

**VOL. 2
No. 22**

FEDERAL REPUBLIC OF NIGERIA

**Wednesday
16th December, 2009**



NATIONAL ASSEMBLY DEBATES

FOURTH REPUBLIC THIRD ASSEMBLY (SIXTH SENATE)

THIRD SESSION

SENATE OFFICIAL REPORT

CONTENTS

**Votes and Proceedings
Announcements
Presentation of Public Petition
Presentation of Bills
Consideration of Reports
Adjournment**

0611

**SENATE OF THE FEDERAL
REPUBLIC OF NIGERIA**

Wednesday 16th December, 2009

The Senate met at 2.35 p. m.

PRAYERS

(The President in the Chair)

VOTES AND PROCEEDINGS

The President: Distinguished Senators, we have the Votes and Proceedings of Thursday, 10th December, 2009 for approval. Pages 319, 320, 321, 322,

Senator Dahiru Kuta (Niger East): Mr. President, the last paragraph of page 322 reads: *Conferees to virement of 2009 Appropriation Act*. The next line; *The Senate President named the following distinguished Senators as conference to virement*. Something must be missing here. *Conferees to Virement*; there must be something between words *to* and *virement*.

The President: What is the correction that you are making now?

Senator Dahiru Kuta: It should be *Virement Conference Committee* or *Conference Conferees on Virement Proposals of 2009*.

The President: It should be *Conference Committee on virement*. You got up but you have no correction to actually make on the matter.

We continue with page 233,

Senator Abubakar D. Sodangi (Nasarawa West): Mr. President, I am Sorry to take you back a little bit. On page 322, there is a misinformation on item 6. Under the Ministry, it should be *Ministry of Federal Capital Territory* and not *Federal Capital Administration*. It should be corrected for the purpose of record.

The President: It is the correction on it, but, this is what came in the Virement Proposal. The place is Federal Capital Territory.

We go ahead with Pages 323 and 324.

0612

Senator Justina Nkechi Nwaogu (Abia Central): Mr. President, I move that the Votes and Proceedings of Thursday, 10th December, 2009, be approved as amended.

Senator Heineken Lokpobiri (Bayelsa West): Mr. President, I second the Motion moved by Senator Nkechi Nwaogu that the Votes and Proceedings of Thursday, 10th December, 2009, be approved as amended.

Question put and agreed to.

Resolved: That the Votes and Proceedings of Thursday, 10th December, 2009 be approved as amended.

ANNOUNCEMENTS

Letter of Appreciation

The President: We have a number of announcements and the first one is a letter of appreciation from Senator Paulker Emmanuel and it reads:

*His Excellency,
President of the Senate*

Appreciation

I wish to express, on behalf of my entire family, a very sincere appreciation to your Excellency, the President of the Senate and my distinguished Colleagues, for the honour done to us by the attendance and support during the wedding of our son Simemie Paulker Emmanuel, on Saturday, 12 December, 2009, in Yenegoa, Bayelsa State.

I thank your Excellency and my very distinguished Colleagues.

Yours sincerely

(Signed)
Senator Paulker Emmanuel.

Wedding Invitation

The next letter is from distinguished Senator Nimi Barigha-Amange and it reads:

0613

*The senate,
Through: The Senate President,*

My Dear Boss and Colleagues,

***Marriage Ceremony of my Daughter
Miss Ovo Barigha-Amange***

With Reference to my earlier invitation to distinguished Senators in respect of the marriage ceremony of my daughter, may I formally notify the Senate that the traditional ceremony will take place as scheduled at Senator (Chief) Nimi Barigha-Amange's residence, GRA, Ekeke, Yenogoa by 2 p.m. on 17th December, 2009.

The Church wedding is as scheduled at Chapel of Redemption, River State University of Science and Technology, Port Harcourt at 10.00 a.m. on 19th December, 2009.

Reception follows immediately at Diette Spiff, Civic Centre Port Harcourt.

Distinguished Senators who may wish to grace the traditional marriage in Yenogoa on 17th December, 2009, will be air lifted by chopper from Port Harcourt to Yenogoa and back to Port Harcourt the same day.

I will be highly honoured by your distinguished presence at the auspicious occasion.

Yours sincerely,

*(Signed)
Nimi Barigha-Amange.
(Bayelsa East)*

Reminder of Wedding Notification

The next letter is from distinguished Senator Abubakar Danso Sodangi and it reads thus:

Distinguished Senator David Mark,

My Very Dear SP,

Reminder of Wedding Notification

With Reference to my earlier letter of notification of wedding Fatiha of my daughter, Fidelia Abubakar Sodangi, to you, I have the

0614

pleasure of requesting you as my Senate President and Chairman of the National Assembly of the Federal Republic of Nigeria to serve as a Special Guest of Honour and all my distinguished Colleagues to serve as the Fathers and Mothers of the Day for the forthcoming Wedding Fatiha, which will Insha Allah take place on Saturday, 19th December, 2009.

There will be a dinner, tomorrow, 17th December, 2009 at the International Conference Centre, Abuja at 7.30 p.m.

The Wedding Fatiha will take place at Mahadual Halala Mosque, Keffi Road, near the Federal Polytechnic Gate, Nasarawa Town, Nasarawa Gate by 11.00 a.m. prompt.

While looking forward to seeing your presence at the occasion, please accept the assurances of my best regards.

Yours sincerely

*(Signed)
Senator Abubakar Danso Sodangi.
(Chairman, Senate Committee on FCT)*

Executive Session

There will be an Executive Session immediately after today's Plenary. So, please, endeavour to remain behind.

Birthday Wishes

May I, on behalf of all of us, wish distinguished Senator Agbo O. Anthony a happy birthday? Yesterday was his birthday.

We also would like to wish distinguished Senator Ganiyu Solomon a happy birthday. His birthday is on 19th December, 2009 and we would not be here, so I thought I should announce those that would come during our break.

The birthday of distinguished Senator Nicholas Ugbane is on the 23rd of December and that of distinguished Senator Mohammed A. Mohammed is on the 27th of December. You will get a paid advert from the Senate congratulating you on your birthday.

0615

The birthday of distinguished Senator George Akume is on 27th December but he would not get paid advert from the Senate.

We wish them all happy birthday.

Senator George Thompson Sekibo (Rivers East): Point of Order!

The President: What is your Point of Order, distinguished Senator George Thompson Sekibo?

Senator George Thompson Sekibo: Mr. President. I come under Order 17 of our Standing Orders.

The President: Please, read.

Senator George Thompson Sekibo: Order 17 reads thus: *No person shall be admitted to the lobby or the floor of the Senate while in session, except the following and only by consent of the Senate:*

- a) *The President or Vice President of the Federal Republic of Nigeria, and their Private Secretaries.*
- b) *Former elected Presidents and former elected Vice Presidents of the Federal Republic of Nigeria.*
- c) *Former Presidents and former Vice Presidents of the Senate.*
- d) *Former Senators and Senators-elect.*
- e) *Members of the House of Representatives.*
- f) *Judges of the Supreme Court.*
- g) *Former Clerks and former Sergeant-at-arms of the Senate.*
- h) *Secretary to the Government of the Federation (when carrying a message from the President of the Federal Republic of Nigeria).*
- i) *Former Speakers and Deputy Speakers of the House of Representatives.*
- j) *Ambassadors and Ministers of the Federal Republic of Nigeria.*

0616

k) *Governors of State and former elected Governors of State.*

l) *Members of National Legislatures of foreign countries only on official duties.*

m) *Legislative Aides to Senators when in the actual discharge of official duties.*

n) *Officers and employees of the Senate in the discharge of their official duties.*

I bring this Point of Order because when we started our proceedings, a non-Senator was sitting with us. When rules are being observed, they are not observed selectively. If we have a rule that a non-Senator should not sit with us when in Session, we should be able to stand by it, no matter the level of the person.

Thank you, Mr. President.

The President: I am sorry; I did not observe what happened. What really happened? Who is the non-Senator here?

Senator George Thompson Sekibo: Mr. President, former Senator Adamu Aliero was here, but when I turned back now, he has left, but I know that he was in the Chamber until I got up to raise the Motion. Now that he is not here, I withdraw my Point of Order.

The President: All right, he has withdrawn his Point of Order.

PRESENTATION OF PUBLIC PETITION

Petition of Mrs. Francisca Tochukwu Udoji

Senator Enyinnaya H. Abaribe (Abia South): Point of Order!

The President: What is your Point of Order, distinguished Senator Enyinnaya H. Abaribe?

Senator Enyinnaya H. Abaribe: Mr. President, I come under Order 41.

The President: You may please, read.

Senator Enyinnaya H. Abaribe: Order 41 reads thus:

0617

- 1) *A petition may only be presented to the Senate by a Senator, who shall affix his name at the beginning thereof.*
- 2) *A Senator presenting a petition shall confine himself to a brief statement of the parties from whom it came, the number of signatures attached to it and the material allegations contained in it, and to reading the prayers of such petitions.*

I have a Petition from a Constituent of mine which I want to present to the Senate. May I go ahead to give a little synopsis?

The President: Yes, you may go ahead.

Senator Enyinnaya H. Abaribe: This Petition is one which I may say is the first of its kind in Nigeria. This is a Petition by a Constituent of mine and her name is Mrs. Udoji Tochukwu Francisca who worked for a Federal Government Agency and her appointment was terminated because of love.

Several distinguished Senators: Did you say, because of love?

Senator Enyinnaya H. Abaribe: Yes, because of love. May I go ahead to give the explanation.

Several distinguished Senators: Yes, go ahead.

Senator Enyinnaya H. Abaribe: That is why I said that it is the first of its kind in Nigeria. My Constituent, who worked for NDLEA got married to somebody who works with NDDC and her superiors adjudged that she married below her station because she was an officer in NDLEA who got married to a driver in NDDC and because of that, they terminated her appointment. *(Laughter)*

It is a gender issue; a discriminatory issue, and one I think we should *(Interruptions)*

The President: Senator Abaribe, if the Petition has fulfilled all the conditions in Section 41(1) and (5)(a) to (e) then you can lay it on the Table.

Senator Enyinnaya H. Abaribe: Yes, it has.

0618

The President: The Petition is referred to Public Petitions Committee of the Senate.

(Petition accordingly laid on the Table and referred to the Public Petitions Committee)

PRESENTATION OF BILLS

Institute for Democratic and Legislative Studies Act (Amendment) Bill, 2009

Senator Teslim Kolawole Folarin (Oyo Central): Mr. President, the first business of the day is the presentation of a Bill standing in the name of Senator Aloysius Etok and two others on the Institute for Democratic and Legislative Studies Act (Amendment) Bill 2009.

You may invite the Clerk of the Senate to read the Short Title of the Bill.

Institute for Democratic and Legislative Studies Act (Amendment) Bill 2009 - *read the First Time*

Federal University of Petroleum Resources (Establishment etc) Bill, 2009

The second business of the day is the presentation of a Bill standing in the name of Senator Adegbo Eferakeya on the Federal University of Petroleum Resources (Establishment, etc) Bill, 2009.

Again, you may invite the Clerk of the Senate to read the Short Title of the Bill.

Federal University of Petroleum Resources (Establishment etc.) Bill 2009 – *read the First Time*

Private Prosecutions Bill, 2009

The third business of the day is the presentation of a Bill standing in the name of Senator Wilson A Ake on the Private Prosecutions Bill, 2009.

You may invite the Clerk of the Senate to read the Short Title of the Bill.

Private Prosecutions Bill, 2009 – *read the First Time*

0619

**Nigeria Air Force Institute of Technology
Bill, 2009**

The fourth business of the day is the presentation of a Bill standing in the name of Senator Idris A. Umar and 10 others on the Nigeria Air Force Institute of Technology Bill, 2009.

You may invite the Clerk of the Senate to read the Short Title of the Bill.

Nigerian Air Force Institute of Technology Bill,
2009 – *read the First Time.*

ORDERS OF THE DAY

CONSIDERATION OF REPORTS

**Report of the Conference Committee on
Virement Proposals**

The first Order of the day is the presentation and consideration of the Conference Committee Report on the Virement Proposal.

You may now invite the Chairman of the Appropriations Committee, Senator Ahmed Maccido to move the Motion for the Senate to consider and approve the Conference Report.

Senator Ahmed Mohammed Maccido (Sokoto North): Mr. President, I seek the approval of the Senate to present the Report of the Conference Committee on Virement Proposals.

0620

You will recall that the Senate and the House of Representatives passed different versions of the Virement Proposals. The Conference Committee drawn from both Houses had met and harmonised the differences in accordance with the Senate Standing Order 88.

Senator Ayogu Eze (Enugu North): Mr. President, I rise to second the Motion moved by the Chairman of the Appropriations Committee, Senator Ahmed Maccido that the Senate do consider and approve the Report of the Conference Committee on Virement Proposals in respect of the 2009 Appropriation Act.

Question put and agreed to.

Resolved: That the Senate do consider and approve the Report of the Conference Committee on Virement Proposals in respect of the 2009 Appropriation Act.

Senator Ahmed Mohammed Maccido: Mr. President, I wish to present the Report of the National Assembly Conference Committee on the 2009 Virement Proposals.

**REPORT OF THE NATIONAL ASSEMBLY
CONFERENCE COMMITTEE ON THE 2009
VIREMENT PROPOSALS**

1. *The Senate will recall that the 2009 Executive request for virement was presented to the Senate and the House of Representatives respectively for approval. The two Chambers considered the request and approved it independently. The comparative analysis of the request passed by both Chambers indicates areas of differences as outlined below.*

0621

0622

		<i>Senate Version</i>		<i>House Version</i>	
<i>S/N</i>	<i>MINISTRIES</i>	<i>AMOUNT VIRED</i>		<i>AMOUNT VIRED</i>	
		<i>Capital</i>	<i>Recurrent</i>	<i>Capital</i>	<i>Recurrent</i>
1.	<i>Niger Delta Affairs</i>	933,000,00	1,124,627,000	933,000,000	669,577,000
2.	<i>Power</i>	1,763,051,678	-	10,339,020,727	-
3.	<i>Science & Technology</i>	9,000,000	-	9,000,000	
4.	<i>Interior</i>	33,000,000	56,086,178	33,000,000	56,086,178
5.	<i>Defence</i>	8,011,610,082	-	8,011,610,082	-
6.	<i>Federal Capital Administration</i>	6,150,000,000	-	6,150,000,000	-
7.	<i>Aviation</i>	1,946,189,738	-	1,446,189,739	-
8.	<i>Agric & Water Resources</i>	11,012,000,000	-	9,175,100,150	-
9.	<i>Culture and Tourism</i>	-	-	113,957,596	-
10.	<i>Education</i>	-	-	-	-
	Total	29,857,851,498	1,180,713,178	36,210,878,294	725,663,178

Total amount vired by the Senate = N31, 038,564,676

0623

0624

Total amount vired by the House of Representatives = N36, 936,541,472

2. As a result of the above differences, the Conference Committee was constituted to harmonize the positions of the two Chambers. The Conference Committee held an intensive meeting on Wednesday, 16th December, 2009 in furtherance of its mandate and harmonised the differences and the Senate version was accepted as shown below:

S/NO	MINISTRIES	AMOUNT VIRED	
		Capital	Recurrent
1.	Niger Delta Affairs	933,000,000	1,124,627,000
2.	Power	1,763,051,678	`-
3.	Science &Technology	9,000,000	-
4.	Interior	33,000,000	56,086,178
5.	Defence	8,011,610,082	-
6.	Federal Capital Administration	6,150,000,000	-
7.	Aviation	1,946,189,738	-
8.	Agric and Water Resources	11,462,000,000	-
9.	Culture and Tourism (House Version adopted)	113,957,596	-
10.	Education	-	-
	Total	30,421,809,094	1,180,713,178

Total amount vired = ₦31, 602,522,272

3. The harmonised position is hereby submitted for the approval of the Senate/House of Representatives. The details of the virement in respect of the Ministries mentioned above are also attached. We so recommend.

0625

(Signed)
Senator Ahmed Maccido
Chairman,
Senate committee on Appropriation
16th December, 2009

Senator Yisa Braimoh (Edo North): Mr. President, on the last page of the Report particularly, item No 8 on Agric and Water Resources, the amount supposedly agreed on virement on that page is N11,462,000,000. It is neither the position of the Senate nor the House of Representatives so I do not know how this figure came about. The figure proposed by the Senate was N11,012,000,000 whereas the figure agreed finally was N11,462,000,000. That was claimed to be the Senate position. It was not.

The President: Senator Maccido, how did you people come about it? The point he has raised is valid.

Senator Ahmed Mohamed Maccido: Mr. President, I believe we realised in the Executive proposal that there was a particular item that we have not been able to capture earlier so we tried to capture it.

The President: But you cannot do that because when you go for Conference you take one of the two positions. You cannot introduce a new item that we did not approve here or the one that is not approved in the House.

Senator Ahmed Mohamed Maccido: Mr. President, we discussed this at the Conference, and they agreed with us.

The President: I am not talking about what you people discussed at the Conference. What I am saying is that procedurally, it is wrong because you brought a figure that is strange to us and to the House of Representatives. When you meet in the Conference Committee, you cannot bring any additional figure it has to be one of the two positions taken by either House.

Senator Ayogu Eze (Enugu North): What happened was that we found in the process of totaling the figures that there were some discrepancies as they were even in some of the agencies which we had already dropped so, we did the totaling and got this new figure and this is

0626

(Signed)
Hon. Ayo Adeseun
Chairman,
House Committee on Appropriation

agreeable to both Chambers. These figures were ratified by Members of both Chambers and we have signed the documents having discussed it during our deliberations.

The President: Senator Ayogu Eze, it is not what you people discussed. I am telling you what the rules is.

Senator Teslim Folarin: Mr. President, what you have explained is absolutely right. I do not think we should waste too much time on this. I suggest that we step this down so that they can go back and decide which figure they want to adopt either the Senate version or that of the House.

The President: Senator Maccido, if you read Rule 87(c) just to guide you, it reads:

The Conference Committee shall deliberate only on areas of disagreement between the Senate and the House of Representatives. The Conference Committee shall not insert in its report any matter not committed to it by either Senate or House of Representatives nor shall it be in order to strike out from the Bill matter agreed to by the Senate or the House of Representatives.

So, what you have done is wrong and you cannot justify it. Senate Leader, you have moved that this be stood down?

Senator Teslim Folarin: I might as well move a proper Motion, Mr. President. I now move that this item on the Order Paper be stood down till the next legislative day for further legislative action.

I so move.

Senator Maina Ma'aji Lawan (Borno North): Mr. President I second the Motion that further discussions on the Report of the Conference Committee on Virement Proposal be stood down till another legislative day.

I so second.

0627

The President: Is it another or next legislative day?

Senator Teslim Folarin: It is the next legislative day, which is tomorrow.

Senator Maina Ma'aji Lawan: Mr. President, I was just trying to make room for all possibilities so that tomorrow is not another one. Having said that, I second the Motion that discussions on the Report of the Conference Committee on Virement Proposal be stood down till the next legislative day.

I so second.

The President: Senator Maccido, your Committee should agree on one of the two figures submitted either the one by the Senate or the one from the House of Representatives. There will be requirement for that explanation you people were making.

Question put and agreed to.

Resolved: That further discussions on the Report of the Conference Committee on the Virement Proposal be stood down till the next legislative day for further legislative action.

Confirmation of Nominations

Senator Teslim Folarin: Mr. President, the second Order of the Day is the screening of Hon. Justice Aloysius Iyorgyer Katsina-Alu CON as Chief Justice of Nigeria and Hon. Justice I. A. Salami, OFR as President of the Court of Appeal in accordance with Section 231(1) of the 1999 Constitution of the Federal Republic of Nigeria.

You will recall that the request of Mr. President, Commander-in-Chief, was referred to the Committee of the Whole on Wednesday, 18th November, 2009. To carry out this exercise, I move that this Senate do now resolve into Committee of the Whole to conduct the Confirmation Hearing.

I so move.

Senator Maina M. Lawan: Mr. President, I rise to second the Motion that the Senate do resolve into Committee of the Whole to consider Mr.

President's request for the confirmation of Hon. Justice Aloysius Iyorgyer Katsina-Alu CON as Chief Justice of Nigeria and Hon. Justice I. A. Salami, OFR as President of the Court of Appeal.

I so second.

Question put and agreed to.

Resolved: That the Senate do resolve into Committee of the Whole to consider the request of Mr. President's request for the confirmation of the nominations of Hon. Justice Aloysius Iyorgyer Katsina-Alu CON as Chief Justice of Nigeria and Hon. Justice I. A. Salami, OFR as President of the Court of Appeal.

Confirmation of the nominations of Hon. Justice Aloysius Iyorgyer Katsina-Alu CON as Chief Justice of Nigeria and Hon. Justice I. A. Salami, OFR as President of the Court of Appeal –
CONSIDERED IN THE COMMITTEE OF THE WHOLE.

(The Chairman in the Chair)

Senator Teslim Kolawole Folarin: Mr. Chairman, I move that this Senate do suspend Order 17 to allow Special Adviser to the President on National Assembly Matters; Nominees and other Justices as well as their Special Assistants accompanying them to come into the Senate Chamber.

Senator Maina Ma'aji Lawan: Mr. Chairman, I second the Motion ably moved by the Senate Leader.

Question put and agreed to.

Resolved: That the Senate do suspend Order 17 to allow the Special Adviser to the President on National Assembly Matters, Nominees and other Justices as well as their Special Assistants accompanying them to come into the Senate Chamber.

(The Special Adviser to the President on National Assembly Matters, Nominees and other Justices as well as their Special Assistants accordingly admitted into the Senate Chamber)

.0629

0630

The Chairman: Distinguished Colleagues, this is a bit an unusual number for us in a clearance but there is a lot of understanding and co-operation between the Legislature and the Judiciary as separate arms of government. In our desire to work together for the progress of this country, we would not have any serious objection to this large number but this is rather unusual for us. We do not see so many people accompanying one person for screening before us here. I believe that we have no serious problem with that.

My Lord, Justice Katsina-Alu, we will ask you a lot of questions. We already have your *Curriculum Vitae* (CV) but if there is anything that you want to tell us outside your C.V. that would assist us please do so. If there is anything in your C.V. that you will like to emphasise to also assist us, please feel free to do so. The idea is for us to know as much as we can about you.

Distinguished Colleagues, we are used to this formality and it is a usual procedure. We will take a couple of questions and then he would respond and we take some more questions until we are done.

Senator Victor Ndoma-Egba (Cross River Central): Mr. Chairman, the Nominee has not introduced himself.

The Chairman: I am sorry about that. It was because you people were raising your hands and that was why the confusion came up.

My Lord, you will start by telling us as I said, the things you want us to know that will help us.

Hon. Justice Aloysius Iyorgyer Katsina-Alu, CON: Mr. Chairman, all I have ever done is in my C.V. Perhaps, only to point out that I have been a Judge for 30 years, 11 of which are in the Supreme Court.

Senator Victor Ndoma-Egba: Mr. Chairman, my Lord, the Nominee for the Chief Justice of Nigeria, I welcome you into this hallowed Chamber and it is quite exciting that we are seeing the entire Supreme Court of Nigeria move over to the Legislature today. It is a unique day in the history of this country.

My Lord, going through your C.V., you attended some of the best military schools in Nigeria and elsewhere. Even though you attended some of the best military schools, you had a remarkably short career as an army officer. I am sure that the Senate President will be interested in knowing why that career was so short?

The Chairman: Senator Victor Ndoma-Egba, I never knew for once that my Lord, Hon. Justice Katsina-Alu was one of my own, I must confess.

Senator Victor Ndoma-Egba: My Lord, under our Constitution; there is separation of powers whereby lawmaking is reserved for the Parliament and that is a classical position. Parliament is responsible for lawmaking. But recently, we have had judgments of the Supreme Court, in one of them, at least, you read the lead judgment, I believe, it is Governor Amechi's case in which the Judiciary made law sort of because the consequence of that judgment is that the time for elections has been changed essentially by the pronouncement of the Supreme Court. Before those pronouncements we expected Governorship elections to hold at the same time but the cases of Peter Obi and Amechi changed all of that. Therefore, my question is, when should the Judiciary make laws and how far should they go in making laws?

The President: My Lord, just take a couple of the questions before reacting to them.

Senator Ike Ekweremadu (Enugu West): Your Excellency, the Chairman, my dear Colleagues, my Lords, I have just two very short questions. One is that in the course of the exercise of the on-going Constitutional Review in the country, one of the major issues that came up is the time frame for the conclusion of election petitions and there is also the view that election petition matters need to be concluded before those who have been declared winners take Oath of Office. I believe you are aware that the Judiciary has maintained a strong position on that arguing that there must be room for flexibility so that all parties are heard. My Lord we want to know your contributions to this debate. What is your view in terms of finishing election petitions before those who had won take Oath of Office?

0631

The second one which is the last is that we had a lot of presentations from your junior colleagues, the Magistrates asking that they be named as judicial officers. What is your take on this?

Senator Jibril M. Aminu (Adamawa Central): Distinguished candidate for Chief Justice of Nigeria, we are not allowed to congratulate you but I do so.

The President: Why do you want to do something which you yourself said we are not allowed to do? (*Laughter*)

Senator Jibril Mohammed Aminu: I was arguing with some Justices that the Supreme Court always sits with an odd number of Judges which suggests to me that there is in-built injustice because some have always helped to get a majority. Why do you not have even numbers sometimes and odd numbers another time? Why are you always in odd number so that there will always be a majority judgment? That is number one.

Number two is that you have been through life and ending up as the third most senior Nigerian and may I ask you, in what way have you been exercising your mind about our Judiciary and what sort of mark you want to make apart from delivering judgments on cases that happen to come before your Lordship? What sort of things has been exercising your mind about our Judiciary and the sort of differences and marks you want to make when you leave?

Hon. Justice Aloysius Iyorghyer Katsina-Alu: The first question is the case that changed the election of all the states together is the case of Governor Peter Obi and you asked when do we make laws. In Governor Peter Obi's case, we did not make any law. Before the 2007 General Elections, Governor Peter Obi had won his case. In the case of Governor Rotimi Amechi there is no change in when to conduct elections. In the Anambra State case, before the 2007 General Elections Governor Peter Obi had won his appeal in 2006 at the Court of Appeal. He then filed a case in which he wanted the Supreme Court to interpret Section 180(2) regarding his tenure and we interpreted that Section which says that his tenure begins the day he was sworn in, that is what we did in that case. So, we did not change the law but, in any case, it is good for the country. When all the States do election in one day, there is too much work for INEC.

0632

Mr. President, when we all do elections in one day, it is too much work for INEC. If I have power to change that, I will change it as it is done in the United States of America where all the States do not do election in one day. INEC will now have more time to concentrate and do a better job than it has been in the past. So, if we have a few states doing their elections in one day, it is better for all of us. The man who wins knows that he has won and the man who loses will see why he has lost. The issues of rigging will be stamped out and it will be clear for everybody to see. That is my answer to that one.

For Governor Rotimi Amechi's case, it is better I give you few facts. Governor Rotimi Amechi won the Party primaries by over 6,000 votes. His Party, the Peoples Democratic Party submitted his name to INEC. Shortly thereafter, there was an allegation that he was indicted and then he was substituted by Omehia. At this stage, it is important to note that Omehia did not contest the party primaries. Amechi proceeded to the Federal High Court, which gave him judgment and they made far-reaching decision. The only thing they did not do was to follow it up with an appropriate order, which would have been that he remained the candidate of the PDP. He was not satisfied because that order was not made so he went to the Court of Appeal.

Just before then another case on all fours was before the Court of Appeal and, in fact, it had come to the Supreme Court and that was Araraume's case. The parties agreed they would await the decision of the Supreme Court in Araraume's case. In Araraume's case, the Court of Appeal said that the word, *error* was not a reason for substituting Araraume; that is Section 84(2) of the Electoral Act. When he came to the Supreme Court, we affirmed that decision. As soon as we affirmed the decision, Araraume was expelled from the party. By this time, election had taken place.

The lawyer for Omehia said that the Court of Appeal had no jurisdiction. The Court of Appeal agreed that they had no jurisdiction and the matter came to the Supreme Court. We thought otherwise. If they had jurisdiction originally, nothing changed that ousted that jurisdiction, so we took on the matter and heard it. Of course, by this time, Amechi too was expelled from the PDP. But they country was beginning to look like a jungle. We are practicing democracy and if a man goes to the

0633

poll and wins, it should be so stated and everybody should agree to that. The Presidency did not want that.

In the eyes of the law, Amechi was the candidate of the party. We pronounced that and you cannot have a victory without something to take home as it were. We declared that since he was in the eyes of the law the rightful candidate for the party, then he was the Governor of that State. One of the reasons was that it was the party that went out canvassing for votes, not the individual because we do not have individual candidacy here. Their dispute was not intra-party dispute it was inter-party; who should sit where? We said that the man who went through primaries was the rightful person to take over. That was all we did. Anybody who thinks that it was not too correct should wait until it is his time, he will know that it is correct. If he wins and he is shown the out, I do not think he will be happy.

The question on my Army career can wait for now.

On the question on time frame for electoral petitions; my personal view is that we should first get rid of all the electoral petitions. We should finish every case arising from the elections before those who won would take over and be sworn in as it is done in many countries. Although we might still go over the date for swearing in, it is the mind frame of all of us; when you lose, you do not accept that you have lost. So, even if you say do it before, which will take sometime, but that will be a better choice.

We have had cases here since 2007 General Elections and we are still dealing with them. It is a distressing feature in the administration of justice in this country. It is not the fault of the courts. If you have a party that brings in 100 witnesses, what do you do? You have to listen to them and at the end of the day, give judgment that you believe is right. Perhaps, when we learn to accept defeat and gains it will help us.

As for my answer to the question that Magistrates want to be Judicial Officers, until they put their case across to us, I would not know why they want to be called Judicial Officers?

0634

You asked me about odd numbers, I do not know why we have odd numbers, but I do not think that it does any harm to anybody.

As to what I would want to do if you graciously confirm me, there is really nothing wrong with what we are doing now. It is, again, a matter of the mind frame, but I would ensure that we have fair and speedy trials. We note that there are cases that last about ten years in the trial court alone and by any standard it cannot be fair. It puts the litigants into a lot of financial problems. We will work hard to put that behind us.

I will also advocate for financial independence, especially, as it concerns the states. Section 121(3) of the 1999 Constitution says: *The remuneration and salaries payable to the holders of the said offices and their conditions of service, other than allowances, shall not be altered to their disadvantage after their appointment.* All the funds, Capital or Current should be handed over to the heads of courts and we are having problems in the states. The Executives in the states are so unwillingly to adhere strictly to that. That creates problems. It creates delay in trials. It brings about delay in trying to get adequate accommodation for Judges and even equipment in the courts.

Perhaps, we would have to work together with the National Assembly to try and get the states, to give us a break. Give us what is our due so as to run the Judiciary as efficiently as we can. I want to know whether I can come back to the army career. Please, forgive me, Sir.

The Chairman: Well, reserve that for the last. It would be your conclusion. (*Laughter*)

Senator Adamu Sidi Ali (FCT): Mr. Chairman, in answering one of the questions here, you said you would await presentation from Magistrates, whether or not they will become Judicial Officers. I will take it that probably, you are very comfortable with the present arrangement as it were.

Secondly, are you in support of establishing Constitutional Courts in Nigeria and other courts that will specially take care of fraud issues? We have a situation where the ICPC and the EFFC

0635

send cases to courts. In my opinion, these cases are not being addressed adequately. Are you in support of establishing Constitution Courts in addition to the courts we have as Special Courts to take care of cases coming from these two Agencies?

On a lighter mood, my Lord, I read in your C.V. that within seven years you attended about four primary schools. You also went into the Army briefly and checked out. Does that have to do with your early character?

Senator James Manager (Delta South): Mr. Chairman, I have three questions here. One of them has been asked by the person who had the opportunity to speak before me the setting up of Special Courts.

The second one is about the retirement age of Judicial Officers, particularly, at the level of Supreme Court. Looking at you, Your Lordship, it is very evident that you are very healthy and you have a sound mind. Do you not think that they can be given additional five or ten years, at the level of Supreme Court where its judgments go to no other place for appeal? Do you not think that the older the Justices, the better?

Thirdly, arising from the question that was asked by Senator Victor Ndoma-Egba, (SAN) I want to add a rider. Court of Appeal is the highest court for election issues concerning Governors, Members of the State Houses of Assembly, Senators and Members of House of Representatives. The man whose election has been annulled as a Governor of a State goes back for another round of election and he is re-elected as the Governor of that same State. Is it morally right for the tenure of that particular person to start from the very day he was sworn in the second time? Is it morally right? If it is not morally right but legally right, what can be done to remedy the situation?

Senator Maina M. Lawan: Mr. Chairman, I am a layman but two issues are agitating my mind and these two issues all have to do with the current efforts in the country and in particular, at the National Assembly level to reform the electoral processes. As you are aware, we have received submissions and we are working on tinkering with the provisions of the Constitution as it affects the electoral process.

0636

The first issue that is agitating my mind is the question of process of appointment of the Election Management Body, that is, the Independent National Electoral Commission, talking about the Chairman and Members of the Commission. Some say that in a football game a player should not be appointing the referee in a game in which he is participating. Yet others say that it does not matter, it depends on the integrity of the person appointed.

We have a recommendation that suggests that, perhaps, given the National Judicial Council the responsibility of processing and searching for credible persons and making a couple of recommendations out of which Mr. President in Council will pick one and forward to the Senate may detach this process from partisanship.

The other side is that some people say that even the National Judicial Council, for the fact that cases emanating from there could end up before the Supreme Court and the Chief Justice of the Federation being Chairman of that Council may have already formed opinion in the process.

I want to really know if the management of the processes, particularly the recommendation emanating from the National Judicial Council might compromise the process. If yes, how do we detach the processing of that appointment from the analogy of the player in a football game?

The second issue that is equally agitating my mind, is that I am a layman but lawyers say that he who asserts must prove and in the quest of addressing election issues petitioners had always struggled to have access to INEC documents in trying to prove their cases for which reason a recommendation is made that the burden of proof should be shifted from the petitioner to the election management body in respect of election cases. I would want to hear your views on this so that we would be properly guided.

The Chairman: My Lord, react to these set of questions and then we move on.

Hon. Justice Aloysius Iyorgyer Katsina-Alu: Perhaps, I will take the last questions first. On whether the appointment of the Chairman and Members of INEC should be done by the NJC or

0637

the Presidency, as of now, the law creating INEC says that it is the President that will appoint the Chairman and the Members. You are our Representatives, if you think that is wrong you can effect a change here. You can change the law.

As to whether or not it should be NJC, really does not matter who appoints. When you appoint a person of integrity, he will do his job as faithfully and correctly as possible. If the NJC recommends, the people will owe no allegiance to NJC because NJC are no politicians. We are not participating in politics. The people NJC appoints will owe no allegiance to NJC. The good side of it is that they will owe no allegiance also to the Presidency because he did not appoint them. In other words, in the end they would have free hand in doing their job. It is our mind set that is the problem and not whether or not the system is bad; no.

If you appoint a good man, if you go wrong he will tell you that you are wrong. The reform should be from our hearts first before you start talking about reforming the law. There is nothing wrong with the law.

Yes, it is said that he who asserts must prove, and I believe that it is a good law. If you say that the burden should shift, you would have more frivolous petitions. The man who knows that he does not have a good case will petition and would push the burden to the other side. So, I think the law as we have it now is a good law and there is nothing wrong with it. If you do not have material to back up your petition, then, do not file any. Wait for your time; four years is a short time.

You talked of annulled elections at the Court of Appeal level and whether or not it is morally right. I am not sure whether I understood you but if somebody's election was annulled and another election holds and he wins, there is nothing wrong with that. Perhaps, it was annulled as a result of some technical reasons. On the tenure, that is where Section 180(2) of the Constitution comes in. Those who are still pursuing the 2007 election especially Governorship, they really do not have much problem. The day they win and they are sworn in they have their four years. That is what we decided in Peter Obi's case.

A situation where you fight through the court, for instance, for three years and you win and you have only one year to go and somebody thinks that

0638

is all you deserve, I think that is wrong. A man who did not win has taken three years, you that won have only one year is morally wrong. That is the beauty of Section 180 of the Constitution.

On the retirement age of 70 years, it all depends on the health of the people concerned. Most of our Judges who retire at 70 years get full time jobs and they wake up early to go to their offices. Sometimes you wonder why they retired or why they should be retired, but that is the law. I have had colleagues who retired when the age limit was 65 years and if you look at them they look 50 years and very strong. It was not fair really. I do not think that a few more years would do anybody any harm.

Somebody asked me why I went to four primary schools; my Uncle was a headmaster and I was with him so when he moved, of course, I would not stay behind that was the reason.

On the issue of establishment of Constitutional Courts, maybe, because of the volume of electoral matters we now have people believe that Constitution Court is, perhaps, necessary. I would not say no to the establishment of Constitutional Courts because they will help us, too. It will help the Supreme Court and also the Court of Appeal but our attitude is the same. If you go there you will also have backlog of cases. That is what we are trying to run away from by creating a Constitutional Court but the result will still be the same. However, there is no harm in trying if the country needs it.

I do not think ICPC and EFCC need special courts. What we need to do is to approach the Chief Judges in the States and the Federal Capital Territory and they will put aside one court that will treat these matters and that will solve the problem. What we need is one Judge and he will do them.

I am done for now, Sir.

Senator Bala A. Mohammed (Bauchi South):
Mr. Chairman, my questions have already been asked by my Leader distinguished Senator Maina Ma'aji Lawan except one which is a general question that has to do with the separation of powers within the Judiciary and the Executive vis-a-vis moral court for the Chief Judges of the States.

0639

The last statement of my Lord says a lot that is the confidence and the responsibility of the Chief Judges in the States to dispense justice without any undue influence *vis-a-vis* the lack of financial independence of the Judiciary in the States where some Judges out of, maybe, blackmail or lack of capacity to dispense or to administer justice are left at the mercy of States Chief Executives.

What can you do as the Chief Justice of Nigeria to ensure that you instill more confidence in the States Chief Judges so that they can dispense justice without any fear or inhibitions due to lack or need of assistance from the State Government as a moral court as you said, this body comes up with some package that will give you the financial independence that you need.

Senator Ayogu Eze (Enugu North): My Lord, I wish to first of all congratulate you for having a glorious tenure in the Supreme Court for the past 11 years. I wish to ask you considering what has happened in the past couple of years, a lot of people have tended to go away with the impression that the Judiciary has embarked on some form of activism, in fact, taking on the streets and getting the people clapping.

A lot of people believe, I am sorry for returning to the same matter, that it was this activism that led to the emergence of the results of what we saw in the cases of Peter Obi and Amechi. This is because if you look at certain aspects of the Constitution it is truly contentious whether, indeed, the intention of the drafters of the Constitution was for the term of office of a governor to run from when his election result is overturned and another election held and which he also won rather than he completing the remaining part of the years as is the case with legislators and as it is also provided for in the Constitution in the case of other forms of succession. Going from those provisions, is it not really true, indeed, that the intention of those who drafted the Constitution was that the tenure of office of a governor is fixed. You run from point A to point B and if anybody comes in between it completes what is remaining. What do you say to that, Sir?

The Chairman: Distinguish Colleagues, I will request that you ask questions please, rather than giving a narrative before the question so that we can take many more.

0640

Senator George Anthony Manzo (Taraba North): My Lord, would it be fair to say that the deluge of election cases in the justice system has frustrated the Judiciary? This is because the time the Judiciary ought to utilise to define the character of our society, which I believe, it should do from time to time, has been wasted in dealing with those election cases. As a result of this, we stand the risk of seeing the Judiciary quite rightly I believe, attempting to define the character of this democracy.

Secondly, Section 150 of our Constitution deals with the establishment of the Office of the Attorney-General of the Federation while Section 195 deals the establishment of the Attorney-General of a State. Whereas in the case of the Federation the Constitution refers to the position as the Attorney-General, the Chief Law Officer and a Minister, but for the state it refers to the position as the Attorney-General and Commissioner for Justice? The word, *justice* is not specified in the case of Section 150. Is one right to assume that the President, perhaps, could possibly appoint another lawyer as a Minister of Justice?

Senator Kabiru Ibrahim Gaya (Kano South): My Lord, I just want to ask one question so that I can allow my Colleagues to ask more questions. My only question is that there is a slogan that says: *Justice delayed, is justice denied* and I believe we all believe in that. In Kano Prison we have over 3,000 inmates, half of those are awaiting trial and some of them have been there for five years or more.

Another issue is the case of Major Al-Mustapha and Yakubu and Co. which have lasted for over eleven years without really giving judgment. This gives us an impression that justice has been tempered with by an undue influence from outside because in normal circumstances, this case should have been sorted out long ago. My Lord, you are under screening and as soon as you are being confirmed, I will appeal to you to look at these cases and do justice to them.

The Chairman: Distinguished, because the cases are pending in courts we should not delve into them, if you do not mind. It is still an outstanding case, if it is a case that has been decided, it would be proper for us to discuss them. So, we cannot make that appeal here, please.

0641

My Lord, you should ignore that aspect of the question please, because it is a case that is still pending in court. There is no need to make reference to it here. You will respond to the aspect of the inmates in prison.

Justice Aloysius Iyorgyer Katsina-Alu: They talked about Judges doing justice without fear or favour that is what we endeavour to do on a daily basis. Before a person is appointed to the Bench, so much is done to ensure that we get the right material.

Again, when we talk about doing justice without fear or favour, sometimes the aggrieved party may not be honest to himself. A person believes that he has a bad case, he goes to court; if he loses, the court takes the blame. I often tell people that I do not ask you to come to my court. A man who loses, as I said before, does not believe he should have lost even when the law says so. You can see that it is not the Judge that is lacking here, it is our mentality. The man does his job well, but the loser says no. We have brilliant Judges on the Bench and we have the National Judicial Institute and we hold seminars from time to time to bring ourselves up to date. The fault is not with the personnel but with those that go to court who think they must win at all cost.

I do not know what the framers of the Constitution had in mind when they brought in Section 180(2), the language is so plain. Your time begins to run on the day you were sworn-in. I do not know how else one can interpret that. The problem lies with those who complain when they should not be complaining. They keep the winner two years fighting in court. Surely, he went into election for a four year period and the day you say he wins, he should have his four years.

Somebody talked about Sections 150 and 195. Section 195 talks of appointment of an Attorney-General and Commissioner for Justice, whereas Section 150 talks of Attorney-General and Minister. Having regard to the practice world wide, an Attorney General can be no other Minister but Minister of Justice. I have never heard where an Attorney General is also as Minister of Petroleum. The two do not go together. Simply put equity looks at the substance and not the form, you are thinking of the form but the substance is there. An Attorney General can be no other Minister but the Minister of Justice. If you do not want that, you

0642

can create the Office of Attorney General and also the Office of Minister of Justice and that has been done before. I know that Sarduna in those days did it when he had an Attorney General and also a Minister of Justice.

Those awaiting trial is a distressing reflection of what happens in our country. The Judges try to ameliorate the situation by going on inspection and asking some people to go, but that is actually not the solution; the solution is to give us the wherewithal to enable the courts to be in a position to deal with these matters as speedily as it should be done. There are some who spend more years in prison than they would have even if they were convicted. The Ministries of Justice are poorly staffed and equipped. When these things are rectified it would go along way.

Also we would try to educate our Judges of the lower cadre. There are some charges that should not take an hour or so to dispose off, but the typical thing in Nigeria is that when you do that the other side would be complaining that he must have been enriched to do so. They would query why did he finish the case so quickly and that creates problems even for the Judges.

The Chairman: Please, looking at the Justices who are here we also have gender friendly, so I will call on distinguished Senator Justina Nkechi Nwaogu.

Senator Justina Nkechi Nwaogu (Abia Central): My Lord, I have also associated myself with my Colleagues who are canvassing for bow and go in view of the way and manner our Lord has answered the questions, but I would like to just add a little to the questions already asked.

I was very excited when my Lord affirmed once again the decisions on the rulings on Executive positions, that is on the Governors who were either shortchanged by removing them on their seats and when eventually justice is done they are given back their seats and most importantly their tenure is restored. My question, therefore is, in view of the fact that the Legislature also suffers this type of injustice by some of us in court for two to three years and when we win, what is your opinion about having a staggered election for the Legislature there by restoring the time that wrong people have taken in the Legislature? What is your opinion with regard to the Legislature? Even the

0643

latest Supreme Court judgment that has become the norm today by pronouncing in favour of staggered elections for Governorship in particular, what is your opinion about advocating for the same thing for the Legislature where you have people coming on board for just three years and in some cases six months before the next election?

The Chairman: On an issue that is purely constitutional, if he is expressing an opinion that should remain his personal view. Tenure issue is very specific in the Constitution and you have just explained that so there is no point going over it several times.

Senator Ibrahim Ida (Katsina Central): Mr. Chairman, my question is a very simple one. Section 231(3) of the Constitution clearly stipulates the qualification for appointment as a Supreme Court Judge and by implication as the Attorney General. That means anybody that is so qualified can be appointed as the Attorney General, but it has now become a norm that only Justices of the Supreme Court are considered whereas Nigeria has a history of having somebody from outside been appointed as a Chief Justice and he performed well. I am referring to Justice Teslim Elias. Sir, what is your view on the fact that people from outside who are qualified should be considered for appointment to the position of Chief Justice rather than confirming it to those who are serving in the Supreme Court with all due apologies.

Senator Abubakar D. Sodangi (Nasarawa West): My Lord, let me join my Colleagues to congratulate you for your nomination. I have three questions for you:

On ECOWAS Court, there has been an advocacy by citizens of West African sub-region that instead of leaving ECOWAS Court to taking only matters on human rights and Consular matters like the freedom of movement of goods and persons, that their jurisdiction should be enlarged to take cases on contractual breaches, Maritime Administration, *et cetera* as the Chief Justice of Nigeria if confirmed, what would be your view? Should that be allowed? Do you think it is reasonable to enlarge the jurisdiction of the ECOWAS Court to take all matters?

Coming back home, of recent there has been abuse of professional conduct by both lawyers in the legal profession and those on the Bench with

0644

due respect. When I say lawyers in the legal profession I mean both the Inner and Outer members of the Bar. In other words, there has been indiscipline by the lawyers. As the Chairman to be of the legal profession both for the Inner and Outer Bar and, indeed, the Judges and Justices of the Superior Courts, what would you be your advice in that regard?

Is the indiscipline caused by the quality of lawyers that is being produced? Or is the indiscipline caused by Judges and Justices of the superior Courts who grant indiscriminate *ex parte* orders which we have always quarreled about? A Judge sits and without hearing the other side grants an *ex parte* order. What are your views on these issues and how can they be stopped?

Lastly, still on the legal profession, and on the title of Senior Advocate of Nigeria being conferred on deserving legal practitioners, of recent there have been calls from the majority of those who have not got the title and because of the kind of selective, *manner* of conferring the title; some are saying the title should be scrapped. With due respect to my Colleague here, Senator Victor Ndoma-Egba and, of course, the Minister of Justice who is also here, would you subscribe to idea that it should be scrapped?

Senator Ahmad Rufai Sani Yerima (Zamfara West): My question is that the Constitution of the Federal Republic of Nigeria provides for Sharia Courts and Sharia Courts of Appeal for States that want them. Appeals arising from a Sharia Court of Appeal can go up to the Supreme Court of Nigeria. Where such an appeal happens, will the final decision of the Supreme Court be determined based on the Sharia Legal System? Is there any obstacle in the process that may require amendment of the Constitution concerning any of the courts?

Secondly, is there any way that the National Judicial Council can bring about changes in the procedure so as to ensure that cases in lower courts do not drag on beyond ten years as it is happening today?

The President: Truly Senator Kabiru's question on long detention has been answered. Let him not answer something that would obviously be an inference on what is still there. My Lord, you have answered the question on long detention and

0645

what can be done; let nobody draw any inference from whatever he says here.

Hon. Justice Aloysius Iyorgyer Katsina-Alu: I will start with the award of Senior Advocate of Nigeria. We know that there is out-cry in some quarters on that. As of today, we appoint only 15 lawyers but you have sometimes 200 lawyers that would apply for this. There are people who think they ought to get it, but this is a privilege. It is not a right and we are doing our best to ensure that those who really qualify get it. Before 2007, we did very little but now when lawyers apply we go for the inspection of their Chambers. Those who qualify at that stage, we invite them for interview. In addition, their names are put out in the newspapers in case somebody has anything against any one of them. In some cases we have petitions written about some of the lawyers. Those who go through may be more than 30 but we can only give 15. There is nothing wrong with the procedure and there is no favoritism. More importantly, it is a privilege. If you qualify but have no manners, you do not deserve to get it. If you qualify as a brilliant lawyer but you are a thief, you will not get it and I do not think that we are doing anything wrong. We want to put out the best. If you are said to be a Senior Advocate, you must be senior in all respects.

For the indiscipline of lawyers; I would say that indiscipline is in every sphere of life, it is not limited to lawyers. But when we have cases of indiscipline, we look into them. Lawyers are taken before the Disciplinary Committee of the Bar Association for their misconducts and they are tried by their peers and if they are found guilty, they would recommend that their names be struck off the Roll and we have been doing that. There are some people who were lawyers two years ago are no more lawyers. So we, too, are trying to cleanse our profession. It is the only one that we have.

On *ex parte order* that is a Latin expression meaning without the other side. They are necessary when a situation is dangerous. If you do not arrest it in the shortest possible time, a greater danger will occasion.

On the request for the enlargement of the jurisdiction of the ECOWAS Court, I have never read any of their papers. You will excuse me because I would not know whether or not they need to expand their jurisdiction.

0646

That is all, Sir.

The Chairman: My distinguished Colleagues, really he has spent enough time with us and we are still going to get another person in the Judiciary, there are questions that can be answered by the next person. We should really reserve those for the other person unless you believe it is better answered by my Lord, Justice Katsina-Alu. However, there is still one question still not answered, my Lord, that is your military career. *(Laughter)*

Hon. Justice Aloysius Iyorgyer Katsina-Alu: I thought I escaped that one. Mine is a simple one. I trained here in Kaduna, then it was Nigerian Military Training College. We trained for six months, and went through all the shots. The first night we got there, I had a problem; the Sergeant Major came round and we had not even alighted from the big lorries when he started shouting out orders. I thought it was a bit of foolishness so, I smiled and he did not like it. He said to me; what was funny? I said, well, I thought you would show us to our dormitories first before shouting out orders. I do not know which direction you want us to run. *(Laughter)* And he said, oh, you were the one? Is it not? That was the day my trouble started.

So, after our course, I was not commissioned. Six days to the Commissioning, the Commander told me that the Ministry of Defence wanted to see me in Lagos. When I came to Lagos, they said, what are you doing here, have you been commissioned? I said, I was told you wanted to see me. They said, no, they did not. They said, all right, in that case, we give you local commission and I said, no, it simply means that God does not want me in the Army. So, I put in Notice to Leave and it took them four months to reply me. Finally, they agreed and when I left, I went in straight to read law. That was what happened.

The Chairman: Thank you very much, my Lord. You have been on your feet for sometime and I think it is a clear indication that even at this age, you are still very fit. I was looking at distinguished Senator Mana, and distinguished Senator Akaagerger, when he was describing his military career, and they listened with wrapped attention because they were also Colleagues, even though, he did not get commissioned, but he did all the training. *(Laughter)*

0647

There are a lot of us who are pocket lawyers, even though we never went through a normal legal school.

Well, distinguished Colleagues, is it the wish of the Senate that we ask him to take a bow and go now?

Several distinguished Senators: Yes.

The Chairman: Thank you, my Lord, you may take a bow and go. *(The Nominee took a bow and left)*

Distinguished Colleagues, we have before us, Justice Salami. My Lord, I thank you for coming before us. We have a copy of your C.V. If there is anything in the C.V. that you would like to emphasise that will help us, please, do so and if there is anything that has been left out of the C.V. that you would like us to know, we will like you to tell us also. After that, we will then ask you a couple of questions.

My Lord, Justices, generally, we do not allow so many people to accompany people who come before us. But we are aware that the Judiciary is also a sister arm of government. We are allowing this to show our desire to cooperate with the Judiciary so that we can move this nation forward. It is a very unique thing for us. My Lord, you have got all these supporters but none of them will be able to answer for you when we throw the shells at you.

Hon. Justice Isa Ayo Salami: The President of the Senate, the Deputy President of the Senate, distinguished Leadership of the Senate and distinguished Senators, I am Isa Ayo Salami. I was born on 15th October, 1943. I started primary education at Iyeru-Okin Primary School, Offa. Subsequently, I went to St. Cyprian's Catholic School in Offa. I was eventually admitted to Offa Grammar School where I did my Senior School Certificate Examination (SSCE).

By the arrangement in Northern Nigeria at that time, there was a Common Entrance Examination which we took in our final year of the Secondary School. Successful candidates among us were shared among Secondary Schools in Northern Nigeria at that time that had HSC. By this arrangement, I happened to go to Provincial Secondary School, Kano, now Runfa College

0648

where I met a lot of classmates from different parts of Northern Nigeria; like Mohammed Goni from Borno who was once the Governor of Bornu State and Dauda Birma who was the Minister of Education at one time.

After that I went to Ahmadu Bello University where I did my LLB. from 1964 to 1967. University education was regular at that time so, we started in October and finished in June. That was how I spent my three years at the Ahmadu Bello University.

There, I participated to some extent in Student's unionism. I won election for the position of Superintendent of Food in my second year. That time, the Students Union was responsible for catering for the students. The University owned the kitchen and the facilities but we had the food contractors; we did the purchases, the cooking and every other thing among ourselves.

When I graduated in 1967, I went to the Nigerian Law School and thereafter, I went home. I had health problems that time so, I could not go into private practice which I had the intention of doing. I had to seek employment first in the Customs where I stayed for two years before joining the Ministry of Justice of the then North Central State.

I hope I have said enough to assist you, distinguished Senators.

Senator Enyinnaya Abaribe (Abia South): My Lord, the answer that most Nigerians will be interested in hearing from you is on the question of corruption. Rightly or wrongly, we do not know the reason the Judiciary is seen today as giving judgments that people think are induced or motivated by matters that are outside of the law. None of us knows whether it is true or not, but if you are confirmed today you would be the person that would be assigning Judges to tribunals and also giving other responsibilities to the other Appeal Court Justices under you. We want to know your view on this aspect that really agitates the minds of most Nigerians.

Secondly, I read from your *Curriculum Vitae* that you have worked with Government at all times from State Counsel, Solicitor General to Permanent Secretary and that means you are very comfortable with government. We would want to know when

0649

you have to make a decision that has to be between an individual and a government whether we can be very certain that you would not be influenced by your past government relationship. We say this, my Lord, because we want to be sure that each one of us that comes to the temple of justice will walk away feeling very satisfied.

Senator Teslim Kolawole Folarin: My Lord, my question is a very simple one. I would like to know your view about setting up of special courts to deal exclusively with election petitions on electoral offences instead of the present amendment of setting up tribunals.

The Chairman: My Lord, he wants to know your views on setting up special courts to deal specifically with election cases instead of tribunal.

Senator Bassey Ewa-Henshaw (Cross River South): My Lord, I want you to address the issue of violation of court orders. How seriously does the Judiciary view this problem and what would you do in your position as the President of the Court of Appeal to ensure that flagrant violation of court orders are checked. I would like to address the issue within the context of the following three examples I will give to you which have been widely publicized in the media.

First, is the issue of the perpetual injunction issued against the prosecution of an ex-Governor. A Judge of a High Court issued a perpetual injunction forbidding the prosecution of an ex-governor.

Second, is the one we read sometime ago about a former Minister that flagrantly and regularly abused court orders?

Finally, there was also the case of a High Court issuing a restraining Order against the conclusion of the ceding of Bakassi which we were told the Government ignored and went ahead and completed the exercise. So, I would like you to address the issue of violation of court orders within the context of those three examples.

The second question has to do with Treaties. In a situation where Nigeria voluntarily enters into an international Treaty, is there any such Treaty that can be superior to the Nigerian Constitution.

0650

The Chairman: Distinguished Senator Ewa-Henshaw, the issue of the examples you gave with respect to perpetual injunction any case that is pending which is yet to be decided upon, we should avoid it to avoid being misinterpreted. I would suggest that you ignore that question with all due respect. I am sure you understand that. You will deal with question on anything that is not before any law court.

Senator Umar Dahiru (Sokoto south): I thought by virtue of being the Chairman of the Senate Committee on Judiciary I should abstain from asking questions.

The Chairman: But you raised your hand and that was why I wrote your name. Did you raise your hand to say you want to abstain from asking questions?

Senator Umar Dahiru: Just one thing, it is to the credit of His Lordship before us that he made it possible for settlement of contracts in foreign currency which hitherto was not the case. It was through his judgment which was concurred by the Supreme Court that we are now able to achieve that.

It is equally to his credit that on the issue consent dealing with the land matters, we discovered that we can do all the arrangements before going either for consent in the use of alienation, mortgage or whatever. Now, part of the reform that is being sent across to the National Assembly in the issue of dealings on the land, is the matter of consent because that has been causing delays on land development. For now you own a property but the Governor may deny you consent to deal with your property. Are we required to seek for Governor's consent before embarking on any transaction on the property or we abandon it so to say for the sake of our own development?

Lastly, on the issue of subversion of judgments by the lower courts, quite often we discover, particularly with the High Court that the Supreme Court will make a pronouncement in a given case and the divisions of the High Court in one way or the other would ignore the judgment of the Supreme Court which we found binding. When that happens what do you think we should do with that particular Judge? These are my questions.

0651

The Chairman: My Lord, answer this set of questions and after that you get the next set of questions.

Hon. Justice I. A. Salami: On the question of corruption in the Judiciary, we have over 300 Judges spread across the country in various states jurisdictions so, I cannot deny the fact that there may be one or two bad eggs. There is no community that is 100 *per cent* clean or bad.

The problem is that this matter respectfully, is being over exaggerated and that comes from our nature of being bad losers. After losing, instead of graciously accepting the verdict of the court, we try one way or the other to blame it on the court. It is unfortunate that some of our lawyers encourage this type of thing. After hearing the submission in court they go out and make their own submission to the Press of things which they probably did not present in court. Then when the judgment goes against them, they would say; *yes, I told you, you see what I presented to you here the other day, and see what they have decided.* But the court is to decide what you presented to it and not what you presented to the media outside the court.

So, that is how this question of corruption is being bandied around and respectfully, I do not think that it is as serious as people tend to paint the picture.

There is a question that whether because of my background as a Civil Servant because I was a Collector of Customs truly but I found it very difficult and that was why I had to run to North Central State to beg them for appointment as a State Counsel and, in fact, a grade lower than what I was in the Customs.

Irrespective of my background as somebody who has worked in government, I have tried over the years when I became a Judge to do justice to all manners of people irrespective of their status and of whose ox is gored. If government has good case, I will have no option than to decide in its favour and if a citizen has a good case I will have no option than to decide in the citizen's favour.

There was a land case in Enugu dealing with notice. The Anambra State Government acquired the land on behalf of the Federal Government but subsequently they gave it to a third party who is neither a government nor a government subsidiary.

0652

The original owners sued the Government. They lost in the High Court and appealed to the Court of Appeal. In the Court of Appeal the question was whether the got notice of the acquisition of the land; the evidence of the Government was that the family was served with notice of the acquisition through their PW 6. When PW 6 was cross examined he admitted that by the time the land was acquired, he had retired from the service of the Local Government in which the land was situated.

Even though the provision of the Land Use Act says that notice must be served personally on the people and if you cannot get them, place it on the land physically, we gave a decision two to one. My Colleagues said that since the Government published the notice in a Gazette, it was enough notice. I disagreed and wrote my dissenting judgment in which I said that since they did not serve them as required by the Land Use Act, the family was right to come to court and the acquisition was null and void. This was in 1998 in Enugu, ***Ononuju versus the Attorney General of Anambra State.***

Since that time nothing happened so I thought that, maybe, when they saw my dissenting judgment they had gone to negotiate with the family and the matter was all over. But in July, just before we went on vacation, the Supreme Court did the case twelve years later and upheld my dissenting judgment and set aside the majority judgment. I do not know the reference but it is in Part 11(48) of Nigeria Weekly Law Report. There are other judgments which I have given against government. I do not think that my background has anything to do with my sense of justice.

On Elections Tribunals; if another court is set up to take on the work of Election Tribunals, the problem will still be there because it is not that the present system is not working but we are confronted with an enormous responsibility. You imagine a case where one side wants to call 100 witnesses, the tribunal as it is presently constituted cannot stop that party from doing so. The other party may do the same thing. The person who is occupying the seat will be doing everything humanly possible to delay the hearing of the matter. So these are the things that have sort of, contributed to give the impression that the system is not working. If we set up another court purely for election purposes, it would be faced with the same problems we are facing now except probably,

0653

if there are constitutional amendments to the right of fair hearing which court can curtail but without that one we would be estopped.

On the issue of violation of court Orders, this is a point recognised by every one of us and it has its roots in the principle that, of the three arms of Government, the Judiciary is the weakest. It has no arms or treasury, it cannot vote money and it has no sword, or Police, or Army to enforce its orders. We rely on the Executive to enforce the courts decisions and if they are unwillingly to enforce them, there is little or nothing the courts can do. That is why it is not the fault of the court, but if there are resources, maybe, we may consider going the American way, where they have Court Sheriffs which is a sort of Police Force of the courts to enforce courts decisions. Since they would be under the Chief Justice of Nigeria, they cannot be influenced by the Executive arm of Government. Except there is a system like that I do not think we would be out of the woods.

Then on the issue of Treaty, well, when we enter into any Treaty we are required to bring it to the National Assembly for domestication and I doubt if distinguished Senators and the other arm of the National Assembly, will ratify or domesticate a Treaty that violates the Constitution. Our laws must be made in compliance with the Constitution, so we cannot domesticate a Treaty, in my view and with the greatest respect to you, which will be in conflict with our Constitution.

On the issue of foreign currency, I made two judgments on it whether Nigerian courts can make awards in foreign currency. I wrote two judgments. Sir, I do not know if I can take a look at the reference or is it not necessary.

Several distinguished Senators: It is not necessary.

Hon. Justice I. A. Salami: well, I said in the judgment that we can do it. The Court of Appeal sitting in Lagos said, no; that I was wrong. Then another court in Ibadan also disagreed with me. The Ibadan judgment was the first to get to the Supreme Court and the Supreme Court considered all the four judgments and came to the conclusion that we can make contract to pay in foreign currency and that is the position of the Law now until it is change by the Supreme Court.

0654

On the question of consent of Governors, well, all these things are made to protect the land, if I may say. There is nothing in the Land Tenure Act as it stands now that prevents a person from making contract to mortgage a land but after you have made the contract and agreed, you can now apply to the Governor to consent to the agreement and that will enable the Governor to ascertain whether there is anything inimical to the interest of the State. So, if consent is dispensed with and people can just enter into mortgage with land obtained under the Land Use Act the problem might arise where some illegalities will be perpetrated and there will be nobody to check it. That is the only fear I have. That is all the questions for now.

Senator Suleiman A. Adokwe (Nasarawa South): My Lord, the first question I would want you to address is the issue of retirement of Justices particularly in the case of the President of the Court of Appeal where some people feel that if you are still very strong and able you should be able to stay for a long time to create an era where we could say during the era of so and so person a lot of achievements were made but as the Law stands now you have to retire at a certain age even when you are still strong and willing to go on. What is your view about the retirement age as it is presently the Law?

My second question has to do with delays particularly in electoral trials. The President of the Court of Appeal gives practice directions, and I believe the intention is to minimise the waste of time in trials, but we still found out that even up to the moment of speaking there are still cases that are yet to be dispensed with. One of the issues that arose when we had the last Senate Retreat in Enugu was that INEC always have difficulty in complying with directives to allow litigants access to INEC documents and it has been very difficult for Judges to compel them to do so. I thought the Judges could do that or in the alternative, the presumption in Law always is that if you have official documents and you do not want to bring them out, they will count against you. Why is it difficult for Judges to rule against INEC in such circumstances?

We are concerned that litigations arising from elections ought to be finished in good time. When somebody rules for about three years and his election is nullified then somebody starts afresh, it creates injustice in the system as far as some of us

0655

are concerned. What would you suggest to be done in hasting judgments or are you of the view that all cases on electoral matters should be dispensed with before people are sworn into offices?

Senator Mohammed A. Mohammed (Bauchi Central): My Lord, from the layman's point of view, the decisions of both the Supreme and Appeal Courts, especially where you have a number of Justices sitting appear to be on simple majority. However, the decision of this august body, that is the National Assembly on certain issues are based on two-thirds majority, for example, the decision on creation of state.

There are very critical decisions to be taken by the Supreme Court and the Appeal Court. Do you not think it will be good to introduce the system in the National Assembly so that, at least, you have two-thirds of the Justices sitting on critical issues to arrive at decisions rather than using simple majority? This is because the Judiciary and the National Assembly are being criticised a lot on a number of issues. Take for example, the decision on the election of a State Governor or the President, such should require more than a simple majority.

Senator Wilson Ake Asinobi (Rivers West): My Lord, I have just two questions. One of them is on the issue of appointment of Election Tribunals. As part of the reform, how do you see a situation where the Tribunal is appointed by the President of the Appeal Court and the President of the Appeal Court also appoints the Appeal Tribunals? Do you not think that it is too convenient and should it not have been better that the Appeal Tribunal be appointed by the National Judicial Council? *(Interruptions)*

Extension of Sitting Time

Senator Teslim Kolawole Folarin: Point of Order, Mr. Chairman. Pursuant to Order 13 of the Senate Standing Orders, I move that this Senate sits beyond 6.00 p.m.

Senator Olorunnimbe Mamora (Lagos East): Mr. Chairman, I second the Motion as moved by the Senate Leader.

Question put and agreed to.

Resolved: That the Senate sits beyond 6.00 p.m.

0656

Senator Wilson Ake Asinobi: My second question is that of cases arising from primaries. Some of these cases are allowed to go up to the Supreme Court whereas cases arising from the general elections terminate at the Appeal Court level. Sometimes the outcome of the appeals at the Court of Appeal level arising from primaries can be overturned at the Supreme Court. How can we reconcile this situation and what do you think should be the remedy that cases arising from election primaries should not go beyond the Court of Appeal?

Senator Sola Akinyede (Ekiti South): The question I had when I put up my hand was meant for the Chief Justice nominee, I, therefore, decline to give my time to the next person.

Senator Anyim Ude (Ebonyi South): My Lord, anybody who is going through what you are going through now and who is moving into a new office is expected to have a vision and ideas about what he hopes to do which is not being done right, what he intends to do by way of change. I want to believe that you are going into that office with new ideas or will you just pass through and leave things as they are? What are those new ideas that you have?

The President: My Lord, you can answer this set of questions and then we would go to the next set.

Hon. Justice I. A. Salami: On the age of retirement of Justices, presently, a Justice of Court of Appeal retires at the age of 70 and with greatest respect, I believe we should leave it at that. This is because in Europe or England, for instance, they are allowed to go as far as 80 years or as far as they choose to go. But the medical facilities they have there are not comparable with what is obtainable here. If you decide to keep us there till 75 years, some of us may become mere passengers who may not be able to contribute meaningfully to judgments that would be delivered. That is why I think, with greatest respect to you, that we should let it be what it is now.

On the issue of delay in election petitions, one of the problems as the distinguished Senator who put the question identified is INEC. The parties do not get co-operation from INEC and when courts make orders that INEC should comply, at times they do halfheartedly, at other times they do not.

0657

For instance, in the case of **Obasanjo versus M.D. Yusuf**, on the Presidential Election of 2003, we ordered that INEC should give Justice Party that is the Party of M.D. Yusuf, opportunity to look at the electoral documents, they went to INEC headquarters here, they said; no, they should go to the state concerned. They went there, and they said; these are the few we have here, others have been transported to Abuja national headquarters. That was how things went until they had to give up that aspect of their petition.

I agree there is a provision that if you are asked to produce and you do not produce, the other party has the right to give oral evidence of what is in the document you are asked to produce which you fail to produce and thereafter you are estopped from producing that document. But it is not for us to tell lawyers what to do. It is for your lawyer to bring it before us and then we will determine it. I doubt if lawyers have been taking advantage of the provisions of the Evidence Act.

On the question of not swearing in people before the determination of the election petition against them, well, I will suggest that if a provision can be made that the person should be allowed to be sworn in but if the matter goes on appeal, he should not be allowed to take office until the appeal is disposed off. This is because I do not see any possibility of all the election petitions being disposed off in time for swearing in to take place at the same time, unless you are going to have staggered swearing in.

That we should have a majority of two-thirds before we can have a judgment, in most cases, the majority has been wider than two-thirds, but if you want to have two-thirds our composition is usually five in the Court of Appeal. We have odd number because if we disagree, one man will fall to one side and, therefore, that side will get the majority. So, if we are talking about two-thirds majority, we may have to expand the composition of the court, I mean the number of people who will sit on the matter and this means more money, because it will entail employing more Justices.

On the appointment of election tribunal by NJC, with respect, Sir, all members of the Election Petition Tribunals are Judges whose appointments were done through the NJC. All what the Court of Appeal does is to select some of them to participate in election petition.

0658

If you take a look at the schedule on Election Tribunal, the President of the Court of Appeal uses his ingenuity to interpret the Section, in the sense that it should have been five Justice for the tribunal for their state, if one looks at the literal meaning of the Section. He was the one who interpreted it to mean; *they are to go and serve in states other than their own*. This tends to have assisted the polity because one wonders what we would have had if Election Tribunal Members either constituted by NJC or by the Court of Appeal President are to serve in their states of origin.

Yes, cases arising from primaries; until the last Electoral Act of 2006, these are considered to be internal matters for political parties and the courts had nothing to do with them. It is the Electoral Act 2006 that empowers the courts to go into it and this has to be done in the High Courts and not in the Election Tribunals and since they are going to be done in the High Courts, it means that they can go as far as to the Supreme Court whereas election cases are by the provision of the Constitution to terminate in the Court of Appeal. That is why we have the discrepancies, except there is an amendment to the Constitution that election petition matters should go up to the Supreme Court, meanwhile only matters coming out of primaries, what we call; *pre-election matters* go through the High Courts and anything that is initiated in the High Court has the possibility of terminating in the Supreme Court.

My vision is as much as possible to bring justice closer to the people and to do this, we will need to open some new divisions of the court, and with your support, increase the present set of the courts from 70 to about 90 so that we will get personnel to man the proposed new divisions.

The Chairman: May I get the last set of questions from Senators George Thompson Sekibo, Grace Blessing Anyanwu and Aloysius Etok in that order.

Senator George Thompson Sekibo (Rivers East): My Lord, I have two short questions to ask you. One is about a suspect that is arraigned before a court, and for one reason or the other he is not granted bail, and he is kept on awaiting trial, perhaps, the man stays there for about three years, thereafter, judgment is given. When judgment is given, in the first scenario, he is not found guilty and he is acquitted and discharged. What do you

0659

talk about the years he has spent in detention? Is that injustice and who caters for that?

The converse of it is, if after the three years the man is found guilty and sentenced to three years imprisonment, having spent three years on awaiting trial, will he be discharged instantly by the court or will he go back to serve the three years? If he goes back to serve the three years, is it morally justifiable?

The next question is on governance and Election Tribunals. A person elected and inaugurated as a Governor is in court. On assumption after two years, the election was nullified. Another election is conducted and assuming the same person still wins the election, he is to serve another four years as provided by Section 180(2) of the Constitution. The same Constitution in Section 191(2) says that if the Governor and the Deputy Governor vacates their offices for circumstances I have described before, the Speaker of the House of Assembly takes over and then elections are conducted in three months and the winner serves the remaining term of the tenure either he is from the same party of the last occupant or from another party.

The question is this, vacation of an office or vacancy in an office is vacancy. How do you correlate the one that was in office and the election nullified and he comes back assuming he wins the election serves four more years. Again assuming both the Governor and the Deputy Governor die and election is conducted and the man that comes in, even from an Opposition Party, serves the remaining term of the tenure. How can we correlate it?

Thank you very much.

The Chairman: I am sorry, Senator George Thompson Sekibo, I just want to get the question right. You are asking him to comment on what the Constitution has said because the point you raised is in the Constitution. I just want to make sure that I got your point right because the two scenarios you painted are constitutional.

Senator Aloysius Akpan Etok (Akwa Ibom North-West): My Lord, my question is very simple and straightforward. Considering the fact that in Nigerian situation today, we are suffering from

0660

constant corruption episodes here and there, including electronic fraud. What would you say about the present Evidence Act that we have, which does not recognise electronic generated evidence as admissible in court as real evidence in fraud cases, especially, the current ones which are mainly electronic in nature?

Senator Patricia N. Akwashiki (Nasarawa North): My question is the same as that of Senator Bassey Ewa-Henshaw. We talked about the incessant abuse of court orders and what should be done. His answer was that there is very little the courts can do because they do not have their own sheriff if we are to take the American system. I am not very satisfied with the answer. My Lord, now that you are going to be in a position to take a decision, the Legislature, the Executive and the Judiciary are supposed to work in harmony and have respect for each other. As the head of the Court of Appeal, what would you do? There must be something you can do or say to the Executive if there are cases of abuses emanating from Ministers or other officers in the Executive. There must be something you can do and the Executive can also do about it.

Senator Chris N. D. Anyanwu (Imo East): When the first Senator was asking you question concerning the increasing number of Judicial Officers who are called to question over accusations that bother on corruption he did not quite ram it through. I would like to ask you a follow-up question, which is, what would you do to increase public confidence in the courts? This is because there has been quite a bit of loss of confidence, what is your Action Plan?

Secondly, going through your C.V. I see that from your background, you have no private practice experience and you have worked all your life in government. As somebody who is going to shape the future of the Judiciary, would you not agree that it would be desirable to have people with the broadest sweep of experience; some private sector experience, *et cetera* in order to broaden the perspective and the view point of those who serve on the Bench, especially at the high level where you are going to be operating now?

Finally, would you advocate the setting up of a Constitutional Court apart from the Supreme Court?

0661

The Chairman: That is all right, my Lord, you can take those questions now.

Hon. Justice L. A. Salami: In the case of a suspect remanded in custody during trial and was eventually discharged; I would put it simply that it is just unfortunate. But in some jurisdictions, Ghana is one, they have legislations whereby such people are paid some amount of money as a form of compensation. Then those who were eventually convicted, the law is very clear because it says, if he is convicted he will be sentenced to so many years or months in prison with or without fine. In that circumstance, the Judge can only use his discretion in imposing the sentence to quietly put down that this man has been in custody for so long and it will not be fair to give him maximum punishment. He is giving him either two years or one year to that effect. That is what is in practice.

As for the other question, the Chairman said that it is catered for by constitutional provisions, that is, person whose election is nullified and he comes back and won the re-election. As for that one, the Constitution says that his term of office starts from the date he is sworn in. There is nothing in the Constitution saying that except if he has been previously elected, if there were something like that then the court can take it into account but in the absence of such exception, I think from the date of his swearing in, it will be four years. On the other hand the person who came to office through subsequence election as a result of vacation of office of the Governor and the Deputy Governor the Constitution is very clear. They are to spend the unspent term of their predecessors in the office.

On the recognition of electronic generated evidence, people say that electronic evidence is inadmissible. I cannot remember the reference of the case but the Supreme Court has, as far back as 1969, admitted computer generated evidence and used it to give judgment. I agree that we have to improve on the provision but I will not subscribe to the idea of somebody letting off an accused person simply because there is no modern day provision which they have in American and in other countries in our own Evidence Act. There is provision in our Evidence Act which the Supreme Court has sanctioned as covering computer generated evidence. Based on that and until we update it that will be enough to do justice to cases.

0662

As with regard to whether or not I have private practice, in the legal profession when we go to court we meet private lawyers. They are either prosecuting and we are defending or we are prosecuting and they are defending. So, we have the same experience. The only experience we do not have is charging clients. It is like saying that a doctor who works in government hospital does not have experience. We have more of them in government hospitals doing the job professionally and efficiently. That does not mean that the doctor in the private hospital is by any means better than him.

On the issue of Constitutional Court, this was toiled with during the period of late General Sani Abacha. The decree was made and they were in the process of appointing judges for the court, the system may be good for European continental countries but I do not think it is meant for \Common Law countries otherwise, you would be having duplication of efforts. South Africa, a Commonwealth country has it because of her peculiar nature. Some of the South Africans are Dutch and not English, that is how South Africa has it. But all other Commonwealth countries do not have Constitutional Court. This is because one of the provisions is that all matters affecting constitutional law should go to the Constitutional Court.

So, if we are hearing an election petition or an appeal in the Court of Appeal and the man says that he did not get fair hearing he would stop and go to the Constitutional Court to resolve whether he got fair hearing or not before coming back to the Court of Appeal to proceed with the case. It looks very beautiful but it is meant for French speaking countries, the Continental Europe and the South Americans. So, with respect, I will not encourage establishment of a Constitutional Court in Nigeria.

The Chairman: Distinguished Colleagues, I think he has answered enough questions. Justice Salami I want to thank you for answering the questions. Is there anything else you would like to add?

Hon. Justice I.A. Salami: There is nothing, Mr. Chairman.

The Chairman: You have done enough. So, please, take a bow and go. *(The Nominee took a bow and left)*

0663

Is there any comment from anybody before I put the Question on the confirmation of the nominations?

Several distinguished Senators: There is no comment. Put the Question.

Question put and agreed to.

Senator Teslim K. Folarin: Mr. Chairman, you may now report progress.

Senator Maina M. Lawan: Mr. Chairman, I second the Motion that the Chair do now report progress

Question put and agreed to.

(The President resumed the Chair)

The President: The Senate in an open Session sat in the Committee of the Whole and considered the request of Mr. President for the confirmation of the appointments of the Chief Justice of Nigeria and the President of the Court of Appeal. Senators were invited to ask questions and clarifications were made by the nominees. At the end of the session the Senate approved the nominations of Hon. Justice Aloysius Katsina-Alu, CON as the Chief Justice of Nigeria and Hon. Justice I. A. Salami, OFR as President of the Court of Appeal.

Is this the true reflection of what transpired in the Committee of the Whole?

Several distinguished Senators: Yes.

Confirmation of Nominees

The President: Will the Senate confirm the appointment of Hon. Justice Aloysius Katsina-Alu as the Chief Justice of Nigeria?

Question put and agreed to.

Will the Senate confirm the appointment of Hon. Justice Isa Salami as the President of the Court of Appeal?

0664

Question put and agreed to.

The nomination of Hon. Justice Aloysius Katsina-Alu as the Chief Justice of Nigeria is hereby confirmed.

The nomination of Hon. Isa Salami as the President of the Court of Appeal is hereby confirmed.

I would like, on behalf of all of us, to congratulate the two Justices and pray that as a result of the questions that they have been asked here I am sure that they are aware that all is not very well with the Judiciary and that their tenure would see a marked improvement in the activities of the Judiciary and that the decisions of the Justices in the various levels of the Judiciary would be one that would ensure that our Judicial system in this country is improved to be one of the best in the world. I would like, on your behalf, to wish all of them a very fruitful tenure.

Senator Teslim K. Folarin: Mr. President, I move that we step down the last item on the Order Paper till the next legislative day and go into a Closed Session.

I so move.

Senator Maina M. Lawan: Mr. President, I second the Motion ably moved by the Senate Leader.

Question put and agreed to.

Resolved: That the next item on the Order Paper be stepped down to the next legislative day for the Senate to go into Closed Session.

ADJOURNMENT

And it being 6.40 p.m. the President adjourned the Senate without Question put pursuant to Standing Order 13(5) of the Senate Stand Orders till Thursday, 17th December, 2009 at 10.00 a.m.

The Senate adjourned accordingly at 6.40 p.m.