

EXCHANGE CONTROL (ANTI-SABOTAGE) DECREE 1984



ARRANGEMENT OF SECTIONS

Section

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SCHEDULE

FORMS

Decree No. 7

[5th April 1984]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) Any person who, whether or not before the commencement of this Decree but not earlier than 1st October 1979 does any of the following things, that is to say—

Offences.

(a) without the permission of the appropriate authority—

(i) makes any payment to or for the credit of a person resident outside Nigeria ; or

(ii) makes any payment to or for the credit of any person resident in Nigeria by order or on behalf of a person who is resident outside Nigeria ; or

(iii) makes any payment whatsoever in respect of any loan, bank overdraft or other credit facilities outside Nigeria ; or

(iv) places any sum to the credit of any person resident outside Nigeria ;

(b) without the permission of the appropriate authority, and being a person resident in Nigeria, makes any payment outside Nigeria to or for the credit of a person resident outside Nigeria, or takes or accepts any loan, bank overdraft or other credit facilities ;

(c) without the permission of the appropriate authority, in Nigeria makes any payment to or for the credit of any person resident in Nigeria, or being resident in Nigeria makes any payment outside Nigeria to or for the credit of a person resident in Nigeria, as consideration for or in association with—

(i) the receipt by any person of payment made outside Nigeria or the acquisition by any person of property which is outside Nigeria ; or

(ii) the transfer to any person, or the creation of a favour to any person, of a right (whether present or future, or whether vested or contingent) to receive a payment outside Nigeria or to acquire property which is outside Nigeria ;

(d) without the permission of the appropriate authority and not being an authorised dealer, in Nigeria buys or borrows any foreign currency from or sells or lends any foreign currency to any person other than an authorised dealer ;

(e) without the permission of the appropriate authority, and not being an authorised dealer, while resident in Nigeria buys or borrows any foreign currency outside Nigeria from or sells or lends any foreign currency to any person other than an authorised dealer ;

(f) without the permission of the appropriate authority—

(i) transfers any security or creates or transfers any interest in a security, to or in favour of a person resident outside Nigeria ;

(ii) transfers any security from a register in Nigeria to a register outside Nigeria or does any act which is calculated to secure, or forms part of a series of acts which together are calculated to secure, the substitution for any security which is either in or registered in Nigeria of any security which is either outside or registered outside Nigeria ; or

(iii) issues, whether in Nigeria or elsewhere, any security which is registered or to be registered in Nigeria to a person resident outside Nigeria ; or

(iv) acquires or disposes of any foreign security ;

(g) counterfeits or falsifies any document which is required for obtaining any permission under the Act or which is used for the transaction of any business connected with the obtaining of any such permission ;

(h) knowingly accepts, receives or uses any document to which paragraph (g) above relates ;

(i) counterfeits any seal, signature, initials or other mark of or used by any officer for the verification of any document to which paragraph (g) above relates ; or

(j) alters any document to which paragraph (g) above relates after it has been officially issued ;

(k) unlawfully imports into Nigeria any notes which are or at any time have been legal tender in Nigeria or any foreign currency ;

(l) does any other act which is prohibited under the Act ;

shall, notwithstanding anything to the contrary in any law, be guilty of an offence under this Decree.

(2) For the purposes of subsection (1) of this section, any payment made and anything done by any person otherwise than in accordance with the terms of a permission granted under or pursuant to the Act shall be deemed to have been made or done, as the case may be, without the permission of the appropriate authority.

(3) The onus of proving that any payment was made or anything done was with the permission of the appropriate authority shall be on the person charged.

(4) In this Decree—

(a) the reference to the appropriate authority is a reference to the Minister of Finance or any person or authority authorised by him to give any required permission under the Act ;

(b) the reference to "permission" includes a reference to any consent or approval required under the Act ; and

(c) "the Act" means the Exchange Control Act 1962 and any subsidiary legislation made thereunder. 1962 No. 16.

2.—(1) Any person convicted of an offence under section 1 of this Decree shall—

Penalties
etc.

(a) in the case of an individual, be liable to imprisonment for not less than 5 years and a fine of an amount not less than the amount and the value of the currency, security, payment, property or transaction in respect of which the offence was committed ; and

(b) in the case of a body corporate, be liable to a fine of not less than five times the amount or value of the currency, security, payment, property or transaction in respect of which the offence was committed or the sum of ₦100,000, whichever is higher.

(2) Where an offence under section 1 by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, servant or agent of the body corporate (or a person purporting to act in any such capacity) he as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished as an individual.

(3) For the purposes of subsection (1) above, "value" in the case of an offence under paragraphs (g) to (j) of section 1 (1) of this Decree means the amount stated on the face of the document or the value of the transaction to which the document relates or, where appropriate, its equivalent in Nigerian currency.

3.—(1) For the purpose of the recovery of any fine imposed on an offender under this Decree, the tribunal shall have power to make an order for the forfeiture to the Federal Military Government of—

Forfeiture
orders.

(a) any assets owned or held by the offender ; or

(b) any assets held by any person whom having regard to his relationship to the offender or to any other circumstances there is reason to believe that such assets are held on behalf of or in trust for the offender ; and the reference in this paragraph to a person shall include a reference to a body whether corporate or unincorporate.

(2) An order under this section shall have effect according to its tenor and the failure to comply with any order so made shall be an offence punishable on conviction—

(a) in the case of an individual, by imprisonment for not less than five years without the option of a fine ; and the value of the currency, security, payment, property or transaction in respect of which the offence was committed ; and

(b) in the case of a body corporate, by a fine in an amount equal to five times the value of the asset affected by the non-compliance or ₦100,000, whichever is the higher.

Constitution
of special
tribunals, etc.

4.—(1) The Head of the Federal Military Government shall, whenever occasion demands, constitute one or more tribunals for the trial of offences under this Decree.

(2) A tribunal constituted under subsection (1) of this section shall consist of a Chairman who shall be a judge of the High Court of a State or of the Federal High Court or the High Court of the Federal Capital Territory and two other persons at least one of whom shall be an officer in the Nigerian Army not below the rank of major or an officer of the Nigerian Navy or Air Force of equivalent rank.

Procedure
for the
trial of
offences.

5.—(1) The trial of offences under this Decree shall commence by way of application, supported by proofs of evidence, made to the tribunal in that behalf by the Attorney-General of the Federation or by such officer subordinate to him as the Attorney-General may authorise to do so :

Provided that the question whether any authority has been given in pursuance of this subsection or what the authority was shall not be enquired into by any person except at the instance of the Attorney-General.

(2) Where after perusal of the application and the proofs of evidence or any further evidence in such form as the tribunal may consider necessary the tribunal is satisfied that any person appears to have committed any offence under this Decree, it shall cause notice to be served on that person calling upon him to show cause why he should not be punished for that offence.

(3) Where no cause or no sufficient cause under subsection (2) above is shown by the person on whom a notice is served under that subsection to its satisfaction, the tribunal may, after such inquiry as the tribunal may consider necessary, convict that person of the offence and impose upon him an appropriate sentence in accordance with the provisions of this Decree.

(4) The procedure to be followed upon an application to the tribunal under subsection (1) above shall be in accordance with such directions as the tribunal may make either generally or for the purpose of a particular trial ; and in relation to and for the purpose of proceedings of the tribunal the tribunal shall have the same powers, whether of compelling the attendance

of persons and the production of documents or otherwise, as the High Court of a State has in the exercise of its ordinary jurisdiction.

(5) Without prejudice to the generality of subsection (4) above, a tribunal shall, if satisfied that it is in the public interest so to do, have power—

(a) to admit or exclude the public or the press, or both, from any of its proceedings ;

(b) to direct that the name or other particulars of any witness be not published.

(6) An offender under this Decree shall be entitled to defend himself in person or by a person of his own choice who is a legal practitioner in Nigeria, and to examine in person or by his legal practitioner, if he so wishes, any person whose evidence on affidavit or otherwise forms part of the case against him.

(7) Subject to the express provisions, if any, of this Decree the forms contained in the Schedule to this Decree may, in accordance with any instruction contained in the said forms, and with such variations as the circumstances of the particular case may require, be used in the cases to which they apply, and, when so used, shall be good and sufficient in law.

6.—(1) In any trial for an offence under this Decree the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the tribunal as corroborating the testimony of any witness in such trial or inquiry that such accused person accepted or obtained any payment and as showing that such payment was accepted or made as alleged in the charge.

Evidence of
pecuniary
resources or
property.

(2) An offender shall, for the purposes of subsection (1) of this section, be deemed to be in possession of pecuniary resources or property or to have obtained an accretion thereto where such resources or property are held or such accretion is obtained by any other person whom, having regard to this relationship to the offender or to any other circumstances, there is reason to believe him to be holding such resources or property or to have obtained the accretion in trust for or on behalf of such offender.

(3) For the avoidance of doubt, the reference in subsection (2) above to any person includes a reference to a body, whether corporate or unincorporate.

7. Notwithstanding anything to the contrary in any law (including any rule of law), no witness shall, in any trial or inquiry under this Decree be presumed to be unworthy of credit by reason only that he took part in the commission of the offence.

Evidence of
accomplices.

8.—(1) Whenever two or more persons are charged with an offence under this Decree, the tribunal may require one or more of them to give evidence as a witness for the prosecution.

Witness to be
compellable
in
certain
cases.

(2) Any person who refuses to be sworn or to answer any lawful question after having been required to do so pursuant to subsection (1) above may be dealt with in the same manner as a witness so refusing may be dealt with by a High Court.

Parties to
offences, etc.

9.—(1) Any person who—

(a) aids, counsels, abets or procures any person to commit an offence under this Decree ; or

(b) conspires with any person to commit such an offence,

whether or not he is present when the offence is committed or attempted to be committed, shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this Decree.

(2) Where a person is charged with an offence but the evidence establishes an attempt to commit the offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged, and punished as provided in section 2 of this Decree.

(3) Where a person is charged with an attempt to commit an offence but the evidence establishes the commission of the full offence the offender shall not be entitled to acquittal but he may be convicted of the attempt and punished as provided in section 2 of this Decree.

Conviction
or sentence
subject to
confirmation
or disallow-
ance.

10.—(1) The Head of the Federal Military Government shall have power to confirm or disallow any conviction or sentence imposed by a tribunal.

(2) Any sentence imposed under this Decree shall not take effect until the conviction or sentence is confirmed by the Head of the Federal Military Government under subsection (1) of this section and pending such confirmation the convicted offender shall be kept in such place of safe custody as the tribunal may decide.

(3) Where under subsection (1) above, the Head of the Federal Military Government disallows—

(a) a conviction, whether upon representation made by the convicted offender or from other circumstances, he shall order the release of the person convicted from custody ;

(b) a sentence, he may substitute a less severe form of punishment for any punishment imposed on the convicted offender.

Exclusion of
right of
appeal.

11. No right of appeal to any court in Nigeria granted by any enactment or law shall apply in respect of the conviction of an offender or in respect of any sentence imposed by a tribunal constituted under this Decree.

Exclusion of
civil pro-
ceedings ;
supplemen-
tal.

12.—(1) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done under or pursuant to this Decree and if any such proceedings are instituted after the commencement of this Decree the proceedings shall abate, be discharged and made void.

1978 No. 25.

1984 No. 1.

(2) The question whether any provision of Chapter IV of the Constitution of the Federal Republic of Nigeria 1979, as suspended or modified, has been, is being or would be contravened by anything done or proposed to be done in pursuance of this Decree shall not be inquired into in any court of law and, accordingly no provision of that Constitution shall apply in respect of any such question.

1964 No. 1.

(3) It is hereby declared that section 24 of the Interpretation Act 1964 (which provides, *inter alia*, that a person shall not be punished twice where he is guilty of an offence under more than one enactment) shall apply in respect of this Decree.

13.—(1) In this Decree—

Interpreta-
tion.

"foreign currency" means any currency other than Nigerian currency and includes any notes which are or have at any time been legal tender in any territory outside Nigeria, and where reference is made to foreign currency, the reference includes the right to receive foreign currency in respect of any credit or balance at a bank ;

"foreign security" means any security issued in any country other than Nigeria and includes any security where the principal or interest is payable in any foreign currency or is payable elsewhere than in Nigeria ;

"the tribunal" means any tribunal constituted under section 4 of this Decree.

(2) Except where the context otherwise requires, expressions used in this Decree have the same meaning as in the Exchange Control Act 1962.

1962 No. 16.

14. This Decree may be cited as the Exchange Control (Anti-Sabotage) Decree 1984.

Citation.

SCHEDULE

Section 5 (7)

FORMS

FORM No. I

APPLICATION TO COMMENCE TRIAL FOR AN
OFFENCE UNDER THE EXCHANGE CONTROL
(ANTI-SABOTAGE) DECREE 1984

To : The Chairman,

Tribunal for the trial of offences under the Exchange Control
(Anti-Sabotage) Decree 1984.

Pursuant to section 5 of the Exchange Control (Anti-Sabotage) Decree 1984, I hereby apply for the commencement of a trial for the offence

of (i).....under section

.....of the Exchange Control

(Anti-Sabotage) Decree 1984 against the under-mentioned person :—

(ii).....

2. In support of this application I attach hereto.....
copies of evidence of affidavit for the consideration of the Tribunal.

3. If this application is granted, I shall be relying on the facts disclosed in the affidavits and any further evidence the Tribunal may consider necessary at the trial. I attach hereto four copies of the charge against the accused. A list of the deponents and their addresses is also attached for the purpose of issuing witness summons on them.

.....
Prosecutor

.....
(i) *Insert the offence.*

(ii) *Insert the name of accused.*

FORM No. 2

EXCHANGE CONTROL (ANTI-SABOTAGE)

DECREE 1984

SUMMONS TO ACCUSED

In the Tribunal for the trial of offences under the Exchange Control (Anti-Sabotage) Decree 1984.

To A.B. of.....

Complaint has been made this day by.....

.....for

that you on the.....day of.....

at.....

in the.....aforesaid

did*

You are therefore summoned to appear before the tribunal mentioned above sitting at

on.....to answer the said complaint.

DATED the.....day of.....19.....

.....
Chairman of the Tribunal

.....
*State concisely the substance of the offence.

FORM No. 3

EXCHANGE CONTROL (ANTI-SABOTAGE)

DECREE 1984

WARRANT FOR APPREHENSION OF ACCUSED

In the Tribunal for the trial of offences under the Exchange Control (Anti-Sabotage) Decree 1984.

Between

The Federal Republic of Nigeria

and

.....Accused

To.....Police Officer.

Complaint has been made on.....of.....

by.....that.....

hereinafter called the accused, on the.....

day of.....did (*).....

You are hereby commanded to bring the accused before the Tribunal mentioned above sitting at.....on.....to answer the said complaint and be dealt with according to law.

DATED the.....day of.....19.....

.....
Chairman of the Tribunal

*State concisely the substance of the offence.

FORM No. 4

EXCHANGE CONTROL (ANTI-SABOTAGE)

DECREE 1984

SUMMONS TO WITNESS

In the Tribunal for the trial of offences under the Exchange Control (Anti-Sabotage) Decree 1984.

Between

The Federal Republic of Nigeria

and

Accused

To (i)

(ii)

has been

charged by (iii)

at

in

that he did (iv)

and it appearing to me on the application of (iii)

that you are likely to give material evidence therein on behalf of the prosecutor (or accused).

You are therefore summoned to appear before the tribunal named above sitting at on the day of 19 at the hour of in the noon, to testify what you know in such matter.

DATED the day of 19

Chairman of the Tribunal

- (i) Insert name of witness.
- (ii) Insert name of accused.
- (iii) Insert name of prosecutor or, if applicable, the accused.
- (iv) State concisely the substance of the offence.

FORM No. 5
EXCHANGE CONTROL (ANTI-SABOTAGE)
DECREE 1984

WARRANT FOR APPREHENSION OF WITNESS IN THE FIRST INSTANCE

In the Tribunal for the trial of offences under the Exchange Control Anti-Sabotage) Decree 1984.

To

A. B. has been charged by

for that he on the _____
day of _____ at _____
in the _____ State aforesaid
did _____

And it appearing to me by the oath of _____
that E. F. is likely to give material evidence concerning the said matter, and
that it is probable he will not attend to give evidence unless compelled to do
so.

You are therefore hereby commanded to bring him before the tribunal
named above sitting at _____
forthwith to testify what he knows concerning the said matter.

DATED the _____ day of _____ 19 _____

Chairman of the Tribunal

• *State concisely the substance of the offence.*

FORM No. 6

EXCHANGE CONTROL (ANTI-SABOTAGE)

DECREE 1984

WARRANT FOR APPREHENSION OF A WITNESS

In the Tribunal for the trial of offences under the Exchange Control
(Anti-Sabotage) Decree 1984.

Between

The Federal Republic of Nigeria

and

Accused

To _____ Police Constable or to each and all the
Constables of _____

(i) _____ was duly summoned to appear
before the tribunal named above sitting at _____
on _____ at the hour of _____

in the.....noon, to testify what he knows concerning a certain
complaint against.....

And he has neither appeared thereto, nor offered any just excuse for his neglect.

And it has been proved on oath that the summons has been duly served on him (and that a reasonable sum has been paid (or tendered) to him for his costs and expenses in that behalf).

You are therefore hereby commanded to bring him before the tribunal named above sitting at.....forthwith to testify what he knows concerning the said matter.

DATED the.....day of.....19.....

.....
Chairman of the Tribunal

.....
(i) Insert name of witness.

FORM No. 7

EXCHANGE CONTROL (ANTI-SABOTAGE)

DECREE 1984

WARRANT FOR COMMITMENT OF WITNESS

In the Tribunal for the trial of offences under the Exchange Control (Anti-Sabotage) Decree 1984.

Between

The Federal Republic of Nigeria

and

.....Accused
To.....and to the
Superintendent of.....Prison
(i).....having appeared
or been brought before the tribunal named above sitting at.....
on the.....day of.....19.....to testify what he knows concerning

a certain matter against (ii) _____ refused to take an oath (or having taken an oath) refused to answer any (or a certain) question put to him concerning the matter and did not offer any just excuse for his refusal.

You the said Police Officer are hereby commanded to convey the said

_____ safely to the prison, and deliver him to the Superintendent thereof, together with this warrant and you, the Superintendent of the said prison, to receive him into your custody and keep him for the period of _____ unless he in the meantime consents to be examined and to answer concerning the matter.

DATED the _____ day of _____ 19 _____

Chairman of the Tribunal

(i) *Insert name of witness.*

(ii) *Insert name of accused.*

FORM No. 8

EXCHANGE CONTROL (ANTI-SABOTAGE)

DECREE 1984

COMMITMENT ON REMAND

In the Tribunal for the trial of offences under the Exchange Control (Anti-Sabotage) Decree 1984.

Between

The Federal Republic of Nigeria

and

Accused

To _____ Officer-in-charge of

_____ Police Station and the
Superintendent of _____ prison

(i) _____ hereinafter called the accused

being brought before the tribunal named above, sitting at _____

charged with having (ii) _____

The hearing of the case being adjourned :

You the said Police Officer are hereby commanded to convey the accused from police custody at.....*to the said prison, and there to deliver him to the Officer-in-charge*/Superintendent thereof, together with this Warrant, and you, the Officer-in-charge*/the Superintendent of the said prison to receive him into your custody, and keep him until the.....day of.....19....., and on that day to convey him before the said tribunal at the hour of.....in thenoon to be further dealt with according to law.

DATED the.....day of.....19.....

.....
Chairman of the Tribunal

- (i) *Insert name of Accused.*
(ii) *State the Offence or Offences.*
* *Delete whichever does not apply.*

FORM No. 9
EXCHANGE CONTROL (ANTI-SABOTAGE)
DECREE 1984

In the tribunal for the trial of offences under the Exchange Control (Anti-Sabotage) Decree 1984.

WARRANT OF CONVICTION

Between

The Federal Republic of Nigeria
and

.....Accused

(i).....having appeared before the tribunal named above sitting at..... is this day convicted for that he, on the.....day of19....., at..... within the.....did

(ii)

And it is adjudged that the accused, for his said offence, be sentenced to

(iii) _____
and the accused shall until the conviction and/or sentence be confirmed or
disallowed by the Head of the Federal Military Government be kept in
custody at (iv) _____

DATED the _____ day of _____ 19 _____

Chairman of the Tribunal

- (i) *Insert name of accused.*
(ii) *State offence or offences for which accused is convicted.*
(iii) *Insert the tribunal's sentence.*
(iv) *Insert place of custody.*

MADE at Lagos this 5th day of April 1984.

MAJOR-GENERAL MUHAMMADU BUHARI,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*

EXPLANATORY NOTE

*(This note does not form part of the above Decree but is intended to
explain its effect)*

The Decree substantially re-enacts a repealed Decree on the same subject matter to make special penal provisions with respect to acts subversive of the exchange control legislation in force in the country. Stiff penalties are prescribed and provisions are made for the constitution of special tribunals for the trial of offenders under the Decree, and with respect to ancillary and evidentiary matters.

RECOVERY OF PUBLIC PROPERTY (SPECIAL MILITARY TRIBUNALS) (AMENDMENT) DECREE 1984



Decree No. 8

[31st December 1983]

Commence-
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1. Immediately after subsection (1) of section 1 of the Recovery of Public Property (Special Military Tribunals) Decree 1984, there shall be inserted the following new subsection (1A), that is—

Amendment
of Decree
No. 3 of
1984.

“(1A) Any public officer who—

(a) has engaged in corrupt practices or has corruptly enriched himself or any other person ; or

(b) has by virtue of abuse of his office contributed to the economic adversity of the Federal Republic of Nigeria ;

or has in any other way been in breach of the Code of Conduct, shall be guilty of an offence under this Decree and upon conviction shall, apart from any other penalty prescribed by or pursuant to any other provision of this Decree, forfeit the assets, whether movable or immovable property, connected with the commission of the offence, to the Federal Military Government.”

2. This Decree may be cited as the Recovery of Public Property (Special Military Tribunals) (Amendment) Decree 1984 and shall be deemed to have come into force on 31st December 1983.

Citation and
commence
ment.

MADE at Lagos this 5th day of April 1984.

MAJOR-GENERAL MUHAMMADU BUHARI,
*Head of the Federal Military Government,
Commander-in-Chief of the Armed Forces,
Federal Republic of Nigeria*