

MILITARY COURTS (SPECIAL POWERS) DECREE 1968



ARRANGEMENT OF SECTIONS

Section

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Decree No. 4

[1st June 1967]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) There shall be a court established for the enforcement of discipline in the armed forces to be known as the Armed Forces Disciplinary Court (in this Decree hereafter referred to as “a court”) which may in proper case in time of war or at any time during the continuance of the state of emergency in Nigeria be convened by the commanding officer of a unit of the armed forces ; and where a court is convened under this Decree, it shall have the powers hereby conferred to the exclusion of other courts and the provisions of any other enactment or rule of law relating to courts martial unless otherwise to be invoked under this Decree, shall not apply.

Armed
Forces
Disciplinary
Court
established.

(2) A court shall not have power to punish an officer above the rank of substantive lieutenant-colonel or of the equivalent substantive rank in any other arm of the armed forces, but subject thereto it shall, when convened, have all the powers of a general court martial other than the imposition of sentence where the penalty liable to be imposed is death or imprisonment for a term exceeding five years.

(3) Subject to the next succeeding subsection, any sentence imposed or awarded by a court shall be subject to confirmation by the Head of the Service concerned ; and if confirmed, the sentence shall not thereafter be liable to review or be the subject of an appeal.

(4) Notwithstanding the provisions of subsection (3) above, an appeal shall lie in the case of a commissioned officer from the decision of the Head of the Service concerned to the Commander-in-Chief.

(5) The decision of a commanding officer as to whether a case for trial before a court under this Decree is a proper one shall likewise not be liable to review or be the subject of an appeal.

Membership
etc. of court.

2.—(1) Subject to the provisions of this Decree—

(a) a court shall be convened by a commanding officer in respect of his unit, and for all purposes it shall be treated as duly constituted when there are present in session the president and not less than two other officers :

(b) the president shall, where an officer or a warrant officer is to be tried, rank not below that of substantive major but shall rank senior in status to the accused ; and the commanding officer as the convening officer shall not preside at any sitting of the court unless the exigencies of the service (of which he shall be sole judge and from which decision there shall be no review or appeal) so demand or require, as the case may be, and the officer to be tried is of equal or equivalent rank to that of the convening officer :

(c) the president shall, where the accused is a non-commissioned officer or a soldier of the armed forces, rank not below substantive captain in the army.

(2) In the application of this section,—

(a) the president and the members of a court must have been commissioned in any rank above that of warrant officer in the army, for a continuous period of not less than two years in any arm of the armed forces before the commencement of the trial, and in any event, be themselves subject to service law ;

(b) an officer may sit as a president or as a member of the court if he is satisfied that the exigencies of the service so demand or require, but otherwise he shall not so sit if at any time between the date on which the accused was charged with an offence and the date of the trial, he has been the commanding officer of the accused or has investigated the charge, or under service law has held or acted as the holder of an inquiry (whether solely or jointly with others) into matters relating to the subject-matter of the charge.

Rights of
accused in
relation to
his defence.

3.—(1) Where a member of the armed forces is charged with an offence he shall be given not less than twenty-four hours notice of the intention to try him under this Decree, and all assistance commensurate with service conditions shall thereupon be given to him in the preparation of his defence ; and a defending officer who is himself subject to service law shall be assigned to the accused, and wherever possible the defending officer shall be one chosen by the accused.

(2) Notwithstanding the effect of section 1 of this Decree whereby the provisions of any other enactment are excluded, a court may, if it thinks fit, invoke regulations and rules made for trial of an accused by court martial under the enactment relating to the particular arm of the armed forces of which the accused is a member ; but where so invoked they shall have effect not inconsistent with the provisions of this Decree, and references to courts and persons and to confirmation of findings shall be construed accordingly.

(3) Evidence at the hearing shall be presented by the officer appointed for the purpose by the convening officer.

(4) Where a member of the armed forces is convicted of the offence he may appeal to the Head of the Service concerned by way of petition or by submission made on his behalf not later than seventy-two hours after delivery by the court of its findings ; and the convening officer shall forward

the appeal with the proceedings of the court and its finding and the comment (if any) of the convening officer on any appeal therefrom as soon as possible and by the most convenient means, to the Head of the Service concerned.

(5) Pending confirmation or other action by the Head of the Service concerned, the accused shall be detained in military custody.

4. This Decree shall apply to all arms of the armed forces ; and it is declared for the avoidance of doubt that a member of the armed forces who is subject to service law may, if on detachment duties, be tried by direction of the commanding officer of the unit to which he is attached, or with which he is operating at the time of commission of an offence punishable under this Decree, and any such member if not subject to service law may in proper case be returned to his unit, to be dealt with as the circumstances may require.

Application of Decree.

5. In this Decree unless the context otherwise requires—

“commanding officer” means in relation to the army an officer not below the rank of lieutenant-colonel, and in respect of the navy and of the air force means an officer of corresponding rank therein, and includes a divisional commander and a brigade commander ;

“convening officer” in relation to any offence to be tried under this Decree means the commanding officer of the unit of which the accused is a member ;

“Head of the Service concerned” means the officer commanding (by whatever title known) in charge of a particular arm of the armed forces, and does not include the Commander-in-Chief of the Armed Forces ;

“proper case” means a case in which the commanding officer is satisfied that the provisions of this Decree should be invoked ;

“rank” where used herein relative to the army, includes equivalent rank in any other arm of the armed forces, and “unit” shall be construed accordingly ;

“service law” means any enactment passed or made for discipline and general control of members of the armed forces of Nigeria, and includes any enactment passed or made for a particular arm of the armed forces in Nigeria.

Interpretation.

6.—(1) This Decree may be cited as the Military Courts (Special Powers) Decree 1968 and shall apply throughout the Federation.

(2) This Decree shall be deemed to have come into operation on 1st June 1967.

Citation and operation, etc.

MADE at Lagos this 31st day of January 1968.

MAJOR-GENERAL Y. GOWON,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*