

P.N.D.C.L. 19

SPECIAL MILITARY TRIBUNAL ACT, 1982

ARRANGEMENT OF SECTIONS

SECTION

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P.N.D.C.L. 19

SPECIAL MILITARY TRIBUNAL ACT, 1982¹

AN ACT to declare certain acts as offences in relation to the Armed Forces, to provide for the trial of those offences and for related matters.

1. Acts which are offences

(1) Without prejudice to any other enactment, a member of the Armed Forces commits an offence if that member

- (a) incites or assists or procures a person to invade the Republic with armed force or unlawfully to subject a part of the Republic to attack by sea or air or assists in the preparation of that invasion or attack;
- (b) prepares or endeavours in any manner to overthrow the Government or to usurp a power of the Government; or
- (c) knows of the commission of an act under paragraph (a) or (b) of this subsection but does not report it to a member of the Government or to a serving police officer not below the rank of sergeant or to a serving member of the Armed Forces of Ghana not below the rank of sergeant in the Ghana Army or its equivalent in the Ghana Navy or Air Force.

(2) For the purposes of subsection (1), a person who has retired from or deserted the Armed Forces of Ghana is a member of the Armed Forces of Ghana.

(3) Despite any other enactment to the contrary, a person commits an offence if that person

- (a) being a member of the Armed Forces of Ghana
 - (i) assaults or molests any other person, or
 - (ii) unlawfully arrests any other person, or

1. This Act was issued as the Special Military Tribunal Law, 1982 (P.N.D.C.L. 19) made on the 21st day of July, 1982, and notified in the *Gazette* on 6th August, 1982.

- (iii) obstructs a public officer or any other person in the discharge of the duties, or
- (iv) smuggles anything into or outside the Republic in contravention of an execution; or
- (b) directly or indirectly, instigates, commands, counsels, procures, solicits, or in a manner aids, facilitates, encourages, or promotes whether by act or presence or otherwise, the assault, molestation or unlawful arrest of another person by a member of the Armed Forces of Ghana; or
- (c) does an act for the purpose of aiding, facilitating, encouraging, or promoting the assault, molestation or unlawful arrest of another person by a member of the Armed Forces of Ghana; or
- (d) uses a member of the Armed Forces of Ghana for any unauthorised purposes or act; or
- (e) being a member of the Armed Forces of Ghana uses that position for an unauthorised purpose or act; or
- (f) not being a member of the Armed Forces of Ghana parades, whether in military uniform or not, as a member of the Armed Forces; or
- (g) smuggles any thing into or outside the Republic in contravention of an enactment.

(4) For the purposes of paragraphs (a) (ii) and (b) of subsection (3), a person arrests another unlawfully if that person does so without lawful authority or a reasonable excuse.²

1A. Acts done outside the Republic

A person who is not a citizen does not commit an offence under this Act in respect of anything done outside the Republic, but a citizen may be tried and punished for an

2. Substituted by paragraph (a) of the Special Military Tribunal (Amendment) Law, 1984 (P.N.D.C.L. 77). The substitution was deemed to have come into effect on the 21st day of July, 1982. The substitution was further amended by paragraph (a) of the No. 2 Amendment (P.N.D.C.L. 100). The section reads as follows:

“(1) Notwithstanding any law to the contrary, a person shall be guilty of an offence who—

- (a) being a member of the Armed Forces of Ghana
 - (i) assaults or molests any person,
 - (ii) unlawfully arrests any person, or
 - (iii) obstructs any public officer or other person in the performance of his duties,
 - (b) directly or indirectly, instigates, commands, counsels, procures, solicits, or in any manner aids, facilitates, encourages, or promotes whether by his act or presence or otherwise, the assault, molestation or unlawful arrest of another person by a member of the Armed Forces of Ghana, or
 - (c) does any act for the purpose of aiding, facilitating, encouraging, or promoting the assault, molestation or unlawful arrest of another person by a member of the Armed Forces of Ghana, or
 - (d) uses as a member of the Armed Forces of Ghana his position for any unauthorised purposes or act, or
 - (e) not being a member of the Armed Forces of Ghana parades, whether in military uniform or not, as a member of such Forces.
- (2) For the purposes of paragraphs (a) (ii) and (b) of subsection (1) of this section a person shall be deemed to arrest another unlawfully if he does so without lawful authority or any reasonable excuse.”

offence under this Act in respect of an act referred to in subsection (1) of section 1 whether done in or outside the Republic.³

2. Penalty

(1) A person who commits an offence under subsection (1) of section 1 is liable on conviction to suffer death by shooting by firing squad.

(2) A person who commits an offence under subsection (3) of section 1 is liable on conviction

- (a) in the case of a member of the Armed Forces of Ghana, to any or a combination of the following punishments:
 - (i) dismissal with disgrace from the Armed Forces of Ghana;
 - (ii) detention;
 - (iii) reduction in rank;
 - (iv) forfeiture of seniority;
 - (v) a fine not exceeding five hundred penalty units;
- (b) in the case of any other person to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(3) A special military tribunal may impose as appropriate in respect of the offence referred to it under subsection (1) of section 3 the penalty prescribed in subsection (1) or (2) of the section having regard to the nature of the offence.

(4) Conviction for an offence under this Act has the same effect as a conviction under the Criminal Offences Act, 1960 (Act 29).⁴

3. Trial of offences by special military tribunal

(1) Despite anything to the contrary and except as otherwise provided in subsection (2), a special military tribunal shall try the offences specified in section 1 or an offence under an enactment which may be referred to it by the President.

(2) The offences specified in subsection (3) (a) (iv) and (g) of section (1) shall be tried by a special military tribunal comprising a panel of three members.

3. Inserted by paragraph (b) of the Special Military Tribunal (Amendment) Law, 1984 (P.N.D.C.L. 77). The insertion was deemed to have come into force on 21st July, 1982.

4. Substituted by paragraph (c) of the Special Military Tribunal (Amendment) Law, 1984 (P.N.D.C.L. 77). The substitution was deemed to have come into force on the 21st day of July, 1982. It was further amended by paragraph (b) of the No. 2 Amendment (P.N.D.C.L. 100). The section reads as follows:

"(1) Any person who commits an offence under section 1 of this Law shall on summary conviction

- (a) in the case of a member of the Armed Forces of Ghana, be liable to a fine not exceeding ₵2,000.00 or to a term of imprisonment not exceeding one year or to both, as well as dismissal from the Armed Forces with effect from the date of the offence; and
 - (b) in the case of any other person, be liable to a fine not exceeding ₵2,000.00 or to a term of imprisonment not exceeding one year or to both.
- (2) Conviction for an offence under this Law shall have the same effect as conviction under the Criminal Code, 1960 (Act 29)."

(3) The Commander-in-Chief of the Armed Forces of Ghana or any other authority authorised by the Commander-in-Chief may convene a Special Military Tribunal under this section, comprising seven, five or three members.

(4) A special military tribunal convened under this section shall,

- (a) in the case of a panel of seven members, consist of not more than four officers and not more than five other ranks;
- (b) in the case of a panel of five members, consist of more than three officers and not more than three other ranks;
- (c) in the case of a panel of three members, consist of the Unit Commander, one officer and one other rank.

(5) A special military tribunal shall from its members appoint its own chairman.⁵

3A. Trial in absentia

Despite any other enactment to the contrary, the trial of a person charged with an offence under this Act shall be conducted in the presence of that person or where that person is outside the Republic or it is otherwise impossible for that person to be made to be present the trial may be conducted in the absence of that person.⁶

4. Meetings and procedure

(1) A special military tribunal shall determine the place and the time at which it meets.

(2) A special military tribunal shall, in the exercise of its jurisdiction under section 3 have all the powers of a Justice of the High Court.

(3) A special military tribunal is not, in the performance of its functions under this Act bound by the decisions of a Court or tribunal but shall be guided by the rules of natural justice.

(4) A special military tribunal shall in trials before it adopt the procedure for summary trials.

5. Substituted by paragraph (c) of the Special Military Tribunal (Amendment) (No. 2) Law, 1984 (P.N.D.C.L. 100). The original section reads as follows:

“(1) Notwithstanding anything to the contrary any person who commits an offence under this Law shall be tried by a Special Military Tribunal as provided in this section.

(2) The Commander-in-Chief of the Armed Forces of Ghana or such other authority as may be authorised by him may convene a Special Military Tribunal under this section, comprising seven or five members.

(3) A Special Military Tribunal convened under this section shall

- (a) in the case of a panel of seven members consist of not more than four officers or more than five other ranks; and
- (b) in the case of a panel of five members consist of not more than three officers or more than three other ranks.

(4) A Special Military Tribunal shall from among its members appoint its own Chairman.”

6. Inserted by paragraph (d) of the Special Military Tribunal (Amendment) Law, 1984 (P.N.D.C.L. 77). The insertion was deemed to have come in to force on the 21st day of July, 1982.

(5) For the purposes of this Act, a decision is a decision of a special military tribunal if it is supported by all its members or a majority of the members.

(6) *Omitted.*⁷

(7) The trial of a person accused of the commission of an offence under subsection (1) of section 1 may be held in camera.

5. Application of the Armed Forces Act

(1) The Armed Forces Act, 1992 (Act 105) shall, with the modifications that are necessary to give effect to this Act and any other modifications directed by the President, apply in respect of the arrest, trial and punishment of a person, whether civilian or not for an offence under this Act as if that offence were a service offence and as if a special military tribunal appointed under this Act were a service tribunal, and also as if a person alleged to have committed an offence under this Act were a person subject to the Code of Service Discipline.

(2) Subject to this Act, this Act shall be construed as one with the Armed Forces Act, 1962 (Act 105).

7. Omitted as offending clause (4) of article 125 of the Constitution. The substitution provided that "A decision of a special military tribunal under this Act shall be final and no appeal shall lie from such a decision."

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