b) an offence under paragraph 6 of Part A of the First Schedule, unless the trial begins within the period prescribed for bringing proceedings in a court in respect of the similar civil offence under the other law concerned; or
  - (c) a disciplinary offence unless disciplinary proceedings are commenced within 12 months after the commission of the offence.
- (2) A person may be tried at any time for an offence under paragraph 2 or 3 of Part A of the First Schedule.

### 20. Redress of grievances

- (1) Except in respect of a matter that would properly be the subject of an appeal or review under this Act, a member of the Defence Force who considers that he has suffered any personal oppression, injustice or ill-treatment, or that he has any other cause for grievance, may as a matter of right complain to such superior officer, in such manner and on such conditions as are prescribed in Regulations or in orders made by the Commander-in-Chief.
- (2) If the complainant is not satisfied with the decision or action on the complaint by the superior officer to whom the complaint was made and the superior officer refuses or fails, when requested to do so, to forward the complaint to the next superior officer, the complainant is entitled to make a complaint of the original grievance or against the refusal or failure, or both, and the provisions of this subsection apply to any such further complaints.
- (3) It is the duty of an officer receiving a complaint under this section to investigate it or have it investigated as soon as practicable, and to take such steps within his authority for redressing the grievance as appear to him to be necessary, whether or not the act or omission that gave rise to the complaint was procedurally correct.

## 21. Delegation

- (1) The Commander-in-Chief may delegate by instrument in writing any of his functions under this Act (except this power of delegation) either unconditionally or subject to such conditions, limitations or exceptions as are specified in the instrument of delegation, and may, by instrument in writing, revoke or vary any such delegation.
- (2) The delegation under subsection (1) of any function may be made either generally or with respect to any particular matter or class of matters.
- (3) Any act or thing done or suffered by a delegate while acting pursuant to a delegation has the same effect as if the act or thing done or suffered had been done or suffered by the Commander-in-Chief.

## 22. Regulations

- (1) The Commander-in-Chief may make Regulations prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, Regulations may prescribe matters in respect of—
  - (a) proceedings before courts-martial or disciplinary officers;
  - (b) the custody, discipline or treatment of persons arrested for or convicted of an offence against this Act; or
  - (c) the execution of sentences for offences against this Act.

## First Schedule (Sections 6 and 7)

### Part A – Serious offences

1. (1) A person subject to this Act who, with intent to assist an enemy—
  - (a) assists, or does any act that is calculated or likely to assist, an enemy in any way; or
  - (b) except as authorised by law, communicates to any person any information that—
    - (i) it is his duty to keep secret; and
    - (ii) is likely to assist an enemy,

is guilty of an offence against this Act and liable on conviction before a court-martial to imprisonment for life or for a lesser period.
- (2) Sub-paragraph 1(a) does not apply in relation to an act that is otherwise lawful and—
  - (a) is directed to the relief of the distress of an injured or otherwise distressed person; and
  - (b) is not calculated, and is not likely, to assist the enemy in any political, military, navel or air force sense,

but the burden of proof of any such matter is on the accused person.
- (3) A person subject to this Act who, knowing or having reasonable grounds for suspecting that an offence against sub-paragraph (1) has been or is likely to be committed, does not immediately report the fact, together with the grounds of his belief or suspicion, to a member of the Defence Force of superior rank to himself, is guilty of an offence against this Act and liable on conviction before a court-martial to imprisonment for a term not exceeding 10 years.



- (4) For the purposes of this paragraph and without limiting its generality, assistance to an enemy includes—
    - (a) concealing or sheltering an enemy;
    - (b) concealing, transporting or taking care of any munitions, arms or goods of, or intended for the use of, an enemy; or
    - (c) failing to report to a member of the Defence Force of superior rank to himself the presence or suspected presence in or on any place, or in any locality, of an enemy or of munitions, arms or goods of, or intended for the use of, an enemy.
  - (5) In this paragraph, "enemy" means—
    - (a) any authority (whether governmental or otherwise) controlling any defence force or guerrilla or irregular force with which Seychelles is at war or engaged in armed combat operations;
    - (b) any member of an authority or force of a kind referred to in item (a);
    - (c) any person or authority materially assisting an authority or a person of a kind referred to in item (a) or (b); or
    - (d) any person or group of persons declared by the President by notice published in the *Gazette* to be an enemy.
2. (1) A person subject to this Act who takes part in a mutiny is guilty of an offence against this Act and liable on conviction before a court-martial to imprisonment for life or for a lesser period.
- (2) A person subject to this Act who, knowing that a mutiny is taking place or is intended—
  - (a) fails to use his utmost endeavour to suppress or prevent it; or
  - (b) fails to report to a member of the Defence Force of superior rank to himself that a mutiny is taking place or is intended,is guilty of an offence against this Act and liable on conviction before a court-martial to imprisonment for a term not exceeding 10 years.
- (3) In this paragraph, "mutiny" means a combination of two or more persons subject to this Act, or between persons of whom at least two are such persons—
  - (a) to overthrow or resist lawful authority in the Defence Force or in any part of the Defence Force;
  - (b) to disobey any such authority in such circumstances as to make the disobedience subversive of discipline, or with the object of avoiding any service or duty against, or in connection with operations against, an enemy as defined in paragraph 1(5); or
  - (c) to impede the performance of any duty or service of duty of the Defence Force or of any part of the Defence Force.
3. (1) A member of a Regular Force who—
  - (a) with intent to remain permanently absent from duty leaves or fails to attend at his place of duty without authority; or
  - (b) having left or failed to attend at his place of duty, forms the intention to remain permanently absent from duty without authority,is guilty of an offence against this Act.
- (2) A member of a Reserve Force or the Militia who being bound under Part VI of the Defence Act, to render service or to perform duty, conducts himself in the manner and with the intention referred to in item (a) or (b) of sub-paragraph (1) is guilty of an offence against this Act.

- (3) On conviction before a court-martial for an offence against this paragraph—
- (a) a member of a Regular Force is liable to imprisonment for life or for a lesser period; or
  - (b) any other person is liable to imprisonment for a term not exceeding 10 years.
4. A person subject to this Act who—
- (a) steals from, or, with intent to steal, searches the person of any person killed or wounded or captured in the course of any war or warlike operations, or any operations of the Defence Force, or any part of the Defence Force;
  - (b) steals any property that has been left exposed or unprotected in consequence of—
    - (i) any act of war or any warlike operations;
    - (ii) riot, civil commotion or disorder;
    - (iii) an accident; or
    - (iv) a natural disaster, whether actual or apprehended;
  - (c) takes, otherwise than in execution of his duty or for the public service, any vehicle, vessel, aircraft, equipment or stores abandoned by an enemy as defined in paragraph 1(5),
- is guilty of an offence against this Act and liable on conviction before a court-martial to imprisonment for a term not exceeding 10 years.
5. (1) A person subject to this Act who, while on operational service, is guilty of misconduct is guilty of an offence against this Act and liable on conviction before a court-martial to imprisonment for a term not exceeding 10 years.
- (2) In sub-paragraph (1)—
- "misconduct" includes—
- (a) a breach of service discipline;
  - (b) negligence in the performance of duty;
  - (c) failure to use the utmost exertions in the performance of duty; and
  - (d) failure to use all lawful means to prevent or suppress misconduct by any other person;
- "operational service" means service—
- (a) in the defence of Seychelles; or
  - (b)
- pursuant to section 30 of the Defence Act.
6. (1) A person subject to this Act who commits a civil offence is guilty of an offence against this Act and is liable on conviction before a court-martial to incur the penalty, or a penalty not exceeding the penalty, prescribed in respect of the civil offence.
- (2) This paragraph applies notwithstanding that some of the ingredients of the civil offence arose or occurred after the person whose alleged conduct constitutes an offence under sub-paragraph (1) had ceased (whether temporarily or permanently) to be subject to this Act.
- (3) In this paragraph "civil offence" means an offence under any law other than this Act.
- (4) Regulations may prescribe that any proceedings in respect of a civil offence of a minor nature and specified in the Regulations shall not be taken before a court-martial but shall be dealt with as a disciplinary offence and taken before a disciplinary officer in accordance with Part B of the Second Schedule; such Regulations may specify particular civil offences or classes or types of civil offence.

7. A person subject to this Act who contravenes paragraph 14(4) (b) of Part B is guilty of an offence against this Act and liable on conviction before a court-martial to a fine not exceeding R.5000 or to imprisonment for a term not exceeding 2 years, or to both.

### **Part B – Courts-martial**

8. No proceedings against a person shall be instituted or proceedings before court-martial without the authority of the Commander-in-Chief, or of a person designated by the Commander-in-Chief.
9. (1) The Commander-in-Chief may convene and constitute a court-martial.
- (2) In pursuance of sub-paragraph (1), the Commander-in-Chief may—
- (a) appoint not less than 3 officers to be members of a court-martial;
  - (b) where he considers that the seriousness or complexity of the offence, or the seniority of the person, to be tried, justifies his doing so and after consultation with the Chief Justice, appoint a Judge or Magistrate to be a member of a court-martial; and
  - (c) designate a member to be president of the court-martial.
10. (1) The Commander-in-Chief may appoint members of the Defence Force to be prosecutors in proceedings before courts-martial.
- (2) The Commander-in-Chief may direct the Attorney-General to be prosecutor for purpose of any proceedings before a court-martial and, in that event, the Attorney-General or a member of his Chambers designated by the Attorney-General shall be prosecutor in those proceedings.
- (3) A prosecutor is entitled—
- (a) to present a charge;
  - (b) with the agreement of the Commander-in-Chief or a person designated by him, to discontinue at any stage before judgement proceedings before a court-martial; and
  - (c) to appear and be heard on a charge.
11. (1) The Commander-in-Chief may appoint members of the Defence Force to be defenders in proceedings before courts-martial.
- (2) An accused person awaiting trial before a court-martial shall be afforded the opportunity before the trial to be advised—
- (a) at no cost to himself, by a defender; or
  - (b) if he is in custody and so wishes, by a legal practitioner.
- (3) In proceedings before a court-martial, an accused person may be represented—
- (a) at no cost to himself, by a defender; or
  - (b) if he so wishes, by a legal practitioner,
- and the person so representing the accused person is entitled to appear and be heard in those proceedings on behalf of the accused person.
12. Save as otherwise expressly provided in this Schedule or in Regulations, the rules of evidence and procedure to be observed in proceedings before courts-martial shall, as far as is practicable, be the same as those observed in criminal trials before the Magistrates' Court.
13. Proceedings before courts-martial shall be open to the public unless—
- (a) the Commander-in-Chief, in the interest of defence, public safety or public morals; or

- (b) the president of a court-martial, in the interest of public morals or the orderly conduct of proceedings,
- orders that the public, or any member or class of members of the public, be excluded from all or any proceedings before a court-martial.
14. (1) A court-martial may—
- (a) summon any person whose evidence is likely to be material;
  - (b) administer an oath to any person appearing to give evidence; or
  - (c) require any person to produce documents within his possession or subject to his control.
- (2) The powers under sub-paragraph (1) may be exercised on behalf of the court by any person authorised by the court and exercising duties in relation to the proceedings of the court.
- (3) A member of the Defence Force may be ordered by a court martial or by another member of the Defence Force of superior rank to him to appear before a court-martial to give evidence or to produce documents within his possession or subject to his control.
- (4) Any person who—
- (a) neglects or fails, without reasonable excuse, the burden of proof of which lies upon him, to attend in obedience to a summons or order made under sub-paragraph (1) or (3), or to be sworn or to answer questions or produce documents when required to do so;
  - (b) knowingly or recklessly makes any false or misleading statement in any evidence before a court-martial;
  - (c) uses insulting or threatening language before, or causes any interruption or disturbance in the proceedings of, a court-martial; or
  - (d) commits, or omits to perform, before a court-martial any act which if done or made before a court would constitute contempt of that court,
- is guilty—
- (e) in the case of a person subject to this Act, of an offence under paragraph 7 of Part A; or
  - (f) in the case of a person not subject to this Act, of an offence and liable on conviction to a fine not exceeding 2 years, or to both.
- (5) Proceedings in respect of an offence under sub-paragraph (4)(f) may be brought in any court of competent jurisdiction but shall not be taken under this Act.
- (6) A witness shall not refuse or fail to answer a question or produce a document on the ground that it might incriminate him, but any statement or disclosure is admissible in evidence against him only in proceedings for an offence against this paragraph or paragraph 7 of Part A.
15. Regulations may make provision with respect to the procedures to be followed in or in connection with courts-martial and, in particular, with respect to the proof of any matter or the admissibility of documents and records or copies thereof.
16. (1) Subject to this paragraph, the finding and sentence at 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.
- (2) Subject to sub-paragraph (3), in the case of an equality of votes on a finding, the accused person shall be found not guilty.
- (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.

- (4) Where a Judge or a Magistrate has been appointed pursuant to paragraph 9(2) to be a member of a court-martial, he may, in such circumstances and subject to such conditions and procedures as are prescribed, determine questions of law arising before or after the commencement of the trial.
17. (1) Subject to the modifications referred to in sub-paragraph (2), the provisions of section 308 to 319 of the Criminal Procedure Code apply with respect to appeals from courts-martial to the Supreme Court as they apply to appeals from the Magistrates' Court to the Supreme Court.
- (2) For the purpose of the application of sections 308 to 319 as provided in sub-paragraph (1)—
- (a) the reference therein to "the Magistrates' Court" (except in section 318 or 319(4)) is deemed to be a reference to "a court-martial";
  - (b) section 315 shall be read as if it required the notice and memorandum of appeal to be served in every case on the Attorney-General;
  - (c) section 316 shall be read as if in (a)(i) the words "or order him to be tried by a court of competent jurisdiction, or commit him for trial" were deleted;
  - (d) section 318 shall be read—
    - (i) as if the reference in subsection (1) to the Magistrates' Court did not occur; and
    - (ii) as if subsection (3) were deleted; and
  - (e) section 319 shall be read—
    - (i) as if the reference in subsection (1) to the Magistrates' Court did not occur; and
    - (ii) as if subsection (2) were deleted.
- (3) No appeal from courts-martial lies to the Court of Appeal.
18. For the purpose of appeals from courts-martial to the Supreme Court, the Supreme Court shall be constituted by the Chief Justice or by a Judge designated by the Chief Justice either generally or for the purpose of hearing any particular appeal.

## Second Schedule (Sections 7 and 8)

### Part A – Disciplinary offences

1. (1) A person subject to this Act who commits an act or omission that is—
- (a) prejudicial to good order and discipline; or
  - (b) unbecoming of a member of the Defence Force,
- is guilty of a disciplinary offence.
- (2) Without prejudice to the generality of sub-paragraph (1), the following are disciplinary offences—
- (a) to strike or use, or threaten by words, actions or otherwise to use, violence to another member of the Defence Force on duty;
  - (b) to ill-treat in any way a member of the Defence Force on duty and of inferior rank;
  - (c) to offer, in the course of duty, inhumane or degrading treatment to another person;
  - (d) to cause or engage in a disturbance, or to behave in a disorderly manner;
  - (e) to behave in an insubordinate manner;
  - (f) to misconduct oneself or fail to do one's duty while on sentry duty or on watch;

- (g) to disobey a lawful order;
  - (h) to be drunk or under the influence of drugs;
  - (i) to be inefficient due to causes within one's own control;
  - (j) to be absent without leave;
  - (k) to avoid duty;
  - (l) to make a false statement concerning any service matter;
  - (m) to take or damage property belonging to another member of the Defence Force without authority;
  - (n) to resist arrest;
  - (o) to escape from service custody;
  - (p) to hinder or obstruct any person in the exercise of his powers or the performance of his duties under the Defence Act, or this Act; or
  - (q) a civil offence dealt with as a disciplinary offence under paragraph 6(4) of Part A of the First Schedule.
- (3) A person subject to this Act who—
- (a) has helped or encouraged another person to commit a disciplinary offence; or
  - (b) tries to conceal a disciplinary offence; or
  - (c) is otherwise an accessory to the commission of a disciplinary offence; or
  - (d) attempts to commit a disciplinary offence,
- is liable to be treated as if he had committed the disciplinary offence.
2. (1) Subject to this Act, all or any of the following punishments, which are listed in descending order of severity, may be imposed in accordance with this Act in respect of a disciplinary offence, namely—
- (a) dismissal with previous detention in accordance with item (d);
  - (b) dismissal without detention;
  - (c) reduction in rank, with or without detention;
  - (d) detention for a period not exceeding 180 days;
  - (e) forfeiture of service for the purposes of promotion;
  - (f) confinement to barracks for a period not exceeding 180 days;
  - (g) a fine not exceeding three month's salary;
  - (h) stoppage of not more than 21 days leave;
  - (i) extra duties in accordance with Regulations or with orders by the Commander-in-Chief; or
  - (j) reprimand.
- (2) The punishment of—
- (a) dismissal under sub-paragraph 1(a) or (b);
  - (b) reduction in rank under sub-paragraph (1) (c);
  - (c) detention for a period exceeding 14 fdays under sub-paragraph (1)(d);
  - (d) forfeiture of service under sub-paragraph (1)(e);

- (e) confinement to barracks for a period exceeding 21 days under sub-paragraph (1)(f);
  - (f) a fine exceeding one week's salary under sub-paragraph (1)(g); or
  - (g) stoppage of more than 7 days leave under sub-paragraph (1)(h),
- shall not take effect until it is confirmed by the Defence Council in the manner prescribed in Regulations or others made by the Commander-in-Chief.
- (3) An offer shall not be reduced to a rank of a non-commissioned member.
  - (4) A sentence of detention shall be served in such place and under such conditions as the Commander-in-Chief may order or as may be prescribed.
  - (5) Where the breach involves damage to property, the disciplinary officer may order that part or all of any fine imposed be paid to the owner of the property by the way of compensation.

### **Part B – Disciplinary proceedings**

- 3. The Commander-in-Chief may appoint—
  - (a) any officer to be a senior disciplinary officer; or
  - (b) any officer to be a junior disciplinary officer,in relation to the Defence Force or any part of the Defence Force.
- 4. A senior disciplinary officer—
  - (a) has jurisdiction over all disciplinary offences; and
  - (b) may, subject to paragraph 2 of Part A, impose any punishment provided for in that paragraph.
- 5. (1) A junior disciplinary officer—
  - (a) has jurisdiction over all disciplinary offences committed by non-commissioned members; and
  - (b) may imposed any punishment provided for in sub-paragraph (2).
  - (2) A junior disciplinary officer may impose only the following punishments namely—
    - (a) detention under paragraph 2 (1)(d) of Part A, for a period not exceeding 14 days;
    - (b) confinement to barracks under paragraph 2 (1)(f) of Part A, for a period not exceeding 7 days;
    - (c) a fine under paragraph 2(1)(g) of Part A, not exceeding R250;
    - (d) stoppage of not more than 7 days' leave under paragraph 2(1)(h) of Part A;
    - (e) extra duties under paragraph 2(1)(i) of Part A, for a period not exceeding 14 days; or
    - (f) reprimand under paragraph 2(1)(j) of Part A.
  - (3) Notwithstanding the preceding provisions of this paragraph, a junior disciplinary officer who investigates a charge of breach of service discipline over which he has no jurisdiction may recommend to a senior disciplinary officer that the charge be not proceeded with, and the senior disciplinary officer may dismiss the charge.
- 6. (1) Subject to this paragraph, the procedures to be followed by disciplinary officers in disciplinary proceedings are as prescribed in Regulations or in orders made by the Commander-in-Chief.
- (2) For the avoidance of doubt, it is hereby declared that disciplinary proceedings are not judicial proceedings.

- (3) Subject to this Schedule and the Regulations, a disciplinary officer is not bound by any technical rules of law or of evidence, and may inform himself on any matter in such manner as he thinks fit; but as far as operational requirements allow, disciplinary proceedings must be conducted so as to give the person charged a full and fair opportunity of presenting his defence or explanation (if any) and for that purpose and to that extent—
- (a) the disciplinary officer dealing with the charge should not proceed with the charge where it is in the interests of natural justice that the charge should be dealt with by another disciplinary officer; and
  - (b) the person charged is always entitled—
    - (i) to have the charge stated in writing, and to have a copy of it before the proceedings commence, and to have the charge explained to him by the disciplinary officer at or before the commencement of the proceedings;
    - (ii) to remain silent and not to be required to make any statement;
    - (iii) to examine and cross-examine witnesses called against him and persons whose statements are used against him;
    - (iv) to call and examine witnesses on his behalf; and
    - (v) to be represented by a person of his own choice who is a member of the Defence Force.
- (4) A disciplinary officer conducting any disciplinary proceedings may examine witnesses on oath.
- (5) A disciplinary officer conducting any disciplinary proceedings shall keep in the manner prescribed in Regulations or in orders made by the Commander-in-Chief, a record of—
- (a) the charge;
  - (b) the defence or explanation (if any) of the person charged;
  - (c) the decision; and
  - (d) the reasons for the decision,
- and a note of the evidence given, and such other records as are so prescribed.
- (6) If the disciplinary officer, at any stage of any disciplinary proceedings before he has imposed a punishment, considers that—
- (a) the breach of service discipline warrants or may warrant a punishment more severe than he has power to impose;
  - (b) he should disqualify himself in accordance with sub-paragraph 3(a); or
  - (c) it is for any other reason inappropriate that he should deal with the charge or appropriate that another disciplinary officer should deal with the charge,
- he may refer the matter for hearing to another disciplinary officer having jurisdiction.
7. No appeal lies to a court against a decision in any disciplinary proceedings.
8. (1) The Defence Council shall review any disciplinary proceedings where any punishment of a kind referred to in paragraph 2(2) of Part A is imposed.
- (2) Subject to sub-paragraph (1) the Defence Council may, of its own motion or at the request of any person affected by the decision, review any disciplinary proceedings.
- (3) On review by the Defence Council of any disciplinary proceedings it may, if it thinks it proper to do so,—
- (a) disallow any findings of guilt;



- (b) impose any punishment less than that imposed by the decision; or
- (c) order a further investigation into the matter or the decision,

and may make such other order that it considers necessary to do justice in the matter, and for the purposes of a review or a further investigation may suspend the carrying out of the punishment.