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THE PUBLIC SERVICE ACT,

(CAP. 298)

INSTRUMENT

THE PUBLIC SERVICE DISCIPLINARY CODE OF GOOD PRACTICE

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THE PUBLIC SERVICE DISPLINARY CODE OF GOOD PRACTICE

Made under Section 7, 34(3)(g) and Clauses 30 and 35 of the Public Service Scheme

1.0. INTRODUCTION

1.1. The Public Service Disciplinary Code of Good Practice is one of the instruments made consequently to the formulation and implementation of the Public Service Management and Employment Policy of 1998, the Public Service Act, the Public Service Regulations and the Public Service Scheme.

1.2. These are efforts geared to ensure improvements in the management of human resource in the public service and to ease the administration of the service. The objective being to enhance the highest standard of service to the public.

1.3. Formulation of this code is a legal requirement under the provisions of the Public Service Regulation, 2003. This legal requirement goes together with the administrative need of having well established, elaborative, instructive and constructive methods of managing of discipline in the public service. The importance of this code, therefore, is to have the principles which are legally recognized, impartial, transparent and which can easily be implemented by the responsible authorities in the public service. Thus, it is expected that this code will be user-friendly to everyone in the management of discipline.

2.0. WHAT IS THE CODE OF GOOD PRACTICE?

2.1. A Code of Good Practice is what is called "soft law" meaning that the provisions of the code do not impose any hard and fast obligations on any person. The only legal obligation may be to justify a departure from the

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provisions of the code.

- 2.2. The code constitute best practice in policy implementation. In other words a code outlines what is expected of a person, rather than what is binding on a person. In this Disciplinary Code of Good Practice, it is outlined what is required by the Act and what is expected of both employers and employees.
- 2.3. The code provides guidance by summarizing some of the provisions of the law and providing guidance on good practice. Where there is any conflict between the provisions of the Act and the code, the provisions of the Act shall prevail.
- 2.4. The code is the instrument which will guide both the employers and the employees in handling disciplinary matters in the Public Service. It creates certainty and consistency in the management of discipline in the Public Service

3.0. THE PURPOSE

- 3.1. The purpose of this code is to provide for a fair, acceptable and transparent procedure to be applied, to ensure that fair decisions are made in respect of the conduct or capacity of employees, so as to foster discipline amongst the employees and improvement of management performance in the delivery of service to the Public.
- 3.2. The code is therefore intended to help and encourage the employees to achieve and maintain acceptable standards of conduct, and performance in order to reach the required blend of flexibility and consistency and to ensure that there is fairness, systematic and consistent approach to the enforcement and application of the code irrespective of grade and status of employers or employees.
- 3.3. The purpose of this code therefore, is to provide for a fair proceaur to be applied:-

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- (a) where the conduct of the employee is unacceptable;
- (b) where an employee is incapable of rendering satisfactory service due to poor work performance, or
- (c) in cases of incompatibility.

3.4. The code also aims to ensure that fair decisions are taken in respect of the conduct or capacity of employees.

3.5. The employees are expected to carry out their duties in an effective manner and should conduct themselves in a reasonable manner. Their actions at all times should be in accordance with the policies, ethics and rules existing within an organization.

3.6. An employer should apply disciplinary measures where possible in a corrective manner, to ensure that employees comply with the rules and policies governing their employment.

3.7. The disciplinary procedure will serve as a guide, and should be implemented in a flexible manner.

4.0 THE SCOPE

The code shall apply to both employers and employees of the Public Service.

5.0. INTERPRETATION

5.1. "Act" means the Public Service Act No.8 of 2002

5.2. "Appellate Authority" means a body or organ or a person authorized by the Act and the Regulations to decide upon employee's appeals.

5.3. "Appellate Authority Secretariat" when used in relation to the commission, means secretary, deputy secretaries and other staff of the commission and when used in relation to the President, means the Chief Secretary and any other employee scheduled to work on appeals.

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- 5.4. "Committee" when used in relation to an inquiry, means an inquiry committee in the disciplinary proceedings and when used in relation to Teachers, means the Regional and District Committees for teachers.
- 5.5. "Disciplinary Authority" means any person or authority vested with powers under Part V of the Regulations to take disciplinary measures against any employee and includes any person to whom those powers have been delegated
- 5.6. "Employee" means any person termed by the Act as a public servant
- 5.7. "Employer" means a person or organization in the public service, with whom an employee entered into a contract of service and who is responsible for payment of salaries of such employee.
- 5.8. "Local Authority Commission" means a commission established when any council is dissolved.
- 5.9. "Misconduct" means unacceptable behaviour or act done without reasonable excuse by an employee which amounts to a failure to perform in a proper manner any duty imposed upon him as such, or which contravenes any enactment relating to the public service, or which is otherwise prejudicial to the efficient conduct of the public service or tends to bring the public service into disrepute.
- 5.10. "Regulations" means Public Service Regulation of 2003.
- 5.11. "Sanction" for the purpose of this Code means punishment or penalty.
- 5.12. "The Service" means the public service as defined in the Act.

6.0. MANAGEMENT OF DISCIPLINE

6.1. Management of discipline in the Public Service should be in two approaches of corrective and sanctioning. Having regard that the public service is one, the required standard of conduct and performance should, in its broad perspective, be certain and consistent. In case of peculiarities existing in every service group, the employers should adopt some rules to cover those peculiarities.

6.2. Corrective approach:-

6.2.1. This approach should regard the purpose of managing discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct the employee's behaviour through the system of graduated friendly disciplinary measures such as counselling and verbal warnings.

6.2.2. The corrective approach shall be applied by employers themselves without involving disciplinary authorities.

6.2.3. Formal procedures leading to sanctioning do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor infractions of work rules and discipline.

6.3. Sanctioning approach

6.3.1. This approach shall have the purpose either of correcting or doing away with the employee who can no longer be tolerated to continue in the service.

6.3.2. This approach shall include formal disciplinary procedure including summary and formal disciplinary proceedings.

6.3.3. Sanctioning approach shall be resorted into where there is:

- (a) a repeated misconduct or breach; -
- (b) a serious or intolerable misconduct or breach.

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- 6.3.4. Repeated misconduct shall justify warnings which may themselves be graded according to degree or severity. More serious breach or repeated misconduct may call for severe sanctions including termination.
- 6.3.5. Termination of service should be reserved for cases of serious breach or repeated misconduct especially where there is contravention of the rule, service ethics, professional ethics or standard and performance standard to the intolerable degree.
- 6.3.6. It is not appropriate to dismiss an employee for a first unserious offence. Termination may be justified if the misconduct is a repetition or a serious one and of such gravity that it makes a continued employment relationship intolerable.
- 6.3.7. In determining whether or not termination is the appropriate sanction, the employer must consider:
- (a) the gravity of the misconduct as provided for in the Act and the Regulations in the light of past breach, the strictness of the rule, the nature of the job, health and safety and the likelihood of repetition;
 - (b) the circumstances of the employee such as the employee's employment record (including length of service, previous disciplinary record, period of stay at one station or in one organisation) and personal circumstances.
- 6.3.8. The employer shall apply the sanction of termination to the employee consistently in the way which it has been applied to other employees in the past, and consistently as between two or more employees who participated in the misconduct under consideration.

- 6.3.9. The management of discipline should take in consideration the concept that the employer or the supervisor has a duty of care to his employee and clients and is legally responsible for ensuring that the behaviour and conduct of employees in the course of their work is acceptable. The employer, therefore, is duty bound always to understand his employees behaviour and should quickly notice changes. The incidents of unacceptable behaviour should be investigated and necessary steps be taken.
- 6.3.10. Failure to notice or investigate incidents of unacceptable behaviour and to take necessary steps, shall render the employer or the supervisor liable and shall himself face disciplinary consequences. Supervisors at all levels are expected to take the initiative in identifying unacceptable behaviour and taking reasonable corrective or preventive action.
- 6.3.11. Foundation of all forms of acceptable behaviour at work is the respect and basic for the achievement of the organisation. This should be the value to be placed on every individual as his contribution to the common purpose of the public service.
- 6.3.12. Management of discipline and disciplinary actions should not be taken as a lee-way to mistreatment of employees. Every employee in the public service should be entitled to fair and equitable treatment and no one shall be subject to discrimination. *It should be understood that where treatment of staff with dignity, courtesy and respect exist, an atmosphere of mutual cooperation, confidence, kindness and trust are fostered.*
- 6.3.13. Supervisors at all levels are responsible for communicating the requirements of this code to the subordinates and any other documents relevant for the discipline and disciplinary measures. They are expected to take necessary steps in maintaining an environment which is free from unacceptable behaviour. This code does not inhibit firm and fair management.

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7.0. ROLES AND RESPONSIBILITIES

7.1. *President*

7.1.1. By virtue of his constitutional role and responsibility as the head of Executive Arm of the State, the President under Article 36 of the Constitution of the United Republic of Tanzania of 1977, is an overall incharge of the public service. He has powers to constitute and abolish any office in the service of the Government of the United Republic.

7.1.2. The President under the same Article has the authority to promote, to remove, to dismiss and to discipline any public servant in the service.

7.2. *Minister*

7.2.1. All Ministers are responsible for overseeing policy implementation including adherence to disciplinary rules and standards in their ministries and institutions. In order to facilitate this role, the Permanent Secretaries have the role of apprising their Ministers in case there is any disciplinary proceedings or measures to be taken against any public servant in their respective Ministries and Institutions.

7.2.2. The Minister responsible for Local Government Authority is the disciplinary authority of Director of Local Government Authority excluding Directors of City Councils and Local Authority Commissions.

7.3. *The Chief Secretary*

7.3.1. The Chief Secretary as provided for under Section 4 of the Act is the head of the Public Service and the highest ranking disciplinary authority in the service and may in that capacity in relation to any servant exercise all or any of the powers delegated to a disciplinary authority by the laws

7.3.2. The exercise of these powers against the employee other than the appointee of the President shall be only where the immediate disciplinary authority fails to exercise his powers.

7.3.3. Whenever it is necessary that the Chief Secretary should exercise his powers mentioned under paragraph 7.3.1., he shall do so by observing the procedures governing the disciplinary proceedings

7.4. The Public Service Commission

7.4.1. The Public Service Commission shall monitor implementation of disciplinary procedures and practices within the service to establish whether disciplinary procedures including the code are being observed by the disciplinary authorities and employees.

7.4.2. The Commission shall issue guidance in line with the Act, the Regulations, Schemes and this Code on disciplinary procedures where need arises.

7.5. Disciplinary Authorities

Disciplinary Authorities have the role to ensure that disciplinary process is conducted in line with the Act, the Regulations, the Schemes, this code and any other administrative instruments.

7.6. Inquiry Committee

The role of the committee is to inquire into the charge or charges facing the accused employee by finding the truth on the allegations against the representations made by the accused employee. The purpose of inquiry is to enable the disciplinary authority to make a fair decision.

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8.0. DISCIPLINARY PRINCIPLES

- 8.1. An employee shall not be dismissed for a first breach except where the breach constitutes gross misconduct and/or serious dereliction of duty.
- 8.2. Disciplinary action shall not be taken against an employee without an investigation to establish the facts. Every effort must be made to try and establish the facts in each case without undue delay.
- 8.3. Disciplinary offences must be dealt with at the time they occur. It is unfair to accumulate offences so as to deliberately impose a more serious disciplinary sanction on the employee concerned.
- 8.4. Prior to any disciplinary decision being taken, any mitigating factors or circumstances must be taken into account.
- 8.5. To ensure impartiality, transparency and fair decision the disciplinary authority shall appoint a Chairman, Secretary and Members of the Committee from outside the organization, whereas the Secretariat shall be appointed by the disciplinary authority from within the organization. While appointing members of the committee, Regulation 46 of the Regulations should be taken into account.
- 8.6. At all stages of the disciplinary procedure, the employee shall be advised of the nature of the allegations and given the opportunity to respond to the allegations.
- 8.7. At all stages of the disciplinary proceedings, the employee shall be given the opportunity of being represented by any public servant or advocate or a representative of a trade union.
- 8.8. At all stages of the disciplinary proceedings, any document that either party intends to rely on in the course of the disciplinary hearing shall be made available and

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circulated to all parties in advance in any hearing organized. At least seven days' notice must be given before the hearing.

- 8.9. Two or more disciplinary cases may be identical that is why consistency of approach is extremely important, each case must be considered on its merits, although the decision might be the same.

9.0. DISCIPLINARY PROCEDURES

- 9.1. The Regulations provide the procedure on how disciplinary proceedings should be conducted. The form of the proceedings shall depend on the nature of the offence (i.e. the gravity or seriousness of the offence).
- 9.2. The main purpose of the disciplinary procedure is to encourage an employee whose standard of work or conduct is unsatisfactory, to improve. It is from this reason that employers are required to find out and investigate from all the allegations against the employee concerned; are required to find out and the employee concerned; so as to be clear and precise on what disciplinary action need to be taken. This should be considered as the preliminary investigation stage.

10.0. PRELIMINARY INVESTIGATION

- 10.1. Preliminary investigation is a legal requirement under Regulation 36 of the Regulations.
- 10.2. Preliminary investigation is conducted in order to establish the facts about the offence which an employee is alleged to have committed.
- 10.3. The disciplinary authority shall establish if there are any or enough allegations to institute a disciplinary proceedings against an employee.
- 10.4. The disciplinary authority shall weigh those allegations in order to determine whether they constitute a disciplinary offence.

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- 10.5. If the disciplinary action is established, then the disciplinary authority shall embark in instituting either summary or formal proceedings.
- 10.6. Under formal proceedings a disciplinary authority shall revert to inquiry procedures.

11.0. RELIEVE OF DUTIES ADMINISTRATIVELY

- 11.1. Allegations which appear to involve serious misconduct, a suspect may be relieved of his duties administratively while the allegation is being preliminary investigated. This relieve of duties should be with pay as it does not amount to a disciplinary penalty or sanction.
- 11.2. The relieve of duty shall not be more than three months. Upon expiry of the three months the disciplinary authority shall be required to apply for extension of time to the Permanent Secretary (Establishments) where a need for further investigation arises.
- 11.3. Where the disciplinary authority is the Permanent Secretary (Establishments), he shall apply for extension of time to the Chief Secretary.
- 11.4. The extension of time for relieve of duties administratively shall not be granted for more than two months.
- 11.5. When exercising his powers as the disciplinary authority, the Chief Secretary shall not be bound to apply to the Permanent Secretary (Establishments) for extension of time as required by the provisions of Paragraph 11.2, but when need arises for further investigation he shall make sure that the extension does not exceed two months.
- 11.6. The relieve of duties administratively shall cease immediately upon the commencement of the disciplinary proceedings against the employee even before the expiry of three months provided that preliminary investigation has established enough allegations.

12.0. COUNSELLING

12.1. Before taking any formal disciplinary action, the supervisor shall make every effort to resolve the difficulties by counselling the employee concerned. Where this fails to bring about the desired improvement in job performance or a change in behaviour, the formal disciplinary procedure shall be implemented.

12.2. How Counselling should be done?

12.2.1. Where possible, hold the discussion out of the hearing of other employees. It should be a two-way discussion in a friendly manner, aimed at pointing out any shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, and the emphasis should be on finding ways in which the employee can remedy any shortcomings.

12.2.2. Listen to any explanation put forward by the employee. If it becomes evident that there is no case to answer this should be made clear to the employee.

12.2.3. Where an improvement is required make sure that the employee understands what needs to be done, how performance or conduct will be reviewed, and over what period of time. The employee should be told that if there is no improvement the next stage will be the formal disciplinary procedure.

12.2.4. Make sure that a counselling interview does not turn into a formal disciplinary hearing. If during the meeting it becomes obvious that the matter is more serious, the discussion should be adjourned. It should be clear that the matter will be pursued under the formal disciplinary procedures.

12.2.5. A brief record of any counselling or meeting organized, shall be retained in the individual's confidential file in form of minutes and, where possible, the record shall be agreed and signed by both parties.

12.2.6. It should not be confused with action taken under the formal disciplinary procedures.

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13.0. FORMEL VERBAL WARNING

- 13.1. Where a first minor disciplinary breach occurs or where previous counselling has proved to be ineffective, the immediate supervisor shall organize an interview with the employee concerned. Where the explanations given by the employee concerned are unacceptable, the supervisor shall issue a verbal warning.
- 13.2. The supervisor issuing the verbal warning shall make sure that the employee understands:-
 - (a) why the warning has been issued or given;
 - (b) the verbal warning is issued in accordance with disciplinary procedures;
 - (c) that if within three (3) months time limit applicable for a verbal warning the employee commits the same disciplinary offence; or commits a different offence or where the warning has been issued because of misconduct or poor job performance, there is not a marked improvement in his standard of work then further disciplinary actions will be contemplated;
 - (d) an employee who is dissatisfied by the verbal warning issued by his supervisor shall have the right to appeal against that verbal warning to his senior supervisor within the organization. Where the employee is not satisfied by the decision of his senior supervisor in an organization, he shall be required to exhaust all the seniority ladder of his supervisor present in his organization and the decision of the Chief Executive in that matter shall be final.
 - (e) that a record of the verbal warning shall be kept in the individual's personal file and shall be disregarded for any further disciplinary actions after the lapse of three (3) months subject to satisfactory conduct or performance during the period in which the warning is in force;

- 13.3. Where the verbal warning has been made, a record shall be made in a minute form. This shall be agreed and signed by both parties, where possible and placed in the individual confidential personal file for a period of three (3) months; thereafter the record shall lose authenticity.
- 13.4. It shall be taken into account that verbal warning shall not be communicated in writing to the employee concerned.

14.0. DISCIPLINARY ACTION

- 14.1. Formal disciplinary action should be instituted in the form of formal proceedings or summary proceedings as provided for in Regulation 42 and 43 of the Regulations.
- 14.2. Institution of any disciplinary proceedings under paragraph 14.1 above should be formalized in writing.
- 14.3. The disciplinary authority should notify and charge an employee in a manner and language that the employee can reasonably understand, using the format laid down under Part B of the Second Schedule to the Regulations.
- 14.4. The charge must list the type of unacceptable behaviour or conduct which necessitates disciplinary action.
- 14.5. The employee should be entitled to a reasonable time to prepare a response and to seek for assistance of a fellow employee, a legal representative or a representative of a Trade Union.
- 14.6. After receipt of the employee's response or representations, the Disciplinary Authority shall consider the representation made and must decide whether to institute formal or summary proceedings.

15.0. FORMAL PROCEEDINGS

- 15.1. Any person who is determining whether disciplinary proceedings should be conducted has to consider the gravity of the disciplinary offence which an employee is alleged to have committed.

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- 15.2. Formal proceedings can be conducted when the alleged offence justifies dismissal, or reduction in rank or reduction in salary of an employee.
- 15.3. In order to conduct a formal proceeding, the disciplinary authority shall form an Inquiry Committee.

16.0. INQUIRY COMMITTEE

- 16.1. The committee referred to under paragraph 5.1 shall be chaired by a senior employee appointed to convene a hearing in the event of allegations of serious misconduct which could on their own justify dismissal.
- 16.2. The chairperson of the committee must be impartial and should not if possible, have been involved in the issue giving rise to the hearing. In appropriate circumstances, chairperson should be from a different organization.
- 16.3. The employee must be advised in writing of the allegation or allegations against him, the time and date of the proposed hearing giving reasonable opportunity to prepare for the hearing.
- 16.4. Where an employee unreasonably refuses to attend the hearing the committee may proceed with the hearing in the absence of the employee.
- 16.5. The employee must be informed of the right to choose a representation of his fellow employee or a legal representative or a representative of a trade union to be a representative in the hearing.
- 16.6. Both the employee and the representative are entitled to be present at all time during the hearing, and must be informed of all the facts of the case being brought against the employee.

- 16.7. Disciplinary authority or his representative should present the case in support of the allegations against the employee, and the employee or his representative must be given an opportunity to present a case at the hearing. Both parties may call witness and question any witnesses called by the other party.
- 16.8. After having heard all the evidence, the committee must make a conclusion as to whether the employee is guilty of the allegation. Where the committee is undecided, the employee must get the benefit of doubt.
- 16.9. The question of guilty should be considered by the committee which had enough time to evaluate the evidence during the hearing while the penalty to be imposed must be considered by the disciplinary authority, and the employee or the representative is entitled to make representations as a mitigation in regard to an appropriate sanction. The disciplinary authority should consider any applicable legislation in deciding on the sanction.
- 16.10. Mitigating and aggravating factors to be considered should include:
 - (a) the seriousness of the offence in light of past infringements, the strictness of the rule and the likelihood of repetition;
 - (b) the employee's circumstances, including personal circumstances, length of service and previous disciplinary record;
 - (c) the nature of the employee's job including health and safety considerations; and
 - (d) the circumstances of the infringement itself.
- 16.11. After the inquiry, the disciplinary authority should communicate the decision taken, and preferably furnish the employee with written notification of the decision.

17.0. HOW SHOULD AN INQUIRY HEARING BE CONDUCTED

An Inquiry hearing should be aimed to proceed in a neat, orderly state and the following approach shall be followed by the Chairperson:-

- (a) he should introduce those present to the employee and explain why they are there;
- (b) he should explain to the employee, representatives and witnesses the powers and functions of the committee;
- (c) he should explain the purpose of the inquiry;
- (d) he should explain to those present the rights and demarcation of their participation;

- (e) he should explain how the hearing will be conducted;
- (f) he should conduct the hearing in a manner that do not raise doubt of biasness. The Chairperson should ensure that acts of confrontation are avoided. Hash, abusive or defamatory statements or words should not be allowed;
- (g) the employee should be required not to abuse the right and opportunity afforded to him. Any misconduct by the employee, his representative or a witness may tarnish the aim of the inquiry. Where it happens, the person concern should be liable to a disciplinary or criminal offence accordingly;
- (h) questions should be properly asked and answers be recorded clearly. The questions must be those assisting to know the truth of the offences, the manner in which commission of the offence was done;
- (i) all the deliberations of the committee should be treated confidential;
- (j) the committee should not entertain unnecessary and unimportant arguments during the hearing;
- (k) in cases where the employer is not the disciplinary authority, the employer shall also be given opportunity to be present or be represented at the hearing and should be afforded opportunity to give statement;

- (l) the committee shall not have power to formulate any other additional fresh charges against the employee. Where, during the inquiry, the committee realizes that apart from the offence or offences employee has already been charged with, evidence reveals that there are other offences that the accused employee would have been charged with, the committee may advise the disciplinary authority to see to it if he can draw another charge or other charges and serve to the employee;
- (m) where the disciplinary authority has decided to serve the employee with a fresh charge or charges, he shall give additional instructions to the committee, after the accused employee has made his representation in writing, to inquire into the additional charge or charges as well. The report of the committee shall also include the deliberations and opinions on the additional charge or charges;
- (n) where during the hearing of the committee the accused employee becomes hostile and either refuses to answer or ask questions, or threaten violently, he can, on the first day, be cautioned and be warned on the outcome of his conduct and the chairman may adjourn the hearing for another day. The employee should be notified that next hearing the committee shall proceed with the inquiry regardless of whether he continues with his hostility;
- (o) the committee should visit the areas concerned with the offence to see physically the situation involved in the allegation. Where any key witness is at present not available but is expected to be available after not more than a month, the committee shall not conclude its inquiry until that witness becomes available to give evidence. Where such witness does not become available and cannot be called upon to give evidence, the committee should make it clear in the report indicating the evidence expected from that witness and the effect of not getting that evidence;
- (p) where a key witness has already moved to a station far from where the inquiry is conducted, the committee should be facilitated to ensure that key witness is either called

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- upon and transported to the place of inquiry or the committee moves to the place where that witness can be found, to get evidence expected from him;
- (q) the committee may postpone its activities until further notice where any unavoidable circumstance arises such as necessary traveling of most of members or the accused employee or his representative or where in the course of inquiry, the accused employee is committed to a criminal charge under the same offence or offences. The inquiry shall resume immediately after the conclusion of the criminal case and where the employee has been acquitted or after he has won the case on appeal.
 - (r) the disciplinary authority or the employer should not himself be a member of the committee in order to avoid breach of the principles of natural justice and fairness.
 - (s) the committee should be assisted by any public servants conversant and experienced in the areas involved in the offence or offences to which the inquiry is conducted. The assistant or assistants shall not be a member or members of the committee but may be allowed by the chairman to ask questions or offer advices and elaborations on various issues during the inquiry. The assistant should be present at the hearing and should participate in all process of the inquiry except giving recommendations or opinions.
 - (t) the committee shall get the statement of witness orally and in writing.

18.0. THE REPORT OF THE INQUIRY COMMITTEE

- 18.1. The report of the committee should be prepared clearly taking into consideration all circumstances transpired during the inquiry. It should have the introduction part, the elaboration of terms of reference, list of offences, defence of the accused employee, statements given by

witnesses, legal position or procedure adhered to by the committee, elaboration of facts and evidence, opinions and recommendations. Sometimes statements of witnesses may be attached as annexures.

- 18.2. The report shall contain neither suggestion on the decision to be given by the disciplinary authority nor the punishment to be imposed. The report should only put it clear whether the accused employee has been found guilty of the offence. The conclusion must explain all circumstances that leads the committee to conclude that the accused is guilty or not guilty of any particular offence.
- 18.3. The report should be prepared by the committee alone in a confidential manner. Neither accused employee, his representative, witnesses, the disciplinary authority nor the employer shall be involved in the preparation of the report.

19.0. STATEMENT OF THE OFFENCE DURING INQUIRY

- 19.1. In giving statement of offence during hearing the chairman or secretary shall consider the following:-
 - (a) state precisely what the offence is and outline the case briefly by going through the evidence that has been gathered.
 - (b) ensure that the employee and his representative is allowed to see any statements made by witness or is told very clearly exactly what they contain.
 - (c) remember that the object of the inquiry hearing is to discover the truth, not to catch people, but to establish whether the employee is prepared to accept that he has done something wrong.

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20.0. EMPLOYEE'S REPLY

- 20.1. Give the employee the opportunity to state his case, ask questions, present evidence and call witnesses. Listen attentively and be sensitive to silence as this can be a constructive way of encouraging the employee to be more forthcoming. If it is not practical for witnesses to attend, consider proceeding if it is clear that their evidence will not affect the substance of the allegation.
- 20.2. Where necessary and appropriate, or at the request of the employee or his representative, the hearing or interrogation may be adjourned for further investigation.
- 20.3. Formal and polite approach may be preferred, to encourage the employee to talk freely with a view to establish all the facts. A properly conducted inquiry hearing should be a two-way process.
- 20.4. Questions should be used to clarify all the issues and to check that what has been said is understood.
- 20.5. After general questions and discussions, the main points raised by the employee concerning the offence and any matters that need to be checked should be summarized. This will ensure that nothing has been missed and will help demonstrate to the employee that, he has been given a fair hearing.

21.0. WHAT PROBLEMS MAY ARISE AND HOW SHOULD THEY BE HANDLED

- 21.1. Where problems are expected it is particularly important to ensure, wherever possible, that a second member of management and, where requested, an employee representative are present.
- 21.2. Where the employee becomes emotionally distressed during the hearing, allow time for the employee to become composed before continuing. Where the employee continues to be so distressed, the hearing cannot continue, it should be adjourned and resumed at a later date.

- 21.3. Where misconduct or gross misconduct for example; use of abusive language or threatened physical violence takes place during the hearing, and where it cannot be settled during that period, adjourn the hearing and reconvene it at a later date when this offence can be considered as well.
- 21.4. When dealing with the misconduct or poor performance of the employee, normal public service practice should be taken into consideration. This does not mean that similar offences will always call for similar disciplinary action. Each case must be looked at its own merits and any relevant circumstances taken into account. These may include health or domestic problems, provocation, ignorance of rule, regulation or standard involved or inconsistent treatment in the past.
- 21.5. Where there is doubt about what disciplinary action to take, consider consulting any legal officer within an organization and where further advice is required the Permanent Secretary (Establishments) should be consulted.
- 21.6. Where guidance is needed on disciplinary action seek advice, where possible, from someone who will not be involved in hearing any potential appeal.

22.0. IMPOSITION OF THE DISCIPLINARY PUNISHMENT

- 22.1. Depending on the seriousness of the misconduct involved, it will be appropriate to dismiss an employee, reduce his rank or salary.
- 22.2. Employers should give all the employees a clear indication of the types of misconduct which, in the light of the requirements of the service, will warrant dismissal.
- 22.3. A dismissal for gross misconduct should only take place after the normal inquiry to establish all the facts has been taken or considered.

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22.4. Gross misconduct is generally seen as misconduct serious enough to destroy the employment contract between the employer and the employees and make any further working relationship and trust impossible. Gross misconduct is restricted to very serious offences.

22.5. The breach of the offences set under Part A of the First Schedule to the Regulations, shall be considered sufficient to justify dismissal.

23.0. POOR PERFORMANCE

23.1. It is important in determining the fairness of a dismissal for poor work performance that the performance standard is not only reasonable but known by the employees.

23.2. In determining whether a dismissal for poor work performance is fair, the following matters should be considered:-

- (a) whether or not the employee failed to meet a performance standard;
- (b) whether the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
- (c) whether the performance standards are reasonable;
- (d) the reasons why the employee failed to meet the standard;
- (e) whether the employee was afforded a fair opportunity to meet the performance standards.

24.0. PUNISHMENT

24.1. Written Warning

- (a) the written warning is imposed on an employee for the first commission of any of the offences set out under Part 'B' of the First Schedule to the Regulations.

- (b) reprimand is imposed on an employee for the second commission of any of the offence set out under Part 'B' of the First Schedule to the Regulations.

24.2. Stoppage of Increment

24.2.1. This punishment shall be imposed where there is a third breach or commission of the offences listed under Part 'B' of the First Schedule to the Regulations.

24.2.2. The employee's increment may be restored where the improvement is evidenced in the conduct and, or in the performance. *In this case the appraisal report may be used as the evidence.*

24.2.3. Where the stoppage of increment is imposed, the employee should be informed in writing indicating the reasons thereon.

24.3. Reduction in Rank

Reduction in rank or salary is a punishment imposed on the employee where the offence charged is one or those listed in Part 'A' of the First Schedule to the Regulations.

24.4. Dismissal

Dismissal is the penalty which may be imposed on an employee for the offences listed under Part 'A' of the First Schedule to the Regulations.

25.0. APPEALS

25.1. The Right to Appeal

25.1.1. Subject to any form of disciplinary action the employees have the right to appeal against the decision of the disciplinary authority and the commission. The appellate authorities are provided for in PART VI of the Regulations.

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- 25.1.2. The disciplinary authorities have the right to appeal against the decision of the commission as an appellate authority.
- 25.1.3. The right to appeal must be exercised only where the aggrieved party has good reasons to show that his rights have not fairly been determined or that the disciplinary procedures have not well been adhered to.
- 25.1.4. All appeals shall be in writing and submitted to the appellate authority within 45 days of the receipt of the decision as provided for in Regulation 61(1) of the Regulations. A letter of appeal should be elaborative enough indicating the grounds or reasons of appeal, narrating in clear and understandable statements what transpired and carrying supportive evidence.
- 25.1.5. When submitting the appeal to the appellate authority the appellant should adhere to the provisions of the Regulations which require that a copy of the appeal should be served to the other party.
- 25.1.6. The appeal submitted out of time must specify reasons for the delay. Where no reasons specified for submitting the appeal out of time or where the reasons specified are not accepted, the appellant may be informed that his appeal has not been decided upon due to non adherence to the legal requirement.
- 25.1.7. Where the appeal letter has been received, the appellate authority secretariat shall go through it to see if it is complete and if it is within time.
- 25.1.8. Where the appellate authority secretariat establishes that the appeal is complete and is within time, the appellate authority secretariat shall make its analysis and submit its opinion, recommendations and advice to the appellate authority for the decision.

- 25.1.9. Where the appellate authority secretariat establishes that the appeal is only incomplete but is within time, the appellate authority secretariat shall take initiative to advise the appellant on what to do so that his appeal can be submitted to the appellate authority for decision.
- 25.1.10. Where the appellate authority secretariat establishes that the appeal is complete but is out of time, it shall be dealt with in the following manner:-
- (a) where the appellate authority secretariat is the commission the commission secretariat shall submit its findings or analysis with opinion, advice and recommendations as to whether there are reasonable and acceptable reasons for the delay. Upon receipt of the findings or analysis of the secretariat, the commission shall, on its own discretion, decide whether to accept the appeal and make decision thereon or to refuse it and direct the secretariat to inform the appellant accordingly. The commission may give any other directives to the secretariat on the appeal as it thinks fit and prudent.
 - (b) Where the appellate authority is the President, the appellate authority secretariat shall establish and satisfy itself whether there are reasonable and acceptable reasons for the delay.
 - (c) Where the appellate authority secretariat establishes that reasonable and acceptable reasons for the delay exist, it shall make its analysis or findings and submit together with its opinion, recommendations and advice to the appellate authority for decision.
 - (d) Where the appellate authority secretariat establishes that reasonable and acceptable reasons for delay do not exist, it shall inform the appellant in writing that his appeal has not been accepted and shall not

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be submitted to the appellate authority for decision.
The information shall give the reasons for non-acceptance.

- 25.1.11 Where immediately after submitting his appeal or during the pendency of his appeal, the employee dies, his appeal shall continue to be dealt with and the decision be made thereon. The effect of such decision is to put clear the position as to whether the appellant is disciplinary innocent, justice was not done to him or whether his appeal has no merit. The decision shall be communicated to the employer and the employee's survivors informing them whether they can have something to benefit from the rights of the deceased employee.
- 25.1.12. It shall be the responsibility of the appellate authority secretariat to inform the appellant the decision of the appellate authority. The information should be in writing clearly spelling out whether the decision of the disciplinary authority or commission has been upheld or not, and whether the penalty has been confirmed or not.
- 25.1.13. Where during analysis the appellate authority secretariat establishes that ambiguity exists between the report of the proceedings and the grounds of appeal, and that, the ambiguity is to the extent that may render the decision of the appellate authority incorrect or unfair, the secretariat shall appoint any of its officers to conduct the investigation to get the truth in order to solve the ambiguity.
- 25.1.14. In conducting the investigation the appellate authority secretariat shall afford opportunity to both the appellant and the other party to be present. Both sides shall give their explanation, listen to witnesses and ask questions.
- 25.1.15. The appellate authority secretariat shall decide on the appropriate place in which the investigation shall be conducted, preferably, at the place where the disciplinary

offence or offences were committed or where the proceedings were conducted or where most of the witnesses can be traced.

25.1.16. While conducting the investigation officers of the appellate authority secretariat shall have power to call upon any person to give explanations. The officers conducting investigation shall also have power to visit any area involved or mentioned in the proceedings.

25.1.17. After the investigation the officers of the secretariat shall prepare a report which shall be submitted to the appellant authority together with the final analysis.

25.2. *Appeals against dismissal*

25.2.1. This code highlights some of the key aspects to which appellate authority has regard when considering appeals against dismissal.

25.2.2. In cases of dismissal, whether on disciplinary, inefficiency or unsuccessful completion of probation grounds, the appellate authority shall consider the following aspects:-

- (a) Procedures,
- (b) substantive issue,
- (c) consistency, and
- (d) proportionality.

25.3. *Procedures*

25.3.1. The appellate authority has to be satisfied that relevant procedures laid down in the Regulations, the code and other guide-lines have been followed satisfactorily.

25.3.2. Failure to follow the statutory procedures, which apply to all dismissals, shall mean that appellate authority shall find the decision automatically unfair.

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25.3.3. In cases of misconduct, the appellate authority shall consider whether:

- (a) the employee has been informed, in writing, of the specific charges being laid against him.
- (b) the employee has been advised of his representational rights at the inquiry committee hearing by his work colleague, trade union representative or Advocate.
- (c) the employee has been provided with copies of notes minutes taken at the committee hearing and given an opportunity to comment.
- (d) the employee has been told of his right to appeal on time, following a decision to dismiss.
- (e) the employee has been advised that dismissal could be a consequence of disciplinary action.
- (f) The rules and regulations are clear enough and there is a process in place to ensure the effective communication of relevant policies and procedures.

25.3.4. Serious procedural shortcomings can arise when the employers deals with inefficiency cases:-

- (a) in cases of dismissal for inefficiency on the grounds of unsatisfactory performance:-
 - (i) the employee has been told precisely what are his shortcomings and what has to be done and over what timescale, to try to put matters right.
 - (ii) the employee has been advised that if a satisfactory level of performance is not achieved, dismissal could be a consequence.
 - (iii) appropriate targets have been set for monitoring periods and have notes been kept of monitoring meeting.

- (iv) appropriate remedial training has been arranged and undertaken.
- (b) in cases of dismissal for inefficiency on the grounds of unsatisfactory attendance, appellate authority shall consider whether:-
 - (i) frequent intermittent absence is the trigger for action, and whether warnings have been issued at the appropriate times and in the correct sequence, including reference to the possibility if dismissal or attendance levels do not improve.
 - (ii) a long term absence is the trigger for action, and sufficient efforts have been made by management to keep in touch with the employee.
 - (iii) the employee have been given due notice of the intention to dismiss and the opportunity to make representations in cases of long term absence.
- (c) In cases of dismissals for failure of probation, the appellate authority shall consider whether:
 - (i) timescales for the submission of reports have been respected.
 - (ii) Employees have been advised, where appropriate, of shortcomings in the attendance, conduct and performance and told that if a satisfactory standard is not attained dismissal could be a consequence.
- (d) In all cases procedural good practice dictates that employers shall deal with the disciplinary and inefficiency procedures as expeditiously as possible. Failure to do so, particularly when timescale are laid down in the disciplinary procedures governing the public service shall render the dismissal procedurally unfair, particularly if it can be demonstrated to the appellate authority that the delay itself has been to the material detriment of the employee.

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25.4. Substantive Issue

When dealing with substantive issues the appellate authority shall consider whether:

- (a) there has been a reasonable investigation in misconduct case.
- (b) the individual has been treated fairly and reasonably in all cases.
- (c) evidence was taken from witnesses, including those who could provide evidence in support of the employee.
- (d) the evidence was evaluated on the basis of the balance of probabilities tests.
- (e) the investigating officer was sufficiently independent.

25.5. Consistency

In determining consistency the appellate authority shall consider whether:

- (a) similar penalties have been imposed in similar disciplinary cases.
- (b) Similar outcomes have arisen in similar disciplinary cases involving inefficiency.
- (c) decision makers should acquaint themselves with penalties imposed in similar cases, to ensure a degree of consistency.

25.6. Proportionality

In determining proportionality the appellate authority shall consider whether:

- (a) a lesser penalty should have been considered in cases of discipline;

- (b) downgrading, or a change of duties was considered before proceeding to dismissal in cases of performance in efficiency.
- (c) sufficient account has been taken to mitigating circumstances in all cases. The decision maker should take into account an individual's general performance, attendance record and conduct, together with any mitigating circumstances, before reaching *their* conclusion.**

25.7. Appeal's decision

- 25.7.1. The appellate authority may order for reinstatement of the employee and reinstitution of fresh proceedings against the employee basing on the same offence.
- 25.7.2. Where the employee is reinstated to the employment, the employer should immediately abide to the decision of the appellate authority and the employee should be reinstated within 21 days from the date when the decision is made.
- 25.7.3. Where the decision referred to in paragraph 25.7.1 is made by the commission and the disciplinary authority appeals against the decision, the employer shall not be bound with the requirement of paragraph 25.7.2 until the determination of the appeal.
- 25.7.4. The decision of the appellate authority should be communicated to the disciplinary authority and the employee within 21 days after the date of the decision.
- 25.7.5. After receipt of the decision from the appellate authority the disciplinary authority shall communicate the same to the employee within 21 days.
- 25.7.6. Where the employee is reinstated in the employment under the condition that fresh disciplinary proceedings should be reinstited the employer shall frame a fresh charge(s) against the employee basing on the same facts as in the former disciplinary proceedings.

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- 25.7.7. Where fresh disciplinary proceedings have been reinstated under this code and the employee is found not guilty, he shall be entitled to his half salary that was retained from the date when he was first charged.
- 25.7.8. Where the appellate authority upholds or confirms the decision of the disciplinary authority the half salary retained shall not be paid to the employee
- 25.7.9. Where the appellate authority varies or rescinds the decision of the disciplinary authority, or the commission the half salary retained shall be paid to the employee. Where the employee dies before the appeal hearing starts, the decision of the appellate authority shall be recorded accordingly and reported to the employees survivors. In case the deceased employee is found guilty his half salary that was retained from the date he was charged should be forfeited.
- 25.7.10. Where the deceased employee is not found guilty his half salary which was retained should be restored to his survivors and his pension rights should be calculated in terms of Public Service Retirement Benefits Act. (Act No.2 of 1999).

26.0. KEY POINTS TO OBSERVE

26.1. *On counselling*

- (a) counselling may often be a more satisfactory method of resolving problems than a disciplinary action.
- (b) it should take the form of a discussion with the objective of encouraging and helping the employee to improve.
- (c) the employee should fully understand the outcome.
- (d) a note of any counselling should be kept for reference purposes.

26.2. *On handling a disciplinary matter*

- (a) remember that disciplinary action is intended to encourage an unsatisfactory employee to improve.

- (b) handle the matter promptly and gather all the relevant facts.
- (c) be firm, (it is the employer's responsibility to maintain satisfactory standards)
- (d) consider interdiction with half pay while the case is inquired.
- (e) be objective, fair and consistent.
- (f) consider each case on its own merits and avoid snap decisions made in the heat of the moment.
- (g) follow the disciplinary procedures.

26.3. On deciding and implementing disciplinary action

- (a) before deciding whether a disciplinary penalty is appropriate consider the employee's disciplinary and general record, whether the disciplinary procedure points to the likely penalty, action taken in previous cases, any explanations and circumstances to be considered and whether the penalty is reasonable.
- (b) dismissal for gross misconduct without warnings or notice should only be for very serious offences and should only occur after a normal disciplinary investigation and inquiry.
- (c) leave the employee in no doubt as to the nature of the disciplinary penalty, the improvement expected and the method of appeal.
- (d) except in the event of a formal verbal warning, give the employee written details of any disciplinary action.
- (e) keep records of disciplinary action secure and confidential.
- (f) do not normally allow disciplinary action to count against an employee indefinitely.

26.4. On handling cases where the employee criminal offence is involved

- (a) do not dismiss or discipline an employee merely because he has been charged with or convicted of a criminal offence. Decide whether the employee's conduct affects ability or suitability for continued employment. If it does, use normal disciplinary procedures. If it does not, decide whether in the light of the needs of the organization's business, the employee's post can be kept open throughout the period of absence.
- (b) base any decision on a reasonable belief following a reasonable investigation into the circumstances of the case.
- (c) where a criminal charge has been made, do not hesitate taking fair and reasonable disciplinary action in accordance to the provisions of the Regulations.

26.5. On handling an appeals

- (a) remember that appeal is intended to seek justice to a higher authority having more powers than the authority which made the decision.
- (b) provide for conclusive environment and proper means of dealing with appeals and make sure appeals are dealt with speedily.
- (c) whenever possible, use a procedure which is separate from the general grievance procedure.
- (d) analyse thoroughly the grounds of appeal, the report of the proceedings and any other documents relevant on the matter.
- (e) pay particular attention to any evidence introduced on appeal but which was not introduced during the proceedings.
- (f) examine all issues fully and do not be afraid to overturn a wrong and unfair decision.

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APPENDIX "A"

SAMPLE OF THE WRITTEN WARNING FORM
(To be completed by the Disciplinary Authority issuing the warning)

NAME OF EMPLOYEE.....

REASON FOR WRITTEN WARNING.....

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.....

DESCRIPTION OF WRITTEN WARNING:

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

DATE OF ISSUE:.....

DISCIPLINARY AUTHORITY'S
SIGNATURE:..... DATE:

EMPLOYEE'S
SIGNATURE..... DATE:

EMPLOYEE
REPRESENTATIVE
(if any) SIGNATURE..... DATE:

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APPENDIX "B"

SAMPLE OF ENQUIRY FORM

(To be completed by the Disciplinary Authority conducting the enquiry)

1. NAME OF EMPLOYEE.....
2. NAME OF CHAIRPERSON.....
3. SUMMARY OF ALLEGATIONS AGAINST EMPLOYEE.....
.....
.....
4. DATE, TIME AND PLACE EMPLOYEE ADVISED OF ENQUIRY TO BE HELD
.....
5. DATE, TIME AND PLACE OF ENQUIRY.....
6. PERSONS PRESENT AT ENQUIRY (EXCLUDING WITNESSES) AND THEIR DESIGNATION
.....
.....
.....
.....
.....
7. EMPLOYEE DOES/DOES NOT WISH TO HAVE A REPRESENTATIVE PRESENT (DELETE WHICH EVER DOES NOT APPLY). NAME OF REPRESENTATIVE TO BE INSERTED IN 6 ABOVE.
8. BRIEF SUMMARY OF EMPLOYEE'S REPRESENTATIONS TO ALLEGATIONS
.....
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.....

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10. DISCIPLINARY AUTHORITY'S FINDINGS BASED ON THE EVIDENCE PRESENTED:

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11. RELEVANT FACTORS TO BE TAKEN INTO ACCOUNT IN DECIDING ON THE APPROPRIATE SANCTION:

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12. OUTCOME OF ENQUIRY:

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13. DISCIPLINARY AUTHORITY'S SIGNATURE..... DATE:.....

14. EMPLOYEE'S SIGNATURE..... DATE:.....

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APPENDIX "C"

SAMPLE OF APPEAL FORM

I WISH TO APPEAL AGAINST THE OUTCOME OF THE ENQUIRY FOR THE FOLLOWING REASONS: (ADDITIONAL PAPER CAN BE USED)

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IN TERMS OF THIS APPEAL, I ASK THAT THE FOLLOWING ACTION BE TAKEN

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.....

EMPLOYEE'S SIGNATURE..... DATE:.....

(To be completed by the Manager Hearing the appeal)

DATE RECEIVED:.....

FINDINGS CONCERNING THE APPEAL:

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.....
.....

OUTCOME OF APPEAL:.....

APPELLATE AUTHORITY'S SIGNATURE..... DATE:.....

EMPLOYEE'S SIGNATURE..... DATE:.....

Dar es Salaam,
22nd February, 2006

HAWA A. GHASIA,
Minister of State, President's Office
Public Service Management