

GUYANA

No. 1 of 1979

## RULES

Made Under

## THE DEFENCE ACT

(Cap. 15:01)

UNDER SECTION 139 OF THE DEFENCE ACT THE FOLLOWING RULES HAVE BEEN MADE BY THE GUYANA DEFENCE BOARD:-

1. These Rules may be cited as the Defence (Board of Inquiry) Rules 1979.

2. In these Rules, unless the context otherwise requires -  
"authority" means the Defence Board or any officer empowered by these Rules to convene a board;

"board" means a board of inquiry;

"civil authority" includes a coroner and the police;

"civilian witness" means a person who gives evidence before a board and is either a person to whom section 210 of the Act applies, or a person who is not subject to service law;

"president" means the president of a board;

"record of the proceedings" includes the report of a board and any opinion expressed by a board in accordance with any direction given by the authority;

"represented" means represented by an officer or by a legal practitioner, and, outside Guyana, a person recognised by the authority as having rights and duties similar to those of a legal practitioner.

Duties of a Board.

3. It shall be the duty of a board to investigate and report on the facts relating to any matter referred to the Board under these Rules, and if directed so to do, to express its opinion on any question arising out of any such matter.

4. Subject to these Rules, a board may be convened with reference to -

(a) the absence of any person subject to service law who has been continuously absent with leave for

a period of not less than twenty-one days, and the deficiency (if any) in the clothing, arms, ammunition or other equipment or any other public property or service property issued to him for his use;

- (b) the capture of any person subject to service law by the enemy and his conduct in captivity, if there are reasonable grounds for suspecting -
  - (i) that he was made a prisoner of war through disobedience to orders or wilful neglect of his duty; or
  - (ii) that having been made a prisoner of war, he failed to take any reasonable steps to rejoin the force; or
  - (iii) that having been a prisoner of war, he served with and aided the *enemy* in prosecution of active hostilities or in execution or furtherance of measures calculated to influence morale, or in any other manner whatsoever not authorised by international conventions or customary international law;
- (c) the circumstances causing or attending the death of any persons in a military establishment where an inquiry into the cause of such death, or the circumstances attending it, is not required to be held by any civil authority;
- (d) any matter which the authority decides to refer to a board.

5. (1) Subject to paragraph (2), where any matter is the subject of investigation or inquiry under service law or by a civil authority, or of proceedings in a civil court (whether within or outside Guyana), if -

- (a) a board has not been convened with reference thereto, the authority may defer the convening of a board until the completion of such investigation, inquiry or proceedings and, upon completion thereof, the authority shall not be required to convene a board, if satisfied that a board is not necessary in relation to that matter; or
- (b) a board has already been convened with reference thereto, the authority may stay the proceedings of the board until such investigation, inquiry or pro-

ceedings have been completed and shall then dissolve the board if satisfied that a board is not necessary in relation to that matter.

(2) Paragraph (1) shall not apply to the convening of a board with reference to such absence or such deficiency (if any) as is mentioned in paragraph (a) of rule 4 but, where the authority is satisfied that the absence was terminated, or where the absentee is attached to other legally constituted military forces and the authority is satisfied that an inquiry into the absence is being or will be held under service law, then -

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

6. (1) A board may be convened by order of -

- (a) the Defence Board; or
- (b) any officer not below the rank of Major; or
- (c) any officer commanding a unit or detachment or the Force -
  - (i) with reference to such absence and such deficiency (if any) as are mentioned in paragraph (a) or rule 4;
  - (ii) if authorised by the Defence Board, or any such officer as is mentioned in sub-paragraph (b), with reference to any particular matter or to matters of any specified class or description.

(2) The following provisions of this paragraph shall apply in relation to the order convening a board -

- (a) the order shall specify the composition of the board and the place and time at which the board shall assemble;
- (b) the order shall specify the terms of reference of the board;
- (c) the order may direct the board to express an opinion on any question arising out of any matter referred to the board; and

(d) the authority may at any time revoke, vary or suspend the order.

7. (1) A board shall consist of a president who shall be an officer subject to service law not below the rank of lieutenant and not less than two other persons subject to service law, one of whom may be a warrant officer.

(2) The authority shall appoint the president by name and each remaining member of the board either by name, or by detailing a commanding officer to appoint from persons under his command an officer or warrant officer of a specified rank.

8. (1) A board shall assemble at the time and place specified in the order convening the board.

(2) The president shall lay the terms of reference before the board and the board shall proceed to hear and record the evidence in accordance with these Rules.

9. (1) Immediately after the convening of a board, an oath shall be administered to the president and the other members of the board in accordance with this rule in the presence of the person whose conduct is the subject matter of the inquiry.

(2) The oath shall be first administered by the president to the other members of the board and then to the president by any member already sworn.

(3) An oath shall be administered by the president or other member of the board to every witness, at any inquiry, and to every shorthand writer and interpreter in attendance thereat.

(4) Every witness before a board shall be examined on

Provided that where a child of tender years called as a witness does not in the opinion of the board understand the nature of an oath, his evidence may be received though not given on oath, in the opinion of the board he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth

(5) The oaths required to be administered under this rule shall be administered in the appropriate form and in the manner set out in the schedule.

10. (1) The president may adjourn the board on such occasions and to such places as he may, from time to time, direct.

(2) Without prejudice to paragraph (1), the authority may at any time, if it appears necessary or desirable, direct that the board shall reassemble for such purpose or purposes (in relation to the subject-matter of the inquiry) as may be specified by the authority.

11. (1) A board shall hear the evidence of the witnesses who have been made available by the authority and may hear the evidence of such other persons as it thinks fit.

(2) While a civilian witness is giving evidence before the board he may be represented, but, subject to rule 12, his representative shall not be entitled to be present at any other time.

(3) A civilian witness shall be entitled to receive from the Defence Board the reasonable expenses of his attendance and a reasonable allowance in respect of loss of time.

(4) A board may receive any evidence which it considers relevant to the matter referred to the board, whether oral or written, and whether or not it would be admissible in proceedings in court of law in Guyana.

12. (1) Where it appears to the authority or, if a board has been convened, either to the authority or, to the president that any witness or other person, being a witness or other person

subject to service law, may be affected by the findings of the board, the authority or, as the case may be, the president, shall take such steps as are in his view reasonable and necessary to secure that such witness or such other person has notice of the proceedings, and if he so desires, has an opportunity of being present and represented at the sittings of the board, or at such part of the proceedings thereof as the authority or, as the case may be, the president may specify.

(2) Any such witness or other person may give evidence, cross-examine witnesses, or produce any witness to give evidence on the matter which may affect him and, if he is represented, his representative may cross-examine witnesses, but a representative shall not address the board, except with the permission of the president.

(3) This rule shall also apply to a witness or other person who, though not subject to service-law, is in the service of the

State and who may be affected in his character or professional reputation by the findings of the board.

13. (1) Subject to paragraph (2), any document or thing produced to a board by a witness when giving evidence shall be made an exhibit.

(2) When an original document or book is produced to a board by a witness, the board may, at the request of the witness, compare a copy of it or an extract therefrom of the relevant parts with the original, and after it has satisfied itself that such copy or extract is correct and the president has certified thereon that the board has compared it with the original and found it correct, the board may return the document or book to the witness and attach the copy or extract to the record of the proceedings as an exhibit.

(3) Every exhibit shall -

- (a) be marked with a reference number or letter and be signed by the president or have a label affixed to it bearing a reference number or letter and the signature of the president; and
- (b) be attached to, or kept with the record of the proceedings, unless in the opinion of the board it is not expedient to attach it, or keep it with the record.

14. (1) The president shall record in writing or cause to be so recorded, the proceedings of the board and in sufficient detail as to constitute a true; full and correct record as will follow the course of the proceedings.

(2) Where there is no shorthand writer present, the evidence shall be taken down in narrative form recording as nearly as possible the words used: .

Provided that, if the board consider it necessary, any particular question and answer shall be taken down verbatim.

(3) The evidence of each witness, as soon as it has been taken down in accordance with paragraph (2), shall be read over to him by a member of the board and shall be signed by him.

(4) A record of the proceedings shall be signed by the president and other members of the board and forwarded to the authority.

15. Where a board reports that a person subject to service law has been absent without leave or other sufficient cause for a period specified, in the report, not being less than twenty-one days and there is a deficiency in any clothing, arms, ammunition or other equipment or other public property or service- property issued to him for use, a record of the report shall be entered in the service books in addition to a record of the report of such absence required to be entered in the service books by section 130 of the Act.

Rule 9.

SCHEDULE

PRESIDENT AND MEMBERS

1. I,....., do swear that I will well and truly investigate the matter before this board of inquiry according to the Defence Act, without fear or favour, affection or ill-will; and I do further swear that I will not on any account at any time what-soever disclose the vote or opinion of the president/any member of this board of inquiry\* unless thereunto required in due course of law.

So help me God.

SHORT HAND WRITER

2. I,....., do swear that I will to the best of my ability truly record the evidence to be given before this board of inquiry and such other matters as may be required, and will, when required, deliver to the board of inquiry a transcript of the same.

So help me God.

INTERPRETTER

3. I,....., do swear that I will to the best of my ability truly interpret and translate as I shall be required to do touching the matter being investigated.

So help me God.

\* Delete if not applicable.

WITNESS

4. I....., do swear that the evidence which I shall give at this investigation shall be the truth and nothing but the truth.

So help me God.

Made this 8th day of March, 1979.

*L. F. S. Burnham,*  
Prime Minister  
Chairman  
Defence Board

*P. A. Reid,*  
Deputy Prime Minister and  
Minister of National Development  
Member  
Defence Board

*S. S. Naraine,*  
Minister of Works and Transport  
Member  
Defence Board

*C. V. Mingo,*  
Minister of Home Affairs  
Member  
Defence Board

*Mohammed Shahabuddeen,*  
Attorney General and  
Minister of Justice  
Member  
Defence Board

*C. A. L. Price,*  
Guyana Defence Force  
Chief of Staff  
Member  
Defence Board