

(Legislative Supplement No. 8)

LEGAL NOTICE NO. 8

THE NATIONAL YOUTH SERVICE ACT

(No. 17 of 2018)

IN EXERCISE of the powers conferred by section 64(1)(i) of the National Youth Service Act, 2018, the Cabinet Secretary responsible for Public Service and Gender makes the following Regulations—

THE NATIONAL YOUTH SERVICE (DISCIPLINARY
PROCEDURE) REGULATIONS, 2020

PART I— PRELIMINARY

1. These Rules may be cited as the National Youth Service (Disciplinary Procedure) Regulations, 2020.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the National Youth Service Act;

Act No. 17 of 2018.

“accused officer” means a member of the Service who is alleged to have committed an offence against discipline;

“decorations” means an honour through official recognition, status or award conferred by the President under Article 132(4)(c) of the Constitution;

“delegated officer” means an officer acting under the direct instructions of the Director-General;

“investigating officer” means a member of the Service appointed by the Director-General or a delegated officer to investigate an offence against discipline;

“offence” means an offence against discipline as set out in the Fourth Schedule to the Act;

“presiding officer” means the Director-General or a delegated officer who presides over the orderly proceedings of the Service; and

“receiving officer” means an officer to whom a complaint is reported.

3. (1) A presiding officer shall in the discharge of his or her functions observe and uphold the rules of natural justice.

Guiding principles.

(2) Notwithstanding paragraph (1) a presiding officer shall ensure that—

(a) no punishment is meted out against an accused officer, unless there has been full and careful inquiry and the presiding officer is satisfied beyond any reasonable doubt that an offence has been committed;

- (b) where there is any doubt as to the true facts, the accused officer shall be given the benefit of the doubt and the charge dismissed;
- (c) no person shall be punished until he or she has been accorded an opportunity to be heard;
- (d) no person is punished twice for the same offence; and
- (e) the punishment meted out against the accused officer is proportionate to the offence committed.

PART II—COMPLAINTS, INVESTIGATION, CHARGE AND HEARING

4. (1) A person may report a complaint, orally or in writing that an offence against discipline has been committed. Complaint.

(2) Where a complaint is made orally, the receiving officer shall cause the complaint to be reduced into writing.

(3) The receiving officer shall, on receipt of the complaint and where it appears that a member of the Service has committed an offence against discipline, cause the particulars of the complaint to be entered in Form I set out in the Schedule.

(4) Upon entering the particulars of the complaint, the receiving officer shall within twenty-four hours of receipt of the complaint, notify the Director-General through the commanding officer, that an offence against discipline has been committed.

5. (1) On receipt of the complaint under regulation 4 and after the particulars of the complaint are entered in the appropriate form, the Director-General shall designate a member of the Service to be an investigating officer and to immediately commence the investigations. Investigations.

(2) An investigating officer under paragraph (1) shall be an officer of a rank superior to the accused officer and shall have no direct interest in the matter under investigation.

(3) An investigating officer to whom a matter has been referred shall commence and conclude the investigations within fourteen days, unless an extension is granted by the Director-General, and cause the evidence to be reduced into writing in the form of an abstract of evidence in Form II set out in the Schedule.

(4) Where the evidence taken in accordance with paragraph (3) discloses an offence other than the offence which is the subject of the investigations, a charge alleging that offence may be preferred against the accused officer.

(5) On completion of the investigations, the investigating officer shall compile and forward a report containing the evidence collated and the recommendations to the Director-General.

6. An investigating officer shall, upon being satisfied that there is sufficient evidence to support the breach of offence against discipline, frame a charge-sheet in Form III set out in the Schedule.

Formulation of a charge.

7. Where the Director-General is satisfied with the evidence to support an offence against discipline, the Director-General shall appoint a presiding officer to hear the matter.

Presiding Officer.

8. (1) On conclusion of the investigations and upon being satisfied with the report of the investigating officer, the presiding officer shall issue notice of summons to the accused officer to appear before him or her on the date stated in the summons.

Summons.

(2) The summons referred to in paragraph (1), shall be in Form IV set out in the Schedule.

(3) An investigating officer may cause for the arrest of the accused officer who fails to honor the summons having been served and shall—

- (a) immediately following the arrest, inform the accused officer of the reasons for his or her arrest; or
- (b) as soon as practicable report this fact and the grounds thereof to the arrested person's commanding officer.

(4) The investigating officer shall ensure that the accused officer is availed before the presiding officer within twenty-four hours of the arrest.

9. Where an accused officer has been charged with an offence against discipline, the investigating officer shall as soon as practicable, but before the hearing commences, supply the accused officer with a copy of the abstract of evidence containing the evidence to be adduced against him or her before the presiding officer.

Documents to be supplied.

10. The accused officer shall have the right to state in writing, the names and addresses of the witnesses he or she intends to call at the hearing to support his or her case.

Witnesses.

11. (1) Upon receipt of the investigations report and the charge sheet from the investigating officer, the presiding officer shall as soon as practicable, commence the hearing of the allegations against the accused officer.

Hearing.

(2) The presiding officer upon being satisfied that the person brought before him or her is the accused officer as named in the charge sheet, shall proceed as follows—

- (a) record that the accused officer is before him or her and that he or she has been charged with the particulars of the offence as shown in the charge sheet;

- (b) record that the accused officer admits that he or she understands the charge and has been required to plead thereto;
- (c) read out the charge to the accused officer in a language he or she understands then ask the accused officer whether or not, he or she pleads guilty;
- (d) record the plea of the accused officer;
- (e) a plea of "not guilty" shall be recorded as such and an unequivocal plea shall be treated and recorded as a plea of "not guilty";
- (f) if the plea is one of "not guilty", the presiding officer shall hear all the prosecution witnesses, and the accused officer shall be accorded an opportunity to cross-examine the prosecution witnesses;
- (g) after hearing the prosecution witnesses, the presiding officer shall decide whether a *prima facie* case has been established against the accused officer;
- (h) if in the opinion of the presiding officer, it appears that from the evidence of the prosecution that a *prima facie* case has not been established, the presiding officer shall record a dismissal of the charge;
- (i) if in the opinion of the presiding officer, it appears that from the evidence of the prosecution that a *prima facie* case has been established, the accused officer shall be asked to make his or her own defence and may call witnesses in support of his or her defence; and
- (j) on reaching the conclusion, the presiding officer shall record a ruling stating the reasons thereof.

(3) The presiding officer may on conviction, and upon according the accused officer an opportunity to mitigate the charges, impose any of the penalties set out in section 34 of the Act.

(4) Without prejudice to the generalities of paragraph (1), a record of the proceedings shall be made in the Form V set out in the Schedule.

12. (1) An accused officer who has been convicted and penalty imposed may pursuant to section 34 (6) of the Act, apply for a review of the decision within fourteen days of the decision.

Review.

(2) An application for review under paragraph (1) may be made on the ground of—

- (a) biasness against the accused officer;
- (b) the discovery of new facts or evidence not within the knowledge of the accused officer when the decision was made;

- (c) miscarriage of justice; or
- (d) on account of some error apparent on the face of the record.

(3) On receipt of an application for review and upon hearing the accused officer, the Council or Director-General may quash, uphold or enhance the penalty imposed against the accused person.

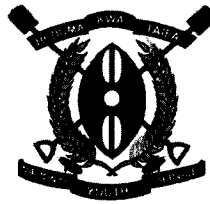
13. The Director-General may on receipt of a report, allegation or complaint that a member of the Service has committed an offence against discipline, temporarily suspend that officer from the Service, whether or not the matter has been investigated.

Power of the Director-General.

14. A disciplinary offence may be any such offence as set out in the Fourth Schedule to the Act.

Disciplinary offences.

SCHEDULE



(r4)

Form I

Note: A copy of each written statement of evidence in relation to the alleged breach is enclosed.

I hereby acknowledge that I have recorded the complaint voluntarily.

Name:.....

Signature.....



..... r5

Form II

Abstract of Evidence

Abstract of evidence in the case of

(number, rank, name, unit) consisting of the.....(insert the number of statements) attached statements and

(insert the number of précis) précis of evidence¹ of witnesses for the prosecution and compiled by me (the Investigating Officer) (.....² on the instructions of the commanding officer of the accused).

.....(Signature and rank)

(Date)20.....



r6

Form III
Charge Sheet

NO. Rank Name

Field Unit

Date of Offence Date of Proceedings

Charge Contrary to Section of the National Youth Service Act, 2018.

Particulars of Offence

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

Witness

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

Plea

.....
.....

Notes

¹Strike out any reference to statements or précis which are not applicable.

²Insert name and rank of the officer making the abstract

.....
.....

Judgment

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.....
.....

Sentence

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

The accused officer wishes / Does not wish to exercise his right of appeal against conviction and punishment.

Signature of the Accused

Presiding Officer

Signature

Designation

Date

Confirmed by

Signature

Designation

Date

Accused officer enlisted

Date of Offence

Number of Previous Offences

General Character

*Precise evidence to be attached.

Notes

¹Strike out any reference to statements or précis which are not applicable.

¹Insert name and rank of the officer making the abstract



r8(2)

Form IV

Notice of Summons

To (name) of (address)

1. Take notice that an offence against discipline contrary to section..... of the National Youth Service Act, 2018, being offence No.....of..... has been filed with the Service against you.
2. Service of the summons on you was ordered to be by this notice.
3. A copy of the summons and investigations report may be obtained from the Presiding officer's office on weekdays between 8:00 A.M.- 5:00 P.M.

Unless you appear before the presiding officer on the stated date and time.....an arrest warrant against you shall issue.

Signature.....

Director General/ Presiding Officer

DATED thisday of20.....



r11(4)

Form V

Record of Proceedings

Accused's number, rank and name.....Unit.....

1. The Presiding officer dealing with the case shall inform the accused of his right to elect to be tried by a different officer duly appointed by the Director General and shall ask the accused-

Q. Do you wish to be tried summarily?

A.....

2. Questions to be put to the accused by the officer dealing with the case before the charge is read.

Q. Have you been served with a copy of the charge sheet and the abstract of evidence not less than 24 hours before this trial?

A.....

Q. Have you had sufficient time to prepare your defense?

A.....

3. The officer dealing with the case shall then read the charge(s) to the accused and ask him the following question-

Q. Have you agreed in writing that the witnesses against you need not give their evidence in person?

A.....

4. If the accused has agreed in writing that the witnesses against him need not give their evidence in person the officer dealing with the case shall read the abstract of evidence to the accused if the accused so requires but, if the accused has not so agreed, the witnesses against him shall give their evidence in person and it shall be recorded on a separate sheet and be attached to this record.

5. After the abstract of evidence has been read or the witnesses against the accused have given their evidence, as the case may be, the officer dealing with the case shall say to the accused-

Q. Do you wish to give evidence on oath or to make or hand in a statement without being sworn? Your evidence or statement may deal with the facts of the case.

A.

.....

Q. Do you wish to present any other evidence in your defense?

A.

6. If the accused elects to give evidence or to make a statement or to call witnesses the evidence for the defense including any statement made by the accused himself shall be recorded on a separate sheet and attached to this record. The officer dealing with the case shall then: (i) consider all the evidence and determine whether the accused is guilty of the offence or not, and (ii) if he determines that the accused is guilty, make such a finding.

7. Finding.....

8. Where a finding of guilty has been entered, the Officer dealing with the case shall ask the accused the following question-

Q. Do you wish to adduce evidence or give a statement dealing with your character and matters in mitigation of punishment?

A.....

9. The Officer dealing with the charge shall examine and consider the accused's record of service and mitigation, if any, before giving an award.

Award.....

.....

.....

(Signature of the accused)

Date

.....

(Signature, rank and appointment of Commanding Officer/appropriate superior authority)

.....

Date

Made on the 15th January, 2021.

MARGARET KOBIA,
Cabinet Secretary for Public Service and Gender.