

## PRICE CONTROL DECREE 1977



## ARRANGEMENT OF SECTIONS

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# Decree No. 1

[1st January 1977]

Commence-  
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

## *Constitution, etc. of Price Control Board and Committees*

1.—(1) There shall continue to be a Price Control Board, which shall consist of—

Price Control  
Board.

(a) the Permanent Secretary, Federal Ministry of Trade who shall be Chairman and Chief Price Controller ;

(b) a representative each of the Federal Ministry of Industries and the Federal Ministry of Co-operatives and Supply ;

(c) the chairman or a representative of the Productivity, Prices and Incomes Board ;

(d) the Chief Statistician of the Federation ;

(e) six representatives of the States as nominated by the Military Governor of the State concerned and appointed by the Commissioner for two years, so however that each state is sometime represented on the Board and that no two of them shall come from the same state.

(f) one representative of consumers, associations in Nigeria ; and

(g) two representatives from outside the public services of the Federation or the States.

(2) The members of the Board under paragraphs (f) and (g) of subsection (1) above shall be appointed by the Commissioner with the approval of the Federal Executive Council and shall hold office on such terms and on such conditions as the Commissioner may with the like approval determine.

(3) There shall be an Executive Secretary to the Board who shall be a public officer in the Federal Ministry of Trade.

2.—(1) There shall continue to be for each State a Committee to be known as the Price Control Committee.

Price Control  
Committees.

(2) The Committee in each State shall consist of—

(a) the Permanent Secretary to the Ministry of Trade and Industries of the State, who shall be Chairman of the Committee and State Price Controller ;

(b) the Commissioner of Police for the State, or his representative ;

(c) the Permanent Secretary, Ministry of Information of the State, or his representative ; and

(d) two other persons to be appointed by the State Commissioner for Trade and Industries.

(3) The representative in the State of the Federal Ministry of Trade shall be the secretary to the Committee.

(4) It shall be the principal function of the Committee to advise and assist the Board on the implementation of this Decree in the State for which the Committee is established.

(5) If in any State any office mentioned in subsection (2) above does not exist, the paragraph in question shall be construed as referring to the office which in the opinion of the Military Governor most nearly corresponds to the office so mentioned.

Provisions supplemental to sections 1 and 2.

3.—(1) Subject to any directions given by the Commissioner, the Board and each Committee may fix its own quorum and otherwise regulate its own procedure.

(2) There may be paid to the members of the Board or any Committee, not being members who are public officers, such remuneration and allowances (if any) as the Commissioner may decide.

(3) The validity of any proceedings of the Board or a Committee shall not be affected by—

- (a) any vacancy in its membership ;
- (b) any defect in the appointment of any member ; or
- (c) the fact that a person not entitled to do so took part in the proceedings.

#### *Imposition of Price Control, Offences, etc.*

Imposition of price control.

4.—(1) Price control shall continue to be imposed in accordance with this Decree on any goods which are of the kind specified in Schedule 1 to this Decree.

(2) The Board may by order add any goods to the said Schedule 1 or delete any goods therefrom.

Fixing of controlled price.

5.—(1) The Board may by notice published in the *Gazette*—

- (a) fix a basic price for any controlled commodity in accordance with subsection (2) below ; and
- (b) fix the permitted variation for that commodity in respect of any State in accordance with subsection (3) below.

(2) The basic price is the price which in the opinion of the Board properly represents—

- (a) in the case of goods produced in Nigeria, the cost of production of the commodity plus the manufacturer's profit ; and
- (b) in the case of imported goods, the duty-paid landed cost in Nigeria plus the importer's profit.

(3) The permitted variation, in relation to any particular commodity, is the amount representing transport and other costs plus the distributor's profit which in the opinion of the Board ought properly to be added to the basic price in order to represent a fair controlled price (wholesale or retail, as the case may be) in any State.

Prohibition of sale above controlled price.

6.—(1) It shall be unlawful for any person to sell, agree to sell or offer to sell any or employ any other person, whether or not that other person is of full age, to sell any controlled commodity at a price which exceeds the controlled price.

(2) If any person contravenes subsection (1) above in respect of any controlled commodity—

(a) he shall be guilty of an offence and shall—

- (i) in the case of a retailer, be liable to a fine of not less than ₦200 and

not more than ₹2,000 or to imprisonment for not less than six months, or to both such fine and imprisonment, and

(ii) in the case of a manufacturer, wholesaler or major distributor, be liable to a fine of not less than ₹1,000 and not more than ₹10,000, or to imprisonment for not less than 12 months, or to both such fine and imprisonment; and

(b) the stock of the controlled commodity shall be liable to forfeiture.

(3) Where a person is convicted of any offence under subsection (2) above in respect of any commodity the court shall make an order forfeiting the stock of the commodity; and, where such an order is made, the commodity shall be disposed of by the Board as it thinks fit, any proceeds of the disposal being paid into the Consolidated Revenue Fund of the Federation.

(4) Where proceedings under subsection (2) above do not result in conviction the court shall make an order for the disposal at the controlled price of any commodity to which the proceedings relate and the proceeds of such disposal shall be applied as follows:—

(a) ninety *per cent* of the proceeds shall be paid to the owner of the commodity;

(b) the remaining ten *per cent* shall be paid into the Consolidated Revenue Fund of the Federation.

(5) For the purposes of subsection (1) of this section where any person employed by another to sell any controlled commodity is proved to have sold the commodity at any price which exceeds the controlled price, the employer of that person shall notwithstanding anything to the contrary in any law or rule of law be deemed to have employed that other person to sell the commodity concerned at the price at which it was in fact sold.

7.—(1) If—

Hoarding.

(a) a person carrying on a business in the course of which controlled commodities of any description are normally sold has in his possession in the course of that business a stock of controlled commodities of that description; and

(b) that person, or any employee employed by him to sell goods in the course of that business, when asked by any other person (referred to in this section as "the buyer") to sell any controlled commodity of that description or whether he or, as the case may be, his employer has any such commodity for sale—

(i) refuses to sell the commodity in question, or denies that he (or, as the case may be, his employer) has the commodity, or uses any words or gives any other indication calculated to lead the buyer to suppose that he (or, as the case may be, his employer) has not got the commodity or will not or cannot sell it, or

(iii) offers to sell the commodity subject to a condition requiring the buying of any other goods (whether controlled commodities or not) or the making of any payment in respect of any service, or subject to any other condition except a condition that the buyer shall pay the price forthwith and take delivery within a reasonable time,

the person carrying on the business shall be guilty of an offence.

(2) It shall be a defence for a person charged with an offence under subsection (1) above in respect of any controlled commodity to prove that the sale of the commodity, or the sale of the commodity without the fulfilment of a condition proposed by him or his employee, would, having regard to the quantity of the commodity which he or his employee was requested to sell or any other consideration, involve a breach of some written and duly stamped contractual obligation lawfully binding on him, which obligation must be to an approved institution.

(3) For the purposes of subsection (2) above an "approved institution" means a hospital, school, educational institution, statutory corporation or any department or agency of the Government of the Federation or of a State.

(4) Where a person is convicted of an offence under subsection (1) above in respect of any controlled commodity of any description—

(a) he shall—

(i) in the case of an individual, be sentenced to imprisonment for not less than six months without the option of a fine, and

(ii) in the case of a body corporate be sentenced to a fine of not less than ₦5,000 ; and

(b) the stock of controlled commodities shall be liable to forfeiture.

(5) Where a person is convicted of any offence under this section in respect of any commodity the court shall make an order forfeiting the stock of the commodity ; and where such an order is made, the commodity shall be disposed of by the Board as it thinks fit, any proceeds of the disposal being paid into the Consolidated Revenue Fund of the Federation.

(6) Where proceedings under subsection (1) above do not result in conviction the court shall make an order for the disposal at the controlled price of any commodity to which the proceedings relate and the proceeds of such disposal shall be applied as follows :—

(a) ninety *per cent* of the proceeds shall be paid to the owner of the commodity ;

(b) the remaining ten *per cent* shall be paid into the Consolidated Revenue Fund of the Federation.

Resale price  
mainte-  
nance.

8.—(1) The Commissioner may on the recommendation of the Board and in relation to any commodity, including any commodity in respect of which price control is imposed under this Decree, by order approve any resale price maintenance agreement or arrangement entered into by the manufacturer, importer or distributor of that commodity on the one hand, and the seller (whether a wholesaler or retailer) of that commodity on the other.

(2) An order under subsection (1) of this section shall specify the commodity to which the approved resale price maintenance agreement or arrangement relates and the maximum price at which the commodity affected is to be sold under the agreement or arrangement.

(3) Where an order under subsection (1) is in force, it shall be unlawful for any person to sell, agree to sell or offer to sell any commodity to which an approved resale price maintenance agreement or arrangement relates otherwise than in accordance with the terms of the agreement or arrangement.

(4) If any person contravenes subsection (3) of this section—

(a) he shall be guilty of an offence and shall—

(i) in the case of a retailer, be liable to a fine of not less than ₹200 and not more than ₹2,000 or to imprisonment for not less than six months, or to both such fine and imprisonment ; and

(ii) in the case of a wholesaler, be liable to a fine of not less than ₹1,000 and not more than ₹10,000, or to imprisonment for not less than 12 months, or to both such fine and imprisonment ; and

(b) the stock of the commodity shall be liable to forfeiture.

(5) Where a person is convicted of any offence under this section in respect of any commodity the court shall make an order forfeiting the stock of the commodity ; and when such an order is made, the stock of the commodity shall be disposed of by the Board as it thinks fit, any proceeds of the disposal being paid into the Consolidated Revenue Fund of the Federation.

(6) Where proceedings under subsection (4) above do not result in conviction the court shall make an order for the disposal at the controlled price of any commodity to which the proceedings relate and the proceeds of such disposal shall be applied as follows :—

(a) ninety *per cent* of the proceeds shall be paid to the owner of the commodity ;

(b) the remaining ten *per cent* shall be paid into the Consolidated Revenue Fund of the Federation.

9.—(1) Subject to this Decree, the Executive Secretary to the Board shall have the duty of supervising the enforcement of the orders of the Board.

Enforce-  
ment staff.

(2) Subject to subsection (3) below, public officers may be appointed by the Commissioner to be inspectors for the purposes of this Decree and when so appointed shall be designated in such manner as may from time to time be approved by the Board.

(3) Every Secretary to a Local Government shall be *ex-officio* an inspector (designated in such manner as may from time to time be approved by the Board) for the area in respect of which he was appointed.

(4) Every inspector shall be under the direction and control of the State Price Controller who in turn shall be responsible to the Chief Price Controller and, without prejudice to any other power conferred by this Decree, the Chief Price Controller, the State Price Controller or an inspector may—

(a) enter and inspect any premises in the occupation or under the control of any manufacturer, wholesaler or retailer ; or

(b) examine any books, accounts or other documents relating to the trade or business of any manufacturer, wholesaler or retailer ; or

(c) require any manufacturer, wholesaler or retailer to furnish any information in relation to his trade or business ; or

(d) conduct on behalf of the Board any civil or criminal proceedings arising under this Decree ; or

(e) do any other thing necessary or expedient for the proper discharge of his functions.

(5) Any person who knowingly obstructs the Chief Price Controller, the State Price Controller or an inspector in the exercise of his functions shall be guilty of an offence and liable on conviction to a fine of not less than ₹200 and not more than ₹2,000 or to imprisonment for not less than 6 months, or to both such fine and imprisonment.

(6) The powers conferred by subsection (4) above are additional to and not in derogation of any powers conferred on any person by any other enactment, and accordingly (without prejudice to the generality of the foregoing) nothing in that subsection or any other provision of this Decree shall prevent—

(a) the conduct on behalf of the Board of any civil or criminal proceedings by a legal practitioner, or

(b) the conduct on behalf of the Board of any criminal proceedings by a police officer.

(7) Any person who falsely represents himself to any other person as an inspector or as an officer designated as such by the Board under this section shall be guilty of an offence and liable on conviction to imprisonment for three years.

Duty to furnish information to the Board ; penalty.

10.—(1) The Board may by an instrument request any manufacturer or importer of any controlled commodity to furnish such information relating to that commodity as the Board may specify, and may by that instrument specify the time, manner and form in which such information is to be furnished and it shall be the duty of any such person to comply with the request.

(2) Any person, who—

(a) refuses or neglects to give any information which the Board may require pursuant to subsection (1) above or which may be required by an inspector under subsection (4) (c) of section 9 above ; or

(b) in respect of the request makes any statement which he knows to be false or which he has no reason to believe to be true ;

shall be guilty of an offence and shall on conviction be liable to a fine of not less than ₹200 or imprisonment for not less than 6 months.

Seizure of goods suspected of being liable to forfeiture.

11.—(1) Where an inspector not below the rank of assistant price inspector has reasonable grounds to believe that any controlled commodity has become liable to forfeiture under section 6 or 7 of this Decree—

(a) he may at any time and without warrant seize and detain the commodity and, if he does so, shall forthwith report the fact to the Committee, and

(b) Schedule 2 to this Decree shall apply in relation to the seizure.

(2) Every police officer shall, if called upon by an inspector to whom subsection (1) above applies, give the inspector all reasonable assistance in the implementation of subsection (1) above ; and every officer in charge of a police station shall, if so called upon, provide such facilities as are reasonably possible for the safe custody of any commodity seized or detained under this section.

Requisition and sealing of premises.

12.—(1) Where an inspector has reasonable grounds to believe that any premises have been, are being or will or might be used directly or indirectly for the purpose of frustrating the operation of this Decree, he may requisition and seal the premises in question.

(2) Where an inspector acts under subsection (1) above—

(a) he shall report his action to the Committee within twenty-four hours ;

(b) any person aggrieved by the action—

(i) may appeal to the Committee, which may confirm or cancel the action, and

(ii) may make a second or further appeal to the Committee in respect of the same matter if more than twelve weeks have passed since a previous appeal ; and

(c) the requisitioning and sealing shall last for three months in the first instance and may be extended by the Committee for further periods of three months at a time, so however that the total period of requisitioning and sealing shall not exceed twelve months.

(3) Notwithstanding subsection (2) of this section, upon receipt of a report under that subsection in respect of any premises which have been requisitioned and sealed up, the Committee may direct that any commodity found therein which in its opinion is of a perishable nature shall be destroyed or disposed of at such time and in such manner as the Committee thinks fit :

Provided that any controlled commodity which is to be sold under the foregoing provisions of this subsection shall be sold at the controlled price.

(4) The proceeds of the disposal of any commodity under subsection (3) of this section shall be applied as follows :—

(a) eighty *per cent* of the proceeds shall be paid to the owner of the commodity ; and

(b) the remaining twenty *per cent* shall be paid into the Consolidated Revenue Fund of the Federation.

(5) Any person who knowingly and without reasonable excuse breaks a seal affixed under subsection (1) above shall be guilty of an offence and on conviction shall be liable to a fine of not less than ₦5,000 or to imprisonment for not less than two years.

13.—(1) On the second or any subsequent occasion on which any person carrying on the business of manufacturer, importer, wholesaler or retailer of any controlled commodity is convicted of any offence under this Decree the court on an application made by the Board shall make an order preventing, for such period not less than two years as the court may specify in the order, that person from carrying on or being directly or indirectly concerned in that business and cancelling any licence or permit (however described) whereby that person is authorised to do so.

Court order preventing habitual offender from carrying on business concerning controlled commodity.

(2) If any person contravenes any provision of an order made under subsection (1) of this section he shall be guilty of an offence and on conviction shall be liable to a fine of not less than ₦2,000 or to imprisonment for not less than three years or to both such fine and imprisonment.

14. Where any offence under this Decree 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 any 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 accordingly.

Offences by bodies corporate.

*Trial of Offences*

Trial of  
offences.

15.—(1) The Chief Judge of a State shall for the purpose of the trial of offences under this Decree, or regulations made thereunder, constitute a separate division of the High Court of the State which shall be presided over by a judge of the High Court of that State and which shall, notwithstanding anything to the contrary in any law, by virtue of this section have jurisdiction to try offences under this Decree committed in any part of the State concerned, and to make such orders as may be required under this Decree.

(2) The division of the High Court constituted pursuant to subsection (1) of this section shall, notwithstanding anything to the contrary as aforesaid, be engaged exclusively on the trial of offences and the hearing of applications and other matters arising from the operation of this Decree, and shall consist of such number of judges (who, for the avoidance of doubt, shall sit separately) as the Chief Judge may determine and such judges shall sit in such places within the State concerned as the Chief Judge may from time to time direct.

(3) Offences under this Decree shall be triable summarily by the division of the High Court constituted pursuant to subsection (1) above, and the provisions of Chapter VI of the Criminal Procedure Act or Law or, where applicable, of Chapter XVIII of the Criminal Procedure Code Law shall apply in relation to the trial of the offences.

(4) It shall be the duty of a court before whom an accused is brought under this section to ensure that the offence is tried and finally disposed of within twenty-eight days of the date on which the accused was first brought before such court.

*Miscellaneous*

Exclusion of  
Chapter III  
of 1963 No.  
20, and  
personal lia-  
bility.

16.—(1) Chapter III of the Constitution of the Federation is hereby suspended for the purposes of this Decree, and no question whether any provision thereof has been or is being or would be contravened by anything done or proposed to be done in pursuance of this Decree shall be inquired into in any court of law; and accordingly sections 115 and 117 (2) (d) of that Constitution shall not apply in relation to any such question.

(2) No personal liability in respect of any act done in good faith and in proper execution of his official duties in pursuance or in purported pursuance of this Decree shall be incurred by any member of the Board or a Committee, the Chief Price Controller, the State Price Controller, any inspector or any police officer.

Regulations.

17. The Commissioner may with the approval of the Federal Executive Council make such regulations as may, in the opinion of the Commissioner, be required for carrying into effect the object of this Decree and generally to facilitate the implementation of this Decree and, without prejudice to the generality of the foregoing, the regulations may make provisions—

(a) with respect to any matter pertaining to the sale of any commodity, whether or not the commodity is subject to price control under this Decree;

(b) prescribe penalties not exceeding a fine of ₦200 or imprisonment for six months for any contravention of the regulations.

Interpreta-  
tion.

18.—(1) In this Decree, unless the context otherwise requires—

“the Board” means the Price Control Board established by this Decree;

“the Commissioner” means the Federal Commissioner charged with responsibility for trade;

“Committee” means a Price Control Committee established by this Decree and “the Committee” in relation to a State, means the Committee so established for that State ;

“controlled commodity” means any goods specified in Schedule 1 to this Decree or any class of any such goods ;

“controlled price” in relation to a controlled commodity, means the controlled price, wholesale or retail, fixed in accordance with section 5 of this Decree ;

“court” means a special division of the High Court of a State constituted pursuant to section 15 of this Decree ;

“inspector” means any inspector, however designated, who is an inspector by virtue of section 9 of this Decree and includes the Chief Price Controller and a State Price Controller but does not include any person appointed to any grade below that of assistant price inspector ;

“premises” includes premises which consist of part of larger premises.

(2) In this Decree the reference, in relation to any commodity, to—

(a) a major distributor of that commodity is a reference to a seller of that commodity who obtains his stock of the commodity directly from the manufacturer or importer of that commodity ;

(b) a wholesaler of that commodity is a reference to any seller of that commodity engaged whether exclusively or not, in the selling of that commodity in quantities other than those in which the commodity is ultimately normally sold to the consumer or user of the commodity ; and

(c) a retailer of that commodity is a reference to the seller of that commodity who is neither a major distributor nor a wholesaler.

19.—(1) This Decree may be cited as the Price Control Decree 1977 and shall be deemed to have come into operation on 1st January 1977.

Citation, repeal, savings, etc.

(2) The Price Control Decree 1970 is hereby repealed and the following enactments, that is to say —

(i) the Price Control (Amendment) Decree 1971, and

1971 No. 3.

(ii) the Price Control (Amendment) Decree 1974,

1974 No. 10.

are hereby, consequentially, repealed.

(3) Without prejudice to section 6 of the Interpretation Act 1964, nothing in this Decree shall invalidate or otherwise prejudicially affect any appointment made or price fixed under the repealed enactments ; and any such appointment or price, if it was effective immediately before the commencement of this Decree, shall thereafter have effect as if it had been validly made or fixed under this Decree.

1964 No. 1.

## SCHEDULES

## SCHEDULE 1

Section 4

## CONTROLLED COMMODITIES

1. Textiles and clothing.
2. Cement.
3. Roofing sheets.
4. Beer and stout.
5. Soft drinks.
6. Sugar.
7. Tyres and inner tubes.
8. Flour.
9. Matches.
10. Bicycles and spare parts.
11. Salt.
12. Tinned Meat.
13. Tinned Fish.
14. Kerosene.
15. Petrol.
16. Diesel oil.
17. Fuel oil.
18. Motor vehicles and spare parts.
19. Milk.
20. Building materials.
21. Tobacco.
22. Pharmaceuticals.
23. Educational materials.
24. Electronics.
25. Motor cycles and spare parts.

## SCHEDULE 2

Section 11

## DISPOSAL OF SEIZED COMMODITIES

1. This Schedule applies where an inspector seizes a commodity under section 11 of this Decree.
2. The commodity shall be held in the custody or under the control of the Board until it is disposed of in accordance with this Schedule or section 6 or 7 of this Decree.
3. Unless the commodity is seized in the presence of the offender or in the presence of the owner of the commodity or his employees, notice of the seizure shall be given by the inspector to any person appearing to the inspector to be the owner of the commodity.
4. A notice under paragraph 3 above shall be in the form specified in the Appendix to this Schedule and, without prejudice to any other method of service, may be served—
  - (a) by being delivered by hand, by post or otherwise to the usual or last-known place of abode or business of the person to be served or, in the case of a body corporate, to its registered or principal office, or

SCHEDULE 2—*continued*

(b) by being published in a newspaper circulating in the State in which the seizure took place.

5.—(1) Any person claiming that he is the owner of the commodity and that the commodity is not liable to forfeiture may give notice of his claim in the form specified in the Appendix to this Schedule to the Committee within twenty-eight days of the seizure or, if a notice is served under paragraph 3 above, within twenty-eight days of the service of the notice under that paragraph.

(2) The said period of twenty-eight days may be extended by the Committee if it thinks fit.

6.—(1) If a claim is made under paragraph 5 above—

(a) the Committee shall refer the claim to the appropriate court, and

(b) the claim shall be disposed of by the court as nearly as may be as if it were an action of detinue or its equivalent brought by the claimant against the Board, power being hereby conferred on the court to give any special procedural directions which may be necessary or expedient to ensure the proper disposal of the claim on that basis.

7. If no claim is made under paragraph 5 above, or if any such claim is dismissed by the court under paragraph 6 above, then, subject to paragraph 8 below, the commodity shall be deemed to be forfeited and shall be disposed of by the Board as it thinks fit, any proceeds of the disposal being paid into the Consolidated Revenue Fund of the Federation.

8. If criminal proceedings under this Decree are instituted in respect of the commodity, then, notwithstanding anything in this Schedule, the commodity shall be disposed of as ordered in those proceedings, and any proceedings started under paragraph 6 above shall forthwith abate and be discharged.

9. References in this Schedule to the owner of a commodity shall be construed, where a commodity has more than one owner, as references to any co-owner.

## APPENDIX

## NOTICE OF SEIZURE

(Price Control Decree 1977)

Paragraph 4

Take notice that under the powers conferred by section 11 of the Price Control Decree 1977 the goods listed below were seized on.....(date)

at.....(place).

## List of Goods

Signature.....

Date .....

To. ....

of .....

.....

## NOTICE OF CLAIM TO SEIZED GOODS

Paragraph 5

(Price Control Decree 1977)

Take notice that it is hereby claimed that.....  
of..... is the owner of the goods  
listed below which were seized on..... (date) at.....  
(place) and that it is hereby further claimed that the said goods are not liable  
to forfeiture under the Price Control Decree 1977.

## List of Goods

Signature.....

Date.....

To : The Secretary,

The Price Control Committee for..... State.

MADE at Lagos this 10th day of January 1977.

LT.-GENERAL O. OBASANJO,  
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 re-enacts the Price Control Decree 1970 to provide stiffer penalties in respect of offences and to make better provisions for the implementation of the scheme.

**TRIBUNALS OF INQUIRY (AMENDMENT)  
DECREE 1977**



**Decree No. 2**

[29th July 1975]

Commence-  
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1. Immediately after section 20 of the Tribunals of Inquiry Decree 1966 there shall be inserted the following new section—

Amendment  
of  
1966 No. 41.

“Preservation of power of Military Governor to constitute tribunal of inquiry. 21. Nothing in this Decree shall be construed as precluding the Military Governor of a State from constituting a Tribunal of Inquiry to inquire into any matter in respect of which the Military Governor of that State has power to make law.”

2. This Decree may be cited as the Tribunals of Inquiry (Amendment) Decree 1977 and shall be deemed to have come into operation on 29th July 1975.

Citation and  
commence-  
ment.

MADE at Lagos this 10th day of January 1977.

**LT.-GENERAL O. OBASANJO,**  
*Head of the Federal Military Government,  
Commander-in-Chief of the Armed Forces,  
Federal Republic of Nigeria*

# NIGERIAN ENTERPRISES PROMOTION DECREE 1977



## ARRANGEMENT OF SECTIONS

### Sections

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| <ol style="list-style-type: none"> <li>1. Establishment of Nigerian Enterprises Promotion Board, etc.</li> <li>2. Establishment of Enterprises Promotion Committees for the States, etc.</li> <li>3. Supplementary provisions with respect to proceedings of the Board or of State Committees.</li> <li>4. Enterprises exclusively reserved for Nigerians. Schedule 1.</li> <li>5. Enterprises in respect of which 60 per cent of equity must be owned by Nigerians. Schedule 2.</li> <li>6. Enterprises in respect of which 40 per cent of the equity must be owned by Nigerians. Schedule 3.</li> <li>7. Special provisions in respect of certain enterprises holding companies.</li> <li>8. Definition of expressions used in sections 4 to 6.</li> <li>9. Sale or transfer of enterprises to be subject to approval by the Board and the Capital Issues Commission.</li> <li>10. Provisions supplementary to section 9.</li> </ol> | <ol style="list-style-type: none"> <li>11. General guidelines regarding approval of sales or transfer by the Board or Commission.</li> <li>12. Inspectors of enterprises.</li> <li>13. Power to seal up premises.</li> <li>14. Additional penalty for contravention of the Decree.</li> <li>15. Supply of information.</li> <li>16. Alteration of lists of enterprises.</li> <li>17. Penalty for acting as a front.</li> <li>18. Offences and penalties.</li> <li>19. Power of inspector to conduct prosecutions, etc.</li> <li>20. Regulations and reports.</li> <li>21. Right to petition.</li> <li>22. Exclusion of rights.</li> <li>23. Interpretation.</li> <li>24. Repeal and saving.</li> <li>25. Citation and commencement.</li> </ol> <p style="text-align: center; margin-top: 10px;">SCHEDULES</p> <ol style="list-style-type: none"> <li>Schedule 1</li> <li>Schedule 2</li> <li>Schedule 3</li> </ol> |
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## Decree No. 3

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

### *General*

1.—(1) There shall continue to be a body to be known as the Nigerian Enterprises Promotion Board (in this Decree hereafter referred to as "the Board") which shall have and may exercise such functions as may be conferred on it by or under this Decree.

(2) The Board shall have general power to advance and promote enterprises in which citizens of Nigeria shall participate fully and play a dominant role and in particular, without prejudice to the generality of the foregoing, the Board shall have power—

(a) to advise the Commissioner on clearly defined policy guidelines for the promotion of Nigerian enterprises ;

(b) to advise the Commissioner on measures that would assist in ensuring the assumption of the control of the Nigerian economy by Nigerians in the shortest possible time ;

(c) to determine any matter relating to business enterprises in Nigeria generally in respect of commerce and industry that may be referred to it in accordance with any direction of the Commissioner and to make such recommendations as may be necessary on those matters in such manner as may be directed by the Commissioner ; and

(d) to perform such other functions as the Commissioner may determine or as may be conferred on it by this Decree or any other enactment.

(3) The members of the Board shall be appointed by the Federal Executive Council and shall comprise—

(a) five Nigerians from outside the Public Services of the Federation or the States who shall be persons of proven integrity (one of whom shall be appointed as the Executive Chairman of the Board) ;

(b) a representative each of the following Federal Ministries, that is—

(i) Industries ;

(ii) Finance ;

(iii) Economic Development ;

(iv) Trade ; and

(v) Internal Affairs,

who shall be persons of the rank of Deputy Secretary or above ;

(c) the Secretary of the Capital Issues Commission ; and

(d) the Director of each of the Stock Exchanges in Nigeria.

(4) (a) The Executive Chairman of the Board referred to in subsection (3) (a) above shall be appointed by the Federal Executive Council on the recommendation of the Commissioner and shall hold office on such terms as the Federal Executive Council may from time to time approve. The Executive Chairman shall preside over the meetings of the Board and shall be responsible for the day-to-day management of the affairs of the Board.

(b) There shall be a Secretary of the Board who shall be appointed by the Commissioner on the recommendation of the Board and who shall be the head of the Board's Secretariat and shall be responsible to the Chairman for

Establishment of Nigerian Enterprises Promotion Board, etc.

the efficient implementation of the Board's decisions. The Secretary shall be in attendance at all meetings of the Board.

(5) The Board shall have power to co-opt any person to attend its meetings.

(6) A member of the Board shall hold office for such period as may be specified in his instrument of appointment.

2.—(1) There shall continue to be for each State a Nigerian Enterprises Promotion Committee (hereafter in this Decree referred to as "the Committee").

(2) The Committee in each State shall consist of—

(a) the Permanent Secretary responsible for Industries in the State who shall be chairman of the Committee ;

(b) an officer in the Ministry of Trade ;

(c) the Registrar of Co-operative Societies ;

(d) six other persons to be appointed by the State Commissioner or State Commissioners, as the case may be, for trade and industries, and of the six persons at least three shall be Nigerians from outside the Public Service of the Federation or the States who shall be persons with proven experience in commerce or industry ;

and members of such Committee shall hold office for such period as may be directed by the Military Governor of the State.

(3) The Committee shall have power to co-opt any person to attend its meetings.

(4) The Secretary of the Committee shall be an officer in the Ministry of Trade or Industry of the State or any other fit and competent person in the public service of the State appointed by the Military Governor of that State.

(5) The principal functions of the Committee shall be—

(a) to assist and advise the Board on the implementation of this Decree ;

(b) to ensure that the provisions of this Decree are complied with by any alien resident or carrying on business in the State ;

(c) to recommend to the Board such other measures as may be necessary in the opinion of the Committee to enable full effect to be given to the provisions of this Decree ; and

(d) to perform such other functions as may be assigned to it by the Board.

(6) If in any State any office mentioned in this section does not exist or is combined with another office the reference in any provision to the office mentioned there shall be construed as a reference to that office or the offices so combined in the State which in the opinion of the Military Governor most nearly corresponds to the office so mentioned, and the decision of the Military Governor in this regard and as to the number of members of the Committee shall be final.

3.—(1) Subject to such directions as may be given by the Commissioner, the Board or any Committee established by this Decree may determine its own quorum, and may, subject as aforesaid, otherwise regulate its own proceedings.

Establishment of Enterprises Promotion Committees for the States, etc.

Supplementary provisions with respect to proceedings of the Board or of State Committees.

(2) There may be paid to the members of the Board or any Committee remuneration and allowances payable in accordance with the current regulations of the Government of the Federation.

(3) The validity of any proceedings of the Board or of any Committee shall not be affected by—

- (a) any vacancy in its membership ;
- (b) any defect in the appointment of any member ; or
- (c) the fact that any person not entitled to do so took part in the proceedings.

(4) The expenses of the Board in the exercise of its functions shall be paid out of funds provided by the Government of the Federation.

### *Promotion of Nigerian Enterprises*

4.—(1) All enterprises specified in Schedule 1 to this Decree are hereby, subject to this Decree, exclusively reserved for Nigerian citizens or associations and accordingly—

(a) as from the appointed day no person, other than a Nigerian citizen or association, shall be the owner or part owner of any such enterprise in Nigeria ; and

(b) no such enterprise shall be established in Nigeria by an alien on or after the commencement of this Decree.

(2) Nothing in this section shall as from the commencement of this Decree and before the appointed day preclude the sale or transfer in accordance with the provisions of this Decree by any person of any of the enterprises affected by this section.

5. Subject to this Decree, as from the appointed date no alien shall be the owner or part-owner of any of the enterprises specified in Schedule 2 to this Decree unless the equity participation of Nigerian citizens or associations in the enterprise is not less than sixty *per cent*.

6. Subject as aforesaid, as from the appointed date no alien shall be the owner or part-owner of any of the enterprises specified in Schedule 3 to this Decree unless the equity participation of Nigerian citizens or associations in the enterprise is not less than forty *per cent*.

7.—(1) Notwithstanding sections 4, 5, and 6 above any alien who immediately before the commencement of this Decree was the owner or part-owner of any body corporate carrying on an enterprise the business of which comprised enterprises specified in Schedules 1, 2 and 3 to this Decree or in any two of those Schedules may after the appointed date continue to be owner or part-owner of any such body corporate if—

(a) the annual turn-over of the body corporate was not less than ₦25,000,000 ;

Enterprises exclusively reserved for Nigerians. Schedule 1.

Enterprises in respect of which 60 per cent of the equity must be owned by Nigerians. Schedule 2.

Enterprises in respect of which 40 per cent of the equity must be owned by Nigerians. Schedule 3.

Special provision in respect of certain enterprises ; holding companies.

(b) the business of the body corporate was being carried on in not less than 10 States in the Federation ;

(c) the equity participation of Nigerian citizens or associations is by the 30th June 1977 not less than sixty *per cent.*

(2) Sections 4, 5 and 6 above shall not apply in the case of any non-trading holding company the subsidiary companies of which have in respect of the applicable enterprises by the appointed date, complied with the provisions of this Decree.

(3) For the purposes of subsection (2) above, the expressions "holding company" and "subsidiary company" have the meanings respectively assigned thereto in section 147 of the Companies Decree 1968.

1968 No. 53.

Definition of expressions used in section 4.

8. For the purposes of section 4 above, an enterprise shall be deemed to be an alien enterprise unless the entire capital or proprietary interest, whether financial or otherwise, in the enterprise in so far as it concerns any of the enterprises in Schedule 1 to this Decree is also owned and controlled by Nigerian citizens or associations.

Sale or transfer of enterprises to be subject to approval by the Board and the Capital Issues Commission.

9.—(1) As from the commencement of this Decree no enterprise to which section 4 of this Decree applies (whether or not operated by or as a company) and no enterprise to which section 5, 6 or 7 of this Decree applies which is being operated otherwise than by or as a private company shall be sold or in any manner transferred to Nigerian citizens or associations unless the terms and other conditions of and pertaining to the sale or transfer have been approved by the Board.

(2) As from the commencement of this Decree as aforesaid no shares in or in respect of any enterprise to which section 5, 6 or 7 of this Decree applies which is an enterprise operated by or as a public company shall with a view to securing compliance (to any extent whatsoever) with the provisions of section 5, 6 or 7 of this Decree be sold or in any manner transferred to Nigerian citizens unless the approval of the Capital Issues Commission (hereafter referred to as "the Commission") has been obtained with respect to—

(a) the price at which the shares are to be sold or transferred and the timing of the sale ; and

(b) the terms and other conditions pertaining to the sale or transfer, including the manner of the selection of the buyers or transferees or, where applicable, the manner of the allotment of the shares among the buyers or transferees.

(3) This section shall have effect notwithstanding any other requirement in any law (including, where applicable, the Companies Decree 1968) and such other law shall be construed subject to this Decree.

(4) Without prejudice to subsection (3) above, the powers conferred on the Commission under the Capital Issues Decree 1973 shall be construed as including power to grant approvals for the purposes of this Decree and any rules made by the Commission may be adapted or otherwise modified by the Commission for the purposes of this Decree.

1973 No. 14.

(5) Notwithstanding anything to the contrary in this section the Commission shall be charged with the function of determining the prices of shares in enterprises to which the Decree relates and in the case of public companies there shall be an Allotment Committee of that Commission which shall consist of the following persons that is—

- (i) a representative of the Board,
- (ii) a representative of the Lagos Stock Exchange, and
- (iii) a representative of the appropriate issuing house.

10.—(1) Where approval of the Board or, as the case may be, of the Allotment Committee of the Commission has not been obtained as required under section 9 of this Decree or if any application in relation thereto has been refused—

Provisions  
supplement-  
ary to  
section 9.

(a) any sale or transfer of any enterprise concerned or of any shares or other proprietary interest in or in respect of any affected enterprise shall be void and shall be of no effect ; and

(b) any moneys received in relation to or connected with any of the transactions referred to in the section shall forthwith be repaid without interest by the vendor or transferor, and if any such money is not repaid within 14 days after the date of the notification of the refusal to give the approval the directors of any company concerned shall be jointly and severally liable to repay that money with interest at the rate of five *per cent* per annum from the expiration of the 14th day ; Provided that a director shall not be liable if he proves that the default in the repayment of the money is not due to misconduct or negligence on his part, and that all the moneys involved had been kept in a separate bank account to facilitate repayment.

(2) The reference in paragraph (b) of subsection (1) above to "directors of a company" shall—

(a) in the case of a partnership, be construed as a reference to the partners of the body concerned ; and

(b) in the case of any other unincorporated body, be construed as a reference to the person in whom is vested the beneficial ownership of the enterprise concerned.

11.—(1) In considering applications for approval pursuant to section 9 of this Decree the Board or, as the case may be, the Allotment Committee of the Commission shall have regard to the following general guidelines, that is to say :—

General  
guidelines  
regarding  
approval of  
sales or trans-  
fer by the  
Board or  
Commission.

(a) Beneficial ownership of the enterprises affected should be as widespread as the circumstances of each case would justify and deliberate efforts must be made to prevent the concentration of ownership in a few hands.

(b) Except in the case of owner-managers, no enterprise should be sold or transferred to a single individual and in no case is a single individual to be allowed to have control of more than one enterprise.

(c) Where appropriate, allotment rules made or approved by the Board or the Allotment Committee of the Commission as appropriate shall be such that would ensure that—

(i) no individual holding more than 5 per cent of the equity of an enterprise or holding a portion of the equity valued at more than ₦50,000, whichever is the higher, is allotted any further portion of the equity in that enterprise ;

(ii) no individual shall be allotted more than 5 per cent of the equity of an enterprise or any portion of the enterprise valued at more than ₦50,000, whichever is higher ;

(iii) no individual shall be allotted any portion of the equity of an enterprise that would make any holding of that individual of the equity of the enterprise concerned to exceed 5 per cent of the total equity of that enterprise or to attain a value exceeding ₦50,000, whichever is higher.

(d) Not less than 10 per cent total equity shares of any Schedule 2 or 3 enterprise or where only a fraction is being sold not less than 10 per cent of the amount of sale is reserved for the employees of the enterprise concerned and of the 10 per cent not less than one half shall be reserved for the non-managerial staff.

(e) Consideration in a form acceptable to the Board or the Commission should pass from the transferee to the seller or transferor and, where appropriate, all rights including agency rights, sole representation and all other ancillary rights should pass to the buyer or transferee.

(2) For the purposes of subsection (1) above, the Allotment Committee shall have regard to information as to the existing shareholdings of individuals seeking to acquire further interests in enterprises to which this Decree relates.

Inspectors of enterprises.

12.—(1) Without prejudice to the operation of any enactment, there shall continue to be for the purposes of this Decree a number of inspectors of enterprises (in this Decree hereafter referred to as "inspectors") who shall be designated as such by an order published in the Federal Gazette by the Commissioner from among members of the public services of the Federation and of the States, and when so designated the inspectors shall, as respects any exercise of the functions conferred upon them by virtue of this Decree be responsible to the Board and no other person or authority.

(2) The inspectors shall, subject to this section, have such powers and carry out such functions as the Board may confer on them.

(3) Notwithstanding subsection (2) above, for the purpose of carrying out any of their functions, such inspectors—

(a) shall have a right of access at all times as may be necessary to any building or premises where any enterprise is being carried on or which they reasonably suspect is being used for any purpose to which this Decree relates ;

(b) may inspect such building or premises, or business in order to determine whether or not the building or premises is being used, or as the case may be, the business is being carried on, for the purposes authorised by this Decree, and may require the production of all books of account or other documents and inspect them for ensuring that the provisions of this Decree are being complied with ; and

(c) shall be entitled to require from the directors or other officers of the enterprise such information and explanation as may be deemed necessary.

(4) Any person, who—

(a) without lawful excuse the proof of which shall lie on him—

(i) refuses to admit into his building or premises any inspector appointed under this section ; or

(ii) denies such inspector the right to inspect the building or premises or the business for the determination of the matter specified in subsection (3) (b) above ; or

(iii) refuses or neglects to give any information which any inspector may require from him ; or

(b) in respect of any request for information from any inspector, makes any statement which he knows to be false or which he has no reason to believe to be true ; or

(c) in any way obstructs any inspector in the discharge of such functions as may be conferred on him by this section, shall be guilty of an offence under this Decree.

13.—(1) If the Board is satisfied that—

(a) an alien has been engaging in any of the enterprises specified in Schedule 1 to this Decree ; or

(b) that an alien enterprise is being carried on in contravention of section 5, 6 or 7 or any other provision of this Decree,

the Chairman of the Board may direct an inspector to seal up any premises in which the offending enterprise is being carried on.

(2) Whenever an inspector has sealed up any premises he shall be deemed to have been duly directed to do so by the Chairman.

(3) Every police officer shall if called upon by an inspector give all reasonable assistance to the inspector necessary to effect the sealing up of any affected premises and to prevent unauthorised persons from having access to or interfering with the premises or any goods contained therein.

14.—(1) Where, on or after the appointed day, any alien continues to be the owner or part owner of any enterprise in contravention of section 4 of this Decree, it shall be lawful for the Board—

(a) to take over, sell or otherwise dispose of the enterprise, and

(b) to distribute the proceeds of such sale or disposal (if any)—

(i) in the case of partnerships, to the proprietors of the enterprise duly registered under the Registration of Business Names Act 1961 or any other applicable law ;

(ii) in the case of companies, to the share-holders of the company ; and

(iii) in any other case, in such manner as may be directed by the Board ; and

any expenses incurred by the Board in relation to the exercise of any of the powers conferred by this subsection shall be a charge upon and be defrayed by the Board from the proceeds of such sale or disposal.

(2) It shall be sufficient for the purposes of taking over any enterprise under subsection (1) (a) of this section—

(a) in the case of partnerships, if the certificate of registration or business permit of the enterprise is cancelled ;

(b) in the case of a company, if the certificate of registration or business permit of the company is cancelled ; and

(c) in other case, if the assets of the association are registered by the Registrar of Business Names, or as the case may be, the Registrar of Companies or any person duly authorised to do so, in the name of the Federal Military Government.

Power to seal up premises.

Additional penalty for contravention of the Decree.

1963 No. 6.

Supply of  
information.

(3) In this section "business permit" means any business permit issued pursuant to section 8 of the Immigration Act 1963.

15.—(1) The Board may by instrument in writing, request any person carrying on any enterprise to which this Decree relates to furnish such estimates, returns or other information as may be specified and he may by that instrument specify the time, manner and form in which such estimates, returns or information are to be furnished, and it shall be the duty of any such person to comply with the request.

(2) Any person, who—

(a) refuses or neglects to give any information which the Board may require pursuant to subsection (1) above ; or

(b) in respect of the information so required makes any statement which he knows to be false or which he has no reason to believe to be true, shall be guilty of an offence and shall on conviction be liable to a fine of ₦1,000 or to imprisonment for three years.

Alteration of  
lists of enter-  
prises.

16. The Commissioner may with the prior approval of the Federal Executive Council as from the commencement of this Decree and before the appointed day or such other day as may be specified for the purposes of any particular order (or in respect of any enterprise) by an order published in the Gazette—

(a) alter the list of enterprises specified, respectively in Schedules 1, 2 or 3 to this Decree by way of addition, substitution or deletion ;

(b) as respects section 6 or 7 above, vary the extent of the equity participation of Nigerian citizens or associations in the enterprise ;

(c) make such different provisions in relation to different enterprises or as respects different areas of the Federations, and impose such terms as he may deem necessary.

#### *Offences and Penalties*

17.—(1) Any person who—

(a) acts as a front or purports for the purpose of defeating or in manner likely to defeat the object of this Decree, to be the owner or part owner of any enterprise ; or

(b) operates any enterprise for or on behalf of any alien who is under this Decree—

(i) not permitted to operate the enterprise ; or

(ii) disqualified from operating the enterprise ; or

(iii) not permitted to own or be part owner of such enterprise,

shall be guilty of an offence under this section, and shall be liable on conviction to a fine of ₦15,000 or to imprisonment for a term of 5 years or to both such fine and imprisonment.

(2) It shall not be lawful for any Nigerian citizen or association to employ, whether on full time or part time basis, any alien for the operation of any enterprise previously owned wholly or partly by that alien which the alien has disposed of pursuant to the provisions of this Decree, except with the prior approval of the Federal Commissioner for Internal Affairs after consultation with the Board.

18.—(1) Any person found guilty of an offence under this Decree for which no penalty is provided shall upon conviction be liable to a fine of ₦10,000 or to imprisonment for 5 years or to both such fine and imprisonment.

Penalty for  
acting as a  
front.Offences and  
penalties.

(2) Where an offence under this Decree is committed by a body of persons, therein—

(a) in the case of a body corporate, every director or officer of that body shall be deemed to be guilty of the offence ;

(b) in the case of a partnership or other association, every partner or officer of that body shall be deemed to be guilty of the offence.

(3) No person shall, however, be deemed to be guilty of an offence under subsection (2) above, if he proves to the satisfaction of the court that the offence was committed without his consent and that he exercised all due diligence to prevent the commission of the offence having regard to all the circumstances.

19.—(1) Subject to section 104 of the Constitution of the Federation (which relates to the power of the Attorney-General of the Federation to institute, continue or discontinue criminal proceedings) any inspector or officer of the Board may in a court of competent jurisdiction prosecute an offender for an offence under this Decree.

Power of inspector to conduct prosecutions, etc.  
1963 No. 20.

(2) It shall not be an objection to the competency of an inspector to give evidence as a witness in any prosecution for an offence under this Decree that the action is prosecuted or conducted by that inspector.

#### *Miscellaneous Provisions*

20.—(1) The Commissioner may make regulations generally for the purpose of giving effect to the provisions of this Decree, and may in particular, without prejudice to the generality of the foregoing provision, make regulations—

Regulations and reports.

(a) prescribing the forms for returns and other information required under this Decree ;

(b) prescribing the detailed powers and functions of inspectors ;

(c) prescribing the procedure for obtaining any information required under this Decree ;

(d) requiring returns to be made, within the period specified therein, by any enterprise to which this Decree applies ;

(e) prescribing any fees payable under this Decree ; and

(f) prescribing such other matters as may be referred to him by the Federal Executive Council.

(2) Any regulations made pursuant to subsection (1) above shall be presented to the Federal Executive Council for the approval of that Council together with any report and recommendations of the Board including any measures which the Commissioner proposes in relation thereto.

21. Any person aggrieved by any decision of the Board or by the exercise of any power under this Decree shall have the right to forward a petition on such grievance to the Commissioner who may, notwithstanding anything to the contrary in this Decree and subject to the approval of the Federal Executive Council, confirm or reverse the decision of the Board or take such further measures in relation to the petition as he may think just and reasonable.

Right to petition.

22. Except as otherwise prescribed by this Decree, there shall be no right of appeal against any act, matter or thing done or purported to be done by or under this Decree ; and without prejudice to the operation of any other enactment excluding the jurisdiction of a court of law in respect of

Exclusion of rights.

certain proceedings, and for the avoidance of doubt, no proceedings by way of originating summons, certiorari, mandamus, prohibition, injunction or any other prerogative writ shall lie or be instituted on account of or in respect of such act, matter or thing done or purported to be done.

Interpretation.

23.—(1) In this Decree, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them :—

“alien” means a person or association whether corporate or unincorporate other than a Nigerian citizen or association ;

1973 No. 14.

“appointed date” (a) in the case of any enterprise to which section 7 applies, means 30th June 1977 ; and

(b) in every other case, means 31st December, 1978.

“Commission” means the Capital Issues Commission established by section 1 of the Capital Issues Decree 1973 ;

“Commissioner” means the Federal Commissioner charged with responsibility for industries ;

1968 No. 51.

“company” means any company registered under the Companies Decree 1968 or under any enactment replaced by that Decree ;

“enterprise” includes any industrial or commercial undertaking ;

“Nigerian citizen or association” means—

1963 No. 20.

(a) a person who is a citizen of Nigeria by virtue of the Constitution of the Federation ;

(b) any person of African descent, not being a citizen of Nigeria, who is a national of any country in Africa which is a member country of the Organisation of African Unity, and who continues to reside and carry on business in Nigeria, if the country of which he is a national also permits citizens of Nigeria to establish and operate businesses or enterprises in that country on the basis of reciprocity ; and

(c) any company registered under the Companies Decree 1968, partnership, association or body (whether corporate or unincorporate), and except as otherwise prescribed under this Decree, the entire capital or other financial interest of which is owned wholly and exclusively by citizens of Nigeria ;

“ownership” in relation to any enterprise includes any proprietary interest in the enterprise beneficially, and any derivative of that word shall be construed accordingly ;

“prescribed” means prescribed by this Decree or by regulations ;

“shares” includes stocks.

(2) The reference in this Decree to “equity participation of Nigerian citizens or associations” is a reference to stocks and shares which Nigerian citizens or associations have in such industry which do not bear fixed interest or dividend.

(3) Section 22 of this Decree shall not be so construed as to exclude the right to appeal against any decision of a court in connection with any criminal offence created under this Decree.

24.—(1) The Nigerian Enterprises Promotion Decree 1972 is hereby repealed and the following enactments, that is to say—

(a) the Nigerian Enterprises Promotion (Amendment) Decree 1973 ;

(b) the Nigerian Enterprises Promotion (Amendment) Decree 1974 ;

Repeals and saving.

1973 No. 28

1974 No. 7.

(c) the Nigerian Enterprises Promotion (Amendment) (No. 2) Decree 1974 ; and 1974 No. 13.

(d) Nigerian Enterprises Promotion Decree 1976, 1976 No. 27.  
are hereby, consequentially, repealed.

(2) Without prejudice to section 6 of the Interpretation Act 1964 the repeal of the enactments specified in subsection (1) of this section shall not affect anything done under or pursuant to those enactments. 1964 No. 1

25.—(1) This Decree may be cited as the Nigerian Enterprises Promotion Decree 1977. Citation and commencement.

(2) This Decree shall be deemed to have come into force on 29th June 1976.

## SCHEDULES

### SCHEDULE 1

#### Section 4

#### ENTERPRISES EXCLUSIVELY RESERVED FOR NIGERIANS

1. Advertising and public relations business.
2. All aspects of pool betting business and lotteries.
3. Assembly of radios, radiograms, record changers, television sets, tape recorders and other electric domestic appliances not combined with manufacture of components.
4. Blending and bottling of alcoholic drinks.
5. Blocks and ordinary tile manufacture for building and construction works.
6. Bread and cake making.
7. Candle manufacture.
8. Casinos and gaming centres.
9. Cinemas and other places of entertainment.
10. Commercial transportation (wet and dry cargo and fuel).
11. Commission agents.
12. Departmental stores and supermarkets having an annual turnover of less than ₦2,000,000.
13. Distribution agencies excluding motor vehicles, machinery and equipment and spare parts.
14. Electrical repair shops other than repair shops associated with distribution of electrical goods.
15. Establishments specialising in the repair of watches, clocks and jewellery, including imitation jewellery for the general public.
16. Estate agency.
17. Film distribution (including cinema films).
18. Garment manufacture.

19. Hairdressing.
20. Ice-cream making when not associated with the manufacture of other dairy products.
21. Indenting and confirming.
22. Laundry and dry-cleaning.
23. Manufacturers' representatives.
24. Manufacture of jewellery and related articles, including imitation jewellery.
25. Manufacture of suitcases, brief cases, hand-bags, purses, wallets, portfolios and shopping bags.
26. Municipal bus services and taxis.
27. Newspaper publishing and printing.
28. Office cleaning.
29. Passenger bus services of any kind.
30. Poultry farming.
31. Printing of stationery (when not associated with printing of books).
32. Protective agencies.
33. Radio and television broadcasting.
34. Retail trade (except by or within departmental stores and supermarkets).
35. Rice milling
36. Singlet manufacture.
37. Stevedoring and shorehandling.
38. Tyre retreading.
39. Travel agencies.
40. Wholesale distribution of local manufactures and other locally produced goods.

## SCHEDULE 2

## Section 5

## ENTERPRISES IN RESPECT OF WHICH NIGERIANS MUST HAVE MAJORITY INTEREST

1. Banking-commercial, merchant and development banking.
2. Basic iron and steel manufacture.
3. Beer brewing.
4. Boat building.
5. Bottling of soft drinks.
6. Business services (other than machinery and equipment rental and leasing) such as business management and consulting services ; fashion designing.
7. Clearing and forwarding agencies.
8. Canning and preserving of fruits and vegetables.
9. Coastal and inland waterways shipping.
10. Construction industry.

11. Departmental stores and supermarkets having annual turnover of not less than ₦2,000,000.
12. Distribution agencies for machines and technical equipment.
13. Distribution and servicing of motor vehicles, tractors and spare parts thereof or similar objects.
14. Fish and shrimp trawling and processing.
15. Fertilizer production.
16. Grain mill products except rice milling.
17. Industrial cleaning.
18. Insecticides, pesticides and fungicides.
19. Internal air transport (scheduled and charter services).
20. Insurance—all classes.
21. Lighterage.
22. Manufacture of bicycles.
23. Manufacture of biscuits and similar dry bakery products.
24. Manufacture of cement.
25. Manufacture of cosmetics and perfumery.
26. Manufacture of cocoa, chocolate and sugar confectionery.
27. Manufacture of dairy products, butter, cheese, milk and other milk products.
28. Manufacture of food products like yeast, starch, baking powder, coffee roasting ; processing of tea leaves into black tea.
29. Manufacture of furniture and interior decoration. Manufacture of metal fixtures for household, office and public building.
30. Manufacture of leather footwear.
31. Manufacture of matches.
32. Manufacture of metal containers.
33. Manufacture of paints, varnishes or other similar articles.
34. Manufacture of plastic products such as plastic dinnerware, tableware, kitchenware, plastic mats, plastic machinery parts, bottles, tubes and cabinets.
35. Manufacture of rubber products, rubber footwear, industrial and mechanical rubber specialities such as gloves, mats, sponges and foam.
36. Manufacture of tyres and tubes for bicycles and motorcycles ; of tyres and tubes for motor vehicles.
37. Manufacture of soap and detergents.
38. Manufacture of wire, nails, washers, bolts, nuts, rivets and other similar articles.
39. Other manufacturing industries such as non-rubber and non-plastic toys, pens, pencils, umbrellas, canes, buttons, brooms and brushes, lampshades, tobacco pipes and cigarette holders.
40. Mining and quarrying.
41. Oil milling, cotton ginning and crushing industries.
42. Paper conversion industries.
43. Plantation sugar and processing.

44. Plantation agriculture for tree crops, grains and other cash crops.
45. Printing of books.
46. Production of sawn timber, plywood, veneers and other wood conversion industries.
47. Petro-chemical feedstock industries.
48. Publishing of books, periodicals and such like.
49. Pulp and paper mills.
50. Restaurants, cafes and other eating and drinking places.
51. Salt refinery and packaging.
52. Screen printing on cloth, dyeing.
53. Inland and coastal shipping.
54. Slaughtering, storage associated with industrial processing and distribution of meat.
55. Tanneries and leather finishing.
56. Wholesale distribution of imported goods.
57. Photographic studios, including commercial and aerial photography.

## SCHEDULE 3

## Section 6

## ENTERPRISES TO WHICH SECTION 6 APPLIES

1. Distilling, rectifying and blending of spirits such as ethyl alcohol, whisky, brandy, gin and the like.
2. Tobacco manufacture.
3. Manufacture of basic industrial chemicals (organic and inorganic) except fertilizers.
4. Manufacture of synthetic resins, plastic materials and man-made fibres except glass.
5. Manufacture of drugs and medicines.
6. Manufacture of pottery, china and earthenware.
7. Manufacture of glass and glass products.
8. Manufacture of burnt bricks and structural clay products.
9. Manufacture of miscellaneous non-metallic mineral products such as concrete, gypsum and plastering products, including ready-mixed concrete; mineral wool, abrasive; asbestos products; graphite products.
10. Manufacture of primary non-ferrous metal products such as ingots, bars and billets; sheets, strips, circles, rods, tubes, pipes and wire rods; casting and extrusions.
11. Manufacture of (fabricated metal) cutlery, hand tools and general hardware.
12. Manufacture of structural metal products-components of bridges, tanks, metal doors and screens, window frames.
13. Manufacture of miscellaneous fabricated metal products, except machinery and equipment, such as safes and vaults; steel springs furnaces; stoves, and the like.

14. Manufacture of engines and turbines.
15. Manufacture of agricultural machinery and equipment.
16. Manufacture of metal and wood working machinery.
17. Manufacture of special industrial machinery and equipment, such as textile and food machinery, paper industry machinery, oil refining machinery and equipment, and the like.
18. Manufacture of office, computing and accounting machinery.
19. Manufacture of other machinery and equipment except electrical equipment, pumps, air and gas compressors ; blowers, air-conditioning and ventilating machinery ; refrigerators, and the like.
20. Manufacture of electrical industrial machinery and apparatus.
21. Manufacture of radio, television and communication equipment and apparatus.
22. Manufacture of electrical appliances and houseware.
23. Manufacture of electrical apparatus and supplies not elsewhere classified, such as insulated wires and cables, batteries, electric lamps and tubes, fixtures and lamp switches, sockets, switches, insulators, and the like.
24. Ship building and repairing (excluding boat building).
25. Manufacture of railway equipment.
26. Manufacture of motor vehicles and motorcycles.
27. Manufacture of aircraft.
28. Manufacture of professional and scientific and measuring and controlling equipment, such as laboratory and scientific instruments, surgical, medical and dental equipment, instruments and supplies and orthopaedic and prosthetic appliances.
29. Manufacture of photographic and optical goods.
30. Manufacture of watches and clocks.
31. Ocean transport/shipping.
32. Oil servicing companies.
33. Storage and warehousing—the operation of storage facilities and warehouses (including bonded and refrigerated warehouses) for hire by the general public.
34. Textile manufacturing industries.
35. Hotels, rooming houses, camps and lodging places.
36. Data processing and tabulating services (on a fee or contract basis).
37. Production of cinema and television films (or motion picture production).
38. Machinery and equipment rental and leasing.
39. All other enterprises not included in Schedule 1 or 2 not being public sector enterprises.

MADE at Lagos this 12th day of January 1977.

LT.-GENERAL O. OBASANJO,  
*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 re-enacts the Nigerian Enterprises Promotion Decree 1972 to introduce provisions necessary for the implementation of the next stage of the indigenisation programme. The effective date of the Decree is 29th June 1976 while the appointed date, that is, the date on which all affected enterprises are expected to have complied with the applicable provisions of the Decree is 30th June 1977 in the case of enterprises to which section 7 applies, and 31st December 1978 in every other case.

# MILITARY COURTS (SPECIAL POWERS) DECREE 1977



## Decree No. 4

[7th January 1976]

Commence-  
ment.

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

1.—(1) There shall continue to be a court established for the enforcement of discipline in the armed forces to be known as the Armed Forces Disciplinary Court (in this Decree hereafter referred to as “a court”) which may in proper case in time of war or at any time during the continuance of the state of emergency in Nigeria be convened by the commanding officer of a unit of the armed forces ; and where a court is convened under this Decree, it shall have the powers hereby conferred to the exclusion of other courts.

Armed  
Forces  
Disciplinary  
Court  
established.

(2) Subject to this Decree, 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 Head of the Service concerned ; 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) above, an appeal shall lie in the case of a commissioned officer from the decision of the Head of the Service concerned to the Commander-in-Chief.

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

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

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 and shall be of a rank senior in status to the accused ; and

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

(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 above the rank of a warrant officer in the Army or its equivalent in the Nigerian Navy or Air Force for a continuous period of not less than two years.

(3) (a) 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 ;

(b) without prejudice to paragraph (a) 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.

Offences  
triable under  
the Decree.

3.—The offences triable by a court shall be the offences specified under the provisions of the enactments set out in Schedule 1 to this Decree.

Procedure  
before  
trial of  
offence, etc.

4.—(1) A member of the armed forces shall not be tried for an offence under this Decree unless a summary of evidence or an abstract of evidence in the form set out in Schedule 2 to this Decree 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

(b) the commanding officer is of the opinion that the interest of justice require that a summary of evidence be taken,

and in any other case an abstract of evidence shall be taken.

Procedure  
for trial.

5.—(1) The procedure for the trial of offences by a court shall notwithstanding section 1 (2) of this Decree be as set out hereunder and record of the proceedings shall be in the form set out in Schedule 3 to this Decree :—

(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 Decree, 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 Head of the Service concerned 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 proceeding 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 Head of the Service concerned.

(5) Pending confirmation or other action by the Head of the Service concerned, the accused shall be detained in military custody.

6. This Decree shall apply to all arms 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 Decree, 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 Decree.

7. In this Decree, unless the context otherwise requires—

“commanding officer” means in relation to the Army an officer not below the rank of lieutenant-colonel, and in respect of the 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 Decree means the commanding officer of the unit of which the accused is a member ;

“Head of the Service 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 ;

“proper case” means a case in which the commanding officer is satisfied that the provisions of this Decree 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 ;

Interpreta-  
tion.

"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.

Repeal and savings.  
1968 No. 4.

8.—(1) The Military Courts (Special-Powers) Decree 1968 is hereby repealed.

(2) Notwithstanding subsection (1) of this section, where on the commencement of this Decree a court has been convened for the trial of an offence under the repealed Decree and the court has begun to take evidence, the court shall proceed with and conclude the trial under the repealed Decree as if this Decree has not been made, but in any other case the provisions of this Decree shall apply.

Citation.

9. This Decree may be cited as the Military Courts (Special Powers) Decree 1977.

## SCHEDULES

### SCHEDULE 1

#### Section 3

#### OFFENCES TRIABLE BY A COURT UNDER THIS DECREE

Offence	Provisions of the appropriate enactments		
	Army Act	Navy Act	Air Force Act
1. Mutiny .. .. .	S.37	S.42	S.39
2. Failure to suppress mutiny .. .. .	S.38	S.43	S.40
3. Insubordinate behaviour .. .. .	S.39	S.44	S.41
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	—	S.67

### SCHEDULE 2

#### Section 4 (1)

#### 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 ;

(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 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 section.

#### 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 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 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 below in 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]

.....(number, rank, name, unit, or other description), having been duly sworn, <sup>1</sup>states:—

(Cross-examined by the accused)

<sup>2</sup>Question 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).

Witness  
for the  
prosecu-  
tion.

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 Schedule 2 to the Decree) 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)

or

.....(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 Paragraph (c) of Part A of Schedule 2 to the Decree reserves his defence.

or

The accused having been duly cautioned in accordance with Paragraph (c) of Part A of Schedule 2 to the Decree elects [to give evidence on oath] [to make a statement without being sworn] and to call a witness(es).<sup>3</sup>

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

Witness for the defence.

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

Certified that Part A of Schedule 2 to the Decree 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)

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 Schedule 2 to the Decree.

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 or statements) attached statements\* and.....(insert the number of précis) précis of evidence<sup>1</sup> of witnesses for the prosecution and compiled by me [the commanding officer of the accused] [.....<sup>2</sup> on the direction of the commanding officer of the accused].

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

.....  
(Signature and rank)

1. Strike out any references to statements or précis 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.....<sup>1</sup> today handed to the accused<sup>2</sup> ..... the abstract of evidence relating to him dated..... day of .....19..... and duly cautioned in accordance with Paragraph B (2) of Schedule 2 to the Decree 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)

1. Insert rank, name and unit of officer signing the certificate.

2. Insert number, rank, name unit or other description of the accused.

## SCHEDULE 3

## Section 5 (1)

RECORD OF PROCEEDINGS OF A COURT  
 CONVENED UNDER MILITARY COURTS (SPECIAL POWERS) DECREE 1977

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. ....

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 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 Members

MADE at Lagos this 7th day of January 1977.

LT.-GENERAL O. OBASANJO,  
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 re-enacts the Military Courts (Special Powers) Decree 1968 and includes in the Decree provisions relative to the procedure to be followed prior to trial and during the trial of any member of the armed forces charged with an offence under the Decree.