

ACTS

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SIGNED this 31st day of July, 2000.

**ALHAJI AHMAD TEJAN KABBAH,
*President.***

LS

No. 13



Sierra Leone

2000

**The Armed Forces of the Republic of Sierra Leone
(Amendment) Act, 2000**

Short title.

**Being an Act to amend the Armed Forces of the Republic of
Sierra Leone Act, 1961.**

[17th August, 2000]

Date of com-
mencement.

ENACTED by the President and Members of Parliament in this
present Parliament assembled.

Amendment
of Act No. 34
of 1961.

The Armed Forces of the Republic of Sierra Leone Act, 1961 is amended—

- (a) by the repeal of section 129; and
- (b) by the insertion of the following as Part VI thereof:—

“PART VI — APPEALS FROM COURTS-MARTIAL

Right of
appeal.

129. Subject to this Part, an appeal shall lie from any decision of a court-martial to the Court of Appeal with the leave of that Court:

Provided that an appeal from a sentence of death from a court-martial shall lie to the Court of Appeal as of right.

Procedure for
applying for
leave to
appeal or
lodging
appeal.

130. (1) (a) Subject to subsection (2), leave to appeal to the Court of Appeal shall not be given except in pursuance of an application in that behalf made by or on behalf of the appellant, and lodged with the Registrar within forty days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought, being an application in the prescribed form and specifying the grounds on which leave to appeal is sought and such other particulars, if any, as may be prescribed.

(b) An appeal against a decision involving a sentence of death shall not be entertained by the Court of Appeal unless the appeal is lodged with the Registrar in the prescribed manner by or on behalf of the appellant within ten days of the date of promulgation of the finding of the court-martial in respect of which the appeal is brought.

(2) Rules of court may provide that, in such circumstances as may be specified in the rules, any application or appeal referred to in subsection (1) which is lodged with such person (other than the Registrar) as is specified in the rules shall be treated for the purposes of subsection (1), as having been lodged with the Registrar.

(3) The Court of Appeal may extend the period within which an application for leave to appeal may be lodged under paragraph (a) of subsection (1), whether that period has expired or not,

and may also extend the period for lodging an appeal under paragraph (b) of that subsection if, owing to the fact that the appellant is outside Sierra Leone or otherwise, he has not had a reasonable opportunity of lodging his appeal within ten days.

(4) Where the Court of Appeal dismisses an application for leave to appeal, it may, if it considers the application to have been frivolous or vexatious, order that any sentence passed upon the applicant in the proceedings from which it was sought to bring the appeal shall begin to run from the day on which the Court dismisses the application.

131. (1) Subject to section 132, on an appeal under this Part against a conviction, the Court of Appeal shall allow the appeal if it thinks that the finding of the court-martial is unreasonable or cannot be supported having regard to the evidence or involves a wrong decision on a question of law or that, on any ground, there was a miscarriage of justice; and in any other case shall dismiss the appeal:

Determination
of appeals in
ordinary
cases.

Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(2) If the Court of Appeal allows an appeal against a conviction under this Part, it shall quash the conviction.

(3) On an appeal under this Part against sentence, the Court of Appeal shall, if it is of opinion that a different sentence should have been passed, quash the sentence passed by the court-martial and pass such other sentence (whether more or less severe) in substitution therefor, as it thinks ought to have been passed, being a sentence which, under section 73 or section 74, could lawfully have been passed for the offence of which the appellant was convicted, or, if it is not of that opinion, dismiss the appeal.

(4) The term of any sentence passed by the Court of Appeal under subsection (3) shall, unless the Court otherwise directs, begin to run from the time from which it would have begun to run if

it had been passed in the proceedings from which the appeal is brought, and any such sentence shall be deemed for the purposes of this Act to be a sentence passed by the court-martial being a sentence that has been confirmed.

Powers of
Court of
Appeal in
special cases.

132. (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some charge preferred against him before the court-martial by which he was tried, was properly convicted on some other charge so preferred then, if the sentence passed by the court-martial on the appellant was not one which could lawfully be passed by the court-martial for the offence of which he was convicted on the other charge, the Court shall pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which, under section 73 or section 74, might lawfully be passed in respect of the charge on which the appellant was properly convicted, but not being a sentence of greater severity.

(2) Where an appellant has been convicted of an offence and the court-martial by which he was tried could lawfully have found him guilty of some other offence, and it appears to the Court of Appeal that the court-martial must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the other offence and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which, under section 73 or section 74, could lawfully have been passed for that other offence but not being a sentence of greater severity.

(3) Where—

(a) an appellant has been convicted of an offence committed under circumstances involving the higher of two degrees of punishment, and it appears to the Court of Appeal that the court-martial by which he was tried ought to have found him guilty of the offence as being committed under circumstances involving the lower degree of punishment; or

- (b) an appellant has been convicted of an offence and it appears to the Court that the court-martial by which he was tried ought to have found him guilty of the offence subject to exceptions or variations,

the Court may, instead of allowing or dismissing the appeal, substitute for the finding of the court-martial a finding of guilty of the offence as being committed under circumstances involving the lower degree of punishment or, as the case may be, guilty of the offence subject to exceptions or variations and pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as it thinks proper, being a sentence which, under section 73 or section 74, could lawfully have been passed for the offence specified or involved in the substituted finding, but not being a sentence of greater severity.

(4) If, on an appeal, it appears to the Court of Appeal that, although the appellant committed the act or omission charged against him, he was insane at the time the act was done, or the omission made, so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody under section 109, in like manner as on a special finding of insanity by the court-martial by which the appellant was convicted.

(5) The term of any sentence passed by the Court of Appeal under subsections (1) to (4) shall, unless the Court otherwise directs, begin to run from the time from which it would have begun to run if it had been passed in the proceedings from which the appeal is brought, and any such sentence shall be deemed for the purposes of this Act to be a sentence passed by the court-martial being a sentence that has been confirmed.

133. Any determination by the Court of Appeal of any appeal or other matter which it has power to determine under this Part, shall be final and no appeal shall lie from the Court to any other court.

Appeals to be final.

134. For the purposes of this Part, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice, appoint any person with special expert knowledge to act as assessor to the Court

Supplementary powers of Court of Appeal.

in any case where it appears to the Court that such special knowledge is required for the proper determination of the case.

Proceedings to be heard in absence of appellants.

135. An appellant shall not be entitled to be present at the hearing of an appeal to the Court of Appeal under this Part or at any proceedings preliminary or incidental to such an appeal except where rules of court provide that he shall have the right to be present or the Court gives him leave to be present, and accordingly, any power of the Court under this Part to pass a sentence may be exercised notwithstanding the absence of the appellant.

Defence of appeals.

136. It shall be the duty of the Attorney-General and Minister of Justice on appeal against a decision of a court-martial to undertake the defence of the appeal.

Right of appellant to present his case in writing.

137. An appellant may, if he so desires, instead of presenting his case orally, present it in writing in the prescribed form.

Suspension of death sentences.

138. Where a conviction by court-martial involves sentence of death—

- (a) the sentence shall not, in any case, be executed until the expiration of the period within which an appeal to the Court of Appeal against the conviction shall be lodged; and
- (b) if such an appeal is duly lodged, the sentence shall not be executed until the appeal is determined or abandoned.

Persons not to be tried again where conviction quashed.

139. Where the conviction of a person by a court-martial for an offence has been quashed under this Part, he shall not be liable to be tried again for that offence by a court-martial or by any other court.

Removal of prisoners for purposes of proceedings under this Part.

140. Imprisonment Rules may provide in what manner an appellant, when in custody, is to be taken to, kept in custody at and brought back from any place at which he is entitled to be present for the purposes of this Part or any place to which the Court of Appeal or a judge thereof may order him to be taken for the purposes of any proceedings of the Court.

141. In the case of every appeal or application for leave to appeal under this Part to the Court of Appeal against a decision of a court-martial, it shall be the duty of the Chief of Defence staff to furnish to the Registrar, in accordance with rules of court, the proceedings of the court-martial (including any proceedings with respect to the revision of the findings or sentence of the court-martial in pursuance of subsection (1) of section 102) with respect to the confirmation of the finding and sentence of the court-martial.

Furnishing appellant with documents relating to trial.

142. (1) The Registrar shall take all necessary steps for obtaining the determination of appeal or application under this Part, and shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court-martial before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

Duties of Registrar of Court of Appeal with respect to appeals, etc.

(2) The Registrar shall furnish the necessary forms and instructions relating to appeals or applications for leave to appeal under this Part to any person who demands them, to persons in charge of places where persons sentenced by court-martial may lawfully be confined for the purpose of serving their sentences and to such other persons as he thinks fit; and every person in charge of such a place as aforesaid shall cause the forms and instructions to be placed at the disposal of persons confined in that place who desire to lodge an appeal or make application for leave to appeal under this Part.

143. (1) The Rules of Court Committee may make rules of court for regulating the procedure and practice to be followed in the Court of Appeal for the purposes of this Part.

Rules of Court.

(2) Rules of court made for the purposes of any provision of this Part may make different provision in relation to different classes of cases and may provide for any incidental or supplementary matter which appears to the Committee to be necessary or expedient.

(3) Reference in this Part to "prescribed" means prescribed by rules of court.

144. Nothing in this Part shall affect the exercise by reviewing authorities of the powers conferred by Section 106 in respect of a decision of a court-martial so far as regards the exercise thereof at a time before the lodging with the Registrar of an appeal or an

Saving of reviewing authorities' powers.

application for leave to appeal to the Court against the decision and nothing in this Part shall affect the exercise by the President of the prerogative of mercy.

Composition of Court. **145.** In the hearing of an appeal from a court-martial the Court of Appeal shall consist of at least three judges.

Exercise of certain powers of Court of Appeal. **146.** Notwithstanding the provisions of section 145, any judge of the Court of Appeal may—

- (a) give leave to appeal; or
- (b) extend the period within which an application for leave to appeal may be lodged or an appeal made under paragraph (a) or (b) of subsection, (1) of section 130; or
- (c) allow an appellant to be present at any proceedings under this Part,

but if the judge refuses an application on the part of an appellant to exercise in his favour any of the powers mentioned in paragraphs (a) and (b), the appellant, upon making a requisition in that behalf within the prescribed period and in the prescribed form and manner, shall be entitled to have the application determined in accordance with the provisions of section 145.

Application of S.I. No. 29 of 1985. **147.** Subject to this Part, the Court of Appeal Rules, 1985 shall apply to the hearing and determination of an appeal under this Part.”

Passed in Parliament this *18th* day of *July*, in the year of our Lord *two thousand*.

J. A. CARPENTER,
Clerk of Parliament.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed Parliament and found by me to be a true and correctly printed copy of the said Bill.

J. A. CARPENTER,
Clerk of Parliament.