

DRAFT LEGISLATION RESPECTING MARITIME OFFENCES
AND THE
ESTABLISHMENT OF A MARITIME OFFENCES TRIBUNAL

A MARITIME LEGISLATION DRAFTING PROJECT SUBMITTED
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE
AWARD OF A MASTER OF LAWS DEGREE (LL.M.)

AT THE
IMO INTERNATIONAL MARITIME LAW INSTITUTE (I.M.L.I.)

M A L T A

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D E D I C A T I O N

Dedicated to:

Professor Patricia Birnie

in appreciation of her selfless and relentless efforts.

A C K N O W L E D G E M E N T

I express my heartfelt gratitude to the entire staff of IMLI, Joseph, Connie, Dorianne, Valerie, Gladys, Josephine and Joe whose support, affection and encouragement made it possible for me to produce this draft legislation under the most congenial atmosphere.

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SPECIAL TRIBUNAL (MARITIME OFFENCES) ACT 1992

Long Title An Act to establish a Special Tribunal, for the

trial of Maritime Offences in order to deter, reduce and control maritime fraud, piracy, damage to the marine environment caused by pollution and other maritime offences by prescribing stiffer penalties and providing economic compensation for victims.

Commencement 1st April 1992

Establishment of
Maritime Offences
Tribunal

1. (1) For the purpose of the trial of offences under this Act, the Head of the Federal Government shall, whenever occasion demands, by Order constitute for any State or a number of States in the Federation specified in such order, a Tribunal to be known as "The Maritime Offences Tribunal" (in this Act referred to as the Tribunal).

Jurisdiction to
try offences

2. (1) The Tribunal shall have jurisdiction to try:

(a) offences in relation to

unseaworthiness of vessels as contained in the Criminal Code and Penal Code of Nigeria;

(b) offences in relation to collisions at sea as contained in The Prevention of Collisions at Sea Act;

(c) offences in relation to the protection and conservation of the marine environment as contained in Environmental Protection and Preservation Act;

(d) and such other offences as provided in this Act.

(2) Any sentence or ruling imposed or awarded by the Tribunal may be subject to variation, confirmation or disallowance by the Special Appeal Tribunal.

(3) Any offender under this Act shall be brought before the Tribunal constituted for the trial of offences under section 1(1) of this Act and the Tribunal shall

have power (notwithstanding anything to the contrary in any other enactment) to impose any of the penalties provided for in this Act, or any other enactment in force as the case may be.

Membership of
Tribunal

3. (1) A Tribunal appointed under section 1 of this Act shall consist of:-

- (a) a chairman who shall be a Judge of the Federal High Court;
- (b) a member of the Nigerian Naval Force not below the rank of a Squadron Leader;
- (c) a member of the Nigerian Police Force not below the rank of a Chief Superintendent of Police;
- (d) a representative of the Nigerian Ports authority not below the rank of a Chief Administrative Officer.

(2) No person who has taken part in the

search for, pursuit or apprehension of any person to be tried under this Act or who has taken part in the investigation of the charge against the person to be tried shall sit as a member of the Tribunal constituted for the trial of that person in respect of any offence under this Act.

Interpretation

4. In this Act, unless the context otherwise requires:-

"carrier" means any person who owns a vessel or is entrusted with the command of the vessel or the responsibility of managing or controlling the vessel;

"carriage by sea" includes a contract whereby the carrier undertakes against payment of freight to carry goods from one port to another and carriage by some other means insofar as it relates to the carriage by sea;

"financial institution" means a bank as defined in the Banking Act;

"International Trade Instruments" includes bills of lading, waybills, insurance policies, bonds, guarantees, letters of credit, survey certificates, all forms of commercial correspondence and other related documents, disc, tape, soundtrack and other device on or in which information is recorded or stored by mechanical, electronic or other means;

"knowledge" means that the person knew the property involved in the transaction represents proceeds from some form, though not necessarily which form of activity that constitutes an offence under this Act;

"marine adventure" relates to any insurable property exposed to maritime perils as defined in the Marine Insurance Act;

"monetary instruments" means coin or currency of Nigeria or of any other country, travellers cheques, personal cheques, bank cheques,

money orders, investment securities
in bearer form or otherwise in such
form that title passes on delivery;

"rubbish" means to send or forward goods
that are totally of a different
nature to that agreed upon by the
parties;

"scuttle" means any deliberate and wilful
sinking, destroying or ruining
of a vessel;

"specified unlawful activity" means:

(i) any act or activity
constituting an offence under
this Act;

(ii) with respect to a financial
transaction occurring in whole
or in part in Nigeria, an
offence against the laws of a
foreign nation involving the
obtaining of money, or property
in the goods, or a pecuniary
advantage by one or more
parties to the detriment, loss

or injury of the other party or parties, or otherwise, known as maritime fraud;

"transports" includes handing over of goods to an authority or other third party to whom, pursuant to applicable laws or regulations the goods are handed over for shipment or discharge;

"vessel" includes seaplanes and every description of watercraft capable of being used as a means of transportation by water.

PART II OFFENCES

- | | |
|--|---|
| Forgery of international trade instruments | 5. Any person who:- (a) fraudulently and with the knowledge forges, alters, or uses any International Trade Instrument used for a contract of carriage by sea or presents the same to another person knowing it to be false, forged or |
|--|---|

stolen or unlawfully procured; or

- (b) with the knowledge and by means of any false representation and with intent to defraud the Federal Government or the Government of any State promises the delivery or payment to himself or any other person of any goods or money by virtue of any forged International Trade Instrument whether in Nigeria or elsewhere,

shall be guilty of an offence under this Act and shall be liable on conviction to a term of imprisonment not exceeding ten years.

Offences in relation to non-existent goods, short landing of goods

6. (1) Any person, in any contract of carriage by sea, who, fraudulently and with the knowledge, transports rubbish in place of goods specified in the contract, or purports to have transported goods which are not in existence or purports to have transported goods on a

non-existent ship, shall be guilty of an offence under this Act and shall be liable on conviction to a term of imprisonment not exceeding ten years.

(2) Any person, who fraudulently and with the knowledge loads, or discharges a quantity of goods which does not conform with the amount or quantity specified in the contract of sale or carriage of the said goods, shall be guilty of an offence under this Act and shall be liable on conviction to a term of imprisonment not exceeding five years, with an option of fine five times the amount of loss or damage sustained by the defrauded person.

Offences in
relation to marine
insurance

7. (1) Any person, with the intent to obtain for himself or for any other person, the payment of money due under any insurance against risks, with respect to a marine adventure, or for any undue benefit:-

(a) misrepresents or mistates by any means whatsoever a thing belonging to him or to any other person;

(b) scuttles, destroys or disperses a thing belonging to him or to any other person,

shall be guilty of an offence under this Act and shall be liable on conviction to a term of imprisonment not exceeding two years with or without an option of fine not exceeding the sum of fifty thousand naira.

Offences in
relation to
barratry

8. (1) Any person entrusted with the command, use or custody of any vessel who:-

(a) wilfully and intentionally abandons, damages the vessel, or causes the vessel to sink; or

(b) wilfully and intentionally steals or damages any goods or other things which are on the vessel;

- (c) fraudulently sells or otherwise disposes of the vessel against the will and prejudice of the owner; or
- (d) fraudulently connives with any other person to issue any false receipts, or misrepresents any services rendered to the vessel, or for purposes of operation of the vessel; or
- (e) fraudulently connives with any other person to misrepresent the nature or quality of goods in his custody by receiving a letter of indemnity in a contract of carriage by sea,

shall be guilty of an offence under this Act and shall be liable on conviction to penalties provided in subsection 2 of this section.

(2) The penalties for offences under subsection (1) of this section shall:-

- (a) in respect of an offence under paragraph (a), (b) and (c) thereof a

term of imprisonment not exceeding five years with or without an option of fine not exceeding the sum of ten thousand naira;

(b) in respect of an offence under paragraphs (d) and (e) thereof a term of imprisonment not exceeding two years with an option of fine not exceeding the sum of five thousand naira.

(3) It is immaterial that the said offender under this section is a part owner of the goods or vessel.

Laundering of funds obtained through unlawful activity

9. (1) Any person, having knowledge that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of a specified unlawful activity:-

(a) with the intent to promote the carrying on of a specified unlawful activity; or

(b) with the knowledge that the transaction is designed in whole or in part:-

(i) to conceal or disguise the nature, the location, the source, the ownership or the control of the proceeds of a specified unlawful activity; or

(ii) to avoid a lawful transaction under Nigerian law,

shall be guilty of an offence under this Act.

(2) Any person guilty of an offence under subsection (1) of this section shall be liable on conviction:-

(a) in case of a financial institution or corporate body, to a fine of one million naira; or

(b) in the case of a director, secretary or other functionary of the financial institution or corporate body, to imprisonment for a term not exceeding fifteen years.

(3) Where any person transports or attempts to transport a monetary instrument or funds from a place in Nigeria to or through a place outside Nigeria or to a place in Nigeria from or through a place outside Nigeria:

(a) with the intent to promote the carrying of a specified unlawful activity; or

(b) with the knowledge that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part:

(i) to conceal or disguise the

nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity;

(ii) to avoid a lawful transaction under Nigerian law,

shall be guilty of an offence under this Act and liable on conviction to a fine of one million naira or twice the value of the monetary instrument involved in the transportation, whichever is greater, or to imprisonment for a term not exceeding fifteen years or to both such fine and imprisonment.

Offences in relation to piracy

10. (1) Any person, who commits any illegal act of violence or detention or any act of depredation for private ends against a private ship or aircraft and directed:- (a) on the high seas against another ship or aircraft, or against persons or property on board such ship or aircraft;

(b) against a ship, aircraft, persons or property in the Nigerian internal waters, territorial seas and exclusive economic zone, shall be guilty of an offence under this Act.

(2) Any person who:

(a) voluntarily participates in the operation of a ship or an aircraft with the knowledge of facts making it a pirate ship or aircraft; or

(b) invites or intentionally facilitates an act described in subsection (1) of section 10,

shall be guilty of an offence under this Act and shall be liable on conviction to penalties provided in subsection 3.

(3) In respect of:

(a) an offence under subsections (1) and (2) (a) thereof a term of imprisonment not exceeding fifteen

years;

(b) an offence under subsection 2(b) a term of imprisonment not exceeding ten years.

(4) Any pirate ship or vessel used for the commission of the offences under subsections (1) and (2) of this section shall be liable to forfeiture to the Government of the Federal Republic of Nigeria.

MISCELLANEOUS

Attempts and
conspiracy

11. (1) Where any person is charged with any of the offences under this Act and the evidence establishes an attempt or conspiracy to commit the offence, he may be convicted of having attempted or having conspired to commit that offence although the attempt or conspiracy is not separately charged and such a person shall be punished as prescribed for the

offence under this Act.

(2) Where a person is charged with an attempt or conspiracy to commit an offence under this Act, but the evidence establishes the commission of the full offence, the offender shall not be entitled to acquittal but shall be convicted of the offence and punished as provided under this Act.

Offences by
by bodies
corporate

12. (1) Where an offence under this Act has been committed by a body corporate, is proved to have been committed on the instigation or with the connivance of or attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate where practicable, shall be deemed to be guilty of that

offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate is convicted of an offence under this Act, the Tribunal may order that the body corporate shall thereupon and without any further assurance, but for such Order be wound up and all its assets and property may be forfeited to the Federal Government of Nigeria.

Duties of a carrier

13. (1) It shall be the duty of every carrier to take reasonable precautions to:-

(a) ensure that its means of transport are not used in the commission of offences under this Act;

(b) ensure that it does not connive with any persons in the commission of

offences under this Act;

- (c) to comply with appropriate security measures and all regulations in force at points of entry and exist in Nigerian ports and coastal waters to prevent unauthorised and illegal acts.

(2) Such precautions as are referred to in subsection (1) of this section shall include the promotion of integrity of their personnel.

(3) Any carrier which violates the provisions of subsection (1) of this section shall, in addition to any other penalty provided in any other Act or enactment, be guilty of an offence.

(4) Where an offence under subsection (3) of this section is committed by a body corporate, every person who at the

time of the commission of the offence was a proprietor, director, general manager, secretary or other similar officer, servant or agent of the body corporate (or a person purporting to act in any such capacity) he, as well as the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and liable on conviction to a fine not exceeding one million naira.

PART III: SUPPLEMENTARY

Enforcement
against foreign
vessels

14. Where a foreign vessel is used to commit an offence in violation of any provisions of this Act, the flag state of the vessel shall be notified of the institution of proceedings against such vessel through its diplomatic agents or consular officers or any other appropriate channel.

Power to award
damages

15. (1) Where any person has sustained any loss or damage or injury in relation to an offence under this Act, and on application to the Attorney General of the Federation, such person or persons may be joined as a party to the proceedings.

(2) The Tribunal may at the conclusion of trial, wherever it deemed appropriate, assess the amount of loss, damage or injury sustained by any party to the proceedings and award damages accordingly.

(3) Where the circumstances so warrant after the conclusion of a case before the Tribunal, the Attorney General of the Federation may grant leave to any person who has suffered or sustained any loss, damage or injury in relation to the said

case, to file an application before the Tribunal for the purpose of assessment of damages for loss, damage or injury sustained and accordingly make an appropriate award.

(4) Such application as filed in accordance with subsection (3) of section 15 may be allowed in exceptional circumstances where the Tribunal deems it appropriate, and where necessary based on the findings of the Tribunal an award shall be made in accordance with the provisions of this Act and other relevant enactments in force.

(5) The provisions of the foregoing subsections are without prejudice to the rights of a shipowner, carrier, their servants and agents to limit their liability in accordance with any Act or enactment in force.

Prosecutions, rules 16. (1) The rules of procedure to be of procedure etc. adopted in prosecutions for offences under this Act before a Tribunal and the forms to be used in such proceedings shall be as set out in the schedule to this Act.

(2) Prosecutions for offences under this Act shall be instituted before the Tribunal in the name of the Federal Republic of Nigeria and where necessary any other person may be joined as a party by the Attorney General of the Federation or such officer in the Federal Ministry of Justice as he may authorise so to do, and in addition, he may:-

(a) after consultation with the Attorney General of any State in the Federation, authorise the Attorney General or any officer in the Ministry of Justice of that State to undertake any such prosecution directly or assist therein;

(b) if a Tribunal so directs or if contingencies so dictate, authorise any other legal practitioner in Nigeria to undertake any such prosecution directly or assist therein,

the question whether any or what authority has been given in pursuance of this subsection shall not be inquired into by any person other than the Attorney General of the Federation.

(3) Any person accused of an offence under this Act shall be entitled to defend himself in person or by a person of his own choice who is a legal practitioner resident in Nigeria.

(4) Where the rules of procedure contained in the schedule to this Act contain no provisions in respect of any matter relating to or connected with the

trial of offences under this Act, the provisions of the Unified Civil Procedure Act, the Criminal Procedure Code or, depending on the venue, the Criminal Procedure Act, with such modifications as the circumstances may require, apply, in respect of such matter to the same extent as they apply generally to the assessment and award of damages and the trial of offences respectively.

Powers of arrest,
issue of warrant
etc.

17. (1) Whoever, commits an offence under this Act shall be arrested without a warrant by a police officer or any member of the armed forces, as the case may be.

(2) Notwithstanding the provisions of any other enactment conferring power to search, if the Chairman of the Tribunal is satisfied that there is reasonable ground to suspect that there may be found in any place whatsoever any evidence or information whatsoever which, in his

opinion are or may be material to the subject-matter of any trial under this Act, he may issue a warrant under his hand authorising any police officer or any member of the armed forces or any of the security agencies to enter, if necessary by force, any such place and every part thereof, and to seize and remove any such thing as found therein.

PART III - SUPPLEMENTARY

Exclusion of civil
proceedings

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

(2) In the exercise of its jurisdiction

under this Act or any other Act or enactment, the Tribunal shall not be subject to any order of certiorari, mandamus or prohibition of any High Court or any other court order.

(3) The provisions of subsection (2) of this section, shall apply notwithstanding the provisions of any other enactment or law including any inherent power of any High Court or any other Court whatsoever.

Pending
proceedings etc.

19. (1) Any part heard proceedings pending before any court on the date of the making of this Act shall be continued and completed as if the provisions of this Act had not been made.

(2) Any person who on or at any time after 1st April 1992 was arrested, detained or charged with an offence under any other enactment amounting to an offence under this Act shall be liable to

be tried and convicted in accordance with the relevant provisions of this Act or any other enactment as the case may be.

(3) Any person who has been tried and convicted or acquitted for an offence charged under any other enactment shall not be tried a second time for the same offence.

Application

20. This Act shall apply to all parts of the Federation of Nigeria, including its internal waters, territorial seas, exclusive economic zone and continental shelf, and to any other persons or vessels on the seas as determined by treaties entered into by Nigeria or customary international law.

Citation

21. This Act may be cited as the Special Tribunal [Maritime Offences] Act 1992.

SCHEDULE**MARITIME OFFENCES TRIBUNAL RULES OF PROCEDURE****Commencement and Conduct of Trial**

- | | | |
|-------------------------------|----|---|
| Institution of proceedings | 1. | The trial of offences under this Act shall commence by way of an application, supported by evidence on affidavit, made to the Tribunal by the prosecutor. |
| Order on an accused to appear | 2. | Where after perusal of the application and the evidence on affidavit or any further evidence in such form as the Tribunal may consider necessary, the Tribunal is satisfied that any person appears to have committed any offence under this Act it shall cause that person to be brought before the Tribunal on such date and at such time as it may direct. |
| Commencement of trial | 3. | (1) When the Tribunal is ready to commence the trial the accused shall be brought before it and the Tribunal |

shall read or cause to be read to him the substance of the complaint against him and he shall be asked whether he is guilty of the offence or offences charged.

(2) If the accused pleads guilty the plea shall be recorded and he may in the discretion of the Tribunal be convicted thereon.

Plea of not guilty or no plea 4. If the accused pleads not guilty or makes no plea or refuses to plead the Tribunal shall proceed to try the case.

Presentation of case for prosecution 5. (1) After a plea of not guilty has been taken or no plea has been made the prosecutor may open the case against the accused, stating briefly by what evidence he intends to prove the guilt of the accused.

(2) The prosecutor shall then examine

the witnesses for the prosecution who may be cross-examined by the accused or his counsel and may thereafter be re-examined by the prosecutor.

Procedure after
presentation of
evidence by the
prosecution

6. (1) After the conclusion of the presentation of evidence by the prosecutor the Tribunal shall ask the accused -

(a) whether he wishes to give evidence on his own behalf; and

(b) whether he intends to call witnesses other than witnesses to character.

(2) If the accused says that he does not intend to call any witnesses other than witness to character, the prosecutor may sum up his case against the accused and the Tribunal shall then call upon the accused to enter upon the defence.

(3) Notwithstanding the provisions of subparagraph (2) of this rule, the Tribunal may, after hearing the evidence for the prosecution, if it considers that the evidence against the accused or any of several accused is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of such accused without calling upon him or them to enter upon the defence and such accused shall thereupon be discharged and acquitted and the Tribunal shall then call upon the remaining accused, if any, to enter upon the defence.

(4) If the accused or any one of several accused says that he intends to call any witness other than a witness to character, the Tribunal shall call upon the accused to enter upon the defence.

(5) Notwithstanding the provisions of paragraph (4) of this rule, the Tribunal may, before calling upon the accused to enter upon the defence, call upon the prosecutor to sum up his case against any one or more of the accused against whom it considers that the evidence is not sufficient to justify the continuation of the trial and, after hearing the summing up, if any, may in its discretion record a finding of not guilty in respect of any such accused or call upon any of them to enter upon his or their defence.

Defence

7. When the Tribunal calls upon the accused to enter upon the defence the accused or his counsel may open his case stating the facts or law on which he intends to rely and making such comments as he thinks necessary on the evidence for the prosecution, and the accused may then give evidence on his own behalf, examine

his witnesses, if any, and, after their cross-examination and re-examination, if any, the accused or his counsel may sum up his case.

Right of prosecutor 8.
to reply

(1) If the accused or any of the accused calls any witness other than to character or any document other than a document relating to character is put in evidence for the defence the prosecutor shall be entitled to reply.

(2) If the accused has called only evidence to character, the prosecutor may at the close of the case for the defence adduce evidence of previous convictions of the accused, if any.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this rule, in any case, with the leave of the Tribunal, the prosecutor may be heard in reply on a point of law or, where none of the

accused has adduced evidence other than to character but any of them has introduced new matter in his statement to the Tribunal, on such new matter.

Consideration of findings 9. (1) When the case for the defence and the prosecutor if any, are concluded and the Tribunal does not desire to put any further question to the accused, the Tribunal shall retire or adjourn to consider its finding.

Announcement of finding 10. (1) After the Tribunal has made its finding the Chairman shall announce that finding and, where the accused is found guilty, it shall impose the appropriate penalty prescribed by this Act or any other enactment in accordance with section 2 of this Act and issue a committal warrant accordingly.

(2) Where the Tribunal finds it

appropriate to award damages to any party to the proceedings, it shall announce such findings stating the amount of such damages or otherwise.

Notes and evidence to be taken 11. (1) The Chairman of the Tribunal shall in every case take notes in writing of the oral evidence or so much thereof as he considers is material in a book to be kept for that purpose and such book shall be signed by the Chairman and by two other members of the Tribunal.

(2) The records so kept as aforesaid or a copy thereof purporting to be signed and certified as a true copy by the Chairman shall, without further proof, be admitted as evidence of such proceedings and of the statements made by the witnesses.

Supplemental

Issue of summons for witness 12. If the Tribunal is satisfied that any person is likely to give material evidence for the prosecution or for the defence, the Tribunal may issue a summons to such person requiring him to attend, at a time and place to be mentioned therein, before the Tribunal to give evidence respecting the case and to bring with him any specified documents or things and any other documents or things relating thereto which may be in his possession or power or under his control.

Warrant for witness after summons 13. If the person to whom any such summons is directed does not attend before the Tribunal at the time and place mentioned therein, and there does not appear to the Tribunal on inquiry to be any reasonable excuse for such non-attendance, then after proof to the satisfaction of the Tribunal that the summons was duly served

or that person to whom the summons is directed wilfully avoids service, the Tribunal, on being satisfied that such person is likely to give material evidence, may issue a warrant to apprehend him and to bring him, at the time and place to be mentioned in the warrant, before the Tribunal in order to testify as aforesaid.

Local inspection 14. It shall be the duty of the Tribunal to make or cause to be made such local inspection as the circumstances of the case may require.

Forms 15. Subject to the express provisions, if any, of these rules, the forms contained in the Annex hereunder may, in accordance with any instruction contained in the said forms and with such variations as the circumstances of the particular case may require be used in the cases to which they apply, and, when so used, shall be

good and sufficient in law.

- | | |
|--------------------|---|
| Application of | 16. Where these rules contain no |
| Criminal Procedure | provision |
| Code or Act | in respect of any matter relating to or |
| and Unified Civil | connected with the trial of offences |
| Procedure Act | under this Act the provisions of |
| | the |
| | Criminal Procedure Code or, depending on |
| | the venue, the Criminal Procedure Act and |
| | the Unified Civil Procedure Act, shall, |
| | with such modifications as the |
| | circumstances may require, apply, in |
| | respect to such matter to the same extent |
| | as they apply generally to the trial of |
| | offences, proof, assessment and award of |
| | damages. |
| Interpretation | 17. In these rules "the prosecutor" means the |
| | Attorney General of the Federation or any |
| | person authorised by him pursuant to |
| | section 16 of this Act. |

Dated this Day of 1992

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Signed

ANNEX

FORMS

FORM No. I

APPLICATION TO COMMENCE TRIAL OF AN OFFENCE UNDER THE
SPECIAL TRIBUNAL (MARITIME OFFENCES) ACT 1992

To: The Chairman,
Maritime Offences Tribunal

Between

(1) The Federal Republic of Nigeria
(2)
and

_____ Accused

Pursuant to section 16(2) of the Special Tribunal (Maritime Offences) ACT 1992 I hereby apply for the commencement of a trial for the offence of

(i)

_____ under section
_____ of the Special
Tribunal (Maritime Offences) Act 1992 against the undermentioned
person:-

(ii)

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

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

Prosecutor

- (i) Insert the offence
- (ii) Insert the name of accused

FORM No. 2

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT

SUMMONS TO ACCUSED

In the Tribunal for the trial of offences under the Special
Tribunal (Maritime Offences) ACT 1992

BETWEEN

- (1) The Federal Republic of Nigeria
- (2)
- and

_____ Accused

To A.B. of
Complaint has been made this day by
_____ for that you on the
_____ day of _____ at
in the _____ did

You are, therefore, summoned to appear before the Tribunal
mentioned above sitting at
on _____ to answer the said
complaint.

DATED the _____ day of _____ 19

Chairman of the Tribunal

FORM NO. 3

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT 1992

WARRANT FOR APPREHENSION OF ACCUSED

In the Maritime Offences Tribunal

between

- (1) The Federal Republic of Nigeria
- (2)
- and

_____ Accused.

To _____ Public Officer

Complaint has been made on _____ of

_____ by

that _____ hereinafter called the

accused, on the _____ day of

_____ did

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

DATED the _____ day of _____ 19

Chairman of the Tribunal

State concisely the substance of the offence

FORM No. 4

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT 1992

SUMMONS TO WITNESS

In the Maritime Offences Tribunal
Between

- (1) The Federal Republic of Nigeria.
- (2)

and

_____ Accused.

To (i)

(ii)

has been charged by (iii)

at _____ in

that he did (iv)

and it appearing to me on the application of

(iii)

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

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

DATED the _____ day of _____ 19

Chairman of the Tribunal

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

FORM No. 5

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT 1992

WARRANT FOR APPREHENSION OF WITNESS IN THE FIRST INSTANCE

In the Maritime Offences Tribunal

Between

(1) The Federal Republic of Nigeria

(2)

and

_____ Accused
To

A.B. has been charged by
for that he on the
day of _____ at
in the _____ State
did

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

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

DATED the _____ day of _____ 19

Chairman of the Tribunal

FORM No. 6

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT 1992

WARRANT FOR APPREHENSION OF A WITNESS

In the Maritime Offences Tribunal
Between
(1) the Federal Republic of Nigeria
(2)

and

_____ Accused

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

(i) _____ was duly summoned to
appear before the Tribunal named above sitting at
_____ on _____ at the
hour of _____ in the
noon, to testify what he knows concerning a certain
complaint against

And he has neither appeared thereto, not offered any
just excuse for his neglect.

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

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

DATED the _____ day of _____ 19

Chairman of the Tribunal

FORM No. 7

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT 1992

WARRANT FOR COMMITMENT OF WITNESS

In the Maritime Offences Tribunal

Between

(1) The Federal Republic of Nigeria

(2)

and

_____ Accused

To _____ and to the

Superintendent of _____ prison

(i) _____ having

appeared or been brought before the Tribunal named above sitting at

on the day _____ 19 _____ to testify what

he knows concerning certain matter against (ii)

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

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

DATED the _____ day of _____ 19

Chairman of the Tribunal

- (i) Insert name of witness
- (ii) Insert name of accused

FORM No. 8

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT 1992

COMMITMENT ON REMAND

In the Maritime Offences Tribunal
Between
(1) The Federal Republic of Nigeria
(2)

and

_____ Accused.

To _____ Officer-in-Charge of
_____ Police Station and the
Superintendent of _____ prison.

(i) _____ hereinafter called the
accused being brought before the Tribunal named above sitting at
_____ charged with having

(ii)

The hearing of the case being adjourned:

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

DATED the _____ day of _____ 19

Chairman of the Tribunal

- (i) Insert name of accused
- (ii) State the offence or offences.
 - * Delete whichever does not apply.

FORM NO. 9

SPECIAL TRIBUNAL (MARITIME OFFENCES)
ACT 1992

In the Maritime Offences of Tribunal

WARRANT OF CONVICTION

Between

(1) The Federal Republic of Nigeria

(2)

and

_____ Accused.

(i) _____ having appeared

before the Tribunal named above sitting at

_____ is this day convicted for that he,

on the _____ day of

19 _____, at _____ within the

_____ did

(ii)

And it is adjudged that the accused, for his said offence be
sentenced to (iii) _____ and

the accused shall until the conviction be kept in custody at

(iv)

DATED the _____ day of _____ 19

Chairman of the Tribunal

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

FORM NO. 10

SPECIAL TRIBUNAL (MARITIME OFFENCES)

ACT 1992

In the Maritime Offences Tribunal

APPLICATION FOR ASSESSMENT OF DAMAGES

BETWEEN

(1) The Federal Republic of Nigeria

(2)

and

Defendant

(i) _____ having appeared before the Tribunal named above and convicted of the offence of _____ on the _____ day of _____ of 19____.

(ii) _____ pursuant to s. 15(3) of the Special Tribunal (Maritime Offences) Act 1992 hereby, apply for an assessment of damage, loss or injury suffered with respect to the said matter concluded before the Tribunal.

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

- (i) insert name of the Defendant
- (ii) insert name of Applicant

EXPLANATORY NOTE

[This note does not form part of the above Act but is intended to explain its purpose]

1. The purpose of this Act is to create a maritime offences tribunal and simultaneously create offences in order to reduce and control the wave of maritime fraud, to prevent acts of piracy on Nigerian waters and the high seas by punishing offenders. To this end, it has prescribed stiff penalties.

This Act further gives the tribunal jurisdiction to try maritime offences in relation to unseaworthiness of vessels, breach of collision regulations and offences in relation to marine pollution as provided in their respective enactments.

2. This Act also intends to overcome the historical classification of civil and criminal proceedings which is no longer consistent with the ideas that govern the modern world.

An overlap now exists between the idea of a crime and that of a mere breach of civil obligation. This overlap can no longer be ignored in the international forum especially in

international trade transactions where the sea is the lifeblood of trade.

This Act intends to create a flexible means of administration of justice which would be appropriate for both punishment and compensation. This has the advantage of reducing the number of litigations and meets economic crimes with economic measures.

3. Changes have occurred all over the world in the maritime sector. With the expansion of maritime zones by coastal States, new duties and responsibilities have emerged and coastal States now owe the international community a duty not only to control and prevent marine pollution, but also to enforce laws against further damage caused to the marine environment by pollution, and prevention of casualties at sea caused by collisions and unseaworthiness of vessels.

With respect to these new obligations, this Act intends to enforce multilateral treaties entered into by Nigeria, which have become generally accepted by the international community.

4. The offence of piracy is specifically covered because the

world community and rules of international law recognise piracy as a universal offence, hence, the Act covers piracy on the high seas.

5. In relation to maritime fraud, this Act has created new offences, expanded and modified existing ones to prevent and control modern day crimes. It has expanded the meaning of documents with respect to forgery to include instruments used for modern day electronic and mechanical means of information transfer and data storage. This Act provides for the offences of attempt and conspiracy and makes them punishable. It also places a duty on carriers to ensure compliance with provisions of this Act and other laws and regulations in force. It further creates an offence for the laundering of funds obtained through unlawful activity.

6. Any person who has suffered or sustained damage or loss as a result of the commission of an offence under this Act, is entitled to apply to the Attorney General of Federation and may be joined as a party to the proceedings. This has the advantage of facilitation of proof of cases and also provides

compensation for the victims. It also reduces cost of litigation by the exclusion of civil proceeding.

In relation to enforcement against foreign vessels the Act provides for notification of the flag state of the vessel.

7. The Act further lays down a detailed procedure to be followed during trial and provides special forms for use by the tribunal.
8. The offence of armed robbery is not included in this Act because armed robbery on the seas is covered by the Armed Robbery and Firearms Tribunal.
9. This Act also envisages a situation where a person has a right of action against an accused person but due to extraneous circumstances beyond his control could not, or was not aware of the case against the accused prior to conviction. Where a cause lies in civil action and is still within the statutory limitation of time, then an application could be brought to the Tribunal through the Attorney General of the Federation to assess the loss or injury suffered by that person, and make an appropriate award.

10. Finally, maritime offences being international in nature, it is essential that Nigeria conforms appreciably with rules of international law and multilateral treaties entered into by Nigeria in prescribing penalties for contravention.