

TANGANYIKA



No. 15 OF 1964

I ASSENT,

Julius K. Nyerere
.....
President

5TH MARCH, 1964

An Act to make special provision for the Trial and Punishment of persons subject or formerly subject to Military Law, to establish a special Military Court, and for purposes incidental thereto and connected therewith

[.....]

ENACTED by the Parliament of Tanganyika.

1. This Act may be cited as the Military Court Act, 1964.

Short title

2.—(1) In this Act, unless the context otherwise requires—

Interpreta-
tion

“the Court” or “the Military Court” means the court established by section 3, and includes a division of such Court;

“member” in relation to the Court, includes the president of the Court or of a division of the Court;

“the Ordinance” means the Tanganyika Military Forces Ordinance; Cap. 402

“Registrar” means the Registrar of the Court;

“subject to the Ordinance” means subject to the Tanganyika Military Forces Ordinance in accordance with section 201 thereof.

(2) Subject to the provisions of subsection (1), this Act shall be read as one with the Ordinance.

3.—(1) There is hereby established in and for Tanganyika a special court to be known as the Military Court.

Establish-
ment of
Military
Court

(2) If the President of the Republic is of the opinion that the amount of business to be discharged by the Military Court so requires, he may direct the Court to sit in two divisions, each of which shall have all the jurisdiction and powers of the Military Court, and the following provisions of this Act relating to the Military Court shall apply to each such division.

4.—(1) The Military Court (and each division thereof) shall consist of a president and such other members, not being less than two, as may be appointed by the President of the Republic.

Composi-
tion of
Military
Court

(2) The President of the Republic shall appoint as president of the Military Court the Chief Justice of Tanganyika or some other person who holds or who has held high judicial office.

(3) Where the Court sits in two divisions, the president of one division shall be appointed in accordance with subsection (2), and the President of the Republic shall appoint as president of the other division the most senior of the puisne judges or some other person who holds or who has held high judicial office.

(4) The other members of the Military Court shall be appointed by the President of the Republic from amongst the commissioned officers of the Tanganyika Military Forces.

(5) The Registrar of the High Court shall be the Registrar of the Military Court and the officers of the registry of the High Court shall perform such functions in relation to the Military Court as may be directed by the Registrar.

(6) In this section "high judicial office" means the office of a judge of a court, whether within or outside Tanganyika, having unlimited jurisdiction in civil or criminal matters, or a court having jurisdiction in appeals from any such court.

Oath of members of the Court

5. Each of the members of the Military Court shall, before entering upon the duties of his office, take an oath in the form set out in the Schedule hereto.

Immunities of members of Court

6. The members of the Military Court shall, in the exercise of and in relation to their functions as such, have the like immunities from suit and the like privileges as are conferred upon a judge of the High Court in the exercise of and in relation to the functions of his office.

Jurisdiction and powers of court

7.—(1) Subject to the provisions of this Act and in particular to the provisions of section 10, the Military Court shall have jurisdiction and power—

- (a) to try any person subject to the Ordinance who is charged with any offence against any provision of the Ordinance; and
- (b) to deal with any such person tried by it in the like manner as if he had been tried by a general court-martial:

Provided that, save to such extent as may be necessary to determine the date on which the offence shall have been committed, the Military Court shall not have jurisdiction to try or otherwise deal with any such person who shall commit any such offence on or after the 1st day of January, 1965, or such later date as may be substituted therefor under section 21.

(2) The Military Court shall have the like power to convict a person of an offence other than that charged as is conferred on a court-martial by section 88 of the Ordinance.

(3) For the avoidance of doubts it is hereby declared that the Military Court shall have power to impose on any person convicted by it of an offence, any punishment which could have been awarded to a person convicted of the same offence by a court-martial.

(4) Subject to the provisions of this Act, the trial, conviction and punishment, or acquittal of any such person aforesaid by the Military Court shall, for the purposes of the Ordinance, other than the provisions thereof relating to confirmation, revision or review, be deemed to be a trial, conviction and punishment, or acquittal, as the case may be, by a court-martial.

(5) The Military Court shall have the like powers of a court-martial to summon as a witness any person whether subject to the Ordinance or not, to require him to swear an oath, to give evidence, and produce documents, and the president of the Military Court shall have the like power to try and punish any person for a contempt of the Military Court as is exercisable by a judge of the High Court in relation to a contempt of the High Court.

8.—(1) Where it is alleged that a person subject to the Ordinance has committed an offence which the Military Court has jurisdiction to try, the accused's commanding officer may, if, after making such inquiries as he thinks fit, he is of the opinion that the matter should be proceeded with, charge the accused with the offence and direct that an abstract of evidence shall be taken in accordance with the Rules of Procedure for the purposes of the accused being tried by the Military Court: ^{Institution of proceedings}

Provided that, notwithstanding the provisions of the Rules of Procedure, the commanding officer may direct the abstract of evidence to be made by a police officer not below the rank of assistant superintendent and, in any such case, the police officer so directed shall have all the functions and powers to make, and in relation to the making of, the abstract of evidence of an officer of the Military Forces.

(2) Every charge by a commanding officer under this section shall forthwith be reported to the Registrar and to the Director of Public Prosecutions.

(3) On completion of the taking of the abstract of evidence and of any statement made by the accused thereon, copies thereof shall be delivered to the Registrar and to the Director of Public Prosecutions.

(4) If, after considering the abstract of evidence, the Director of Public Prosecutions is of the opinion that the charge should be proceeded with before the Military Court, he shall draw up and sign an information, in the form customarily used in the High Court with such variations as the circumstances require, and deliver the same to the Registrar who shall thereupon make arrangements for the trial of the accused by the Military Court.

(5) Nothing in this Act shall preclude a commanding officer from exercising any power of dealing with an allegation of an offence summarily in accordance with the Ordinance; but where a commanding officer takes any step with a view to a charge which the Military Court has jurisdiction to try being tried by court martial, he shall be deemed to have charged the accused with an offence and to have directed an abstract of evidence to be taken for the purposes of the accused being tried by the Military Court and the foregoing provisions of this section shall have effect accordingly.

(6) Any higher military authority which is notified of any such step as is referred to in subsection (5) shall inform the Registrar and the Director of Public Prosecutions thereof.

Powers of
Director
of Public
Prosecutions

9.—(1) The Director of Public Prosecutions shall have the like power and authority in relation to a person whom the Military Court has jurisdiction to try and to the charges to be preferred therein as is conferred on him in relation to a person who may be tried by the civil courts and the charges in such courts; and the Director shall be subject to like directions in relation to any such first named person as those to which he is subject in relation to a person who may be tried by the civil courts.

Cap. 20

(2) The powers of the Director may be exercised by himself or, subject to his instructions, by such persons as may, in accordance with the provisions of the Criminal Procedure Code, exercise the powers of the Director in the civil courts.

Practice,
procedure
and
evidence

10.—(1) Subject to the provisions of this Act, the practice and procedure of, and the rules of evidence to be observed by, the Military Court shall be assimilated as nearly as may be to the substance of the practice and procedure of, and the rules of evidence observed by, the High Court in the exercise of its original criminal jurisdiction, save that—

- (a) the trial shall be held without assessors and it shall not be necessary to sum up the evidence;
- (b) the abstract of evidence and the statement of the accused thereon (if any) shall be used in lieu of the depositions of a preliminary enquiry; and
- (c) the Court shall not be required to deliver a judgment, but the president of the Court shall state in open court the Court's finding on the guilt or innocence of the accused.

(2) Subject to the provisions of subsections (2) and (3) of section 7, the Military Court shall have the like powers prior to, or in the course of, a trial under this Act to deal with a person charged or deemed to have been charged under this Act as are conferred on the High Court in relation to an accused person prior to, or in the course of, a trial before the High Court in the exercise of its original criminal jurisdiction.

(3) Without prejudice to the generality of the foregoing provisions of this section—

- (a) the Military Court shall take evidence on oath save that, in those cases where the High Court may take evidence on affirmation, or without oath or affirmation, it may take evidence in similar fashion;
- (b) the Military Court shall retire while deliberating on its finding or sentence on any charge, and may retire on any other deliberation amongst the members; where the Military Court retires to deliberate on any such matter no person who is not a member shall be present at its deliberations;
- (c) an accused person shall have the same right to an advocate in his defence as is enjoyed by a person in the civil courts.

Death or
absence of
members

11.—(1) If, after the commencement of a trial by the Military Court—

- (a) the president of the Military Court dies or is, for any other reason, unable to proceed with the trial; or
- (b) the number of the other members of the Military Court is, by reason of death or otherwise, reduced below two,

the trial shall be stopped, but, save as provided in paragraph (b), the reduction in the number of members of the court, other than the president, shall not preclude the continuance and conclusion of the trial before the continuing members.

(2) When a trial is stopped under this section, the accused may be tried again before the Military Court when properly constituted.

12.—(1) Subject to the provisions of this section, every question to be determined on a trial by the Military Court shall be determined by a majority of the votes of the members of the Court. Decisions of court

(2) In the case of an equality of votes on the finding, the Court shall acquit the accused.

(3) In the case of an equality of votes on the sentence, or on any question arising after the commencement of a trial, except the finding, the president of the Court shall have a second or casting vote.

13. A witness before the Military Court or any other person whose duty it is to attend on or before the Court shall be entitled to the like immunities and privileges as a witness before the High Court. Witnesses

14. Where, prior to, or in the course of, a trial by the Military Court, the Court deals with the accused or any matter in a similar manner to that in which the High Court is empowered by law to deal with a person accused of an offence or matter which the High Court has jurisdiction to entertain, any authority or person who is empowered to exercise any function consequential thereon were the accused or matter to have similarly dealt with by the High Court, shall have the like power to exercise such function in relation to the person or matter so dealt with by the Military Court. Functions of other authorities consequential upon certain actions by Court

15.—(1) A person sentenced to death or imprisonment by the Military Court shall be committed to a civil prison and shall, while in that prison, be confined and otherwise dealt with in the same manner as a person confined therein under a like sentence of a civil court. Execution of sentences and duties of prison officers, etc.

Provided that—

- (a) the provisions of subsection (1) of section 98 of the Ordinance shall apply to any sentence of death passed by the Military Court; and
- (b) the Military Court may direct that a sentence of death passed by it shall be carried out either by shooting or by hanging and, subject to any directions of the President of the Republic, such sentence shall be carried out in the manner so directed.

(2) It shall be the duty of the superintendent or other person in charge of a prison to receive any person duly sent to that prison in pursuance of this Act and to confine him until execution of the sentence is completed or the prisoner is discharged or delivered over in due course of law.

Application
of certain
provisions of
Ordinance

16.—(1) The provisions of subsection (2) of section 84, of section 111, and of paragraphs (a) and (b) of subsection (1) of section 112 of the Ordinance shall apply *mutatis mutandis* in relation to the Military Court as they apply in relation to a court-martial.

(2) Notwithstanding any provision of the Ordinance to the contrary, proceedings in or before the Military Court shall not be barred on the ground of condonation.

(3) The provisions of subsection (4) of section 61 of the Ordinance shall not apply in relation to a person who is charged before, or for the purposes of being tried by, the Military Court if the charge is preferred by, or on the directions of, the Director of Public Prosecutions.

Decision of
Military
Court final

17. The decision of the Military Court in any trial under this Act shall be final and, notwithstanding any other law, no appeal shall lie therefrom; and the proceedings before a Military Court under this Act shall not be subject to enquiry or review by any other court or to confirmation, revision or review under the Ordinance.

Custody of
accused

18. Any person who has been charged or is deemed to have been charged under this Act with an offence which is to be tried by the Military Court may, unless the Director of Public Prosecutions determines that such or any other charge shall not be proceeded with, and pending the determination of the trial, be detained in civil or military custody, and every person so detained shall be deemed to be detained in lawful custody.

Additional
powers of
Military
Court

19. The president of the Military Court or of a division thereof may give directions—

- (a) for the procedure to be followed where a person is charged or deemed to have been charged with an offence which may be tried by the Military Court, including directions modifying the Rules of Procedure relating to the taking of abstracts of evidence;
- (b) for the observance of commanding officers in the exercise of their functions under this Act;
- (c) as to the manner and form in which charges shall be made;
- (d) as to the number of copies of the charge and abstract of evidence and statement of the accused thereon (if any) which shall be provided for the Military Court;
- (e) relating to the procedural steps to be taken in relation to trials under this Act, including directions as to reconciliation of civil and military procedures,

and every person to whom such directions are issued shall comply therewith as if they were contained in this Act.

Modification
of Ordinance
in respect
of certain
discharged
members of
Tanganyika
Military
Forces

20.—(1) Where any person shall have been discharged from the Tanganyika Military Forces between the 20th day of January, 1964, and the 1st day of April, 1964, and at the time of his discharge he shall have been required by any military authority to make a report, whether or not periodically, to any person holding office in the service of the Republic, any such first mentioned person who fails, without lawful or reasonable cause, to report in accordance with the terms of such

requirement, until released from such requirement by the person to whom he is required to report, shall be guilty of an offence and shall be liable, on conviction before the court of a resident magistrate or a district court, to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand shillings or to both such imprisonment and fine.

(2) Notwithstanding the provisions of sections 109 and 110 of the Ordinance, a person who has been discharged from the Tanganyika Military Forces between such dates and in such circumstances aforesaid shall be liable to be proceeded against at any time before a court-martial or the Military Court for an offence contrary to the Ordinance committed prior to his discharge if he fails, without lawful or reasonable cause, at any time to make such report aforesaid until he is released from such requirement by the person to whom he is required to report.

(3) The Military Court and a court-martial shall have jurisdiction to try any person to whom subsection (2) applies notwithstanding that he shall have ceased to be subject to the Ordinance.

21. The National Assembly may from time to time, by resolution, substitute for the 1st day of January, 1965, specified in the proviso to subsection (1) of section 7 (or later date substituted therefor under this section) some later date, and thereupon the jurisdiction of the Military Court shall be extended accordingly:

National
Assembly
may extend
jurisdiction
of Military
Court

Provided that the National Assembly shall not substitute a date more than six months after the date of the resolution.

SCHEDULE

(Section 5)

OATH OF A MEMBER OF THE MILITARY COURT

I,, do swear that I will well and truly try all persons who are charged before the Court according to the evidence, and that I will duly administer justice according to the Military Court Act, 1964, without fear or favour, affection or ill will, and I do further swear that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any member of the Court, unless thereunto required in due course of law.

So HELP ME GOD

Passed in the National Assembly on the twentieth day of February, 1964.

Prof. M. K. M. M. M.
Clerk of the National Assembly