

Military Court (Special Powers) Act

CHAPTER 225

MILITARY COURT (SPECIAL POWERS) ACT

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CHAPTER 225

MILITARY COURT (SPECIAL POWERS) ACT

1984 No. 23. **An Act to re-introduce as the Military Court, the Armed Forces Disciplinary Court dissolved on 30th September 1979.**

Commence-
ment.

[20th July 1984]

Establish-
ment
of the
Military
Court.

1. (1) There is hereby established a court for the enforcement of discipline in the armed forces to be known as the Military Court (in this Act hereafter referred to as "a court") which may in proper case be convened by the commanding officer of a unit of the armed forces; and where a court is convened under this Act, it shall have the powers hereby conferred to the exclusion of other courts.

(2) Subject to this Act, a court shall, when convened, have all the powers of a general court martial other than the power to impose a penalty of death or a sentence of 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 Service Chief concerned and in the case of a commissioned officer, such sentence shall be channelled through the Service Chief concerned to the Army Council, the Navy Board or the Air Force Council for confirmation; 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) of this section, an appeal shall lie in the case of a commissioned officer from the decision of the Army Council, the Navy Board and the Air Force Council, as the case may be, to the Commander-in-Chief.

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

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

Membership,
etc. of court.

(a) a court shall be convened by a commanding officer in respect of his unit and shall consist of a president and not less than two other officers all of whom shall be appointed by the commanding officer; and for all purposes a court shall be treated as duly constituted where there are present in session the president and not less than two other officers;

(b) the president of the court shall—

(i) where an officer or a warrant officer is to be tried, not be of a rank below that of substantive major or its equivalent and shall be of a rank senior in status to the accused; so however that where an officer of or above the rank of a brigadier or its equivalent is to be tried, a court shall be properly constituted if an officer of the same or equivalent rank as the accused is appointed to be the president of that court; and

(ii) where a non-commissioned officer or soldier is to be tried, not be of a rank below that of substantive captain or its equivalent.

(2) An officer shall not be appointed a president or member of a court under this section unless he is subject to service law and has held a commission in the armed forces for a continuous period of not less than two years.

(3) A convening officer may himself sit as president or member of a court if he is satisfied that 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.

(4) Without prejudice to subsection (3) above, no officer who at any time between the date on which the accused was charged with an offence and the date of trial 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 enquiry (whether solely or jointly with others) into matters relating to the subject-matter of the charge, shall sit as president or member of the court.

(5) There shall be for each court a judge-advocate who shall be an officer but not a member of that court and shall be charged with the following functions, that is to say—

- (a) to swear in the members of the court, act as a public prosecutor and advise the court on questions of law;
- (b) to act as counsel to the accused so as to prevent him from answering any incriminating questions which may be put to him or object to leading questions when propounded to other witnesses in the course of the trial; and
- (c) do such other thing as the president or the court may direct him to do.

Offences triable by a court under this Act.

3. (1) The offences triable by a court shall be the offences specified under the provisions of the enactments set out in the First Schedule to this Act.

(2) Without prejudice to the provisions of subsection (1) of this section—

(a) the offences specified in the respective provisions of the following enactments—

Cap. 294

(i) Part V (that is, sections 32 to 74) of the Nigerian Army Act,

Cap. 288.

(ii) Part IV (that is, sections 33 to 82) of the Navy Act, and

Cap. 15.

(iii) Part IV (that is, sections 32 to 74) of the Air Force Act; and

(b) any other offence triable by a court martial under the provisions of the Nigerian Army Act, the Navy Act or the Air Force Act, aforesaid, shall similarly be triable by a court.

Procedure before trial of offence, etc.

4. (1) A member of the armed forces shall not be tried for an offence under this Act unless a summary of evidence or an abstract of evidence in the form set out in the Second Schedule to this Act has been taken in accordance with the applicable provisions of that Schedule.

(2) A summary of evidence must be taken if—

(a) the accused at any time before a court is convened requires in writing that a summary of evidence be taken; or

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(b) the commanding officer is of the opinion that the interest of justice requires that a summary of evidence be taken,
and in any other case an abstract of evidence shall be taken.

5. (1) The procedure for the trial of offences by a court shall, notwithstanding section 1(2) of this Act, be as set out hereunder and, the record of the proceedings shall be in the form set out in the Third Schedule to this Act. Procedure for trial.

- (a) the court shall cause the charge to be read to the accused;
- (b) the witnesses against the accused need not give their evidence orally if the accused has so agreed in writing but if the accused has not so agreed they shall give their evidence orally in his presence and he shall be allowed to cross-examine them. If the witnesses against the accused do not give their evidence orally the court shall read the summary or abstract of evidence to the accused if he so requires;
- (c) the accused in his defence may adduce evidence as to the facts of the case and as to his character and in mitigation of punishment;
- (d) the accused himself may give evidence on oath, make a statement without being sworn or hand in a written statement;
- (e) each witness who gives evidence shall give it on oath and the oath shall be administered by the court to each witness and to any interpreter;
- (f) when the court has considered the evidence it shall award the punishment prescribed by the appropriate service law.

(2) 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 Act, and all assistance commensurate with service conditions shall thereupon be given 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.

(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 Service Chief concerned and in the case of a commissioned officer through the Service Chief concerned to the Army Council, the Navy Board or the Air Force Council, as the case may be, by way of petition or by submission made on his behalf not later than 72 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 findings 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 Service Chief concerned, or in the case of a commissioned officer, through the Service Chief concerned to the Army Council, the Navy Board or the Air Force Council, as the case may be.

(5) Pending confirmation or other action by the Service Chief concerned, the Army Council, the Navy Board or the Air Force Council, or the Commander-in-Chief, as the case may be, the accused shall be detained in custody.

Pending
appeals.

Cap. 62.

6. (1) For the avoidance of doubt, as from the commencement of this Act, notwithstanding anything to the contrary in any law or enactment, including the Constitution of the Federal Republic of Nigeria, no court of law shall have power to entertain or continue to entertain any appeal from the decision of a court martial or military court or other proceedings connected with the decision of a court martial or military court set up pursuant to any law referred to in subsection (3) of this section.

(2) Any appeal or other proceedings now pending in any court of law in respect of any of the proceedings specified in subsection (1) of this section, shall, upon the making of this Act, abate, be discharged and made void.

(3) The enactments referred to in subsection (1) of this section are as follows, that is to say—

Cap. 294.

(a) the Nigerian Army Act;

Cap. 288.

(b) the Navy Act;

Cap. 15.

(c) the Air Force Act;

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- (d) the Military Court (Special Powers) Act; 1977 No. 4.
 (e) the Military Court (Special Powers) (Amendment) Act; 1979 No. 2.
 (f) the Armed Forces Disciplinary Proceedings (Special Provisions) Act. Cap. 22.

7. This Act shall apply to all members 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 Act, 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 Act.

8. In this Act, unless the context otherwise requires— Interpretation.
- “commanding officer” means in relation to the Nigerian Army an officer not below the rank of a substantive major and in respect of the Nigerian 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 Act means the commanding officer of the unit of which the accused is a member;
- “court” means the Military Court established by Section 1(1) of this Act;
- “proper case” means a case in which the commanding officer is satisfied that the provisions of this Act 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 Chief concerned” means the officer in whom responsibility for the overall day-to-day administration of that arm of the armed forces is for the time being vested or delegated;

“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.

Short title. 9. This Act may be cited as the Military Court (Special Powers) Act.

SCHEDULES

FIRST SCHEDULE

section 3(1)

OFFENCES TRIABLE BY A COURT UNDER THIS ACT

		<i>Provisions of the appropriate enactments</i>		
		<i>Nigerian Army Act</i>	<i>Navy Act</i>	<i>Air Force Act</i>
	<i>Offence</i>			
Cap. 294	1. Mutiny .. .. .	.. S.37	S.42	S.39
	2. Failure to suppress mutiny .. .. .	.. S.38	S.43	S.40
Cap. 288.	3. Insubordinate behaviour .. .. .	.. S.39	S.44	S.41
Cap. 15.	4. Offences in relation to public and service property .. .. .	.. S.49	S.63	S.51
	5. Offences in relation to property of members of forces .. .. .	.. S.50	S.65	S.52
	6. Miscellaneous offences relating to property .. .. .	.. S.51	S.64	S.53
	7. Making of false documents .. .. .	.. S.65	Ss.59 and 74	S.67

SECOND SCHEDULE

section 4(1)

PROVISIONS AS TO EVIDENCE

A—Provisions applicable to the taking of Summary of Evidence

A summary of evidence shall be taken in the following manner and shall be in accordance with the form set out in this Schedule:—

- (a) it shall be taken in the presence of the accused by the commanding officer or by another officer on the direction of the commanding officer;

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- (b) the prosecution witnesses shall give their evidence orally and the accused shall be allowed to cross-examine any prosecution witness:

Provided that if a person cannot be compelled to attend as a prosecution witness or if, owing to the exigencies of the service or on other grounds (including the expense and loss of time involved), the attendance of any prosecution witness cannot, in the opinion of the officer taking the summary (to be certified by him in writing) be readily procured, a written statement of evidence purporting to be signed by him, may be read to the accused and included in the summary of evidence, but if such witness can be compelled to attend, the accused may insist that he shall attend for cross-examination;

- (c) after all the evidence against the accused has been given, the accused shall be asked—

“Do you wish to say anything?”

“You are not obliged to say anything unless you desire to do so. You may make a statement on oath, or you may make a statement without being sworn; but whatever you say will be taken down in writing and may be given in evidence.”

Any evidence given or statement made by the accused whether or not on oath, shall be recorded in writing and, immediately thereafter, the record of his evidence or statement shall be read over to him and corrected where necessary, and he shall sign it unless he declines to do so;

- (d) the accused may call witnesses in his defence, who shall give their evidence orally;
- (e) neither the accused nor the witnesses for the defence shall be subject to cross-examination;
- (f) the evidence of each witness (other than the accused) who gives evidence orally shall be recorded in writing and immediately thereafter, the record of his evidence shall be read over to him, corrected where necessary and signed by him;
- (g) the record of the evidence may be in narrative record form save that any question put to a witness in cross-examination by the accused, and the answer thereto, shall be recorded verbatim if the accused so requires;
- (h) an oath shall be administered by the officer taking the summary of evidence, to each witness, before he gives his evidence, and to any interpreter:

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

- (i) at the conclusion of the taking of the summary of evidence the officer taking it shall certify thereon that he has complied with the provisions of this Part of this Schedule.

B.—Provisions applicable to the taking of Abstract of Evidence

(1) An abstract of evidence shall be taken in the following manner and shall be in accordance with the form set out in Part D of this Schedule—

- (a) it shall be made by the commanding officer or by another officer on the direction of the commanding officer;
- (b) the accused should not be present while the abstract of evidence is being made;
- (c) it shall consist of signed statements by such witnesses as are necessary to prove the charge:

Provided that if, in the case of any witness, a signed statement is not readily procurable a precis of the evidence to be given by that witness may be included instead of a signed statement; and

- (d) an oath shall not be administered to a witness making a statement for inclusion in an abstract of evidence, but use may be made, where necessary, of sworn statements which are already in existence.

(2) Where an abstract of evidence has been made in accordance with paragraph (1) above, a copy of it shall be handed to the accused and he shall then be cautioned in the following terms—

“This is a copy of the abstract of evidence in your case, you are not obliged to say anything with regard to it unless you wish to do so. You should read it and, when you have read it, if you wish to say anything, you may do so on oath or without an oath but whatever you say will be taken down in writing and may be given in evidence.”

Any statement made by the accused after he has read the abstract of evidence shall be taken down in writing and he shall be asked to sign it.

This statement and a certificate by the person who recorded the statement stating that the accused was duly cautioned in accordance with this rule, shall be attached to the abstract of evidence and shall thereafter form part of it. This certificate shall be in the form set out in Part E of this Schedule.

C.—Summary of Evidence

Summary of evidence in the case of (number, rank, name, unit or other description).

Taken by (the commanding officer of the accused)

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

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..... (number, rank, name, unit, or other description), Witness for
having been duly sworn, states:— the prosecu-
tion.

(Cross-examined by the accused)

²Question 1

Answer 1

(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 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 Part A of the Second Schedule to the
Act) the attendance of this witness cannot in my opinion be readily
procured.

(The accused does not demand the attendance of this witness for
cross-examination.)

(The accused demands the attendance of this witness for cross-
examination but the witness is not compellable and has refused to
attend.)

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

.....(description)

A written statement of this witness's evidence has been read to the
accused and is included in this summary at page

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

*The accused having been duly cautioned in accordance with Para-
graph (c) of Part A of the Second Schedule to the Act reserves his
defence.

OR

*The accused having been duly cautioned in accordance with Para-
graph (c) of Part A of the Second Schedule to the Act elects (to give
defence. Witness
for the

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evidence on oath) (to make a statement without being sworn) and to call a witness(es).

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

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

OR

Certified that Part A of the Second Schedule to the Act has been complied with.

This summary of evidence was taken by me at in the presence and hearing of the accused on the day(s) of 19.....

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

Notes:

1. *When a witness or the accused affirms, the words "duly affirmed" should be substituted for the words "been 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".*

2. *See however Part A of this Schedule.*

3. *Omit the words "and to call a witness(es)" if they are not applicable.*

**If the accused makes an unsworn statement amend accordingly.*

D.—Abstract of Evidence

Abstract of evidence in the case of (number, rank, name, unit or other description) consisting of the (insert the number of statements) attached statements* and (insert the number of precis) precis of evidence¹ of witnesses for the prosecution and compiled by me (the commanding officer of the accused) (.....)

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.....² on the direction of the commanding officer of the accused).

DATED 19.....

.....
Signature and rank

Notes:

1. *Strike out any references to statements or precis which are not applicable.*

2. *Insert name and rank of the officer making the abstract.*

**Where an accused has made a written statement to a witness and that statement is produced by the witness it is not included in the number of statements but is treated as an exhibit.*

E.—Certificate to be attached to Abstract of Evidence after it has been handed to the Accused

Certified that I today handed to the

accused
the abstract of the evidence relating to him dated

..... day of 19.....
and duly cautioned in accordance with Paragraph B (2) of the
Second Schedule to the Act and that he (elected to make and sign the
statement dated the day of
..... 19.....

which is marked
and attached to this certificate) (did not make a statement).

DATED..... 19.....

.....
(Signature of certifying officer)

THIRD SCHEDULE section 5(1)

RECORD OF PROCEEDINGS OF A COURT

CONVENED UNDER MILITARY COURT (SPECIAL POWERS) ACT

Accused's Number, Rank and Name

Unit

1. Questions to be put to the accused by the court dealing with the case before the charge is read.

Q. Have you received a copy of the charge-sheet and (summary) (abstract) evidence not less than 24 hours ago?

A.

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

A.

2. The charge-sheet is read to the accused and he is arraigned on each charge, as follows:

Q. Are you guilty or not guilty of the first charge against you which you have heard read?

A.

Q. Are you guilty or not guilty of the second charge, etc.

A.

Q. Do you agree that witnesses against you need not give their evidence in person?

A.

3. If the accused has agreed that the witnesses against him need not give their evidence in person the prosecuting officer shall read the summary or abstract of evidence to the court, but if the accused has not so agreed, the witnesses against him shall read their own summary or abstract of evidence to the court, and shall be liable to cross-examination by the accused (or his defending officer) and by the court. Such summary or abstract of evidence and abridged record of cross-examination shall be endorsed by the court and shall be attached to their record.

4. After the summary or abstract of evidence has been read and if necessary, the witnesses against the accused have been cross-examined, the court 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 facts of the case, with your character and with matters in mitigation of punishment.

A.

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Q. Do you wish to adduce any other evidence or call witnesses?

A.

5. If the accused elects to give evidence or to make a statement or to call witnesses, the evidence for the defence including any statement made by the accused himself shall be recorded in abridged form and attached on a separate sheet and attached to this record. The court shall then retire into private session to consider all the evidence and determine whether the accused is guilty of the offence or not; and if the court determines that the accused is guilty, it shall examine and consider the accused's record of service before arriving at a sentence. The court shall then be reconvened to announce its findings and sentence.

6. FINDING

.....

AWARD

.....

DATE..... 19..... at

.....
Signature and rank of President

.....
Signature and rank of Member

.....
Signature and rank of Member

9740

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CHAPTER 225

SUBSIDIARY LEGISLATION

No Subsidiary Legislation