



SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Tuesday, 26th September, 2006

1. The Senate met at 10:15 a.m. The Senate President read Prayers.
2. **Votes and Proceedings:**
The Senate President announced that he had examined the Votes and Proceedings of Thursday, 21st September, 2006 and approved same.

By unanimous consent, the Votes and Proceedings were adopted.

3. **Announcement:**
Letter of Appreciation:
The Senate President read a letter from the Minister of Foreign Affairs as follows:



MINISTER OF FOREIGN AFFAIRS
NIGERIA

23rd September, 2006

Senator Ken Nnamani, President, Senate of the Federal Republic of Nigeria, National Assembly Complex, Abuja.

Sir,

APPRECIATION

I write to express my sincere thanks and appreciation to you and through you, to the Distinguished Members of the Senate of the Federal Republic of Nigeria, for the kind support and generous assistance extended to me during the recent screening exercise for my appointment as Foreign Minister of our great country.

I am particularly grateful for the cordial interactive session which took place on the occasion as well as for the questions posed and the issues raised in our discussions. The Session indeed provided an excellent opportunity for us to exchange views on a variety of issues including on the current trends and

dynamics in international relations with special emphasis on the challenges facing Nigeria as a global and continental player. I have no doubt that the benefits of our discussions will come in handy as we continue in our respective roles, in the months ahead, to positively influence and enrich the course and content of our Nation's foreign policy.

I look forward to maintaining a productive and mutually beneficial relationship with the Senate to ensure that the dialogue and consultation that we have commenced is sustained and reinforced.

Please accept. Distinguished Senate President, the assurance of my highest esteem and consideration.

Yours sincerely,

*Signed: V. Joy
Ogwu, OFR
Minister of Foreign Affairs*

(ii) The Senate President announced that there would be a Presidential Forum on Census 2006 on Thursday, 5th October, 2006 at the Banquet Hall, Presidential Villa by 11:00 a. m.

(iii) The Senate President acknowledged the presence, in the gallery, of members of Egor Local Government Legislative Council, Uselu, Benin-City, Edo State to observe Senate proceedings.

4. Closed Session:

Motion made and Question Proposed: That the Senate do resolve into a Closed Session to deliberate on issues relevant to the workings of the Senate (*Senate Majority Leader*).

Question put and agreed to.

Senate in Closed Session: — 10: 35 a. m.

Senate in Open Session — 11. 10 a.m.

The Senate President reported that the Senate in Closed Session deliberated on issues related to its Standing Rules and how to remain focused.

5. Matter of Urgent Public Importance:

The Death of Margaret Ekpo:

Rising on Rules 42 and 52, Senator Joy Emodi invited the attention of the Senate to the death of Chief (Mrs.) Margaret Ekpo, on Thursday, 21st September, 2006. She sought and obtained the leave of the Senate for the matter to be deliberated as a Matter of Urgent Public Importance forthwith.

Motion made and Question Proposed: That whereas in the afternoon of Thursday 21st September, the sun set for a foremost woman activist and the last of the female nationalists that fought for the Independence of this country, the Rt. Honourable Chief Mrs Margaret Ekpo OON, CFR. Her death marked the end of a great and remarkable life, full of accomplishments and shining example for the great women of Nigeria.

WHEREAS Margaret Ekpo was thrust into politics by chance. In 1945 her husband, late Dr Ekpo had taken exception to the discriminatory practices of the Colonial Administrators of the Aba General Hospital. But he was a civil servant, and so Dr. Ekpo could not attend the meetings organized by Nigerians to protest against these policies. He sent his wife instead. She was only too happy to be her husband's ears and eyes at these meetings. Soon afterwards she attended a rally at Aba organized by the NCNC. After listening to fiery speeches by Herbert Macaulay, Dr. Mnaradi Azikiwe and Mazi Mbonu Ojike (of boycott the boycott tables fame) urging Nigerians to claim their Independence from Britain, the fire of political activism was ignited in Margaret Ekpo.

WHEREAS Margaret together with Mrs Flora Azikiwe founded the women wing of NCNC. After reading about Mrs Fumilayo Ransome Kuti and her activism, an intrigued Margaret Ekpo traveled from Aba to Abeokuta to hold discussions with her about the need to encourage Nigerian women to participate in the political process. As a result of this move, Mrs Ransom Kuti accepted Mrs Ekpo's invitation to tour the South Eastern Region. They spent one month meeting with various women's groups to awaken political consciousness. Later that year, 1954 Margaret Ekpo was nominated as a special member of the Eastern

House of Chiefs in Enugu to represent the women. It was indeed a controversial but spectacular appointment, initiated by Sir Louis Ojukwu who was impressed with Margaret Ekpo's attendance at the proceedings of the House. She was often seen in the public, gallery with members of her Aba Women Association.

WHEREAS while Margaret Ekpo was in the House of Chiefs as a nominated member, she was selected as one of the delegates to the constitutional conference held in Lancaster House, London in 1958. **While** attending this conference Mrs Ekpo extracted a promise from late Dr. Nnamdi Azikiwe that the NCNC government will amend the constitution to introduce Universal Adult Suffrage, so that women would be entitled to vote and be voted for if they win the election. This promise emboldened and encouraged Mrs Ekpo and the NCNC women to campaign vigorously for the party candidates who were all men. The party won the election in 1959 and Dr. Nnamdi Azikiwe kept his promise. Our presence today as women Senators of the Federal Republic of Nigeria is part of the dividends of that spectacular accomplishment.

WHEREAS in 1962, Mrs Ekpo was nominated to contest the election into the Eastern House of Assembly, representing the Aba Urban North Constituency. She faced seven men in that election, including Barrister Anyiam Osigwe, and defeated them convincingly thus becoming the first woman to be elected to the Eastern House of Assembly. She was an Honourable Member of the Eastern House of Assembly up to 1967 when the civil war broke out, with many motions and bills standing in her credit. She served Nigeria meritoriously in several other respects and assignments. She represented Nigeria in the Inter Parliamentary Union Conference of 1964, World Women's International Domestic Federation Conference in 1963. She was a delegate to all the constitutional conferences leading to Independence.

WHEREAS the activist in Mrs Ekpo founded expression in a number of occasions. One of the most outstanding was in 1950, when a prison officer Mrs Onyia was murdered by a colleague, ostensibly for rejecting his love advances. The murder was covered up by the authorities to avoid controversy. Mrs Ekpo mobilized the Aba women who stormed Enugu prison demanding to see where Mrs Onyia was buried. When they were rebuffed by the white superintendent of prisons, the women sent word to him that if in 10 minutes they were not allowed in, they would break the prison gates and enter forcibly. The threat worked. They were not only allowed in, their request that the body be exhumed and an autopsy done was also acceded to. The murderer was immediately arrested and the case taken to the High Court, where Mrs Onyia's skull with 6 inch nail lodged in it was presented as evidence. Mrs Ekpo followed the matter to the end. The case was decided and the warder executed.

WHEREAS Mrs Ekpo was humiliated and imprisoned severally in the pursuit of common good and for the courses she believed in.

In appreciation therefore of Mrs Margaret Ekpo's contributions to Nation building she was decorated with two national honour; OON and CFR. Her distinguished name graces the Calabar International Airport just as a refectory at the prestigious University of Nigeria was named after her. Today this icon is no more. She has passed on after a good fight and a completed race. It is therefore with Glory to God at this time that I move this distinguished senate as follows:

Be it resolved: That
the Senate do

(i) send a letter of condolence to the President, Commander-in-Chief of the Armed Forces of the
Federal Republic of Nigeria.

(ii) send a delegation to visit and condole her family, the Governor and people of Cross River State. (iii)

observe a minute silence in honour of Rt. Honourable Chief Mrs Margaret Ekpo; OON, CFR. *Debate:*

Prayer (i):

Question: That the Senate do send a letter of condolence to the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria — *Agreed to.*

Prayer (ii):

Question: That the Senate do send a delegation to visit and condole her family, the Governor and people of Cross River State — *Agreed to.*

Prayer (iii):

Question: That the Senate do observe a minute silence in honour of Chief Mrs Margaret Ekpo —*Agreed to.*

Resolved:

(i) That the Senate do send a letter of condolence to the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.

(ii) That the Senate do send a delegation to visit and condole her family, the Governor and people of Cross River State.

(iii) That the Senate do observe a minute silence in honour of Rt. Honourable Chief Mrs Margaret Ekpo; OON, CFR (*S. Res/062/06*).

One minute in silence accordingly observed.

6. Presentation of Bills:

(i) Federal Capital Territory College of Education (Establishment, etc.) Bill 2006 (SB. 319) —*Read the First Time.*

(ii) Federal Capital Territory Agency for Mass Education (Establishment, etc.) Bill 2006 (SB. 322) —*Read the First Time.*

(iii) Federal Capital Territory Education Resource Centre Bill 2006 (SB. 325) —*Read the First Time.*

7. Committee on Judiciary, Human Rights and Legal Matters:

Report on Executive Communication:

Motion made Question Proposed: That the Senate do receive and consider the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the procedure to be adopted in dealing with the Report of the Administrative Panel of inquiry on the Economic and Financial Crimes Commission (EFCC) Investigation Report on some Public Officers (*Senator Oserheimen A. Osunbor*).

Question put and agreed to.

Report presented and Laid.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Majority Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

Consideration of the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the procedure to be adopted in dealing with the Report of the Administrative Panel of inquiry on the Economic and Financial Crimes Commission (EFCC) Investigation Report on some Public Officers.

Debate:

Committee's Recommendations:

(i) That the Senate notes the information as communicated by Mr President (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

(ii) That the Senate may wish to, in accordance with Senate Standing Rules and pursuant to Section 88 of the Constitution of the Federal Republic of Nigeria through a Committee, cause an investigation into the Petroleum Technology Development Fund (PTDF) and other related matters or organisations (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Resolved:

(i) That the Senate notes the information as communicated by Mr President.

House of Chiefs in Enugu to represent the women. It was indeed a controversial but spectacular appointment, initiated by Sir Louis Ojukwu who was impressed with Margaret Ekpo's attendance at the proceedings of the House. She was often seen in the public gallery with members of her Aba Women Association.

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WHEREAS the activist in Mrs Ekpo founded expression in a number of occasions. One of the most outstanding was in 1950, when a prison officer Mrs Onyia was murdered by a colleague, ostensibly for rejecting his love advances. The murder was covered up by the authorities to avoid controversy. Mrs Ekpo mobilized the Aba women who stormed Enugu prison demanding to see where Mrs Onyia was buried. When they were rebuffed by the white superintendent of prisons, the women sent word to him that if in 10 minutes they were not allowed in, they would break the prison gates and enter forcibly. The threat worked. They were not only allowed in, their request that the body be exhumed and an autopsy done was also acceded to. The murderer was immediately arrested and the case taken to the High Court, where Mrs Onyia's skull with 6 inch nail lodged in it was presented as evidence. Mrs Ekpo followed the matter to the end. The case was decided and the warder executed.

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observe a minute silence in honour of Rt. Honourable Chief Mrs Margaret Ekpo; OON, CFR. *Debate:*

Prayer (i);

Question: That the Senate do send a letter of condolence to the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria — *Agreed to.*

Prayer (ii);

Question: That the Senate do send a delegation to visit and condole her family, the Governor and people of Cross River State — *Agreed to.*

Prayer (iii):

Question: That the Senate do observe a minute silence in honour of Chief Mrs Margaret Ekpo —*Agreed to.*

Resolved:

- (i) That **the** Senate do send a letter of condolence to the President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.
- (ii) That the Senate do send a delegation to visit and condole her family, the Governor and people of Cross River State.
- (iii) That the Senate do observe a minute silence in honour of Rt. Honourable Chief Mrs Margaret Ekpo; OON, CFR (*S. Res/062/06*).

One minute in silence accordingly observed.

6. Presentation of Bills:

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7. Committee on Judiciary, Human Rights and Legal Matters:

Report on Executive Communication:

Motion made Question Proposed: That the Senate do receive and consider the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the procedure to be adopted in dealing with the Report of the Administrative Panel of inquiry on the Economic and Financial Crimes Commission (EFCC) Investigation Report on some Public Officers (*Senator Oserheimen A. Osunbor*).

Question put and agreed to.

Report presented and Laid.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Majority Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

Consideration of the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the procedure to be adopted **in** dealing with the Report of the Administrative Panel of inquiry on the Economic and Financial Crimes Commission (EFCC) Investigation Report on some Public Officers.

Debate:

Committee 'S Recommendations:

- (i) That the Senate notes the information as communicated by Mr President (*Senator Oserheimen A. Osunbor*) — *Agreed to.*
- (ii) That the Senate may wish to, in accordance with Senate Standing Rules and pursuant to Section 88 of the Constitution of the Federal Republic of Nigeria through a Committee, cause an investigation into the Petroleum Technology Development Fund (PTDF) and other related matters or organisations (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Resolved:

- (i) That the Senate notes the information as communicated by Mr President.

- (ii) That the Senate may wish to, in accordance with Senate Standing Rules and pursuant to section 88 of the Constitution of the Federal Republic of Nigeria through a Committee, cause an investigation into the Petroleum Technology Development Fund (PTDF) and other related matters or organisations (**S. Res/063/06**).

Chairman to report Progress.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the procedure to be adopted in dealing with the Report of the Administrative Panel of inquiry on the Economic and Financial Crimes Commission (EFCC) Investigation Report on some Public Officers and approved the recommendations.

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

8. Committee on Judiciary, Human Rights and Legal Matters:

Report on the Customary Court Bill 2006 (SB. SO):

Motion made Question Proposed: That the Senate do receive and consider the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the Customary Court Bill 2006 (*Senator Oserheimen A. Osunbor*).

Question put and agreed to.

Report presented and Laid.

Motion made and Question Proposed: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Majority Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

REPORT ON A BILL FOR AN ACT TO ESTABLISH A CUSTOMARY COURT FOR THE FEDERAL CAPITAL TERRITORY ABUJA AND TO PRESCRIBE THE MODE OF ITS OPERATION AND SUPERVISION, 2006

PART I

Clause 1: Establishment and Composition of Customary Court

- (1) There is hereby established a Customary Court for every Area Council and every Development Area in the Federal Capital Territory, **Abuja**.

Committee's Recommendation:

Establishment and Composition of Customary Court

"(1) There is hereby established Grades of Customary Court for the Federal Capital Territory, Abuja, as specified in the schedule to this Act (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

- (2) The President may in consultation with the Chief Judge designate to each Customary Court established under this section such name as he may deem fit and shall issue a warrant under his hand in respect of every such Customary Court.
- (3) Every warrant establishing a Customary Court shall be operative and take effect from the date specified therein.
- (4) The President may at any time after consultation with the Chief Judge suspend, vary or cancel any warrant issued pursuant to this section.

- (5) The Judicial Service Committee shall cause to be published in the Federal Government Gazette -
- (a) any warrant issued in respect of every Customary Court; and
 - (b) any order of suspension, variation or cancellation of a warrant in respect of such Customary Court.
- (6) Every Customary Court shall be a Court of record with concurrent powers to that of the Magistrate/District Court.

Committee's Recommendation:

Leave out the provision in Subclause 1(6) (Senator Oserheimen A. Osunbor) — Agreed to.

- Clause 2: (1) A Customary Court shall consist of a Chairman and two other members who shall be referred customary court members, all of whom shall be appointed by the Judicial Service Committee

Committee's Recommendation:

A Customary Court shall consist of a Chairman and two other members who shall be referred to as customary court members, all of whom shall be appointed by the Judicial Service Committee (Senator Oserheimen A. Osunbor) — Agreed to.

- (2) For the purpose of hearing any case in the court, the three members shall be present at the hearing.

Committee's Recommendation:

(2) For the purpose of hearing any cause or matter, two members shall constitute a quorum (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 2 do stand part of the Bill, put and agreed to.

- Clause 3: (1) In all causes and matters before the Court, the opinion of the majority shall in the event of members disagreeing, be deemed and taken to be the decision of the Court.
- (2) In the event of an equality of votes, the Chairman shall in addition to his original vote have a casting vote.

Question that Clause 3 do stand part of the Bill, put and agreed to.

- Clause 4; (1) Subject to other provisions of this Act, a person shall not be qualified to be appointed as:
- (a) a chairman of a Customary Court unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for a period of not less than five years;
 - (b) a member of a Customary Court unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for a period of not less than two years;
 - (c) as a member of a Customary Court unless he is literate in English and any other Nigerian language and has wide knowledge of customary law.
- (2) Without prejudice to the provisions of sub-section I (a - c) above, no person shall be appointed a member of a Customary Court unless:
- (a) He is a person of good character;
 - (b) He is not less than thirty years and not more than fifty years of age;

- (c) He is not a member of any legislative body in Nigeria, a Local Government Council or an executive member or other officer of a political party;
- (d) He has not been convicted by a Court in Nigeria or elsewhere of an offence involving fraud or dishonesty or he has received a free pardon;
- (e) He is of a sound mind and has not been adjudged to be a lunatic under any law;
- (f) He has not been declared a bankrupt.

Question that Clause 4 do stand part of the Bill, put and agreed to.

- Clause 5: (1) The power to appoint, promote, dismiss, suspend or otherwise exercise any disciplinary control over any member of a Customary Court shall vest in the Federal Capital Territory Judicial Service Committee.

Committee's Recommendation:

Leave out the provision in Subclause 5(1) and insert the following instead thereof: "The power to appoint, dismiss, suspend or otherwise exercise any disciplinary control over any member of a Customary Court shall vest in the Judicial Service Committee" (Senator Oserheimen A. Osunbor). — Agreed to.

- (2) The Judicial Service Committee shall make rules or regulations providing for:-
 - (a) The salaries and allowances;
 - (b) The terms and conditions of service of members of the Customary Court.

Question that Clause 5 do stand part of the Bill, put and agreed to.

- Clause 6: (1) The Judicial Service Committee may remove from office a member of the Customary Court who -
- (a) is unable to perform the functions of his office due to physical or mental illness or for any other cause.

Committee's Recommendation:

Leave out the word "illness" in line 2 and insert the word "disability" instead thereof (Senator Oserheimen A. Osunbor). — Agreed to.

- (b) appears to the Committee to have given or accepted bribe or to have been involved in any corrupt practices or to have otherwise abused his power or his office;

Committee's Recommendation:

Leave out the words "have given or accepted bribe or to" in line 1 (Senator Oserheimen A. Osunbor). — Agreed to.

- (c) appears to the Committee to be unworthy of being a member of the Customary court for any other cause considered sufficient by the Judicial Service Committee.
- (d) Notwithstanding any other provision of this Act, a member of a Customary Court shall automatically cease to be a member thereof if any circumstances arise or become known which disqualify him from being a member of the Court by virtue of the provision of Section 6 of this Act.

Committee's Recommendation:

Leave out the word "automatically" in line 2 (Senator Oserheimen A. Osunbor). — Agreed to.

Question that Clause 6 do stand part of the Bill, put and agreed to.

- Clause 7:
- (1) No person who has been appointed as a Chairman or a member of a Customary Court shall sit or in any way act in that capacity until he has taken and subscribed to the oath of office prescribed by Section 290 of the Constitution of the Federal Republic of Nigeria, 1999.
 - (2) The President of the Customary Court of Appeal, shall administer the oath on the Chairman and members of the Court.

Committee's Recommendation:

That the provision in Clause 7 be retained (*Senator Oserheimen A. Osunbor*).—*Agreed to.*

Question that Clause 7 do stand part of the Bill, put and agreed to.

- Clause 8:
- No member of a Customary Court or of the Customary Court of Appeal shall be liable to be sued in any Court of law for or thing done or **purported** or ordered to be done by him in exercise of jurisdiction or power conferred by this Act for the time being within the limit of his jurisdiction or power, if he at the time of doing the act or thing, believed in good faith that he had the jurisdiction or power to do or order to be done the act or thing in question.

Committee's Recommendation:

Leave out the words "or of the Customary Court of Appeal" in line 1 (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 8 do stand part of the Bill, put and agreed to.

PART II — OFFICERS OF CUSTOMARY COURTS

- Clause 9:
- (1) Subject to the provisions of this Act, the Federal Capital Territory Judicial Service Committee shall from time to time appoint in respect of each Customary Court an officer to be designated as the registrar who shall perform such duties in the execution of such powers and authorities of the Court as may be assigned to him under this Act or by rules of Court or by any special order of the Court and in particular, the registrar shall in relation to the Customary Court to which he is deployed -

Committee's Recommendation:

Leave out the words "Federal Capital Territory" in line 1 (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

- (a) prepare for issue, all warrants and writs;
- (b) to fill or cause to be filled summonses, convictions, recognizance, rulings or execution and other documents and submit same for the signature of the Chairman of the Court;
- (c) register all orders and judgments of the Court;
- (d) to make or cause to be made, copies of the proceedings that are required to be made by any member of the Court and to record the judgments, convictions and orders of the Court;
- (e) to receive or cause to be received all fees, fines, penalties and all other monies paid or deposited in respect of the proceedings in the Court and to keep or cause to be kept an account of the same;
- (f) to attend at such sittings of the Court as the Chairman of the Court may direct;

- (g) to maintain an account showing all monies received or paid by the court;
 - (h) to supervise the staff under him as well as the clerks and other staff of the court under the territorial jurisdiction of the Court;
 - (i) to perform or cause to be performed such other duties as shall be connected with the court or as may be assigned to him by the Chairman of the Court;
- (2) The registrar shall be assisted in the discharge of his functions by such other supporting staff employed by the Judicial Service Committee as may be posted to him by the Chief Registrar.

Committee's Recommendation:

Leave out the words "Judicial Service Committee as may be posted to him by the Chief Registrar" in line 2 and *inset* the words "Customary court of Appeal" instead thereof (Senator Oserheimen A. Osunbor).

Amendment Proposed:

That the Provision in the Principal Bill be retained (Senator Umaru Dahiru).

Question that the amendment be made, put and agreed to.

Question that Clause 9 as amended do stand part of the Bill, put and agreed to.

- Clause 10:
- (1) Every registrar shall be a Commissioner for Oaths with power to administer Oatfis in accordance with the Oaths and Affirmations Act and to take affidavits and declarations, to receive documents produced for the purpose of any cause or matter, to examine and interrogate witnesses and to receive other evidence in respect of any proceeding before the court.
 - (2) Any order of the Court for the attendance and examination of a witness or production of any document before any such Commissioner for Oaths within the jurisdiction of the court shall be enforced in the same manner as an order on a witness to attend and be examined or to produce any document before the court.
 - (3) Every act performed or order made by a Commissioner for oaths in want or excess of his powers shall be liable to be reversed, altered, amended or set aside by the court on application of an aggrieved party.

Committee's Recommendation:

That the provision in Clause 10 be retained (Senator Oserheimen A. Osunbor) — **Agreed to.**

Question that Clause 10 do stand part of the Bill, put and agreed to.

- Clause 11:
- (1) The Customary Court of Appeal shall appoint such number of Fit and proper persons to be bailiffs and messengers of a Customary Court as the business of the Court may require.

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Committee's Recommendation:

Leave out the provisions in Subclause 11(1) and *insert* the following instead thereof: "The Customary Court of Appeal shall appoint such number of fit and proper persons as bailiffs" (Senator Oserheimen A. Osunbor) — **Agreed to.**

- (2) It shall be the duty of any person appointed under the provisions of sub-section (1) of this Section -
 - (a) to effect the service and execution of all writs and other processes which he may receive from the court to which he is deployed;

(b) to perform such other related duties as may from time to time be assigned to him by the registrar.

- (3) A Customary Court may authorise' a member of the Police Force to perform all or any of the duties mentioned in sub-section (2) of this section in so far as they relate to the criminal jurisdiction of the court and any member of the Police Force who shall be in possession of any process issued by the court shall be presumed to be authorised to execute such process unless the contrary is proved.

Committee's Recommendation:

Leave out the words "Police force," and insert the words "Nigeria Police" wherever it appears (Senator Oserheimen A. Osunbor) — Agreed to.

- (4) Subject to the provision of sub-section (3) of this section, no person other than a duly appointed bailiff or messenger shall carry out or purport or attempt to carry out any of the duties mentioned in sub-section (2) of this section.

Committee's Recommendation:

Leave out the word "messenger" in line 2 (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 11 do stand part of the Bill, put and agreed to.

Clause 12: No officer of any Customary Court or other person bound to execute lawful warrants or orders issued or made in exercise of any jurisdiction conferred by this Act shall be personally liable on account of anything done by him in the execution of any warrant or order of the court if the person issuing the same had been acting in exercise of lawful authority and in good faith.

Committee's Recommendation:

Leave out the provision in Clause 12 and insert the following instead thereof: " 12. No officer of any Customary Court or other person bound to execute lawful warrants or orders issued or made in exercise of any jurisdiction conferred by this Act shall be personally liable on account of anything done by him in good faith in the execution of any warrant or order of the court if the person issuing same acted in exercise of lawful authority." (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: If any officer of the court employed to execute an order willfully or by neglect or omission loses the opportunity of executing it, then on complaint of the person aggrieved and proof of the fact alleged, the Customary Court may, if it deems fit, order the officer to pay the damages sustained by the person complaining or part thereof and the order shall be enforced as an order of the Customary Court directing payment of the money.

Committee's Recommendation:

That the provision in Clause 13 be retained (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 13 do stand part of the Bill, put and agreed to.

PART iii - JURISDICTION OF CUSTOMARY COURT

Clause 14: (1) A Customary Court shall have and exercise jurisdiction over all persons within **the** territorial limits of the Federal Capital Territory, Abuja.

Committee's Recommendation:

Immediately after the word "Abuja" in line 2 insert the words "who submit to the Jurisdiction of the Court" (Senator Oserheimen A. Osunbor) — Agreed to.

- (2) A Customary Court shall have and exercise jurisdiction over causes and matters set out in the First Schedule to this Act.
- (3) Subject to the limits of jurisdiction set out in the First schedule to this Act, a Customary court shall have power to try any offence committed in any part of the Federal Capital Territory, Abuja.
- (4) A customary Court shall have jurisdiction to try and determine criminal causes and to impose such punishments thereof as are prescribed in the First Schedule to this Act.

Committee's Recommendation:

*Leave out the provisions in Subclauses 14 (3) and (4) (Senator **Oserheimen A. Osunbor**) — Agreed to.*

Question that Clause 14 do stand part of the Bill, put and agreed to.

- Clause 15:
- (1) A Customary Court shall have power to issue prerogative orders of mandamus, certiorari and prohibition in causes or matters relating to customary law.
 - (2) In civil causes or matters, a customary court may promote reconciliation among the parties thereto and encourage and facilitate amicable settlement thereof.
 - (3) In criminal causes, a customary court may promote reconciliation and encourage and facilitate in any amicable way, the settlement of all proceedings within its competence of any terms of payment of compensation or other terras approved by the court, and may thereupon order proceedings to be stayed.

Committee's Recommendation:

*Leave out the provisions in Subclauses 15 (3) (Senator **Oserheimen A. Osunbor**) — Agreed to.*

*Question that Clause 15 do stand part of the **Bill**, put and agreed to.*

PART IV - LAW TO BE ADMINISTERED

- Clause 16:
- (1) Subject to the provisions of section 6(4) (a) and (5) (J) of the Constitution of the Federal Republic of Nigeria 1999 and the provisions of this Act, a customary court shall administer
 - (a) the appropriate customary law specified in section 19 of this Act in so far as it is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force;
 - (b) the provisions of any written law which the court may be authorized to enforce by an order made pursuant to the provisions of this Act;
 - (c) the provisions of any enactment in respect of which jurisdiction is conferred on the court by that enactment;
 - (d) the provisions of all bye-laws and rules made by the appropriate local government or Area council, or having effect as if so made under the provisions of any enactment in force in the Federal capital Territory;

Committee's Recommendation:

*Immediately after the word "appropriate" in line 1, leave out the words "Local Government or" (Senator **Oserheimen A. Osunbor**) — Agreed to.*

- (e) the provisions of any rule made or deemed made by a statutory corporation having authority in the Federal Capital Territory;

if) payable by the local communities or imposed by the Federal Government Agencies, local government or Area council for the territory or town unions operating within the territory.

Committee's Recommendation:

Leave out the provisions in Subclause 16 (i)(f) (Senator Oserheimen A. Osunbor) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

Clause 17: (1) In land matters, the appropriate customary law shall be the customary law of the place where the land is situate.

Committee's Recommendation:

Leave out the provisions in Subclause 17(1) (Senator Oserheimen A. Osunbor) — *Agreed to.*

(2) In causes and matters arising from inheritance, the appropriate customary law shall, subject to sub-section (1) and (4) of this section, be the customary law that governed the deceased.

Committee's Recommendation:

Leave out the words "sub-section (1) and (4) of this section" in line 2, (Senator Oserheimen A. Osunbor) ~ *Agreed to.*

- (3) Subject to the provisions of sub-section (1) of this section -
- (a) in civil causes or matters where -
 - (i) both parties are not natives of the area of jurisdiction of the court; or
 - (it) the transaction, the subject of the cause or matter was not entered into in the area of jurisdiction of the court, or
 - (iii) one of the parties is not a native of the area of jurisdiction of the court and the parties agreed or may be presumed to have agreed that their obligations shall be regulated wholly or partly by the customary law applicable to that party, the appropriate customary law shall be the customary law binding between the parties which appeared to have regulated the subject matter in dispute.
 - (b) in all other civil causes and matters the appropriate customary law to be administered shall be the customary law prevailing in the area of jurisdiction of the court.

Question that Clause 17 do stand part of the Bill, put and agreed to.

Clause 18: Subject to the provisions of section 41 of the Land Use Act 1978 and this Act, a customary court shall have jurisdiction in respect of proceedings in respect of a customary right of occupancy granted by a Local Government or an Area Council or the Minister under the Land Use Act and any other law; and for the purposes of this section, proceedings includes proceedings for a declaration of title to a customary right of occupancy and all laws including rules of court regulating practice and procedure of the customary court shall have effect with such modifications as would enable effect to be given to this section.

Committee's Recommendation:

Leave out the provision in Clause 18 (Senator Oserheimen A. Osunbor) — *Agreed to.*

Clause 19: (1) A customary law shall be deemed to be binding upon a person where that person-

- (a) is an indigene of a place in which, the customary law is in force;

- (b) being in a place in which the customary law is in force, does an act in violation of the customary law;
 - (c) in cases of claim under a customary law of inheritance, makes a claim in respect of the property or estate of a deceased person and the deceased person was an indigene of the place in which the customary law was in force;
 - (d) agrees or is deemed to have agreed to be bound by the customary law.
- (2) In any matter relating to the guardianship of a child, the interest and welfare of the child shall be the first and paramount consideration.
- (3) Whenever it appears to a customary court that an interim order made by such court in the interest of a child, be reviewed, the court may, of its own motion or upon the application of any interested person, vary or discharge such order.
- (4) Where there is a contravention of any customary law, a customary Court may subject to the provision of this Act impose a penalty authorised by or consistent with the customary law;

PROVIDED that no such penalty shall involve mutilation, torture or other persona] violence or be inhuman or repugnant to natural justice.

Committee's Recommendation:

That the provision in Clause 19 be retained (*Senator Oserheimen A. Osunbor*) —Agreed to.

Question that Clause 19 do stand part of the Bill, put and agreed to.

- Clause 20:
- (1) Notwithstanding the provisions of any written law or customary law, no sentence of whipping shall be passed on any female or any male other than a juvenile offender.
 - (2) For the purposes of this section -
"JUVENILE" means a person who has not attained the age of seventeen years.

Committee's Recommendation:

Leave out the provision in Clause 20 (*Senator Oserheimen A. Osunbor*) — Agreed to.

- Clause 21:
- (1) Evidence of a customary law shall be adduced in a customary court in all such cases as may be provided in the rules made under this Act.
 - (2) No proceedings in a customary court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal solely by reason of any defect in procedure or want of form, but every court exercising powers of appeal under this Act shall decide all matters according to substantial justice without undue regard to technicalities.

Committee's Recommendation:

That the provision in Clause 21 be retained (*Senator Oserheimen A. Osunbor*) —Agreed to. *

Question that Clause 21 do stand part of the Bill, put and agreed to.

PART V — PRACTICE AND PROCEDURE IN CUSTOMARY COURT

- Clause 22: Subject to the provisions of this Act and to such other rules as may be made under this Act, the practice and procedure of the customary court shall be regulated in accordance with customary law.

Committee's Recommendation:

That the provision in Clause 22 be retained (*Senator Oserheimen A. Osunbor*) —*Agreed to.*

Question that Clause 22 do stand part of the Bill, put and agreed to.

Clause 23: A Legal Practitioner shall have the right of audience in a customary court.

Committee's Recommendation:

That the provision in Clause 23 be retained (*Senator Oserheimen A. Osunbor*) —*Agreed to.*

Question that Clause 23 do stand part of the Bill, put and agreed to.

Clause 24:

- (1) In any cause brought by or against a Local Government Council or an Area Council, the Council may be represented before a Customary Court at any stage of the proceedings by an employee of the Council.

Committee's Recommendation:

Immediately after the word "a" in line 1, *leave out* the words "Local Government Council or an" (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

- (2) A customary Court may permit-
 - (a) the husband, wife, guardian, servant, master or inmate of the household of any party, who shall give satisfactory proof that he or she has authority in behalf; or
 - (b) a relative of person administering an estate subject to the jurisdiction of the court, to appear for any party in a civil cause or matter before the customary court.

Committee's Recommendation:

That the provision in Clause 24 be retained (*Senator Oserheimen A. Osunbor*) —*Agreed to.*

Question that Clause 24 do stand part of the Bill, put and agreed to.

- Clause 25:
- (1) An accused in a criminal cause or matter shall appear and may conduct his defence in person or by a legal practitioner of his choice on his behalf.
 - (2) In any civil cause or matter pending in a customary court, any party to a cause or matter may conduct his own case or may be represented by a legal practitioner of his choice on his behalf; the court may however permit a person in custody of any animal or chattel in respect of which the cause or matter is brought to court to appear and defend the cause or matter in court.
 - (3) In any cause or matter where a Government Ministry or Department, Local Government or Area Council, body corporate or a body whose existence is registered under any written law is a party, such Ministry or Department may be represented at any stage of the proceedings by a law officer in the Ministry of Justice or a Legal Practitioner (who in criminal cause or matter obtains a fiat -from the Attorney-General of the Federation), Local Government or Area Council, body corporate or a body may also be represented by a Legal Practitioner, an officer or member thereof who satisfies the court that he is duly authorised to do so.

Committee's Recommendation:

Leave out the Provision in Subclause 25 (3) and *insert* the following instead thereof: "(3)

- (a) In any proceedings where a Government Ministry, Department, or Parastatal or an Area Council is a party, such Ministry, Department, Parastatal or Area Council, may be represented at any stage of the proceedings by a law officer in the Ministry of Justice.

- (b) In any proceedings where a Government Ministry, Department, Parastatal, Area Council, body corporate or a body whose existence is registered under any written law is a party, such party may be represented by an officer or member thereof who satisfies the court that he is duly authorised to do so" (*Senator OserheimenA. Osunbor*)
— *Agreed to.*

Question that Clause 25 do stand part of the Bill, put and agreed to.

- Clause 26:
- (1) The room or place in which a customary court sits to hear and determine any cause or matter shall be an open court to which members of the public shall have access subject to their good behavior and convenience of the court.
 - (2) Provision may be made by the rules of court for the exclusion of the public from any customary court proceedings -
 - (a) in which persons under the age of seventeen years are involved;
 - (b) where the administration would be rendered impracticable by the presence of the public.

Committee's Recommendation:

That the provision in Clause 26 be retained (*Senator OserheimenA. Osunbor*) — *Agreed to.*

Question that Clause 26 do stand part of the Bill, put and agreed to.

- Clause 27:
- (1) A customary court may adjourn its sitting from day to day or to any convenient date.
 - (2) If the members of a customary court are not present at the place appointed for any sitting of the court, or if a quorum is not formed, any member present or an officer of the customary court or any other person authorised in that behalf by the Chairman of the court may adjourn the sitting until such time and to such place as may be announced to be convenient and all persons bound to be present at the sitting so adjourned shall be equally bound to be present at such time and place.
 - (3) In the absence of any announcement to the contrary, all such persons shall be bound to be present at the next succeeding day appointed for the sitting in the same place

Committee's Recommendation:

That the provision in Clause 27 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 27 do stand part of the Bill, put and agreed to.

- Clause 28:
- (1) A customary court shall sit and hold sessions at such places and times as may be necessary for the convenient and speedy despatch of the business of the Court.
 - (2) The permanent places of sitting and places of session of each customary court shall be indicated in the warrant establishing the court.
 - (3) The President of the Customary Court of Appeal may, for convenience and despatch of business, hold sessions at such other places as he may determine provided that the general public shall be notified of such decisions fourteen days before the commencement of sitting or same may have been gazetted before commencement of sitting.

Committee's Recommendation:

Immediately after the word "business" in line 2, *leave out* the word "hold" and *insert* the words "direct the holding of" instead thereof (*Senator Oserheimen A. Osunbor*) — *Agreed to*.

Question that Clause 28 do stand part of the Bill, put and agreed to.

- Clause 29:
- (1) A customary court shall record the reasons for its decisions in every cause or matter.
 - (2) Evidence tendered in proceedings before a customary court shall as far as practicable be recorded in writing by the Chairman of the Court.

Committee's Recommendation:

That the provision in Clause 29 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to*.

Question that Clause 29 do stand part of the Bill, put and agreed to.

- Clause 30:
- (1) A customary court may at any time and at any stage before judgment, of its own motion, or on the application of any party, transfer any cause or matter pending before it to any other customary court if it is of the view that on grounds of convenience and having regard to all the circumstances of the case it is desirable or expedient that the cause or matter be so transferred.

Committee's Recommendation:

Leave out the word "other" in line 2 and *insert* the words "Area Court or" instead thereof (*Senator Oserheimen A- Osunbor*) — *Agreed to*.

- (2) A customary court shall have the power at any time and at any stage before judgment of its own motion or on the application of any party, transfer any cause or matter pending before it to any other Area Court or Magistrate Court within the Federal Capital Territory, if it is of the view that on grounds of jurisdiction, it is proper for the cause or matter to be so transferred.
- (3) The President of the Customary Court of Appeal may at any time and at any stage before judgment, of his own motion or on the application of any party, transfer any cause or matter pending before a Customary Court to another customary court if he is of the view that on grounds of convenience and having regard to all the circumstances of the case, it is desirable that the cause or matter be so transferred.
- (4) Where a cause or matter is transferred pursuant to sub-sections (1), (2) or (3) of this section, the customary court to which it is transferred, shall commence the cause or matter de novo as if it has been instituted originally before the court.
- (5) The power of transfer conferred by sub-sections (1), (2) and (3) of this section, shall be exercised by means of an order under the hand of the supervising authority or the chairman of the Customary Court or a member as the case may be, and may apply either to any particular cause or matter pending, either entirely, or in respect of any part thereof or in respect of the procedure required to be taken thereon, or generally to all such causes and matters as may be described in such order and in the later case, may extend to future causes or matters as well as to such as may, at the time of making such order, be pending.

Committee's Recommendation:

Leave out the Provision in Subclause 30 (5) and *insert* the following instead thereof: "(5) The power of transfer conferred by sub-sections (1), (2) and (3) of this Section, shall be exercised by means of an order under the hand of the President of the Customary Court of Appeal, or the chairman of the Customary Court or a member acting on his behalf as the case may be and may apply to a pending cause or matter either entirely or in respect of any part thereof" (*Senator Oserheimen A. Osunbor*) — *Agreed to*.

- (6) The supervising authority or the chairman or member of the customary court as the case may be, may at any time cancel, alter, add to or amend any order made under sub-section (5) of this section.

Question that Clause 30 do stand part of the Bill, put and agreed to.

Clause 31: Every order of transfer under this part shall operate as a stay of proceedings in the court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process or proceedings in any such cause or matter, and attested copy of all entries in the books of the court relative thereto shall be transmitted to the court to which the matter is transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

Committee's Recommendation:

That the provision in Clause 31 be retained (*Senator Oserheimen A. Osunbor*)—*Agreed to.*

Question that Clause 31 do stand part of the Bill, put and agreed to.

PART VI - ANCILLARY POWERS OF CUSTOMARY COURTS

Clause 32: Every person sentenced by a customary court to imprisonment or taken in execution of the process of such court may be detained in a Nigerian Prison in the Federal Capital Territory or in the State nearest to the area of jurisdiction or sitting of the court.

Committee's Recommendation:

That the provision in Clause 32 be retained (*Senator Oserheimen A. Osunbor*)—*Agreed to.*

Question that Clause 32 do stand pan of the Bill, put and agreed to.

- Clause 33:
- (1) A customary court may order that any fine which it may impose shall be paid at such time or times by such installments as it may think fit.
 - (2) Where there is default in the payment of any fine or of any installment of the same when due the court may -
 - (a) order that the amount of fine or of the installment, as the case may be, shall be levied by the sale of any movable property of the person in default which is situated within the Federal Capital Territory; or
 - (b) order such person to be imprisoned.
 - (3) A sentence of imprisonment passed upon a person in default of payment of a fine or the total of any sentences passed in default of the payment of installments of a fine, as the case may be, shall not exceed in the aggregate the maximum sentence of imprisonment which the court is empowered to impose.
 - (4) Where a term of imprisonment is imposed together with a fine, such term together with either the sentence of imprisonment passed in default of the payment of the fine or the total of the sentences passed in default of the payment of installments thereof, as the case may be, shall not exceed in the aggregate, the maximum sentence of imprisonment which the court is empowered to impose.
 - (5) Where any person has been committed to prison by a customary court for non-payment of a fine and such person thereafter pays the whole or a part of the fine, his imprisonment shall be reduced by the number of days bearing as nearly as possible the same proportion to the total number of days for which such person was committed as the sum paid bears to the amount of the fine for which such person is liable.

Committee's Recommendation:

That the provision in Clause 33 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 33 do stand part of the Bill, put and agreed to.

Clause 34: In every case in which imprisonment is ordered in default of payment of a fine, a customary court shall have power to award to any person injured or aggrieved by the act or omission in respect of which such fine or imprisonment has been imposed, reasonable compensation shall be paid by the accused on condition that such injured person, if he shall accept the same shall not thereafter have or maintain any suit for the recovery of damages for the loss or injury sustained by him by reason of the act or omission in question.

Committee's Recommendation:

Leave out the Provision in Subclause 34 and *insert* the following instead thereof: "34. In every case in which a person is convicted of an offence a customary court shall have power to award to the person injured or aggrieved, reasonable compensation by the accused on condition that such injured person, if he shall accept the same shall not thereafter have or maintain any suit for the recovery of damages for the loss or injury sustained by him by reason of the act or omission in question" (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 34 do stand part of the Bill, put and agreed to.

Clause 35: Subject to the provisions of any rules made under this Act, every customary court shall have power to summon before it for the purpose of giving evidence any person within the area of jurisdiction of the court or any person outside such area but **within** Nigeria.

Committee's Recommendation:

That the provision in Clause 35 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 35 do stand part of the Bill, put and agreed to.

Clause 36: Any person present at a customary court, whether a party or not to any cause or matter before the court, may be required by the court to give evidence in the same manner as if he had been summoned to attend and give evidence:

Provided that a person charged with an offence before a customary court shall not be called upon by the court to give evidence in the proceedings relating to that offence, except upon his own application.

Committee's Recommendation:

Leave out the Provision in Subclause 36 and *insert* the following instead thereof: "36. Any person present at a customary court, whose evidence may be helpful to the court, whether a party or not to any cause or matter before the court, may be required by the court to give evidence in the same manner as if he had been summoned to attend and give evidence:

Provided that a person charged with an offence before a customary court shall not be compelled by the court to give evidence in the proceedings relating to that offence¹ (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 36 do stand part of the Bill, put and agreed to.

Clause 37: Subject to the provisions of any rules made under this Act, any judgment or order given or made by a customary court in a civil cause or matter may be enforced by seizure and sale of the movable property of the person condemned therein, or by such other methods of enforcing judgments and orders as may be prescribed by the rules.

Committee's Recommendation:

Immediately after the word "the" in line 3, *leave out* the words "person condemned therein" and *insert* the word "defendant" instead thereof (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 37 do stand part of the Bill, put and agreed to.

- Clause 38: In any cause before a customary court in which, pending final determinations thereof, it shall be shown to the satisfaction of the customary court that any property which is in dispute in the cause is in danger of being wasted, damaged, alienated or otherwise injuriously dealt with, by any party to the cause, the court may issue an injunction to such party commanding him to refrain from doing the particular act complained of or, alternatively, may take and keep such property in custody pending the determination of such cause.

Committee's Recommendation:

That the provision in Clause 38 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 38 do stand part of the Bill, put and agreed to.

- Clause 39:
- (1) A customary court may, whenever it shall deem it necessary so to do for the preservation, proper custody or management of any property in dispute in a cause, appoint any person as a receiver or manager to receive and to take charge of the property and to deal with it in such manner as may be directed by the customary court.
 - (2) Any person or persons appointed as a receiver or manager under sub-section (1) of this section shall be responsible to the customary court for all things done as receiver or manager, and shall account for or pay to the customary court all money received in respect of any property referred to in sub-section (1) of this section.
 - (3) A customary court may make such order as it shall deem fit but subject to the rules of court or the direction of the President of the Customary Court of Appeal, as regard to the remuneration of any person appointed as receiver or manager and shall pay to the party entitled thereto all moneys in its custody.

Committee's Recommendation:

That the provision in Clause 39 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 39 do stand part of the Bill, put and agreed to.

- Clause 40:
- (1) The Chairman of a Customary Court may by warrant under his hand authorise
 - (a) any premises to be searched for any property alleged to be stolen or wrongfully obtained; and
 - (b) the seizure of any such property by the Police or authorised court officers.
 - (2) The information upon which an application for a search warrant is based shall be given in writing and upon oath.
 - (3) Any property seized as a result of any search shall be taken before the court to be dealt with according to law.
 - (4) A person residing in or being in charge of a premises ordered to be searched shall allow the person authorized to execute the warrant free entry thereto and shall afford all reasonable facilities for a search therein, and where entry cannot

be so obtained, it shall be lawful for the person holding the warrant to enter into such premises and in order to effect such entrance to break open any outer or inner door or window of such premises.

Committee's Recommendation:

Immediately after the word "premises" in line 6, *insert* the words "if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance" (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 40 do stand part of the Bill, put and agreed to.

- Clause 41: In any cause or matter, it shall be lawful for a Customary Court, on the application of either party or of its own motion -
- (a) to make such order as the court may think fit for the inspection by the court of the parties or any witness, or any immovable or movable property the inspection of which may be material to the proper determination of the question in dispute; and
 - (b) to give such direction as the court may think fit in regard to such inspection.

Committee's Recommendation:

That the provision in Clause 41 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 41 do stand part of the Bill, put and agreed to.

- Clause 42: A customary court may grant bail to any person charged for an offence which is triable by it on such terms and conditions as the court may think fit or in accordance with the provisions of the Criminal Procedure Code.

Committee's Recommendation:

Leave out the all the words after "fit" in line 2 (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 42 do stand pan of the Bill, put and agreed to.

- Clause 43: A Customary Court shall carry into execution any decrees or orders of -
- (a) The Supreme Court of Nigeria,
 - (b) The Court of Appeal,
 - (c) The High Court of the Federal Capital Territory, the Federal High Court and the High Court of the states,
 - (d) Any Sharia Court of Appeal,
 - (e) Any Customary Court of Appeal,
 - (f) Any Magistrate/District Court,
 - (g) * Any other Customary Court, and
 - (h) Any Area Court

which may be lawfully directed to it and shall execute all warrants and serve all processes issued by such courts as aforesaid and directed to it for execution or service, and shall generally give such assistance to any of the Courts as may be required.

Committee's Recommendation:

Leave out the provision in Clause 43 and *insert* a new Clause 43 as follows: "43. A Customary Court shall carry into execution any decrees or orders of any Court of law in Nigeria which may be lawfully directed to it and shall execute all warrants and serve all processes issued by such court and directed to it for execution or service, and shall generally give such assistance to any court of law in Nigeria as may be required (Senator Oserheimen A. Osunbor) — *Agreed to.*

Question that Clause 43 do stand part of the Bill, put and agreed to.

PART VII - SUPERVISION AND CONTROL OF CUSTOMARY COURTS

- Clause 44: (1) There is hereby established an Inspectorate Division of the Customary Courts which shall consist of -
- (a) a Chief Inspector of Customary Courts who shall be a Legal Practitioner of not less than seven years post-call,
 - (b) five or more other Inspectors of Customary Courts as the needs of the Court demand who shall be Legal Practitioner of not less than two years post-call experience.
- (2) The appointment of the Inspectors of Customary courts shall be made by the Federal Capital Territory Judicial Service Committee on the recommendation of the Chief Registrar of the Customary Court of Appeal.

Committee's Recommendation:

Leave out the provision in Subclauses 1 and 2, and *insert* the following instead thereof:

- "(1) (a) a Chief Inspector of Customary Courts who shall be a Legal Practitioner with not less than seven years post-call experience.
- (b) five or more other Inspectors of Customary Courts as the needs of the Court demand who shall be Legal Practitioners with not less than two years post-call experience.
- (2) The appointment of the Inspectors of Customary Courts shall be made by Judicial Service Committee on the recommendation of the Chief Registrar" (Senator Oserheimen A. Osunbor) — *Agreed to.*

Question that Clause 44 do stand part of the Bill, put and agreed to.

- Clause 45: (1) The functions of the Inspectorate Division of the Customary Courts shall include-
- (a) to monitor the activities of members of Customary Court;
 - (b) to inspect the records of Customary Courts including revenue;
 - (c) to report any irregularities or excesses of members of Customary Courts to the President of the Customary Court of Appeal;
 - (d) to receive and look into any complaints brought by any party to any proceedings before a Customary Court.
- (2) Where in the exercise of its powers above, the Inspectorate Division is of the opinion that any complaint received by it lacks merits, it shall regard the matter as closed and inform the parties accordingly.
- (3) Where the Inspectorate Division finds that a complaint made to it has merit, it shall report same to the President of the Customary Court of Appeal.

- (4) The President of the Customary Court of Appeal on receipt of a report from the Inspectorate division may -(a) cause further investigations to be carried out; or
- (h) take any action he may deem appropriate in the circumstances; or
- (c) if satisfied that no useful purpose would be served for further investigations, discontinue the matter or
- (d) file his report to the Judicial Service Committee for their appropriate action.

Committee's Recommendation:

That the provision in Clause 45 be retained (*Senator Oserheimen A. Osunbor*) —Agreed to.

Question that Clause 45 do stand part of the Bill, put and agreed to.

- Clause 46: At such times and in such forms as may be prescribed by the President of the Customary Court of Appeal, every Customary Court shall submit to the President-(a) a list of all causes and matters decided or disposed of by, or brought before the court during any prescribed period; and
- (b) a report of any case or class of cases tried by the Court.

Committee's Recommendation:

That the provision in Clause 46 be retained (*Senator Oserheimen A. Osunbor*) —Agreed to.

Question that Clause 46 do stand part of the Bill, put and agreed to.

- Clause 47: The duties of the Inspectorate Division and of the President of the Customary Court of Appeal pursuant to sections 42 — 44 of this Act shall be of the nature of general administrative control and supervision in accordance with this Act -

PROVIDED that no such supervision or control shall interfere with the judicial independence of the customary court concerned.

Committee's Recommendation:

That the provision in Clause 47 be retained (*Senator Oserheimen A. Osunbor*) —Agreed to.

Question that Clause 47 do stand part of the Bill, put and agreed to.

PART VIII - TRANSFER OF CASES

- Clause 48: (1) On application by -
any party to a cause or matter, the President of the Customary Court of Appeal may at any stage of the proceedings before final judgment, by order, stay the hearing of the cause or matter on such terms as he may consider just, and upon such order being made in his discretion -

Committee's Recommendation:

Leave out all the words immediately after the word "made" in line 4, (*Senator Oserheimen A. Osunbor*) — Agreed to.

- (i) If the cause or matter appears to be within the jurisdiction of any other court, by the same or another order direct that the cause or matter be inquired into or tried or determined by such court as shall appear to have jurisdiction over the same;

(ii) Direct in like manner that the same shall be inquired into, tried or determined by another Customary Court or court notwithstanding that the court transferring same had jurisdiction over the cause or matter.

- (2) The Customary Court to which the case is transferred shall be informed in writing of the reason for making the order of transfer and that court shall adjudicate and determine the cause or matter as if it is within its jurisdiction.

Committee's Recommendation:

Leave out all the words immediately after the word "matter" in line 3 (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 48 do stand part of the Bill, put and agreed to.

- Clause 49:
- (1) Notwithstanding the provision of any written law or rule of court, no fee shall be payable in respect of any transfer made under the provision of this Act.
 - (2) A Customary Court and 'the Customary Court of Appeal shall have power to award costs in all civil proceedings before the court and subject to the provision of any other law and to rules of court, it shall be in the discretion of the court to determine by whom and to what extent the costs shall be.

Committee's Recommendation:

Immediately after the word "be" in line 4, insert the word "paid" (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 49 do stand part of the Bill, put and agreed to.

PART IX - APPEALS

- Clause 50:
- (1) Pursuant to section 267 of the Constitution of the Federal Republic of Nigeria 1999, any party, including a complainant or a prosecutor in a criminal cause or matter, who is aggrieved by the decision or order of a Customary Court, may within thirty days from the date of such decision or order appeal to the Customary Court of Appeal.

Committee's Recommendation:

Leave out the provision in Subclause 50(1) and insert a new Subclause 50(1) as follows:

'(1) Any party, who is aggrieved by the decision or order of a Customary Court, may within thirty days from the date of such decision or order appeal to the Customary Court of Appeal (Senator Oserheimen A. Osunbor) — Agreed to.

- (2) The right of appeal to the Customary Court of Appeal shall be subject to the conditions and in accordance with the provisions of any law or rules of court, if any, for the time being in force regulating the practice and procedure of that court with respect to appeals.
- (3) Leave to appeal out of time may, upon reasonable cause being shown, be granted by the appellate court upon such terms as it shall consider just.

Question that Clause 50 do stand pan of the Bill, put and agreed to.

- Clause 51:
- (1) Pursuant to section 265 of the Constitution, the Customary Court of Appeal shall consist of the following:-
 - (a) the President, who shall have the overall control and supervision of the judicial administration of the court; and
 - (b) six other Judges of the Court.
 - (2) A Customary Court of Appeal shall be duly constituted if it consists of at least three Judges of the Court.

Committee's Recommendation:

Leave out the provision in Clause 51 (Senator Oserheimen A. Osunbor) ~ Agreed to.

- Clause 52:
- (1) The Customary Court of Appeal exercising appellate jurisdiction in criminal matters under this Act shall, in exercise of its jurisdiction -
 - (a) if it considers that there is no sufficient ground for interfering with the decision appealed against, confirm that decision and dismiss the appeal;
 - (b) if it considers that there is sufficient ground for interfering with the decision appealed against, set aside that decision and either -
 - (i) acquit the appellant; or
 - (ii) order the retrial of the appellant before another Customary Court of competent jurisdiction on the same charge or on any other charge which might have been laid on the facts as disclosed by the evidence; or
 - (iii) substitute any other decision (whether as to guilt or punishment) which the court of first instance could have made on the facts disclosed by the evidence but so that by the decision so substituted, the appellant shall not be found guilty of any offence with which he was not charged before the court of first instance, unless the appellate court is satisfied that the defence of the appellant before the court of first instance could not have been substantially affected if he had been so charged; or
 - (iv) substitute a special finding to the effect that the appellant was guilty of the act or omission charged, but was insane so as not to be responsible, by virtue of the provision of any other law, for his conduct at the time when he did the act or omission.
 - (2) Any powers conferred by subsection (1) of this section may be exercised notwithstanding that the decision of the court of first instance is correct under customary law.
 - (3) At any stage of the proceedings on appeal the Customary Court of Appeal may order fresh evidence to be adduced; PROVIDED that no miscarriage of justice shall arise therefrom.

Committee's Recommendation:

That the provision in Clause 52 be retained (Senator Oserheimen A. Osunbor) —Agreed to.

Question that Clause 52 do stand part of the Bill, put and agreed to.

- Clause 53:
- The Customary Court of Appeal in exercise of its appellate jurisdiction in civil matters under this Act may -
- (a) Whether after hearing the whole case or not, reverse, vary or confirm the decision of the lower court and may make any such order as the court of first instance could have made in such cause or matter or as it considers that the justice of the case requires;
 - (b) May quash any proceedings and thereupon, where it is considered desirable, order any such cause or matter to be re-tried before the court of first instance or any other court.

Committee's Recommendation:

Leave out the word "May" in line 1 (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 53 do stand part of the Bill, put and agreed to.

Clause 54: Where an appeal lies from an order or decision of a Customary Court, the Customary Court of Appeal shall have power to inspect the records or books of such Customary Court relating to the appeal.

Committee's Recommendation:

That the provision in Clause 54 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 54 do stand part of the Bill, put and agreed to.

Clause 55: Pursuant to section 267 of the Constitution of the Federal Republic of Nigeria 1999, the Customary Court of Appeal of the Federal Capital Territory, Abuja shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

- (a) relating to the selection, appointment, installation, deposition or abdication of a chief or traditional ruler by whatever name called, made by any community or group of persons within the territory.
- (b) the recovery or delivery up of any property in connection with the selection, appointment, installation, deposition or abdication of a chief or traditional ruler.

Committee's Recommendation:

Leave out the provision in Clause 55 (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Clause 56: No proceedings in a Customary Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal solely by reason of any defect in procedure or want of form but every court exercising powers of appeal under this Act shall decide all matters according to substantial justice without undue regard to technicalities.

Committee's Recommendation:

Leave out the provision in Clause 56 (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

PART X — OFFENCES

- Clause 57:
- (1) Any person who -
 - (a) exercises or attempts to exercise judicial powers vested in a Customary Court, except in accordance with the provisions of any enactment or this Act; or
 - (b) sits as a member of such court without due authority, shall be liable on conviction before a Magistrate Court to a fine of five thousand naira or imprisonment for twelve months or to both
 - (2) Any person other than a member of a Customary Court adjudicating as an arbitrator upon any civil matter in dispute (other than a petition for divorce) where the parties thereto have agreed to submit the dispute to his decision shall not be regarded as exercising judicial powers for the purposes of paragraph (a) of sub-section (1) of this section.
 - (3) No prosecution under this section shall be instituted without the consent in ♦ writing of the Attorney-General of the Federation.

Committee's Recommendation:

That the provision in Clause 57 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 57 do stand part of the Bill, put and agreed to.

- Clause 58:
- (1) Any person who -
 - (a) assaults, obstructs, molests or resists; or

- (b) aids or incites any other person to assault, obstruct, molest or resist any person acting or proceeding to act in the execution of his duties under the provisions of Section 37 of this Act shall be guilty of an offence and shall be liable on conviction to a fine of one thousand naira or to imprisonment for six months or to both.

Committee's Recommendation:

That the provision in Clause 57 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 58 do stand part of the Bill, put and agreed to.

- Clause 59:
- (1) No fees or fines in excess of those authorised by or pursuant to this Act or any other written law shall be demanded or exacted from any person in respect of any cause or matter in a Customary Court.
 - (2) Any member, officer or servant of a Customary Court who contravenes the provisions of sub-section (1) of this section shall be guilty of an offence and shall be liable on conviction to a fine of one thousand naira or to imprisonment for six months or to both.
 - (3) The Court may order any amount exacted in excess to be refunded to the person entitled thereto.
 - (4) If default shall be made by any person against whom an order to refund has been made under sub-section (3) of this section, the amount ordered to be refunded may be levied by distress and, in default of sufficient distress, the person defaulting may be committed to prison for any term not exceeding six months in addition to any sentence imposed under the provisions of sub-section (2) of this section.

Committee's Recommendation:

That the provision in Clause 59 be retained (*Senator Oserheimen A. Osunbor*) — *Agreed to.*

Question that Clause 59 do stand part of the Bill, put and agreed to.

- Clause 60:
- (1) Any member or officer or servant of any Customary Court who accepts, claims or obtains, for himself or for any other person, any gratification, advantage, bribe or reward whatsoever, whether in money or otherwise, for -
 - (a) doing or forbearing to do any act which he is authorised or required to do in exercise of his jurisdiction, authority or function as a member, officer or servant of a Customary Court, as the case may be; or
 - (b) corruptly showing favour or disfavour to any person; shall be guilty of an offence.
 - (2) Any person who -
 - (a) gives or offers; or
 - (b) accepts or obtains;
 - (c) agrees to give or offer or accept, or obtain for any other person any gratification, advantage, bribe or reward whatsoever whether in money or otherwise, for inducing by any corrupt or illegal means or by corrupt personal influence any officer or any servant of any Customary Court -
 - (i) to do or to forbear to do any act which the said member, officer or servant, as the case may be, is authorised to do in exercise of his jurisdiction, authority or function; or

- (ii) to show favour or disfavour to any person shall be guilty of an offence.

- (2) Any person convicted of an offence under this section shall be liable to such penalty as may be prescribed for such offence under the Penal Code.

Committee's Recommendation:

Leave out the provision in Clause 60 (Senator Oserheimen A. Osunbor) — Agreed to.

Clause 61

Any person who -

- (a) refuses to produce or deliver up a document on the lawful order of a Customary Court; or
- (b) refuses to answer any question lawfully asked by a Customary Court; or
- (c) intentionally interrupts the proceedings of a Customary Court at any stage; shall be liable on conviction to a fine of five thousand naira or to imprisonment for two months.

Committee's Recommendation:

That the provision in Clause 61 be retained (Senator Oserheimen A. Osunbor) — **Agreed to.**

Question that Clause 61 do stand part of the Bill, put and agreed to.

Clause 62:

Any person who, without reasonable cause or excuse, fails to obey any valid summons issued under the provisions of this Act or any other law shall be arrested and brought before the Customary Court issuing such summons or before such other Court as may have jurisdiction over such person and shall be liable to a fine of one thousand naira or in default of payment of such fine to imprisonment for seven days.

Committee's Recommendation:

That the provision in Clause 62 be retained (Senator Oserheimen A. Osunbor) — **Agreed to.**

Question that Clause 62 do stand part of the Bill, put and agreed to.

Clause 63:

- (1) Any compellable witness who without reasonable cause or excuse refuses to give evidence on being required so to do by a Customary Court under the provisions of this Act or any other law shall be liable to a fine of five hundred naira or imprisonment for fourteen days.
- (2) Any person who in any proceedings before a Customary Court gives evidence, whether on oath or otherwise, which he knows to be false or believes to be false or does not believe to be true shall be liable on conviction to a fine of five thousand naira or to imprisonment for a period of two years or to both such fine and imprisonment.

Committee's Recommendation:

Leave out the words "shall be liable on conviction to" in line 3 and insert the words "commits an offence and" instead thereof (Senator Oserheimen A. Osunbor) — Agreed to.

Question that Clause 63 do stand part of the Bill, put and agreed to.

Clause 64:

Any person who, with intent to defeat, obstruct or pervert the course of justice in any cause or matter in a Customary Court -

- (a) causes any person to delay in giving or to refrain from giving evidence before the court; or
- (b) attempts wrongfully to interfere with or influence a witness whether before or after that witness has given evidence in connection with such evidence; or

- (c) prevents any person from, giving evidence before the court; shall be guilty of an offence and shall be liable on conviction to a fine of two thousand naira or to imprisonment for six months or to both.

Committee's Recommendation:

That the provision in Clause 64 be retained (*Senator OserheimenA. Osunbor*) —Agreed to.

Question that Clause 64 do stand pan of the Bill, put and agreed to.

- Clause 65: Any Clerk or member of a Customary Court who knowingly renders a false return of the cases tried or the penalties imposed by such court shall be guilty of an offence and shall be liable on conviction to a fine of two thousand naira or to imprisonment of six months or to both.

Committee's Recommendation:

That the provision in Clause 65 be retained (*Senator OserheimenA. Osunbor*) —Agreed to.

Question that Clause 65 do stand part of the Bill, put and agreed to.

- Clause 66: Any person being charged in accordance with this Act or rules made under this Act with the duty of recording the proceedings of a Customary Court, who knowingly makes a false record of the proceedings of the court shall be guilty of an offence and shall be liable on conviction to a fine of two thousand naira or to imprisonment for six months or to both.

Committee's Recommendation:

That the provision in Clause 66 be retained (*Senator Oserheimen A. Osunbor*) —Agreed to.

Question that Clause 66 do stand part of the Bill, put and agreed to.

PART XI - FINANCIAL PROVISIONS

- Clause 67: (1) All monies paid to and received by a Customary Court in the course of discharging its functions under this Act shall be paid into and form part of the Consolidated Revenue Fund of the Federal Republic of Nigeria.
- (2) The premises inclusive of buildings, properties and other structures used by a Customary Court shall be provided and maintained by and shall be the property of the Federal Government of Nigeria.
- (3) In all matters of revenue collection and disbursement, the Customary Court shall be guided by the provisions of the Financial Regulations and any similar enactments for the time being in force.

Committee's Recommendation:

That the provision in Clause 67 be retained (*Senator OserheimenA. Osunbor*) —Agreed to.

Question that Clause 67 do stand part of the Bill, put and agreed to.

PART XII- RULES OF COURT

- Clause 68: Subject to the provisions of this Act, the President of the Customary Court of Appeal shall make rules providing for any or all of the following matters -(a) the regulation of the practice and procedure of the Customary Court;

- (b) the recording of the proceedings of Customary Courts;

- (c) the powers of the Customary Court to issue process for the institution of causes and matters and to compel the attendance of accused persons before the court;
- (d) the exclusion of the public from a Customary Court in accordance with the provisions of this Act or any other law;
- (e) the regulation of the issue of summons to witnesses;
- (f) the carrying into execution of the orders or decrees of Customary Courts, whether such Customary Courts are established under this Act or under any other written law;
- (g) the execution of the decrees, orders, warrants or other processes of Customary Courts and the service of the processes of such courts where such decrees or orders are made or such warrants or processes are issued in respect of persons or property not within the area of jurisdiction of the Customary Court making or issuing the same;
- (h) specifying the courts or authority by which the decrees, orders, warrants or processes mentioned in paragraphs (f) and (g) of this subsection shall be carried into execution, executed or served;
- (i) the recording and perpetuation of the decision of Customary Courts in land cases by reference to plans and fixing of land marks;

Committee's Recommendation:

Leave out the provision in subclause 68 (i) (Senator Oserheimen A. Osunbor) —Agreed to.

- (j) the fees which may be charged by surveyors for any work done for the purposes of any rules made under paragraph (I) of this section;

Committee's Recommendation:

Leave out the provision in subclause 68 (j) (Senator Oserheimen A. Osunbor) —Agreed to.

- (k) regulating any matters relating to the costs of proceedings in Customary Courts;
- (l) the maximum fees which may be charged -
 - (i) in Customary Courts;
 - (ii) for appeals from Customary Courts to the Customary Court of Appeal.

- (m) the reduction of prescribed maximum fees in respect of all or any Customary Courts or proceedings; the application of such maximum or reduced fees to such Customary Courts or proceedings and manner in which and the persons by whom such reduction and application may be made;
- (n) the grant of bail to accused persons and to convicted persons pending an appeal and the regulation of the conditions of and the procedure for the granting of such bail;
- (o) defining the duties of any officers of the Customary Court;

Committee's Recommendation:

Leave out the words "defining the" and insert the words "the definition of instead thereof (Senator Oserheimen A. Osunbor) —Agreed to.

- (p) the time within which any act, matter or thing shall be carried out or performed for the purposes of this Act;

(q) the powers of Customary Courts to impose consecutive or concurrent sentences of imprisonment; and

(r) generally for the carrying into effect of the provisions of this Act. *Question that*

Clause 68 do stand pan of the Bill, put and agreed to. **PART XIII — TRANSITIONAL**

AND MISCELLANEOUS PROVISIONS

Clause 69: (1) Where immediately before the commencement of this Act any proceeding has been instituted in any court other than in a Customary Court in respect of any cause or matter over which a Customary Court and the Customary Court of Appeal are conferred with jurisdiction under this Act, such proceeding shall, except in cases where judgment only is left to be delivered, be transferred to and be commenced de novo by the Customary Court or Customary Court of Appeal exercising jurisdiction in the cause or matter.

Committee's Recommendation:

Leave out the words "and the Customary Court of Appeal are" in line 3, (Senator Oserheimen A. Osunbor) — Agreed to.

(2) Subject to the provisions of subsection (1) of this section, the jurisdiction of the Customary Court under this Act to try criminal causes does not affect the original jurisdiction of the Magistrate Court to try such criminal causes and the jurisdiction to try such causes shall be exercised concurrently by the Customary Court or Magistrate Court except as may be provided by any written law.

Committee's Recommendation:

Leave out the provision in subclause 69(2) (Senator Oserheimen A. Osunbor) —Agreed to.

Question that Clause 69 do stand part of the Bill, put and agreed to.

Clause 70: Nothing in mis Act shall preclude any Magistrate or Judge of an Area Court from proceeding with or concluding any issues, causes or matters which, upon the coming into force of this Act are pending in his court, whether or not, jurisdiction to adjudicate on such issues, causes or matters has been transferred to the Customary Court by this Act.

Committee's Recommendation:

That the provision in Clause 70 be retained (Senator Oserheimen A. Osunbor) —Agreed to.

Question that Clause 70 do stand part of the Bill, put and agreed to.

Clause 71: Sections 20 and 21 of the Area Courts Act Cap. 477, Laws of the Federation of Nigeria (Abuja) 1990 are hereby repealed.

Committee's Recommendation:

That the provision in Clause 71 be retained (Senator Oserheimen A. Osunbor) —Agreed to.

Question that Clause 71 do stand part of the Bill, put and agreed to.

Committee's Recommendation:

Insert a new Clause 72 as follows:

"The Customary Court and Customary Court of Appeal FCT, Abuja shall in Judicial Proceedings be bound by the provisions of sections 14, 15, 59, 76, 77, 78, 92, 93, 135, 136, 155, 177 and 227 of the Evidence Act (Senator Oserheimen A. Osunbor) —Agreed to.

Question that Clause 72 do stand part of the Bill, put and agreed to.

PART XIV — INTERPRETATION

Clause 73: In this Act unless where the context otherwise requires -

"action" means a civil proceedings instituted in a Customary Court in accordance with this Act or Rules made thereunder.

Question that the word "action" be as defined in the Interpretation to this Act, put and agreed to.

Committee's Recommendation:

Insert a new subclause as follows:

"Area Court" means a court established for the FCT by Decree No. 12 of 1984 (Senator Oserheimen A. Osunbor) — Agreed to.

"cause" includes any action, suit or other original proceedings between a plaintiff and defendant, and any criminal proceeding.

Question that the word "cause" be as defined in the Interpretation to this Act, put and agreed to.

"Chief Judge" means the Chief Judge of the Federal Capital Territory.

Question that the words "Chief Judge" be as defined in the Interpretation to this Act, put and agreed to.

"Chief Registrar" means the Chief Registrar of the Customary Court of Appeal.

Question that the words "Chief Registrar" be as defined in the Interpretation to this Act, put and agreed to.

"Committee" means the Judicial Service Committee of the Federal Capital Territory established under Section 304 of the Constitution of the Federal Republic of Nigeria, 1999.

Question that the word "Committee" be as defined in the Interpretation to this Act, put and agreed to.

"Customary Court" or "Court" means the Customary Court established under this Act.

Question that the words "Customary Court" or "Court" be as defined in the Interpretation to this Act, put and agreed to.

"Customary Court of Appeal" means the Customary Court of Appeal of the Federal Capital Territory established under the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

Question that the words "Customary Court of Appeal" be as defined in the Interpretation to this Act, put and agreed to.

"Customary Law" means a rule or body of customary rules regulating rights and imposing correlative duties being customary rule or body of customary rules which obtains and is fortified by established usage and which is appropriate and applicable to any particular cause, matter, dispute, issue or question;

Question that the words "Customary Law" be as defined in the Interpretation to this Act, put and agreed to.

"Decision" means a judicial determination after consideration of the facts and the law and includes a ruling, order or judgment pronounced by the court when considering or disposing a case.

Question that the word "Decision" be as defined in the Interpretation to this Act, put and agreed to.

"defendant" includes every person served with any writ of summons or process or with notice of, or entitled to attend any proceedings in a civil cause.

Question that the word "defendant" be as defined in the Interpretation to this Act, put and agreed to.

"execution creditor" includes every person having title to enforce a judgment or order of court by process of execution.

Question that the words "execution creditor" be as defined in the Interpretation to this Act, put and agreed to.

"High Court" means the High Court of the Federal Capital Territory, Abuja.

Question that the words "High Court" be as defined in the Interpretation to this Act, put and agreed to.

"Judge" includes the Chief Judge of the Federal Capital Territory, Abuja, the President of the Customary Court of Appeal Abuja or the Grand Khadi of the Sharia Court of Appeal, Abuja or a Judge of the High Court or of the Customary Court of Appeal Abuja.

Question that the word "Judge" be as defined in the Interpretation to this Act, put and agreed to.

"Judgment" includes a decree or order or ruling of the Court;

Question that the word "Judgment" be as defined in the Interpretation to this Act, put and agreed to.

"Judgment debtor" includes every person ordered by a judgment or order in a civil cause or matter to pay money or to do or abstain from doing any act.

Question that the words "Judgment debtor" be as defined in the Interpretation to this Act, put and agreed to.

"Land Cause", "Land Matter" means a cause or matter relating to the ownership, occupation or possession of land;

Question that the words "Land Cause" be as defined in the Interpretation to this Act, put and agreed to.

"Legal Practitioner" or "Lawyer" means a person admitted and enrolled to practise as a Barrister or Solicitor in the Supreme Court of Nigeria pursuant to the Legal Practitioners Act 1975;

Question that the words "Legal Practitioner" or Lawyer" be as defined in the Interpretation to this Act, put and agreed to.

* "matter" includes any proceeding in a Court not in a cause.

Question that the word "matter" be as defined in the Interpretation to this Act, put and agreed to.

"member" means a member of the Customary Court and includes the Chairman;

Question that the word "member" be as defined in the Interpretation to this Act, put and agreed to.

"native" in relation to the area of jurisdiction means a person who is a member of a community and resident in an area in the Federal Capital Territory.

Question that the word "native" be as defined in the Interpretation to this Act, put and agreed to.

"oath" includes solemn affirmation and statutory declaration;

Question that the word "oath" be as defined in the Interpretation to this Act, put and agreed to.

"Order" means a written direction or command delivered by the court or judge.

Question that the word "Order" be as defined In the Interpretation to this Act, put and agreed to.

"party" includes any person served with notice of or attending any proceeding although not named on the records;

Question that the word "party" be as defined in the Interpretation to this Act, put and agreed to.

"plaintiff" includes every person seeking any relief (otherwise than by way of counterclaim as a defendant) against any persons by any form or proceeding by action, suit, petition, motion, summons or otherwise;

Question that the word "plaintiff" be as defined in the Interpretation to this Act, put and agreed to.

"pleading" includes any petition, summons, writ and also the statements in writing of the claim or demand of the plaintiff and of the defence of any defendant thereto, and of the reply of the plaintiff to any counterclaim of the defendant;

Question that the word "pleading " be as defined in the Interpretation to this Act, put and agreed to.

"President" means the President of the Customary Court of Appeal, Abuja;

Question that the word "President" be as defined in the Interpretation to this Act, put and agreed to.

"public service" means the public service of the Federal Republic of Nigeria;

Question that the words "public service" be as defined in the Interpretation to this Act, put and agreed to.

"rules of court" means rules of practise and procedure made pursuant to this Act and includes court forms;

Question that the words "rules of court" be as defined in the Interpretation to this Act, put and agreed to.

"supervising authority" in relation to a Customary Court means the person empowered in accordance with this Act or any other law to supervise that Court;

Question that the words "supervising authority" be as defined in the Interpretation to this Act, put and agreed to.

"territory" means the Federal Capital Territory, Abuja.

Question that the word "territory" be as defined in the Interpretation to this Act, put and agreed to.

SHORT TITLE AND CITATION

Clause 74: This Act may be cited as the Customary Court Act, 2006

SCHEDULE

(Section 14)

PART I - CIVIL CAUSES LIMIT
OF JURISDICTION AND POWER

Types of Causes

1. Matrimonial causes and matters between persons married under Customary law or arising from or connected with a union contracted by Customary Law OTHER THAN those arising from or connected with a Christian marriage as defined in section 1 of the Criminal Code Act Cap. 77, and marriage under Islamic personal law.
2. Suits relating to the custody of Children and Guardianship of children under Customary Law.
3. Causes or matters under Customary Law, whether or not the value of the debt, demand, including dowry, bride price or damages is liquidated
4. Causes or matters relating to succession and inheritance upon intestacy under Customary Law and the administration of estates under Customary Law
5. Causes and matters concerning ownership, possession or occupation of land subject to customary law or relating to Customary Right of Occupancy.

Committee's Recommendation:

Leave out the provision in Part 1 of the Schedule and insert the following instead thereof:

Types of Causes: 1. Matrimonial causes and matters between persons married under customary law or arising from or connected with a union contracted under customary Law other than those arising from or connected with a Christian marriage or marriage under Islamic Law as defined in section 1 of the Criminal Code Act	Grade A	Grade B	Grade C
2. Suits relating to the custody of Children and guardianship of children under customary law ...	Unlimited	Unlimited	Unlimited
3. Civil causes and matters including bye-laws where the debt, demand including dowry, bride price or damages do not exceed the amounts specified in the respective columns hereof.....	Unlimited	200,000	100,000
4. Causes and matters relating to succession to property and administration of estate under customary law where the value of the property does not exceed the amounts specified in the respective columns hereof.....	Unlimited	Unlimited	100,000

5. Civil causes and matters under any law (other than customary law) including bye-laws where the amount of debt, demand or damages does not exceed the amount indicated in the column hereof (*Senator Oserheimen A. Osunbor*) — Agreed to.

PART II — CRIMINAL CAUSES

Type of offences

1. All offences under the Penal Code except those under Chapter XVIII of the Penal Code Act Cap. 532 Law of the Federation (Abuja) 1990.
2. Where any person is charged with doing any act or with omitting to do any act required under any written law.

Committee's Recommendation:

Leave out the provision in Paragraphs 1 and 2 (Senator Oserheimen A. Osunbor) — Agreed to.

3. Contempt of court committed in the face of the Court

Committee's Recommendation:

Insert a new Paragraph as follows:

Cases where criminal jurisdiction is conferred on the Court by this Act (Senator Oserheimen A. Osunbor) — Agreed to.

4. Statutory offences as may be provided in other laws or bye-laws, where the jurisdiction of the Customary Court is not specifically excluded.

Committee's Recommendation:

Leave out the provision in Paragraphs 4 and insert the following instead thereof:

"Statutory offences as may be provided in any other law or bye-law, where jurisdiction is specifically conferred on the Court (Senator Oserheimen A. Osunbor) — Agreed to.

Chairman to report Bill

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Customary Court Bill 2006 and approved as follows:

Clauses 1 - 10	—	As Recommended
Clauses 11 - 20	—	As Recommended
Clauses 21 - 30	—	As Recommended
Clauses 31 - 40	—	As Recommended
Clauses 41 - 50	—	As Recommended
Clauses 51 - 60	—	As Recommended
Clauses 61 - 74	—	As Recommended
Schedule	—	As Recommended
Short Title	—	As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.* »

Motion made and Question Proposed: That the Bill be now read the Third Time (*Senate Majority Leader*).

Question put and agreed to.

Bill accordingly read the Third Time and Passed.

9. Committee on Health:

Report on National Agency for the Control of HIV/AIDS Bill 2006 (SB. 260):

Bill recommitted to the Committee for further legislative action.

10. Adjournment:

Motion made and Question Proposed: That the Senate do adjourn till Wednesday, 27th September, 2006 at 10: 00 a. m. (*Senate Majority Leader*).

Adjourned accordingly at 1.50 p.m.

Ken Nnamani

President of the Senate