

BOTSWANA DEFENCE FORCE ACT
(Cap. 21:05)

DEFENCE FORCE (BOARDS OF ENQUIRY) RULES, 1995
(Published on 21st April, 1995)

ARRANGEMENT OF RULES

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SCHEDULE

IN EXERCISE of the powers conferred by section 126 of the Botswana Defence Force Act, the President of Botswana hereby makes the following Rules —

- | | |
|--------------------|---|
| Citation | 1. These Rules may be cited as the Defence Force (Boards of Enquiry) Rules, 1995. |
| Interpretation | 2. In these Rules, unless the context otherwise requires —
“the authority”, in relation to a board of enquiry, means any officer empowered by or under these Rules to convene that board;
“board” means a board of enquiry convened under section 117 of the Act to investigate and report on the facts relating to any matter referred to it under that section, and if so required, express its opinion on any question arising therefrom;
“presiding officer” in relation to a board of enquiry means the officer appointed to preside over that board. |
| Convening of board | 3. (1) A board of enquiry may be convened by order of —
(a) any officer not below the rank of colonel, or any corresponding rank, commanding any command or other area, garrison or place, or any formation or body of troops in the Defence Force;
(b) any officer who is for the time being acting in place of such officer referred to in paragraph (a);
(c) any officer, not below the rank of lieutenant, commanding a unit detachment of the Defence Force —
(i) with reference to the absence of any person subject to military law who has been continuously absent without leave for a period of not less than fourteen days;
(ii) with reference to any deficiency in the clothing, arms ammunition, or other equipment, public or service property issued to any person subject to military law for his use; or |

- (iii) with reference to any particular matter, or to matters of any specified class or description, when so authorized by an officer referred to in paragraphs (a) and (b).

(2) The order convening a board shall be in Form 1 in the Schedule hereto, and shall specify its terms of reference, the composition of the board, its presiding officer and the place and time at which it shall first assemble, and may direct it to express its opinion on any matter arising from the enquiry.

(3) The presiding officer of a board shall be an officer not below the rank of lieutenant, or equivalent rank, who shall be appointed by name.

(4) The other members of the board shall be not less than two in number, and shall be officers, unless the subject of the enquiry is not an officer, in which case one or more of the members may be warrant officers, who may be appointed by name in the order, or by a commanding officer so detailed in the order to appoint the members from officers or warrant officers, as the case may be, under his command.

(5) The authority may at any time revoke or suspend the order, or vary its terms.

4. (1) A board shall assemble at the time and place specified in the order convening the board, and at its first meeting the presiding officer shall acquaint it with its terms of reference.

Assembly of
board and
procedure

(2) The presiding officer may, from time to time, as he considers necessary or advisable for the purpose or purposes of a board, determine the procedure to be followed by the board, and may adjourn meetings of the board to such time and place as he shall direct.

(3) Without prejudice to the provisions of sub-rule (2), the authority may at any time, as it considers necessary or desirable, direct that a board shall reassemble for such purpose or purposes as it may specify.

5. (1) A board shall hear and record evidence from witnesses who have been made available to it by the authority, and may hear and record evidence from such other persons as it considers necessary or desirable.

Witnesses

(2) A board may receive and record any evidence, oral or written, which it considers relevant to the matter for which it was convened, whether or not it would be admissible in a civil court.

(3) A civilian witness appearing before a board may be represented by counsel whilst giving evidence, but such counsel shall not be entitled to be present at the proceedings of the board at any other time.

(4) A civilian witness shall be entitled to receive the reasonable expenses of attending before a board, and a reasonable allowance in respect of loss of time.

6. Evidence given before a board shall be required to be on oath as provided in the Sixth Schedule to the Defence Force (Procedure) Rules:

Oaths and
affirmations

Provided that —

- (a) where a witness objects to taking the oath, on whatever grounds, or where it is not reasonably practicable, without inconvenience or undue delay to administer an oath to him in the manner appropriate to his religious beliefs, he may be permitted to make a solemn affirmation instead of taking the oath; and
- (b) where any child called as a witness is not, in the opinion of the board, capable of understanding the nature of the oath, but is possessed of sufficient intelligence to understand the importance of speaking the truth, he may be permitted to give his evidence not on oath.

Exhibits

7. (1) Any document or thing produced by a witness to a board in the course of its proceedings shall be made an exhibit:

Provided that when an original document or book is produced by a witness, the board may, at the request of the witness, compare a copy thereof, or of relevant parts thereof, with the original, and if satisfied that the said copy is accurate, may attach this to the record of proceedings as an exhibit, and return the original document or book to the witness.

(2) Every exhibit shall be marked by a number or letter, or shall have a label affixed to it bearing a number or letter, signed by the presiding officer, and shall be attached to or kept with the record of the proceedings, unless, in the opinion of the board, it is not convenient or expedient to keep it with the record.

(3) The presiding officer shall take such steps as may be necessary to ensure safe custody of exhibits not attached to or kept with the record.

Affected persons

8. (1) Where any person subject to military law is or is likely to be affected by the findings of a board, he shall be entitled to be present and represented, either by an officer or by an advocate or an attorney entitled to practice as such under the Legal Practitioners Act, at the sittings of the board, or at such of the sittings as may be relevant, and the presiding officer shall take such steps as are necessary to ensure that such person has notice of the proceedings, and is given the opportunity of being present and represented at those sittings.

(2) Any such person as is referred to in sub-rule (1) shall be entitled to give evidence himself, and either himself or by his representative, to question witnesses and call witnesses on his behalf, in respect of matters which may affect him:

Provided that his representative shall not be entitled to address the board, except with the permission of the presiding officer.

Record of proceedings

9. (1) The presiding officer of a board of enquiry shall record, or cause to be recorded, the proceedings of the board in sufficient detail to enable the authority to follow the course of the proceedings.

(2) Where there is no shorthand writer present, or other device, to record the evidence verbatim, the evidence shall be taken down by the presiding officer, or by a member of the board detailed by him, in narrative form, as nearly as possible in the words used by the witness:

Provided that where the presiding officer considers it necessary or advisable, any particular question and answer shall be taken down verbatim.

(3) At the conclusion of each witness's evidence, what has been recorded shall be read over to him, and if necessary corrected, and shall be signed by him.

(4) The record of the proceedings, in Form 2 in the Schedule hereto, together with the Summary Sheet, in Form 3 in the Schedule, and all the recorded evidence and exhibits, shall be signed by the presiding officer and other members of the board, and forwarded to the authority, together with the board's opinion on any matter on which it was required to express an opinion.

Deferring and staying of proceedings

10. (1) Subject to sub-rule (2), where any matter is the subject matter of investigation by a civil authority or of proceedings in a civil or criminal court, or of proceedings under military law, either within or without the jurisdiction of Botswana, the authority shall defer the convening of a board, or if a board has already been convened shall defer the meetings thereof, pending the completion of such aforesaid investigation or proceedings.

(2) The provisions of sub-rule (1) shall not apply where the matter concerned is a matter referred to in rule 3 (1)(c)(i) and (ii):

Provided that where the authority is satisfied that the absence has terminated, or, where the absentee belongs to or is attached to another unit of the Defence Force, and the authority is satisfied that an enquiry into the absence is being, or will be, held by the proper authority of that other unit —

- (a) where a board has not yet been convened with reference to the absence and deficiency, if any, the authority shall not be required to convene a board; or
- (b) where a board has already been convened with reference to the absence and deficiency, if any, the authority shall forthwith dissolve the board.

11. Where the findings of a board are to the effect that a person subject to military law has been absent without leave or other sufficient cause for a period, specified in the findings, not being less than fourteen days, and that there is a deficiency in any clothing, arms, ammunition or other equipment or public or service property issued to that person for his use, a record of such deficiency shall be entered in his Defence Force record, in addition to a report of such absence as is required under section 118 (1) of the Act.

Entries of
reports in
service
records

SCHEDULE (π 3, 9)

Form 1
(rule 3)

CONVENING ORDER

1. A board of inquiry composed as hereunder is to assemble at
at.....hours on.....day of.....19.... to investigate
circumstances in which.....

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

Presiding Officer]

Members:.....} (Rank, Name and Unit)

.....]

2. The inquiry is to investigate all the circumstances and record all evidence relevant to the inquiry.
3. The officer convening the board of inquiry directs that evidence to be taken on oath.
4. The undermentioned is/are to be given the opportunity of being present and represented in accordance with the provisions of section 126 (3) of the Botswana Defence Force

Act.....
.....

5. The inquiry is to report on the following matters:

.....
.....

6. The inquiry is to express an opinion on.....

.....

7. *The inquiry is to record what action has been or will be taken to prevent a recurrence and is to make any recommendations to this end.

8. The following military witnesses are to be ordered to attend:

.....
.....

9. Special instructions are being issued to the presiding officer directing his attention to

.....
.....

.....(relative regulations, or procedure).

10. The presiding officer is to forward a copy of the record of the proceedings to

.....
.....

11.is to provide a room suitably equipped for the inquiry, to supply the necessary stationery, manuals and regulations, and copies of the following fully amended, and is to detail and orderly for duty during the inquiry.

Signed.....

Appointment.....

Date.....

**Delete as appropriate*

RECORD OF PROCEEDINGS

Record of proceedings of a board of enquiry assembled at.....
on the.....day of.....19....., by order of.....
.....for the purpose of.....

PRESIDING OFFICER:.....

Members:.....

.....

.....

3. The following persons(s) was/were in attendance during the whole/part of the proceedings in accordance with rule 8 of the Defence Force (Board of Inquiry) Rules, 1995 —

.....

.....

.....

4. He was/they were unrepresented/represented by —

5. The Board, having assembled pursuant to the convening order attached, has recorded evidence on oath. The findings [*and opinion] are attached at page.....

Dated theday of....., 19.....

..... Presiding Officer.
(signature)

..... Members
(signature)

.....
(signature)

**Delete as appropriate*

SUMMARY SHEET

Unit.....C.O.....

Board of Inquiry Convened by.....
(rank, name and appointment)

Terms of reference of the inquiry.....
.....
.....

Date of occurrence.....

Date of assembly of inquiry..... *give explanation for any delay,

Date inquiry completed..... the date of the occurrence of
such delay and any action
taken.

Opinion of inquiry (if directed to express an opinion).....
.....
.....

Statement of any disciplinary action taken.....
.....

Proceedings were forwarded to the Convening Authority on theday
of 19....

Signed.....

.....
(Rank, name appointment)

Note: This Summary Sheet is to be placed immediately above the Record.

MADE this 7th day of April, 1995.

Q.K.J. MASIRE,
President of Botswana.