

CONSTITUTION (SUSPENSION AND MODIFICATION)
(AMENDMENT) DECREE 1985



Decree No. 17

[27th August 1985]

THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows :—

Commence-
ment.

PART I—AMENDMENT OF THE CONSTITUTION
(SUSPENSION AND MODIFICATION) DECREE 1984

- 1.—(1) The Constitution (Suspension and Modification) Decree 1984 (hereinafter in this Decree referred to as "the principal Decree") is hereby amended as provided in this Decree.
- 2.—(1) Any reference in the principal Decree to the Head of the Federal Military Government shall be construed as a reference to the President, Commander-in-Chief of the Armed Forces.
- (2) Any reference in the principal Decree to the Chief of Staff, Supreme Headquarters shall be construed as a reference to the Chief of General Staff, General Staff Headquarters.
- (3) Any reference in the principal Decree to the Supreme Military Council shall be construed as a reference to the Armed Forces Ruling Council.
- (4) Any reference in the principal Decree to the Federal Executive Council shall be construed as a reference to the National Council of Ministers.
- (5) The powers vested in the President of the Federal Republic of Nigeria, Federal Military Government or Supreme Military Council, as the case may be, specified in the sections of the Constitution of the Federal Republic of Nigeria 1979, as amended by the principal Decree, set out in Schedule 1 to this Decree shall vest in the President, Commander-in-Chief of the Armed Forces.
- (6) The powers vested in the National Assembly, Federal Military Government or Supreme Military Council, as the case may be, specified in the sections of the Constitution of the Federal Republic of Nigeria 1979, as amended by the principal Decree, set out in Schedule 2 to this Decree shall vest in the Armed Forces Ruling Council.

Amendment
of 1984
No. 1.

General
modifica-
tions.

Insertion
of section
6A

3. There shall be inserted immediately after section 6 of the principal Decree, the following new section, that is—

6A.—(1) The President, Commander-in-Chief of the Armed Forces shall have the exclusive responsibility for the appointment of the Chief of General Staff, General Staff Headquarters, Minister of Defence and Chairman, Joint Chiefs of Staff, the Chief of Army Staff, the Chief of Naval Staff, the Chief of Air Staff, the Inspector-General of Police and the Director-General of the Nigerian Security Organisation.

(2) The General Officers Commanding, Nigerian Army and equivalent positions in the Nigerian Navy and Nigerian Air Force shall be appointed in accordance with the relevant laws."

Substitution
of section 7.

4. For section 7 of the principal Decree there shall be substituted the following new section, that is—

"Establishment of an Armed Forces Ruling Council, a National Council of State and a National Council of Ministers.

7.—(1) There shall be for Nigeria an Armed Forces Ruling Council, a National Council of State and a National Council of Ministers.

(2) The Armed Forces Ruling Council shall consist of—

(a) the President, Commander-in-Chief of the Armed Forces, who shall be the Chairman of the Armed Forces Ruling Council ;

(b) the Chief of General Staff, General Staff Headquarters ;

(c) the Minister of Defence and Chairman, Joint Chiefs of Staff ;

(d) the Chief of Army Staff ;

(e) the Chief of Naval Staff ;

(f) the Chief of Air Staff ;

(g) the Inspector-General of Police ;

(h) the General Officer Commanding 1st Mechanised Infantry Division, Nigerian Army ;

(i) the General Officer Commanding 2nd Mechanised Infantry Division, Nigerian Army ;

(j) the General Officer Commanding 3rd Armoured Division, Nigerian Army ;

(k) the General Officer Commanding 82 Division, Nigerian Army ;

(l) the Commander, Nigerian Army Corps of Artillery ;

(m) the Flag Officer Commanding, Eastern Naval Command ;

(n) the Flag Officer Commanding, Western Naval Command ;

(o) the Flag Officer Commanding, Naval Training Command ;

(p) the Air Officer Commanding, Training Command ;

(q) the Air Officer Commanding, Tactical Air Command ;

(r) the Air Officer Commanding, Logistic Command ;

(s) twelve designated members who shall be senior officers of the Armed Forces ; and

(t) such other members as the Council may from time to time appoint.

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of

(3) A member of the Armed Forces Ruling Council shall, unless the Council otherwise directs, vacate his office as a member if he ceases to be the holder of the office by virtue of which he was appointed.

(4) The National Council of State shall consist of—

(a) the President, Commander-in-Chief of the Armed Forces, who shall be the Chairman of the National Council of State ;

(b) the Chief of General Staff, General Staff Headquarters ;

(c) the Minister of Defence and Chairman, Joint Chiefs of Staff ;

(d) the Chief of Army Staff ;

(e) the Chief of Naval Staff ;

(f) the Chief of Air Staff ;

(g) the Inspector-General of Police ;

(h) the Military Governors of the States ;

(i) such other members as the Armed Forces Ruling Council may from time to time appoint.

(5) The National Council of Ministers shall consist of—

(a) the President, Commander-in-Chief of the Armed Forces, who shall be the Chairman of the National Council of Ministers ;

(b) the Chief of General Staff, General Staff Headquarters ;

(c) the Attorney-General of the Federation and Minister of Justice ;

(d) such other members to be known as Ministers as the Armed Forces Ruling Council may from time to time appoint.

(6) Each of the Councils established by this section—

(a) shall be presided over by the President, Commander-in-Chief of the Armed Forces or in his absence by the Chief of General Staff, General Staff Headquarters ;

(b) subject to paragraph (a) of this subsection, may regulate its own procedure and, subject to its rules of procedure, may act notwithstanding any vacancy in its membership or the absence of any member.

5. Section 9 of the principal Decree is hereby amended by substituting for paragraph (d) thereof the following new paragraph, that is—

Amendment
of section 9.

"(d) exclusive responsibility for the appointment of the President, Commander-in-Chief of the Armed Forces, Military Governors, members of the National Council of State and of the National Council of Ministers ;"

PART II—AMENDMENT OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1979

6. The Constitution of the Federal Republic of Nigeria 1979 as suspended, modified, amended or otherwise affected by the principal Decree is hereby further amended as specified in Schedule 3 to this Decree.

PART II—TRANSITIONAL AND MISCELLANEOUS PROVISIONS

7.—(1) The provisions of the Constitution of the Federal Republic of Nigeria 1979 set out in Schedule 1 to the principal Decree and suspended by section 1 (1) of the principal Decree, in so far as those provisions have not been revived by any other Decree, shall continue to be in force as modified or amended by the principal Decree or any other Decree but shall, for the avoidance of doubt, have effect subject to this Decree

(2) Any law, whether being a rule of law or a provision of a Decree or of an Edict or of any other enactment or instrument whatsoever, in force immediately before the commencement of this Decree or made before that date but comes into force on or after the commencement of this Decree, shall until that law is altered by an authority having power to do so, continue to have effect as if made in exercise of the powers conferred by or derived under this Decree.

8.—(1) This Decree may be cited as the Constitution (Suspension and Modification) (Amendment) Decree 1985.

(2) This Decree shall be deemed to have come into force on 27th August 1985.

SCHEDULES

SCHEDULE 1

Section 2 (5)

Powers vested in the President, Commander-in-Chief of the Armed Forces.

- Section 16 (3) (a)
- Section 24 (1)
- Section 25 (1) and (2)
- Section 27 (1), (2) and (2) (b)
- Section 29 (1) and (2)
- Section 36 (2)
- Section 75 (1)
- Section 141 (1)
- Section 144 (1)
- Section 147 (1)
- Section 156
- Section 157 (1), (2) (e) and (5)
- Section 161 (1) and (3)
- Section 195 (1), (3) and Proviso
- Section 196 (1)
- Section 198 (1), (3) and (4) (a)
- Section 199 (b)
- Section 200 (2)
- Section 277 in the definition of civil service of the Federation.

- Powers vested in the
- Section 6 (4) (g)
- Section 7 (6) (a)
- Section 11 (1) and (2)
- Section 12 (1) and (2)
- Section 40 (3)
- Section 42 (4)
- Section 75 (3)
- Section 78 (1)
- Section 79 (3)
- Section 155 (2)
- Section 198 (4)
- Section 199
- Section 225 (2)
- Section 230 (1) (b)
- Section 231 (2)
- Section 233
- Section 265
- Section 277 in the def

A—RESTORE

- Section 7 (5)
- Section 265

B—SUSPENDE

- Section 145 (2)

C—MODIFICA

Section 6

In paragraphs (a) and (b) of Assembly" there shall be

In paragraph (b) of sub

In paragraphs (g) and (h) of Assembly" and "House of A the "Armed Forces Ruling C

Section 7

In subsection (3) thereof, be inserted the words "or an

In subsection (6) thereof "House of Assembly" in parag stituted the words the "Arn Governor" respectively.

Sections 11 and 12

In sections 11 and 12, fo they occur, there shall be su Council".

SCHEDULE 2

Section 2 (6)

Powers vested in the Armed Forces Ruling Council.

- Section 6 (4) (g)
- Section 7 (6) (a)
- Section 11 (1) and (3)
- Section 12 (1) and (2)
- Section 40 (3)
- Section 42 (4)
- Section 75 (3)
- Section 78 (1)
- Section 79 (3)
- Section 155 (2)
- Section 198 (4)
- Section 199
- Section 225 (2)
- Section 230 (1) (b)
- Section 231 (2)
- Section 233
- Section 265
- Section 277 in the definition of financial year.

SCHEDULE 3

Section 6

A—RESTORED PROVISIONS OF THE CONSTITUTION

- Section 7 (5)
- Section 265

B—SUSPENDED PROVISIONS OF THE CONSTITUTION

- Section 145 (2)

C—MODIFICATION OF PARTICULAR PROVISIONS

Section 6

In paragraphs (a) and (b) of subsection (4) thereof, for the words "House of Assembly" there shall be substituted the words "Military Governor".

In paragraph (b) of subsection (5), the word "Federal" shall be deleted.

In paragraphs (g) and (h) of subsection (5) thereof for the words "National Assembly" and "House of Assembly" there shall be substituted the words the "Armed Forces Ruling Council" and "Military Governor" respectively.

Section 7

In subsection (3) thereof, immediately after the word "Law", there shall be inserted the words "or an Edict".

In subsection (6) thereof, for the words "National Assembly" and "House of Assembly" in paragraphs (a) and (b) thereof, there shall be substituted the words the "Armed Forces Ruling Council" and "Military Governor" respectively.

Sections 11 and 12

In sections 11 and 12, for the words "National Assembly" wherever they occur, there shall be substituted the words "Armed Forces Ruling Council".

Section 16

In subsection (3) thereof, immediately after the words "National Assembly", there shall be added the words "or a Decree".

In paragraph (a) of subsection (4) thereof, for the words "a resolution of each House of the National Assembly" and "a resolution to the contrary is made by the National Assembly" there shall be substituted the words "the Armed Forces Ruling Council" and "a decision to the contrary is made by the Armed Forces Ruling Council" respectively.

Section 40

For subsection (1A), as inserted by the principal Decree, there shall be substituted the following new subsection, that is—

"(1A) Notwithstanding the foregoing provision, the Armed Forces Ruling Council may by Decree provide for the forfeiture of any property, right or interest described therein as having been illegally acquired by an officer in the public service of the Federation or a State or any other person and proved before a court or tribunal as being so illegally acquired."

Section 75

In subsection (1) thereof, as amended by the principal Decree, immediately after the words "Armed Forces Ruling Council", there shall be inserted the words "shall cause to be prepared".

Section 78

For the side-note to section 78, there shall be substituted the following—

"Remuneration of certain officers."

Section 79

For subsections (2) and (3) as amended by the principal Decree there shall be substituted the following new subsections, that is—

"(2) The public accounts of the Federation and of all offices and courts of the Federation shall be audited by the Auditor-General who shall submit his reports to the Armed Forces Ruling Council, and for that purpose, the Auditor-General or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to these accounts.

(3) Nothing in subsection (2) of this section shall be construed as authorising the Auditor-General to audit the accounts of or appoint auditors for government statutory corporations, commissions, authorities, agencies including all persons and bodies established by law but the Auditor-General may—

(a) provide such bodies with—

(i) a list of auditors qualified to be appointed by them as external auditors and from among which the body shall appoint its external auditor; and

(ii) a guide and

(b) comment

(4) The Auditor-General

The existing

Section 118

In subsection (1) thereof, the words

Section 157

In the side-note to section 157, there shall be substituted the words "of the Armed Forces Ruling Council".

In subsection (1) thereof, there shall be substituted the words "of the Armed Forces Ruling Council".

Section 180

Subsection (1) thereof

Section 192

In subsection (1) thereof, there shall be added the words "and the Auditor-General".

Section 195

In subsection (1) thereof, wherever it occurs, the words "Commander-in-Chief" shall be substituted by the words "Armed Forces Ruling Council".

Section 196

Subsection (2) thereof

Section 197

In paragraph (a) thereof, there shall be substituted the words "of the Armed Forces Ruling Council".

Section 198

For subsection (1) thereof, there shall be substituted the following—

"(1) The powers of the Armed Forces Ruling Council shall be operational use

Subsection (2) thereof

In subsection (1) thereof, the words "President" shall be substituted by the words "Armed Forces Ruling Council".

- (ii) a guideline on the level of fees to be paid to external auditors ;
and
(b) comment on their annual accounts and auditor's reports thereon.
- (4) The Auditor-General shall submit his reports to the Armed Forces Ruling Council."

The existing subsection (4) shall be renumbered as subsection (5).

Section 118

In subsection (2) thereof, for the word "Governor", there shall be substituted the words "Military Governor".

Section 157

In the side-note thereto, for the words "Supreme Military Council," there shall be substituted the words "President, Commander-in-Chief of the Armed Forces".

In subsection (2) and in paragraph (e) thereof, for the word "President", there shall be substituted the words "President, Commander-in-Chief of the Armed Forces".

Section 180

Subsection (1) (b) thereof shall be deleted.

Section 192

In subsection (2) thereof, immediately after the words "Law of the State", there shall be added the words "or an Edict".

Section 195

In subsection (3) and the Proviso to subsection (4), for the word "President" wherever it occurs, there shall be substituted the words "President, Commander-in-Chief of the Armed Forces".

Section 196

Subsection (2) thereof shall be deleted.

Section 197

In paragraph (c) of subsection (1) thereof, for the word "President" there shall be substituted the words "President, Commander-in-Chief of the Armed Forces".

Section 198

For subsection (1), as modified by the principal Decree, there shall be substituted the following new section, that is—

"(1) The powers of the President as the Commander-in-Chief of the Armed Forces of the Federation shall include power to determine the operational use of the armed forces of the Federation."

Subsection (2) thereof shall be deleted.

In subsection (3) for the word "President", there shall be substituted the words "President, Commander-in-Chief of the Armed Forces".

In subsection (4), as modified by the principal Decree, for the words "Federal Military Government", there shall be substituted the words "the Armed Forces Ruling Council."

Section 200

In subsection (2) thereof, as modified by the principal Decree, for the word "President" there shall be substituted the words "President, Commander-in-Chief of the Armed Forces".

Section 215

For the words "President" and "Governor" there shall be substituted the words "President, Commander-in-Chief of the Armed Forces" and "Military Governor" respectively.

Section 234

In subsection (2) (a) thereof, the words "of the High Court" shall be deleted.

Sections 235, 241 and 246

In section 235, the words "of the High Court" shall be deleted wherever they occur after the words "Chief Judge".

After the words "made by" wherever they occur in sections 235, 241 and 246 as amended by the principal Decree, there shall be inserted the word "the".

In section 241 (4) after the words "that behalf by" there shall be inserted the word "the".

Section 253

In section 253, as amended by the principal Decree, immediately after the words "he is a", there shall be inserted the words "member of the".

Section 258

In subsection (1) thereof by substituting for the words "on the date of the delivery thereof", the words "within 7 days of the delivery thereof".

In subsection (2) thereof, there shall be inserted the following additional proviso, that is—

"Provided further that the Supreme Court or the Court of Appeal shall be deemed to be duly constituted for the purpose of delivering its decision if at least one member of that Court sits for the purpose."

Immediately after subsection (3), there shall be inserted the following new subsections, that is—

"(4) The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of this section unless the court exercising jurisdiction by way of appeal from or review of that decision is satisfied that the party complaining of such non-compliance has suffered a miscarriage of justice by reason thereof.

(5) As soon as possible after hearing and deciding any case in which it has been determined or observed that there was non-compliance with the provisions of subsection (1) of this section, the person presiding at

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the sitting of the court shall send a report on the case to the Chairman of the Advisory Judicial Committee who shall keep the Committee informed for appropriate action."

Section 263

In paragraph (a) thereof, there shall be substituted for the words "National Assembly, the President of the Federal Republic of Nigeria", the words "Armed Forces Ruling Council, the President, Commander-in-Chief of the Armed Forces"

The entry in the principal Decree relating to section 263 shall be deleted.

Section 265

Subsections (2), (3) (g), (4), (5) and (6) (b), (c) and (d) shall be deleted.

Section 274

In subsection (5) thereof, all the words after "this Constitution" where those words occur the second time in the third line from the bottom of that subsection shall be deleted.

The entry relating to section 274 in the principal Decree shall be deleted.

Section 277

In subsection (1) and in the definition of "judicial office" the word "Federal" occurring in the second line shall be deleted.

THE SCHEDULES TO THE CONSTITUTION

SECOND SCHEDULE

PART II

Item 3

For the words "House of Assembly", there shall be substituted the words "Military Governor".

Item 7

For the words "National Assembly", there shall be substituted the words "Armed Forces Ruling Council".

Item 9

For the word "it", there shall be substituted the word "he".

Item 19

For the words "House of Assembly" there shall be substituted the words "Military Governor".

THIRD SCHEDULE

PART I

Paragraph 4

In sub-paragraph (1) of paragraph 4, for the words "Federal Judicial Service Commission" there shall be substituted the words "Federal Judicial Service Committee" and the words "National Population Commission" shall be deleted.

In sub-paragraph (2) thereof, for the words "President" there shall be substituted the words "President, Commander-in-Chief of the Armed Forces".

FOREIGN

Paragraph 9

PART II

In paragraph (d) and in the last line thereof, for all the words after "magistrates, judges and members" there shall be substituted the following words—

"and all other members of the staff of the judicial service of the State not otherwise specified in this Constitution and of the State Judicial Service Committee."

MADE at Lagos this 8th day of November 1985.

MAJOR-GENERAL I. B. BABANGIDA,
President, 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 purport)

The Decree amends the Constitution (Suspension and Modification) Decree 1984 to reflect the changes brought about by the change of government on 27th August, 1985 with respect to the composition of the principal organs of the Federal Military Government. The unsuspended provisions of the Constitution of the Federal Republic of Nigeria 1979 are to continue in operation but these are to have effect subject to the provisions of the Decree.

The Decree also amends the Constitution of the Federal Republic of Nigeria 1979 to further modify certain unsuspended provisions thereof.

THE FEDER
follows :—

1.—(1) Notwith
other enactment, in
Nigeria Act 1958, th
(Anti-Sabotage) De
it shall be lawful fo
to open, maintain a
currency in any of

(a) First Bank

(b) Union Bank

(c) United Bank

(d) Internationa

(e) Nigeria Arab

(f) Allied Bank

(g) Savannah Ban

(h) National Ban

(i) African Cont

(j) Bank of the I

(k) New Nigeria

(l) Habib Bank

(m) Societe Gen

(n) Progress Ban

(o) Commercial

(p) Bank of Crec

(q) such other

Ruling Council r
Gazette, appoint.

(2) The person
to open, maintain a
follows :—

(a) citizens of