

**TONGA DEFENCE SERVICES ACT 1992**

**(Section 95)**

**TONGA DEFENCE SERVICES SUMMARY JURISDICTION RULES  
1994**

In exercise of the powers conferred by section 95 of the Tonga Defence Services Act 1992, His Majesty hereby makes the following rules:

1. These Rules may be cited as the Tonga Defence Services Summary Jurisdiction Rules 1994.

2. (1) In these Rules "the Act" means the Tonga Defence Services Act 1992.

(2) Unless the contrary intention appears, expressions in these Rules have the same meaning as if these Rules formed part of the Act.

3. A charge report prepared pursuant to section 78 of the Act shall be in the form set out in Form 1 of Schedule 1 to these Rules.

4. (1) Subject to sub-rule (5), a commanding officer who investigates a charge shall:

(a) read and explain the charge to the accused; and

(b) (i) hear the evidence himself in accordance with rule 5; or

(ii) cause the evidence to be reduced to writing, in accordance with rule 7, and consider it.

(2) Notwithstanding that a commanding officer has heard all or part of the evidence, he may cause the evidence to be reduced to writing.

(3) After the evidence has been reduced to writing and he has considered it, a commanding officer may hear evidence in accordance with rule 5.

(4) Before a commanding officer refers the charge to a Defence Services Judge for trial pursuant to section 79 of the Act, he shall cause the evidence to be reduced to writing in the form of a summary of evidence taken in accordance with rule 6.

(5) Where the evidence taken in accordance with sub-rule (1) discloses an offence other than the offence which is the subject of the investigation, a new charge alleging that offence may be preferred against the accused in addition to, or in substitution for, the original charge and the investigations of the original charge may be treated, for the purpose of these Rules, as the investigation of the added or substituted charge.

Provided that where a new charge is added or substituted that the accused be given time to consider the new charge before the commanding officer proceeds with the investigations under these Rules.

5. When a commanding officer who investigates a charge hears the evidence:

(a) each prosecution witness shall give his evidence orally in the presence of the accused, or the commanding officer may, unless

the accused requires that the evidence be given orally, read to the accused a written statement made by a witness;

- (b) the accused shall be allowed to cross-examine any prosecution witness;
- (c) after the evidence against the accused has been given, the commanding officer shall say to the accused:
 

**"Do you wish to say anything. You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence".**
- (d) the accused may, on his behalf, give evidence on oath or may make a statement without being sworn;
- (e) the accused may call witnesses in his defence;
- (f) witnesses for the defence shall give their evidence in the presence of the accused;
- (g) unless the commanding officer otherwise directs or the accused otherwise requests, evidence shall not be given on oath or solemn affirmation;
- (h) if evidence is to be given on oath or solemn affirmation, the commanding officer shall, subject to the accused's right to make an unsworn statement, require each witness and any interpreter to take the oath or make a solemn affirmation in accordance with rule 12, before he gives his evidence.

6. A summary of evidence shall be in the form set out in Form 2 of Schedule 1 to these Rules, and shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer.

7. (1) The taking of the summary of evidence shall be in the manner set out in this rule.

(2) Each prosecution witness shall give his evidence orally and the accused shall be allowed to cross-examine any prosecution witness.

(3) If the officer taking the summary certifies in writing that:

- (a) a prosecution witness cannot be compelled to attend; or
- (b) owing to the exigencies of the service or for some other sufficient reason the attendance of a prosecution witness cannot readily be procured,

the written statement of the evidence, purporting to be signed by the witness, may be read to the accused and included in the summary of evidence.

(4) If a witness who has made a written statement of evidence can be compelled to attend, the accused may request that the witness attend for the purpose of being cross-examined on his statement.

(5) After all the evidence against the accused has been given, the commanding officer shall say to the accused:

"Do you wish to say anything. You are not obliged to do so, but, if you wish, you may give evidence on oath, or you may make a statement without being sworn. Any evidence you give or statement you make will be taken down in writing and may be given in evidence."

(6) Any evidence given or statement made by the accused shall be taken down in writing, read over to the accused and corrected where necessary. The accused shall be then asked to sign it. If he refuses to sign, that fact shall be noted on the document and signed by the officer taking the summary.

(7) The accused may call witnesses in his defence. Any witness called by the accused shall give his evidence orally.

(8) If the officer taking the summary certifies in writing that:

- (a) a person called as a witness for the defence cannot be compelled to attend; or
- (b) owing to the exigencies of the service or for some other sufficient reason the attendance of any defence witness cannot readily be procured,

a written statement of the evidence, purporting to be signed by the witness, may be read to the accused and included in the summary of evidence.

(9) Neither the accused nor the witnesses for the defence shall be subjected to cross-examination.

(10) The evidence of each prosecution or defence witness (other than the accused) who gives evidence orally shall be taken down in writing, read over to the witness and corrected where necessary. The witness shall be then asked to sign it.

(11) The record of the evidence may be in narrative form, except that any question put to a witness in cross-examination by the accused, and the answer given by the witness shall be recorded verbatim if the accused so requests.

(12) The evidence is to be given on oath or affirmation and, subject to the right of the accused to make an unsworn statement, the officer taking the summary shall require each witness to take the oath or make a solemn affirmation in accordance with Rule 12, before he gives his evidence;

(13) Where in the opinion of the officer taking the summary, a child of tender years called as a witness does not understand the nature of an oath, the evidence of the child may be received though not given upon oath, if, in the opinion of the officer taking the summary, the child understands the duty of speaking the truth and is possessed of sufficient intelligence to justify the reception of any evidence the child might give.

(14) At the conclusion of the evidence, the officer taking the summary shall certify in writing on the last page of the summary of evidence that he has complied with the provisions of this rule.

8. Where the evidence in relation to a charge has been reduced to writing in accordance with rule 7, before a commanding officer deals summarily with the charge:

- (a) any prosecution witness who has not given his evidence orally shall do so if the accused requests; and
- (b) the commanding officer shall give the accused a further opportunity to give evidence on oath or to make a statement without being sworn and to call witnesses in his defence.

9. Where, pursuant to section 79 of the Act, a commanding officer refers a charge to a Defence Services Judge for trial, the commanding officer shall cause to be delivered to the Defence Services Judge a copy of the charge on which the accused is held and of any other charge or charges upon which the commanding officer considers that the accused should be tried.

10. Where pursuant to section 79 of the Act, a commanding officer refers a charge to a Defence Services Judge for trial, the commanding officer shall cause to be delivered to the prosecutor and defender appointed pursuant to section 82 of the Act by the Board:

- (a) a copy of the charge on which the accused is held and any other charge or charges upon which the commanding officer considers that the accused should be tried;
- (b) the summary of evidence; and
- (c) a statement of the character and service record of the accused.

11. (1) A witness who is subject to military law may be ordered by the commanding officer to attend at the taking of a summary of evidence.

(2) A witness who is not subject to military law may be summoned to attend the taking of a summary of evidence by an order under the hand of the commanding officer of the accused.

(3) The summons referred to in sub-rule (2) shall be in the form set out in Form 3 of Schedule 1 to these Rules, and shall be served on the witness by:

- (a) delivering it to him personally; or
- (b) by leaving it for him with some person apparently above the age of 16 years at the normal place of living of the witness.

12. (1) Subject to this rule, where under these Rules a person is required to take an oath, the oath shall be administered in the appropriate form and in the manner set out in Schedule 2 to these Rules.

(2) The opening words of the oath may be varied to such words and the oath may be administered in such manner as the person taking the oath declares to be binding on his conscience in accordance with his religious beliefs.

(3) Where instead of taking an oath, a person is permitted to make a solemn affirmation, the affirmation shall be in the form set out in Schedule 2 to these Rules.

13. An accused who has been sentenced by a commanding officer and who wishes to petition the Board for review of his conviction and punishment, pursuant to section 86 of the Act, shall present to the Board a petition in the form set out in Schedule 3 to these Rules.

**SCHEDULE 1**

**(Form I)**

**CHARGE REPORT**

**(Rule 3)**

**1. DATE AND TIME THE CHARGE WAS PREPARED.**

Date: ...../...../19.....

Time: ..... hrs

**2. PARTICULARS OF THE ACCUSED.**

No.:.....Rank: .....Name:.....

Unit & Sub-Unit or Ship: .....

**3. PARTICULARS OF THE CHARGE.**

(here state: the section and statement of offence, detail of the offence including the location and period the offence was alleged to have been occasioned)

**4. NAME OF DISPOSAL OFFICER:** .....

**SIGNATURE OF DISPOSAL OFFICER :** .....

5. THE DECISION OR OTHER DISPOSAL:

[Empty rectangular box for decision or other disposal]

6. DATE OF DISPOSAL: ...../...../.....

(Form 2)

FORMS FOR COMMANDING OFFICERS

SUMMARY OF EVIDENCE

(Rule 6)

Summary of evidence against .....  
(number, rank, name, unit or other description.)

Taken by (officer taking the summary)

..... (rank, name, unit) on the direction of the commanding officer of the accused.

..... (number, rank, name, unit or other description), having been duly sworn (a) states - (cross-examined by the accused)

Question 1 (b) .....

Answer 1 .....

or

(The accused declines to cross-examine this witness)

.....  
(Signature and rank (if any) of witness)

or

.....(number, rank, name, unit or other description)

A written statement of the witness's evidence purporting to be signed by him has been read to the accused as is included in this summary at page.....  
Having regard to

.....  
(insert grounds for non attendance of witness - see Rule 7 (3) (b)) the attendance of this witness cannot in my opinion readily be procured.

The accused does not request the attendance of this witness for cross-examination; or

The accused requests the attendance of this witness for the purpose of being cross-examined but the witness is not compellable and has refused to attend.

.....  
(Signature of officer taking the summary of evidence)

or

.....(description).

A written statement of this witness's evidence has been read to the accused and is included in this summary at page.....The accused does not object to the application of Rule 7(3) or the accused objects to the application of Rule 7(3) but the witness is not compellable and has refused to attend.

.....  
(Signature of officer taking the summary of evidence)

The accused having been duly cautioned in accordance with Rule 7 (5) reserve ✓

or

The accused having been duly cautioned in accordance with Rule 7(5) elects (to give evidence on oath) (to make a statement without being sworn) and to call a witness(es). (c)

The accused .....(number, rank, name, unit or other description) having been duly sworn states-

.....  
(Signature and rank (if any) of accused if he signs)

..... (number, rank, name, unit or other description) having been duly sworn states-

.....  
(Signature and rank (if any) of witness)

or

..... (number, rank, name, unit or other description)

A written statement of this witness's evidence purporting to be signed by him has been read to the accused and is included in this summary at page.....Having regard to

.....  
(insert grounds for non-attendance of witness - see Rule 7(3))

The attendance of this witness cannot in my opinion be readily procured.

.....  
(Signature of officer taking the summary of evidence)

Certified that Rule 7 has been complied with. This summary of evidence was taken by me at .....in the presence and bearing of the accused on the .....day(s) of.....19.....

.....  
(Signature and rank of officer taking the summary of evidence)

- (a) When a witness or the accused affirms the words "duly affirmed" should be substituted for the words "duly sworn" and when a witness is a child who is too young to give evidence on oath or the accused makes a statement without being sworn the words "without being sworn" should be substituted for the words "having been duly sworn".
- (b) See, however, sub-rule 7(11).
- (c) Omit the words "and to call a witness(es)" if they are not applicable.

(Form 3)

**SUMMONS TO A WITNESS TO ATTEND THE TAKING OF A SUMMARY OF EVIDENCE**

(Rule 11)

To ..... (a)

Whereas a charge has been preferred against ..... (b)

and whereas I have directed a summary of evidence to be taken at ..... on the .....day of.....19.....



Pursuant to Rule 11 of the Tonga Defence Services Summary Jurisdiction Rules made under the provisions of section 95 of the Tonga Defence Services Act 1992 you are hereby summoned and are required to attend as a witness at the taking of the said summary of evidence

at ..... (c) on the ..... day of .....

19..... at ..... hours and to bring with you the following documents:

(d) .....

Wherefore you shall fail at your peril.

Given under my hand at ..... on the .....

day of ..... 19.....

.....  
(Signature, rank and unit)  
Commanding Officer of the accused

- (a) Insert name and address of the person to whom the summons is to be sent.
- (b) Insert the number, rank, name, unit or other description of the accused.
- (c) Insert the place where the summary of evidence is to be taken.
- (d) Specify the documents (if any) which the witness is to bring. If the witness is not required to bring documents, strike out the words relating to documents.

## SCHEDULE 2

### OATHS AND AFFIRMATIONS

#### (1) OATHS AT INVESTIGATIONS BY COMMANDING OFFICERS

##### Interpreter

I swear by Almighty God that I will to the best of my knowledge, skill and ability truly interpret and translate the matter now being investigated.

##### Witness

I swear by Almighty God that the evidence which I shall give shall be the truth, the whole truth and nothing but the truth.

#### (2) MANNER OF ADMINISTERING OATHS

Christians taking the oath, shall unless female, remove their headdress and, hold the Bible or New Testament in their right hand and say or repeat after the person administering the oath the words of the oath.

(3) SOLEMN AFFIRMATION

The person making a solemn affirmation shall say or repeat after the person administering the solemn affirmation the words of the appropriate form of oath except that for the words "I swear by Almighty God" he shall substitute the words "I (name in full) do solemnly declare and affirm" and for the word "swear" wherever it occurs the words "solemnly declare and affirm."

SCHEDULE 3

PETITIONS

(Rule 13)

DEFENCE BOARD

To the Honourable Members of the Defence Board.

I: Number ..... Rank ..... Name ..... having been convicted by a commanding officer on ..... 19..... at .....and having been sentenced to a punishment of ..... hereby petition against the conviction(s) on the ..... charge(s) (a) and the punishment

On the grounds- .....  
.....  
.....

and I respectfully request the Board to review the conviction(s) and punishment.

Signed ..... (b)

Dated .....

(a) The words "the conviction(s) on the ..... charge(s)" should be omitted if the accused is only petitioning against a sentence.

(b) Petitions should be signed by the accused personally but, if necessary, be signed on his behalf by his representative.