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FEDERAL REPUBLIC OF NIGERIA

**Wednesday
18th November, 2009**



NATIONAL ASSEMBLY DEBATES

FOURTH REPUBLIC THIRD ASSEMBLY (SIXTH SENATE)

THIRD SESSION

SENATE OFFICIAL REPORT

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**SENATE OF THE FEDERAL
REPUBLIC OF NIGERIA**

Wednesday, 18th November, 2009

The Senate met at 10.35 a.m.

P R A Y E R S

(The President in the Chair)

VOTES AND PROCEEDINGS

The President: Distinguished Senators, let us consider the Votes and Proceedings of Tuesday, 17th November 2009. Pages 275, 276, 277 and 278.

Senator Dahiru Kuta (Niger East): Mr. President, on Item No. 6 of the Votes and Proceedings of Tuesday, 17th November, 2009, after the phrase *Question put and agreed* replace the next sentence with *Request accordingly referred to the Committee on Judiciary, Human Rights and Legal Matters to report within one and a half weeks*.

The President: It is all right. *One and a half weeks* should now replace *one and half weeks*. Secretariat, please take note of the Amendment.

Senator Nkechi Justina Nwaogu (Abia Central): Mr. President, I rise to move the Motion that the Votes and Proceedings of Tuesday, November 17th 2009, be approved as amended.

Senator Mohammed Alhaji Muhammed (Bauchi Central): Mr. President, I second that the proceedings of the Senate of Tuesday 17th November 2009 be approved.

Question put and agreed to.

Resolved: That the Votes and Proceedings of Tuesday 17th of November, 2009 as amended be approved.

MESSAGE FROM MR. PRESIDENT

The President: We have a letter from Mr. President and it reads:

*Distinguished Senator David Mark, GCON
President of the Senate,*

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Dear Brother,

**Forwarding of a Draft Bill for an Act to Establish the
National Land Reform Commission and for Related
Matters**

I forward herewith for your kind consideration and passage into Law a Bill for an Act to establish the National Land Reform Commission and for Related Matters. It is my hope that this Bill would receive the usual expeditious consideration of the Distinguished Senators.

Please accept Mr. Senate President, the assurances of my highest consideration.

Yours sincerely

(Signed)

*Umaru Musa Yar'Adua
President*

ANNOUNCEMENTS

A Letter from Senator Adegbo E. Eferakaya

*The Senate President,
National Assembly Complex,*

Dear Distinguished President and Colleagues,

Wedding Invitation

I wish to invite distinguished Senators to grace the Wedding Ceremony of my daughter on Saturday, the 28th of November 2009.

Time: 11.00 a.m. prompt

*Venue: Saint Mary's Catholic Church, Amukpe,
Sapele, Delta State.*

Looking forward to seeing you in Sapele,

Thanks.

Sincerely,

(Signed)

Senator Adegbo Eferakaya
Delta Central Senatorial District.

**Letter from the Senate Committee on the
Review of the 1999 Constitution**

*The President of the Senate,
National Assembly Complex,*

Your Excellency,

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**The Senate Committee on the Review of the 1999
Constitution**

The Senate Committee on the Review of the 1999 Constitution will meet with Legislative Advocacy, Civil Society Organizations today, Wednesday the 18th of November, 2009 by 2.00 p.m. prompt at Meeting Room 301, Senate Building, New Wing.

(Signed)

*Senator Ike L. Ekweremadu.
Deputy President of the Senate*

**Letter from Distinguished Senator Anyim
Chukwu Ude**

The Senate President,

I wish to express my profound gratitude to the Senate President, His Excellency Senator David Mark GCON, the Deputy Senate President, His Excellency, Senator Ike L. Ekweremadu CFR and other Distinguished Senators who found time to honour my invitation to attend the ceremony marking the hand over and dedication of the Church Building by my Family Thanksgiving Service held on Saturday 14th November 2009 in my Village, Iroji Akaeze in Ivu Local Government Area of Ebonyi State.

Your presence added a Senatorial colour to the ceremony. My family and community have asked me to thank you, Distinguished Colleagues, for the honour done to them with your esteemed presence. Once again, thank you and may God bless you richly.

For my Distinguished Colleagues who were unable to attend, I know that you were with us in spirit, we also thank you.

Please accept the assurances of my high regard and esteem.

Yours very sincerely,

(Signed)

*Senator Elder Anyim Chukwu Ude MON
Ebonyi South Senatorial District.*

Students on Excursion

We have in the Gallery Students of Public Administration Department, Kogi State University, Ayingba, Kogi State.

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We also have in the Gallery, the students and staff of God's Anointed Nursery and Primary Nyanya, Abuja and Students and Staff of Jehovah Jireh International College Jalingo, Taraba State.

We wish all of you a very fruitful observation of our proceedings today.

ORDERS OF THE DAY

MOTION

Joint Session of the National Assembly

Senator Teslim Kolawole Folarin (Oyo Central): Mr. President, the first Business of the Day is a Motion standing in my name requesting this Senate and the House of Representatives to sit in a Joint Session on Thursday 19th November, 2009 at 11:00 a.m. to receive an address by Mr. President, Commander-in-Chief on the 2010 Appropriation Bill.

The purpose of this Motion is for the Senate to consider and formally approve the request by Mr. President, Commander-in-Chief to sit in the Joint Session with the House of Representatives.

With your very kind permission, I hereby move that this Senate and the House of Representatives do sit in a Joint Session on Thursday 19th November, 2009, at 11:00 a.m. to receive an address by Mr. President, Commander-in-Chief on the 2010 Appropriation Bill.

Senator Maina Ma'aji Lawan (Borno North): Mr. President, I rise to second the Motion moved by the Majority Leader that the Senate and the House of Representatives do sit in a Joint Session, tomorrow, Thursday 19th November, 2009 at 11:00 a.m. to receive an address by Mr. President, Commander-in-Chief on the 2010 Appropriation Bill.

Question put and agreed to.

Resolved: That the Senate and the House of Representatives do sit in a Joint Session on Thursday, 19th November, 2009 at 11.00 a.m. to receive Mr. President, Commander-in-Chief on the 2010 Appropriation Bill.

Confirmation of Nominations

Nominations of Hon. Justice Aloysius Iyogyer Katsina-Alu, CON as Chief Justice of Nigeria and Hon. Justice I.A. Salami, OFR as President of the Court of Appeal.

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Senator Teslim Kolawole Folarin: The first Order of the Day is a Motion requesting this Senate to consider the request of Mr. President, Commander-in-Chief for the confirmation of the nominations of Hon. Justice Aloysius Iyorgyer Kastina-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.

The purpose of this Motion on the Order Paper is for the request of Mr. President, Commander-in-Chief to be referred to the relevant Committee for further Legislative actions.

I now move that this Senate do consider the request of Mr. President, Commander-in-Chief for the confirmation of the nominations of Hon. Justice Aloysius Iyorgyer Kastina-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.

Senator Maina Ma'aji Lawan: Mr. President, I rise to second the Motion that the Senate do consider the request of Mr. President, Commander-in-Chief for the confirmation of the nominations of Hon. Justice Aloysius Iyorgyer Kastina-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.

Senator Ike Ekweremadu (Enugu West): Mr. President, the appointments before us are very important, not just to the Judiciary but to the greater people of Nigeria. I believe that the Constitution in its wisdom made provision for the Senate confirmation of these very high appointments. So, in recognition of the importance of these two positions, I suggest in accordance with our practice that the Chief Justice of Nigeria be screened at the Floor of the Senate before all of us here at the Plenary and then, the President of Court of Appeal be refereed to the Committee on Judiciary.

You will recall Sir, that the out-going Chief Justice of Nigeria was screened right here at the Floor of this Chambers and I believe that it a good practice which we need to sustain. In that regards, I suggest most respectfully, that we screen the Chief Justice of Nigeria at the Plenary and the President of Court of Appeal be screened by our Committee on Judiciary.

Senator Victor Ndoma-Egba (Cross River Central): Mr. President, I want to agree with the suggestions made by the Deputy Senate President that given the importance

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of the position of Chief Justice of Nigeria as the head of the other arm of government and that being so, Nigerians have a right to meet through this Senate, with their Chief Justice of Nigeria if confirmed by this Senate. It will provide him an opportunity to introduce himself to Nigerians at large and to let Nigerians know what he would be bringing in the Judiciary.

Moreover, we have set a precedent, the current Chief Justice, Justice Kutigi was screened in Plenary and I believe that it will be in order for us to abide by the precedent that we have established. I agree totally with the Deputy Senate President that the Chief Justice be screened in Plenary.

For the President of the Court of Appeal Nominee, we may in our own wisdom wish to send him to the Committee on Judiciary. But I would like to make a point that since 1999, this would be the first President of the Court of Appeal that this Senate would be screening. For that peculiar reason, it may also be necessary for us to consider screening him in the Plenary for the simple reason that this is the first time under the present dispensation that the President of the Court of Appeal would be screened and confirmed by this Senate.

We may also wish to take the opportunity of that peculiar circumstance to also let him introduce himself to Nigerians by screening him in the Plenary.

Those are my views and I thank you for the opportunity.

Senator A. D. Sodangi (Nasarawa West): Mr. President, I rise to support the proposal being tabled before us by the Deputy Senate President and concurred by my learned Senior Advocate of Nigeria, Senator Ndoma-Egba.

As you all know, in the Judiciary cadre, the highest office is that of the Chief Justice of Nigeria. If precedent is anything to go by, we have committed ourselves individually and collectively in this Senate that the out-going Chief Justice of Nigeria was screened here publicly to demonstrate our spirit and commitment to transparency, openness, fairness and justice to all Nigerians. Of course, God will judge all of us at the end of the day. I think that we should go by that precedent to demonstrate that the gentleman coming into office is an erudite Judge. I had the privilege when I was in active practice to appear before Justice Aloysius Iyorgyer Katsina-Alu. He is an excellent person, a very erudite Judge. He is equal to the task and I believe he would be able to answer our questions.

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I would urge us to quickly adopt this procedure. It is just a question of adopting this procedure.

For Justice I. A. Salami, another erudite Justice of the Court of Appeal now being elevated by our grace if we so approve, if it is the view of all of us, we can take them in Plenary. They are both courts of superior record. We do not have the time. From now till December we are chocked up with so many assignments; the Budget and other things. In order to fast-track the screening, we can take them in Plenary and once we are able to finish, we pass it to the appropriate quarter.

Senator James E. Manager (Delta South): Mr. President, I agree totally with the suggestion that was put forward by the Deputy Senate President and amended by Senator Victor Ndoma-Egba. It is coincidental that the two Justices are coming before us. Of course, the Chief Justice of Nigeria is the Head of the Judiciary which is the third Arm of Government but the Court of Appeal President is equally a weighty position. Since the two are coming before us, it is only fair that we take the two together.

I completely agree with all that has been said by my other learned friends and Colleagues.

The President: Are there any other views from the non-learned Friends? Senator T.U. Wada, you are a learned Friend.

Senator T. U. Wada (Gombe South): With the greatest respect to my Colleagues who expressed the views that the procedure for the screening should be done in Plenary, I want to most respectfully say that I have a contrary view. My contrary view is on the fact that the Judiciary Committee has performed creditably well these days.

One of the reasons is that most of its operations are shredded in discreet. Today, if we want to expose the Chief Justice of the Federation to Plenary Screening, we are introducing some elements of partisanship into the entire business. *(Interruptions)*

Several distinguished Senators: No, please.

Senator T. U. Wada: That is my view. Again, all other Justices in the Supreme Court were screened by the Committee. I do not see any reason why the Head should be screened by a different body altogether. Even the Constitution says straightaway that their money should be passed to them discreetly through the Committees. Also, their processes of appointments and succession are not

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politicized; it is just by order of hierarchy. The next person in seniority steps in automatically.

I do not see any reason why we should conduct the entire exercise in the Plenary Session of the Senate. We should not add ceremonies in the institution that has been working perfectly well. The rule has always been *do not change a winning formula*. Today, we are trying to introduce something that will change a winning formula, a formula that has been working perfectly well; by so doing, we may introduce some elements that might bastardize the entire system. If my Colleagues would agree with me, let us simply screen them at the Committee level.

The President: Senator Wada, I thought since you were expressing another view that you were also going to address the issue of screening Justice Kutigi in the Plenary because we screened him in the Plenary of the Senate. Are you not aware?

A Distinguished Senator: He was not present, Sir.

The President: So, we are not introducing a new thing for the Chief Justice of Nigeria. Chief Justice Kutigi was screened in the Plenary before all of us.

Secondly, screening them in Plenary does not in anyway introduce politics into it. Whether it is in the Plenary or in the Committee, it is the same Senators who will do the screening.

Senator Mahmud Kanti Bello (Katsina North): Mr. President, I just want to clarify a point. Even when we conduct screening in the Committees, it is still being telecast; and the Committee is a representative of the Senate. So, I think it is very much in order to screen these gentlemen in the full Senate.

Senator Adeleke Olorunnimbe Mamowora: Mr. President, my concern on this issue has to do with our Senate Standing Rules. The Senate Standing Rules, 2007 as amended, and with your kind permission I will read Section 118. It states:

When nominations shall be made by the President of the Federal Republic of Nigeria to the Senate, the nomination shall:

- (a) *If the responsibilities of the nominees are specified, be referred to the appropriate Committee.*
- (b) *If the responsibilities are not stated, be referred to the Committee of the Whole Senate.*

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Mr. President, my worry here is that a situation where we conveniently decide to breach the provisions of our Rule may not be the best for us. I do know that these Rules emanate from the supreme body of laws of this country, which is the Constitution. While there may be arguments for wanting to do things otherwise, we should at the same time

The President: What is your Point of Order, Senator Kanti Bello?

Senator Mahmud Kanti Bello (Katsina North): My Point of Order is to draw the attention of Senator Adeleke Mamowora to Section 62 of 1999 Constitution. With your permission, I would read.

Section 62(1) says: *The Senate or the House of Representatives may appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such a Committee*

In a nutshell, it is the duty of this distinguished Senator to appoint a Committee and there is nothing in this Constitution that negates the Senate from performing the job of its Committee and it is very clear in the Constitution.

The President: I think the point that Senator Mamowora is raising is that we should note what our Standing Order has said. I was already reading the Constitution before Senator Kanti Bello came up with it. I think we are still in order. We can regulate ourselves. We can screen them in the Committee of the Whole. If we decide to screen them here, it is still the Committee of the Whole. So, your point is noted. You did not come by Point of Order anyway. You just pointed out what our Standing Rule is saying.

Senator Lee Ledogo Maeba (Rivers South-East): Point of Order

The President: Point of Order, Senator Lee Maeba.

Senator Lee Ledogo Maeba (Rivers South-East): Order 118. With your kind permission, may read.

The President: You may read it.

Senator Lee Ledogo Maeba: Order 118 states thus: *When nominations shall be made by the President of the Federal Republic of Nigeria to the Senate, the nominations shall:*

(a) *if the responsibilities of the nominees are specified, be referred to the appropriate committee;*

I quote this Order because we have been saying that the failure of several Ministers is occasioned by the President not attaching responsibility with the names that are sent here and we have been trapped by the Constitution as a lacuna. This is a clear case where the responsibility of the individual is known. The Office of the Chief Justice of the Federation is a very important office.

If you look at our Rules, when this nomination is referred to the Committee, the Committee shall conduct Open Public Confirmation Hearing where issues can be raised about the person that is going to occupy the Office of the Chief Justice of the Federation but we do not have those happenings here. Petitions can even be sent to the Committee if there are any valid petitions of people who feel that the person so nominated have committed offences or conducts that may not make him sit in the Office of the Chief Justice of the Federation. The Committee will know that. We do not have that avenue in the Plenary. So, it is better we are very careful with this. We should refer it to the Committee so that the Committee can do a thorough work on the person so nominated by the President.

For the integrity of the Senate and in order not to challenge or violate our Rules of Procedure, we should refer it to the Committee on Judiciary. The Committee on Judiciary is a very competent Committee of the Senate and they have the capacity to conduct Public Hearing. This Order is very necessary. We should not be violating our Rules of Procedures.

The President: Senator Lee Maeba, may I ask you also to read Section 60 of the Constitution in conjunction with what you have read.

Senator Lee Ledogo Maeba: *Subject to the provisions of this Constitution, the Senate or the House of Representatives shall have power to regulate its own procedure, including the procedure for summoning and recess of the House.* We have regulated our procedure by this rule. The Standing Rule is our regulation.

The President: Senator Lee Maeba, having started on that, can you read our Standing Rule 25(1) (h) also?

Senator Lee Ledogo Maeba: Rule 25(1) (h) states: *he shall interpret the Rules.*

The President: Who shall interpret the Rules?

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Senator Lee Ledogo Maeba: The President shall interpret the Rules but when the interpretation is complex

The President: Let us not waste more time on this. We have noted the point raised by Senator Mamowora. If we regulate ourselves and we decide that we should screen or interview or discuss in the Committee of the Whole, there is absolutely nothing wrong with that. Senator Lee Maeba because you came by way of Point of Order, I rule you out of Order. We are not doing the screening now, it is just for us to be able to refer them to a Committee.

Senator Bassey Ewa-Henshaw (Cross River South): Point of Order.

The President: Point of Order, Senator Ewa-Henshaw.

Senator Bassey Ewa-Henshaw: Mr. President, Order 1(b) and with your kind permission, I should read. It states: *In all cases not provided for hereinafter, or by Sessional or other Orders or practice of the Senate, the Senate shall by Resolution regulate its procedure.*

I think the point that is being made is that, in Section 118, we have already regulated ourselves. There is a procedure there. There is no need for us to now talk about Section 160 regulating our procedure. It is provided for in our Rule Book and Order 1(b) says, it is only where we have not provided for a situation then we can regulate.

The President: Senator Ewa-Henshaw, with all due respect, Section 60 of the Constitution did not say where you are not provided for. It says that *we can regulate* but I ruled under Section 60. Senator Ewa-Henshaw, in any case, you have come under Order 1(b). Along with that, you can just read Order 64 for me.

Senator Bassey Ewa-Henshaw: Order 64 says: *The President of the Senate, in the Senate and the Chairman in any Committee shall be responsible for the observance of the rules of Order in the Senate and Committee respectively and their decision upon any point of order shall not be open to appeal and shall not be reviewed by the Senate except upon a Substantive Motion after notice.*

The President: So, have I not ruled on Senator Lee Maeba's Point of Order? I ruled on his Point of Order. You came under Order 1(b), referring to the same ruling that I did.

Senator Bassey Ewa-Henshaw: I was referring to the Order raised by Senator Adeleke Mamowora and not that of Senator Lee Maeba.

The President: Senator Adeleke Mamowora did not come by Point of Order, but under observation; and I said, we noted that, but we take cognizance of Section 60 of the Constitution. Senator Lee Maeba came by Point of Order; and I have ruled Senator Lee Maeba out of order. Anything that refers to the Point of Order raised by Senator Lee Maeba, cannot hold again under Section 64 of our Standing Rule.

Senator Bassey Ewa-Henshaw, you came by Point of Order also, so I ruled you out of order.

Senator Ayogu Eze (Enugu North): Point of Order!

The President: Another Point of Order? Is it on this subject matter or another thing?

Senator Ayogu Eze: Mr. President, it is going to be Order 1(b). I am bringing up this Point of Order to show that the flow of argument and decision of the Senate President is in order because he says, *in all cases not provided for hereinafter, or by Sessional or other Orders or practice of the Senate, the Senate shall by Resolution regulate its procedure.*

We have been told here that Justice Kutigi was screened in Plenary here by the Senate, that is, practice. What we are referring to does not breach our Order in any way because it is practice. I am bringing this Point of Order to say that the Senate President and the general flow of argument here is well guided.

The President: I have ruled on the same Point of Order, whether your own was on the opposite direction to that of Senator Bassey Ewa-Henshaw. The point is that I have already ruled on it. So, whether your Point of Order is to support what I said or not, I have ruled.

Senator Ayogu Eze: Mr. President, in that case I stand guided by your very presidential directive. I withdraw the Order.

The President: All right, his Point of Order is withdrawn. Any more Point of Order?

Senator Joseph Iorshagher Akaagerger (Benue North-East): Mr. President, my Point of Order is coming under Section 231(2) of the Constitution of the Federal Republic of Nigeria 1999; and Order 1(a) of the Rules of the Senate Standing Orders 2007 as amended.

The President: All right, read it.

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Senator Joseph Iorshagher Akaagerger: Section 231 (2) states thus: *The appointment of a person to the office of a Justice of the Supreme Court shall be made by the President on the recommendation of the National Judicial Council subject to confirmation of such appointment by the Senate.*

Rule 1(a) of the Standing Order says: *The proceedings in the Senate and in all Committees of the Senate shall be conducted in accordance with the following Standing Orders, which are from (a) to the end.*

The Chief Justice as we are talking today, under our Constitution 231(2), has already appeared in the Committee before and has been screened. It is like building a house; you must start from the foundation. Before you become a Chief Justice of Nigeria you must have been screened by the Committee as a Justice. That is what qualifies you.

The President: Which Committee?

Senator Joseph Akaagerger: He has already been screened.

The President: Are you referring to the Senate Committee on Judiciary?

Senator Joseph Akaagerger: Mr. President, the gamut of my argument on this Point of Order is that this is mere surplusage. The Rules are clear. I do not want to go to what Mr. President has already ruled upon, but only to say that we are guided by the Rules that have not yet been revoked. It follows that if the Rules are to guide us the issue has been provided for.

The President: I do not understand the point you are making, but let me say this, please. Senator Joseph Akaagerger, the Chief Justice of Nigeria has not been screened by our Committee. I hope that point is clear. I think you missed it *ab initio* before you even started the argument to say that he has been screened already; no, he has not been screened by our Committee.

Senator Joseph Akaagerger: Mr. President, I said that the gamut of my Point of Order is that there are Standing Orders which have not been revoked or amended, they remained the same. If they remained the same, the only thing to do is for the Senate Committee on Judiciary to handle it.

Again, the Chief Justice has already been screened by the Committee as a Justice of the Supreme Court; and he is one and the same person and not a separate person.

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The President: I am going to take all the Points of Order because I have to, but please, distinguished Colleagues, let us not bring undue sentiment into this argument. If you go that route then the next time a Supreme Court Justice becomes Chief Justice of Nigeria or is appointed or recommended for Chief Justice of Nigeria, then we would say he was screened as a Supreme Court Justice and therefore, we do not have to screen him again. Absolutely, there is no logic at all in that; and we should not go in that direction.

Senator Joseph Akaagerger, I rule you out of order.

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

The President: Order what Senator Thomson Sekibo?

Senator George Thomson Sekibo: Mr. President, Order 45(1) and (2).

The President: Senator George Sekibo, read it.

Senator George Thomson Sekibo: Order 45(1) states thus: *No rule shall be suspended except by a vote of two thirds of the Senate.*

Order 45 (2) says: *When a Motion to suspend the Rule has been submitted to the Senate, it shall be in order before the final vote is taken thereon, to debate the proposition to be voted upon for twenty minutes, one half of such time to be given to debate in opposition to such proposition; and the rights of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.*

The point I am trying to make is this, I want to bring a Motion to suspend Rule 118(a), so that the Senate can in Plenary receive the Minister of Justice of the Federation.

The President: It is not necessary. Section 60 of the Constitution has given us the power to regulate our proceedings. Senator Ewa-Henshaw, you cannot be interpreting the same thing that you are bringing up. I have not suspended any Rule. By practice, we have screened Justice Kutigi here. Order 1(a), already said *by practice* and we are not going outside the practice what we have done before. We have not suspended any Rule and we do not want to suspend any Rule in screening him here. In any case it is just your intention to bring it here and you have not brought it. Therefore, I cannot rule you out of order until you bring it.

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Any more Point of Order? *(No comments)* I will now put the Question.

Some distinguished Senators: Yes.

Senator Lee Ledogo Maeba (Rivers South East): Point of Order Mr. President!

The President: Point of Order, Senator Lee Maeba.

Senator Lee Ledogo Maeba: Mr. President, Constitutional Point of Order 60 and Order 25 of our Standing Rule.

You know I have full respect that you interpret the rules and that is why I am coming with this Point of Order. We were told when we were elected that this rule is derived from Section 60 of the Constitution that by the provisions of Section 60 of the Constitution, we shall regulate our procedures.

What I want to know is that we have been operating this rule without reverting to source. Is it necessary to dwell on Section 60 of the Constitution when Section 1(b) said the same thing as Section 60; and Section 60 has given origin for the establishment of our rule of procedure? Is it in conflict Sir? We should choose when to go back to the Section 60 of the Constitution when we are already regulated by this rule which is derived from Section 60 of the Constitution. I want to ask that question so that I can understand it since it is your sole right to interpret the rule.

The President: It is my prerogative to interpret the rules and I did so appropriately. Senator Lee, the moment you raise your Point of Order then you carry on another argument with Senator Ewa-Henshaw and Senator Manager at the same time. It is not proper.

Anyway, you have come by Point of Order and again I rule you out of Order because I have explained it over and over to you. I think I should put the Question now.

Question put and agreed to.

Resolved: That the Senate do consider the request of Mr. President Commander-in-Chief 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, in accordance with Section 231(1) of the 1999 Constitution of the Federal Republic of Nigeria.

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(Request accordingly referred to the Committee of the Whole to be done within a week).

Senator Mahmud Kanti Bello (Katsina North): Point of Order, Mr. President!

The President: Yes, Point of Order Senator Kanti Bello.

Senator Mahmud Kanti Bello: It is very important for me to draw the attention of this distinguished Senate to Order 56 (9). With your permission, it states: *When a Senator is speaking, no Senator may converse aloud or make any noise or disturbance to interrupt him.*

This has been the practise of some of my Colleagues, especially Senator Lee. When people are talking he would be interrupting them. He should note this Order.

Order 56(10) states that: *During a sitting all Senators shall be silent or shall confer only in undertones.* And to this, I do refer to Senator Lee and his close friend that they should be keeping quiet when we are working.

Order 56(12) states that *No Senator may interrupt another Senator while speaking, unless; (a) to call attention to a point of order or privilege suddenly arising.*

But without this, these people have been making so much noise that it is very important for me as Chief Whip and as they are members of my party, I feel bad about it and I just want to make sure that this Point of Order is sustained Sir so that they will not do it again.

The President: The Whip, thank you for your Point of Order. I assume that I did not hear the last section. It is not for you to sustain the order but the Point of Orders raised by the Whip of the National Assembly are sustained.

Confirmation of Nomination of Dr. Sir Ogbonna Jacob Anuriegbé as a member of the Board of the Niger Delta Development Commission

Senator Teslim Kolawole Folarin (Oyo Central): Mr. President, the second Order of the Day is a Motion requesting this Senate to consider the request of Mr. President Commander-in-Chief for the confirmation of the nomination of Dr. Sir Ogbonna Jacob Anuriegbé as a member of the Board of the Niger Delta Development Commission (NDDC) in accordance with Section 2(2)(a) of the NDDC Act, 2000.

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The purpose of this Motion is for the request of Mr. President Commander-in-Chief to be referred to the relevant Committee for further legislative action.

I now move that this Senate do consider the request of Mr. President Commander-in-Chief for the confirmation of the nomination of Dr. Sir Ogbonna Jacob Anuriegbé as a Member of the board of the Niger Delta Development Commission (NDDC) in accordance with Section 2(2)(a) of the NDDC Act, 2000.

Senator Maina Ma'aji Lawan (Borno North): Mr. President, I rise to second the Motion moved by the Senate Majority Leader that the Senate do consider the request of Mr. President Commander-in-Chief for the confirmation of the nomination of Dr. Sir Ogbonna Jacob Anuriegbé (Abia State) as a Member of the Board of the Niger Delta Development Commission (NDCC) in accordance with Section 2(2)(a) of the NDDC Act, 2000.

The President: I put the Question now.

Question put and agreed to.

Resolved: That the Senate do consider the request of Mr. President Commander-in-Chief for the confirmation of the nomination of Dr. Sir Ogbonna Jacob Anuriegbé (Abia State) as a Member of the Board of the Niger Delta Development Commission (NDDC) in accordance with Section 2 (2) (a) of the NDDC Act, 2000.

(Request accordingly referred to Senate Committee on NDDC to report back in one week).

Executive Communication

Senator Teslim Folarin: Mr. President, the third Order of the Day is a Motion standing in my name on the Executive communication from Mr. President, the Commander-in-Chief of the Federal Republic of Nigeria, on the 2010/2012 Medium Term Expenditure Framework (MTEF).

You will recall that the request from Mr. President, Commander-In-Chief of the Federal Republic of Nigeria, was read on Tuesday, 6th October, 2009.

With your kind permission, I move that the request be referred to the relevant Committee for further legislative action.

Senator Maina Ma'aji Lawan (Borno North): Mr. President, I rise to second the Motion that the Senate do receive and consider the request from Mr. President, Commander-in-Chief of the Federal Republic

of Nigeria, for the approval of the 2010/2012 Medium Term Expenditure Framework in line with the Fiscal Responsibility Act 2007.

Question put and agreed to.

Resolved: That the Senate do receive and consider the request from Mr. President, Commander-in-Chief, for the approval of the 2010/2012 Medium Term Expenditure Framework in line with the Fiscal Responsibility Act 2007.

The Report is referred to the Committee on Finance and they are to give us a feedback within two weeks.

Senator Osita Izunaso (Imo West): Observation, Mr. President.

The President: What is your observation?

Senator Osita Izunaso: Mr. President, my observation is that the Motion referred to here is expecting us to receive and consider the request of Mr. President and commander-In-Chief (*Interruptions*).

The President: I do not know under what Order you are making your comment because we have taken a ruling on this. We have already finished on that. (*Interruptions*)

CONSIDERATION OF REPORTS

Report on a Bill for an Act to Amend the National Human Rights Commission Act, 1995

Senator Teslim Folarin: Mr. President, the fourth Order of the Day is the Presentation and Consideration of the Report of the Committee on Judiciary, Human Rights and Legal Matters of the National Human Rights Commission Act (Amendment) Bill, 2009.

You will recall that this Bill was referred to the Committee on Judiciary Human Rights and Legal Matters on Tuesday, 24th June 2008.

You may now invite the Vice Chairman of that Committee and the Deputy Leader of the Senate, Senator Victor Ndoma-Egba, to move the Motion for the Presentation and Consideration of this Report.

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Senator Victor Ndoma-Egba (Cross River Central):

Mr. President, I move that this Senate do receive the Report of the Committee on Judiciary, Human Rights and Legal Matters on a Bill for an Act to Amend the National Human Rights Commission Act, 1995 and for other Matters Connected therewith.

Senator Mohammed Kabiru Jibril (Kaduna

Central): Mr. President, I second the Motion ably moved by Distinguished Senator Victor Ndoma-Egba that the Senate do receive the Report of the Committee on Judiciary, Human Rights and Legal Matters.

Question put and agreed to.

Question proposed

Senator Victor Ndoma-Egba: Mr. President, you will recall that this Report was laid on Thursday, 14th May, 2009.

The National Human Rights Commission Act Amendment Bill was sponsored by eight Senators. The Bill was read for the First Time on Tuesday, 24th June, 2008. After extensive deliberation the Bill was read the Second Time and referred to the Senate Committee on Judiciary, Human Rights and Legal Matters for further legislative action.

Objectives of the Bill

The National Human Rights Commission is established under the National Human Rights Commission Act of 1995. The Act was promulgated in the time of the Military. By virtue of Section 315(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria, it is now an Act of the National Assembly. In the Committee's view, the main objectives of the Amendment amongst others are: Firstly, to ensure plurality in terms of geographical, cultural, thematic, gender and other variety of interests in the Federation as Human Rights is central to the fulfillment of the constitutional obligations.

Secondly, to make the Commission a truly independent Commission in the performance of its functions in line with the Paris principles for the establishment of National Human Rights Institutions by granting financial autonomy as well as giving it the powers it requires to carry out its functions effectively and efficiently. This is necessary because the Commission has a broad mandate which covers human rights matters generally in Nigeria.

The Committee in the discharge of its assignments consulted widely and sought the views and comments of Stakeholders especially the National Human Rights Commission, the Nigerian Bar Association as well as views of other Stakeholders including Non-Governmental Organisations and Civil Society Organisations.

As a prelude to the Public Hearing, the Committee held a series of Interactive Sessions where it previewed the Proposed Amendments to the Bill and justifications thereof. On the 19th of November, 2008, the Committee held a Public Hearing in order to elicit public inputs on the Proposed Amendments.

We have listed on Page 2 those who participated in the Public Hearings. In their contributions, Stakeholders supported the Proposed Amendments and submitted that the Bill is a timely Amendment of the National Human Rights Act, 1995 especially in the areas of giving teeth to the Commission and making it a truly independent Commission. The Amendment is intended to bring sustained reform in the Justice Sector as they seek to address matters relating to human rights issues in Nigeria.

Therefore, the proposed Clause-by-Clause Amendments are in conformity with the International Human Rights Instruments to which Nigeria is a party such as principles relating to the statutes of National Human Rights Institutions otherwise known as the Paris Principles of 1991. These principles emanated from the Resolution of the United Nations Commission on Human Rights (now called the Human Rights Council) and adopted by a Resolution of the United Nations General Assembly.

The importance of the United Nations General Assembly Resolution was a call for Member States to establish credible and independent Human Rights Institutions for the promotion and protection of human rights in accordance with International Guidelines as spelt out by the Paris Principles. These principles provide a criteria and rules for the establishment of such National Institutions both in their establishments and operations. It was in response to the United Nations Resolution referred to above that the Federal Government of Nigeria established by statute the National Human Rights Commission of Nigeria 1995 Vide Decree No. 22 (now the Human Rights Act) by virtue of Section 315 of the 1999 Constitution.

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The Act as it is now is fundamentally and materially deficient in many respects. Accordingly, these amendments when passed by this august body will lay to rest most of the concerns arising from non-implementation of these international instruments on human rights that led to the downgrading of Nigeria in status amongst National Human Rights Institutions. This is so because these deficiencies breach Nigeria's obligations under the international treaties and domestic obligations and therefore necessitate the need to amend the National Human Right Commission Act, 1995.

Furthermore, in order to compliment the UN Resolution, all National Human Rights Institutions formed an association called the International Coordinating Committee on National Institutions (ICC) which guides all national institutions in terms of their compliance with the Paris Principles.

In the Committee's view the amendments made to the existing Act are quite important and the innovations are very useful as they will restructure human rights issues in Nigeria, and indeed reposition the Commission in the discharge of its mandate and further guarantee its independence, autonomy and eventual upgrading to 'A' status by the International Coordinating Committee of National Institutions (ICC).

Below are the highlights on some of the Clauses of the proposed amendment Bill for your consideration and passage:

Clause 2 deals with amendment to the preamble of the principal Act. This amendment is in conformity with international human rights instruments on human rights on best practices which made it mandatory for member States to establish National Human Rights Institutions for the promotion and protection of human rights to which Nigeria is a party. It is to be noted that the effectiveness of Nigeria's national human rights institution is also part of the issues being considered by the African Peer Review Mechanism.

Clause 3 deals with the governing Council which is responsible for the discharge of the functions of the Commission. This is entirely a new section. The proposed amendment is intended to enhance the caliber of membership in view of the task before the Council and the need for a pluralistic Commission in accordance with the Paris Principles.

Under the Paris Principles, government appointees to the Council should not have voting powers nor should they form part of the quorum. Non provision of a proviso in

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the enabling Act led to earlier problems in giving the Commission observer status by the African Commission on human and Peoples' Rights. The proviso is therefore necessary to clarify the issue. This amendment is justified in the national interest and in fulfillment of Nigeria's international obligations.

Clause 6 deals with functions and powers of the Commission. This is an essential requirement of the Paris Principles. It requires national human rights institutions to have a broad mandate covering human rights and all categories of persons. This amendment will indeed strengthen, restructure and reposition the Commission especially in the areas of giving teeth to effectively and efficiently perform its statutory obligations in view of its broad mandate on human rights issues in Nigeria. However, the proposed Section 6 (1)(c) which gives an officer the power to enter premises for the purpose of "obtaining evidence or information, etc" is very wide, unconstitutional and subject to abuse. The Committee has also introduced and recommends for approval by the Senate a new sub-section (2) whereby the exercise of powers under paragraph (c), (d), (e), (f), and (h) of the Bill is now made subject to the order of the Court in line with tenets of democratic principles and the law. The introduction of this new sub-section (2) and the rearrangement of paragraphs in the recommendation of the Committee is therefore a welcome development and are accordingly recommended for approval by this august Senate.

Clause 8 makes provision for the appointment of Executive Secretary of the Commission. This amendment is in line with the Paris Principles. Accordingly, confirmation by the Senate in Paragraph "C" would ensure independence of the Commission and enhance the office to perform its functions with integrity and impartiality. Paragraph "e" is deleted because the Executive Secretary is a member of the Council by virtue of Section 2(2)(1) as aforementioned. As a member, he is required to subscribe to an oath under Section 2(4). Paragraph 1(e) is therefore superfluous.

Clause 10 deals with the funds of the Commission. This amendment is intended to provide financial autonomy to the Commission in line with the Paris Principles to aid independence of the Commission in the performance of its functions. Independence in funding is a key element for making a national human rights institution compliant with the Paris Principles and also a material requirement for upgrading to "A" status whereby Nigeria will be reckoned with in the comity of democratic nations.

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Clause 11 deals with Establishment of Human Rights Fund. This is a new Section. The funds are intended to be applied by the Commission to perform all of those things: including conduct research on human rights issues; facilitate human rights activities and assist victims of human rights violations. This is meant to enhance effectiveness of the Commission. The source of the fund shall be contributions and donations from Government, Multi national companies and well-meaning individuals, etc. It is to be noted here that the funds will be used not only by the Commission but by all human rights organisations in Nigeria. It is to promote human rights work in the country generally.

Clause 14 deals with limitation of suits against the Commission. For this purpose, there are five (5) new sections proposed for inclusion that is sections 18, 19, 20, 21 and 22. The import of these provisions by and large, is to provide leverage and space for the Commission, its management and staff, access to perform their statutory functions effectively and unhindered. However, the Committee has gone further to add a *proviso* at the end of section 21 “.....*Provided that he acted in good faith*”. That way a member of the Council, employee or Officer of the Commission should bear personal responsibility for acts done maliciously, unlawfully, negligently or in clear breach of the Commission’s guidelines.

Clause 22 deals with recognition and enforcement of awards and recommendations. The purport of this new provision is to the make decision of the Commission to have binding effect and upon application to the High Court to be so enforceable. This is the practice in other jurisdictions where upon registration of the decision of the Commission at the High Court, it requires the colour of the judgment of the High Court with the attendant legal consequences. This will enable the Commission confer effective remedies and redress to victims of human rights violations.

Clause 17 deals with the issue of quorum. Reference to (a) in sub-paragraph (1) of paragraph 1 of the Bill is erroneous and inelegant. The appropriate reference is sub-paragraph (2) which deals with quorum.

In the same vein, reference to (b) in sub-paragraph (4)(ii) is also in error. Accordingly, the new sub-paragraph (4) in the Bill is deleted because the provisions of the new sub-paragraph (4) have been incorporated in sub-paragraph (1).

In conclusion, I want to state that the amendment being sought in this Bill are timely as they are meant to address apparent inadequacies in the enabling Act in order

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to bring it in conformity with the Paris Principles. The Paris Principles are the principal source of normative standards for national human rights institutions. In this regard, the realization and enforcement of human rights is an important element for achieving peace, equity, fairness and justice.

As you are all aware, Nigeria is a member of the 47-State strong United Nations Human Rights Council which is the highest policy making, agenda setting and supervisory human rights body in the world. Part of Nigeria’s undertaking for election into the Council is that Nigeria would strengthen the National mechanism for the promotion and protection of human rights. The human rights rating of Nigeria has dropped to status “B” (observer status) mainly because of the inadequacies in the enabling law.

Therefore, the amendment of this Act is a right step in the fulfillment of that obligation by Nigeria as it will enhance human rights realization, international image and the restoration of Nigeria National Human Rights Commission to ‘A’ Status by the ICC. I commend the passage of this amendment Bill to distinguished Senators, to enable Nigeria regain its “A” rating to be able to make its voice heard once again at International and regional fora on the discourse of human rights.

The Committee on Judiciary, Human Rights and Legal Matters to which this Bill was referred, having considered same, reports favorably thereon, with amendments, and recommends that the Bill, as amended, be passed.

I so move.

Senator Ayogu Eze (Enugu North): Mr. President, I rise to second this Motion ably moved by Senator Victor Ndoma-Egba on behalf of his Committee, and to commend the Committee for a very thorough and professional job. A lot of issues and novelties introduced into this Bill will definitely stand Nigeria in the step to become in the short run and even in the long run, a very good and highly respected citizen of the international community.

If we pass this Bill with the proposed amendments we would be making it completely unnecessary for agencies like Transparency International and Amnesty International that take delight in disparaging Nigeria’s human rights records to meddle in such matters any more, because I believe that this will be an agency to put our house in order. Moreover, when the Committee has gone ahead to make some recommendations with respect to financial autonomy and some form of independence.

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Not only did it create an avenue for giving the committee financial autonomy, it has also gone ahead to set up a human right fund that would be to the benefit of the Commission as well as to the victims of human rights abuses.

This is a novelty that I commend to the Senate and to my Colleagues, because these are issues that have been highlighted in the presentation that was made by the Committee. I am not going into Clause-by-Clause yet but some of these provisions have caught my attention and they are also part of the highlights that were reviewed by the Committee; and they are highly commendable.

With this few comments, I urge my Colleagues to support that we pass this Bill with these amendments expeditiously.

Senator Ibrahim Saminu Turaki (Jigawa North-West): Mr. President, to me, this is the most important Bill this year. When I was elected Governor of Jigawa State, we did research with the common man. I am not talking of International Community but people who voted us into office. The Police have a law they call *Wandering Law*. During the colonial days, if they see a man going to the areas reserved for VIPs, they arrest him for wandering. If you check the recommendations, you will discover there is access for justice. This was taken from Jigawa State.

Senator Adeleke Olorunnimbe Mamowora (Lagos East): Point of Order, Mr. President.

The President: Point of Order, distinguished Senator Olorunnimbe Mamowora.

Senator Adeleke Olorunnimbe Mamowora: Mr. President, I do not understand what is going on.

The President: We would go to Clause-by-Clause consideration but if there are few comments, nothing stops us from taking them.

Senator A. O. Mamowora: Mr. President, with all due respect to your humble self and office, by the provisions of Senate Rule 81 and by what we have on the Order Paper, we are supposed to be at the report stage. If anybody has comments, it should be when the report is being debated formally. Anything to the contrary is not in tandem with the practice and procedure, and with the Rules of this Senate. The comments being made at this point, with all due respect, is unnecessary.

The President: This is another case where we are regulating ourselves. Please, read Order 81.

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Senator Olorunnimbe Mamowora: Order 81 (3) reads:

The Committee to which a Bill has been committed shall report to the Senate after consideration of the Bill with amendments (if any) it proposes to it.

81 (4) - upon the report of the Standing Committees on a Bill not objected to by the Senate, it shall be placed on the Calendar.

I think that is why we have it on the Order Paper. I expect that at this point it is the report stage and we go into the Committee of the Whole for the consideration of that report on Clause-by-Clause basis, and not a return to Second Reading. We have passed through the Second Reading and we are now at the report stage. That is the point I am making.

The President: You are correct. Actually, it is because the comments became long winding. Senator Mamowora, you are right and I have to sustain your point of Order. Our next stage is Clause-by-Clause consideration of the Bill. That is the correct thing but I thought the comments were going to be few and straightforward.

Your point of Order is sustained.

Senator Teslim Folarin: Mr. President, I now move that this Senate do now resolve into Committee of the Whole to consider this Report.

Senator Adeleke Olorunnimbe Mamowora: Mr. President, I second the Motion as moved by the Leader that the Senate do proceed to the Committee of the Whole for consideration of this Report.

Question put and agreed to.

Report on a Bill for an Act to Amend the National Human Rights Commission Act, 1995 and for Other Related Matters Connected Therewith – *CONSIDERED IN THE COMMITTEE OF THE WHOLE.*

The Chairman: There are nineteen Clauses in the Bill. It is important to note the comments by Senator Victor Ndoma Egba that the Human Rights Commission Act was first established in 1995 by the Military. That is a very key point to note. Thank you Senator Nanzip Shagaya.

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Clause 1 – (THE NATIONAL HUMAN RIGHTS COMMISSION ACT 1995) – *ordered to stand part of the Bill.*

Clause 2 – (PREAMBLE) – *ordered to stand part of the Bill.*

Clause 3 – (GOVERNING COUNCIL OF THE COMMISSION)

Question proposed.

Senator Anyim C. Ude (Ebonyi South): The Section under the Committee's recommendation 2(a) where it says *a Chairman which shall be a retired Justice of the Supreme Court, or the Court of Appeal or a retired Judge of the Federal High Court, or of the High Court of a State.* The statement sounds clumsy. What is wrong in just saying a *retired High Court Judge*? Must we enumerate whether it is Supreme or Appeal.

The Chairman: It is all right. You are saying we should just say a *retired Judge*. But if it Supreme Court, it is Justice; it is not Judge. At the Supreme Court and the Court of Appeal, they are called Justices. I think it is specified there. It is all right. *A Chairman who shall be a retired Justice of the Supreme Court, or the Court of Appeal, or a retired Judge of the Federal High Court or a legal practitioner with twenty years post qualification experience and requisite experience in Human Rights.*

Senator Ahmed Makarfi (Kaduna North): I have problem with the numbering because under the Committee's recommendation, page 3, there are two (c's). On page 4, looking at the Committee's recommendation, item (i) which is the Executive Secretary of the Commission, there is nowhere it is indicated whether it is retained or deleted. I think we need to be careful and look at it so that we do not miss out anything.

The Chairman: We have not reached there but the point he has made is right. Senator Ndoma Egba, I think the Committee's recommendation on the Executive Secretary of the Commission is retained.

Senator Ndoma Egba: Yes, it is retained.

The Chairman: So make the correction that the Executive Summary is retained.

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Senator Jibril Aminu (Adamawa central): I respect your desire to do this quickly but I think you are a bit hasty, I could not get your eyes over Clause 2.

In my opinion, issues like human rights and energy are very important. Setting up a Commission would not get it off the ground. It has to be started by the highest authority of the country like it was done for a roll back Malaria and HIV.

I would recommend that where it is talked about: *to provide a forum for public enlightenment dialogue* should really be under the leadership of the Presidency. The President should take over the leadership and get it through. He is always talking about Rule of Law and so on. We cannot just set up a Commission like this and leave it to normal day-to-day government behaviour. We need to give it a head start by leading the launching of this idea in the country which will involve the President, the State Governors and then the Local Governments. By this, our people would appreciate the importance of Human Rights and recognise this body and the Commission would now be free to go on. This is the recommendation I wanted to make.

Senator Abubakar D. Sodangi (Nasarawa West): Mr. Chairman, I had the rare privilege to be one of the pioneer Directors of the Human Rights Committee that were called toothless Bulldog and that is why they have brought this amendment.

One of the accusations was that it was under the full control of Mr. President. That was during the Military. When we became democratic it was still under Mr. President. If we go by the suggestion of Senator Aminu, it would be seen by other Human Rights Advocate all over that we are still not independent. Human Rights should be independent as it has been captured by the recommendation of the Committee.

So with due respect to his view and opinion, I think we have passed that tutelage stage of Human Right Commission being in its formative stage. It now what should be seen as an independent body and to go in line with other Human Right Institutions. I would urge him to withdraw all the vision and leave it as it is now because it is in conformity of Human Right Instrument Institutions all over the world.

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Senator Uche Chukwumerije (Abia North): Mr. Chairman, I ask for your indulgence. If you do not mind, go back to Clause 2. There is something fundamental I want to raise. I know that we have passed that Clause.

The Chairman: In Clause by Clause consideration, it does not matter; we can go back because we have to be very detailed about it. So, there is no problem with that.

Senator Uche Chukwumerije: Mr. Chairman, I want to raise a question that is fundamental and a bit depressing too. Clause 2, if you read the last four lines, it states: *the promotion and respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion*. I see this as a bit depressing when I am making my proposal now. This particular Clause seems to conflict with the stipulations and contradictions in our own Constitution.

If you refer to our Constitution, you will find that Section 14(3) that talks about the government and the people really talked about Federal Character. At the same time, when you go to Fundamental Human Rights, which is Section 4.2, it talks about right to freedom from discrimination.

The first point I am trying to make is that, our own Constitution itself has fundamentally abridged its space on human rights in terms of discrimination. The stipulation on Federal Character is in itself discrimination. At the same time, the one that follows latter on fundamental human rights, that is item 9, gives freedom from discrimination.

By general law, the Constitution is supreme to any other secondary law. If we take this as it is now, in Clause 2, we are passing and giving to the Commission, laws that are in conflict, if not with the Constitution, but with the contradictions in the Constitution. It is either we are silent on this or we do something about that.

The Chairman: I think on the other hand actually, Section 14(3) says ... *thereby ensuring that there shall be no preponderance of persons from a few states*. That is to say, few individuals should not just capture everything. Because here it says; *and respect for human right and fundamental freedom for all without distinction as to race, sex, language or religion*. I do not think Section 14 contradicts it.

Federal Character, in effect, is saying, let us not have a few group of people that will capture everything.

It does not in anyway, in my opinion, negate or contradict what we have here. What we have always say about Federal Character is that we should not sacrifice merit for Federal Character. I think there is hardly any State in the Federation today that you cannot find a student with 'A' grade, for instance.

The mere fact of the spread means that we also do not want discrimination based on tribe or a section of the country. That is my own interpretation. But as it is now, we cannot cancel this out because we say it negates our Constitution nor can we remove our Constitution. I think we have to allow this to stand. There is very little that we can do.

Senator Jibril, the point you raised, in fact, that was the point raised by Human Rights International group. They do not want preponderance of government agents or activities in it. They want it to be organized by people who have very little attachment to government so that they can have some level of independence. What I am saying is the truth, but whether or not it will work here is another thing.

Senator Wilfred Bode Olajumoke (Ondo North): Mr. Chairman, Clause 3(c), where the Committee recommended that the *representative of the Nigeria Police Force who shall not be below the rank of an Assistant Commissioner of Police*, be deleted. I would have thought that rather than delete, Clause 3(c) should be retained because we are talking about violation of human right. There where the excuse given by the Committees that the Reports of the Commission indicate that the volume of cases of human right violation is against the Police; consequently, fair hearing cannot be guaranteed if they sit in the Council.

I would have thought that by retaining the representative of the Police, the Police will be guided and in fact, add credibility to the Council rather than removing the representative of the Police. He would be there to go and carry the mood of the Council to the Nigerian Police.

The Chairman: In practice, what is likely to happen is the Policeman there will begin to defend the Police. I do not know the rationale, but that is what I suspect would happen.

Senator Wilfred Bode Olajumoke: It is just one person from the Council and he is not even the Chairman.

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Senator Ahmed Mohammed Makarfi (Kaduna North): Mr. Chairman, we have to look at the powers of the Commission. On Clause 11, one of the powers is to conduct investigation and even institute action against violation, which could include the Nigerian Police Force. So, it will be incomprehensible to have a policeman sitting in a Commission that will institute action against the Nigerian Police Force. I think it is better that we delete it.

Senator Benjamin Nimi Barigha-Amange (Bayelsa East): Mr. Chairman, there is a remark column on the right hand side of the Bill, where they gave reason why police should not be there.

Senator Sylvester Ndubisi Anyanwu (Imo North): Mr. Chairman, I tend to support Senator Bode's remark, because we cannot sit down here and think that because the Police are having more cases of violation than any other group. But it goes this way; could it not have been that the police could also help to educate the police in keeping to the human rights rules? And if we have such Police Commissioner in the Council, at least, he will learn the rules and procedures of what the human right stands to be. In that effect, he will go out and train his colleagues.

The Chairman: I think preponderance of opinion would be that we do not keep them there for the simple reason that if the Commission sues the Police, how would this Policeman feel being a member of the Commission?

For the police to educate the people they do not need to be a member of the Commission.

Clauses 3 (1)(2)(3)(4)(5) and (6) (GOVERNING COUNCIL OF THE COMMISSION) – *as amended, ordered to stand part of the Bill.*

Clause 4 (1)(2)(3) – (TENURE OF OFFICE, ETC) – *ordered to stand part of the Bill.*

Clause 5 (1)(2)(3) – (CESSATION OF MEMBERSHIP) - *ordered to stand part of the Bill.*

Clause 6(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)(q)(r)(s) (FUNCTIONS AND POWERS OF THE COMMISSION) – *as amended ordered to stand part of the Bill.*

The Chairman: What is the (j) there for?

A distinguished Senator: It is the renumbering of the existing paragraph.

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The Chairman: All right, renumbering the existing paragraph (j) as paragraph (s). That really should have been a comment?

Senator Ayogu Eze (Enugu North): Mr. Chairman, if you look at (d) (e) then we have (g), then we have (h) and (b). I do not know what this means. The thing is just jumbled up.

The Chairman: I think (f) is retained; even though it is not reflected here. It reads: *organize local and international seminars, workshops, and conferences on human rights issues for public enlightenment.* So, the second column should have (f) retained.

You said (b), *by inserting immediately after paragraph (i), the following new paragraph, that is, it is (i).* The (b) is corrected to be (i).

The Chairman: I will put the Question again because of the corrections made.

Senator Tawar Umbi. Wada (Gombe South): The Clause 6(b) that has been corrected to be (i) do not stand. There is nothing for (i) and what has been inserted after paragraph (i) is not there. So, it seems a little bit confusing. I do not know whether we can get explanation on this. What is supposed to be (i) is not there and what is supposed to be inserted after paragraph (i) is also not there.

The Chairman: Senator Wada, are you on Page 8? Page 8 says;

By inserting immediately after paragraph (i), the following new paragraph (j)(k)(l) and (m) The point you are making is where is (i)?

Senator Victor Ndoma-Egba: It is supposed to be on page 8 Sir. I think the omission there is we ought to have under the comment column, (i) *retained.*

The Chairman: Senator Wada, if you go to page 8, on the third column you will say (i) *is retained.* Is there any more comments?

Senator George Thompson Sekibo (Rivers East): On page 7 Sir, let us start the reading from Page 6. If you look at it Section 5 of the Principal Act is amended.

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There is an (a) in paragraphs (a) (d) (e) (g) and (h). Perhaps what they should have done is to use this (a) instead of using another alphabet. Then (a) contains (a) (d) (e) (g) (h). That is why after the (h), in (a), we now have the (b). (b) includes (i) (j) (k) (l) (m) and so on. There is actually an (a) and also (b). What they should have done is to number them differently and there is (c) also after. They should have used roman numerals to number the (a) (b) and (c) and have the (a) (b) and (c) under it.

Senator George Thompson Sekibo: The item (b) that we are contesting here ought to be in roman numerals.

The Chairman: I do not have (b) on Page 8 in my own paper.

Senator Sekibo: There is (b) which is the last one after Page 8.

The Chairman: We have corrected that. *(Interruptions)*

Senator Nimi Barigha-Amange: Mr. Chairman, the first (a) on Page 7 has (a) starting with *deal with all matters relating to*. Then, after (a) we have (d) because that is what is stated after (6) you have (a), (d), (e), (g) and (h); that is the end.

There is another paragraph starting with (b). What we are saying is that, that (b) is a paragraph which starts with (i). Why not start with roman figure (i), (ii). That is, in the place of (j) you put roman figure (ii); in the place of (k) you put Roman figure (iii) because that (b) is a separate thing. It is not a mistake. The mistake is from using letters instead of roman figures. The (b) can still stand but after (b) that (i) you see there is not proper. After (b) you have (i) then you can take (ii) in the place of (j) and (iii) in the place of (k) and you can go down that way.

The Chairman: What you are saying is that after (h) it would be b(i), b(ii), b(iii), b(iv), b(v) and so on. So, you are saying where you have (j) which is, *receive and investigate complaints concerning violations of human rights and make appropriate determination as may be deemed necessary in its circumstance*, should be b(i).

Is that what you are saying? If it is, how would you be saying (i), (ii), (iii) again? They said (a), (d), (e), (g) and (h) are amended and they brought up (d), (e), (g) and (h). *(Interruptions)*

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Senator Lee Ledogo Maeba (Rivers South East): Everything under Section 6 is correct except that the numberings are confusing. I think it is left for the Secretariat to modify the numberings as we cannot do that here.

The Chairman: Senator Wada, you can attempt to explain and do not cause more confusion. I was following before but with all these explanations now I am getting lost.

Senator Tawar Umbi Wada (Gombe South): Mr. Chairman, I want to explain further. *(Interruptions)*

The Chairman: There is no need for your explanations. What I want from you is to tell me how it is to be written to enable me write it down.

Senator Wada: All right, Mr. Chairman. There are three Amendments to Section (6). The first Amendment is the one amending Paragraphs (a) to (h) and that is why they put (a). Looking at it, Paragraphs (a) - (h) is the first Amendment *(Interruptions)*

The Chairman: What I want you to do is to tell me if (a) should remain (a), (d) remains (d), (e) remains (e) and (g) remains (g) to enable me write them down and not explanations.

Senator Wada: Mr. Chairman, you must understand that there are three Amendments such as Amendments (a), (b) and (c). All these Amendments were done under Section 6. The first Amendment in Paragraphs (a) - (h) has been amended.

If you go to Page 8 Amendment (b) is only correcting the insertion after (j).

The Chairman: Oh! My God. No, let us solve this now. Is Amendment (a) as it stands correct?

Senator Sekibo: No! Amendment (a) is not correct.

The Chairman: What is not the correct one under (a) now? Please avoid explanations and just tell me what to write.

Senator Sekibo: In Section 6 where they have the first (a) Roman numeral (i) that would take care of (a) - (h). Then on Page 8 where they have the (b) Roman numeral (ii). *(Interruptions)*

0445

0446

The Chairman: There is no need for explanations. Just tell me what to write. Looking at the centre column under Section 6, is the figure 6 correct?

Senator Sekibo: Yes!

The Chairman: All right. Is (a) correct?

Senator Sekibo: No, it is not correct.

The Chairman: So, that should be (i)?

Senator Sekibo: Yes. (*Interruptions*)

The Chairman: All right. Is the next (a) correct?

Senator Sekibo: Yes.

The Chairman: Is (d) correct?

Senator Sekibo: Yes.

The Chairman: Is (e) correct?

Senator Sekibo: Yes.

The Chairman: Is (f) correct? There is (f) because I said, *retained*.

Senator Sekibo: Yes.

The Chairman: Is (g) correct?

Senator Sekibo: Yes.

The Chairman: Is (h) correct?

Senator Sekibo: Yes.

The Chairman: On Page 9, is (j) correct?

Senator Sekibo: Yes.

The Chairman: It cannot be (2) and be (j).

Senator Maeba: They are just answering and not correcting.

The Chairman: No, you are not answering but correcting it. Let me start again, (a), (b), (c), (d), (e), (f), (g), (h), (i), are they the correct thing?

Senator Maeba: Alphabet © is not (3)

The Chairman: There is no (c)

Senator Maeba: See page 10

The Chairman: On page 10 we have (i) (j). I will put the question

Clause 6 (1) (2) and (3) – (PART II FUNCTIONS AND POWERS FUNCTIONS OF THE COMMISSION) – *ordered to stand part of the Bill*

Clause 7 (1) (2) (3) (4) and (5) - (POWERS OF THE COMMISSION) - *ordered to stand part of the Bill*

Clause 8 (a) – (d)

Senator Tawar Umbi Wada: If we have sub-section (1), I have not seen sub-section 2 of section 7; section 8 now becomes section 7; and we have 1 in the bracket, where is the 2? When there is a sub section 1, there is supposed to be a follow up for sub section 2.

The Chairman: I think the point he is making is that there is section 8 (1) (a - c) so there should be section 8 (2). That is the point he is making. We can correct that. You have to delete the (1), then it will read there shall be for the Commission and Executive Secretary

(a) who shall be a legal practitioner with not less than 20 years post qualification experience;

(b) Who shall be a person of proven integrity and be the Chief Executive and Accounting Officer of the Commission; and

(c) who shall be appointed by the President on the recommendation of the Attorney-general and subject to confirmation by the Senate.

Clause 8 (a) – (c) - (EXECUTIVE SECRETARY OF THE COMMISSION) – *ordered to stand part of the Bill*.

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Clause 9 - (CONDITION OF SERVICE) - ordered to stand part of the Bill

Senator Nimi Barigha-Amange: I hope we are on page 16? Under Conditions of Service, you have section 9 and then section 10 of the Principle

Act and down we see section 10 again. So which of the 10 are you referring to?

The Chairman: Did you read it? It says Section 10 of the Principle Act is amended by substituting there for the following new sections. That is Clause 10, which says:

The Council shall determine the conditions of service including salaries, pensions and gratuities as appropriate.

There is another one. Section 12 of the Principle Act is thereby amended by substituting a new section (2) and re-number existing sub section as sub section 3 accordingly.

Where is Clause 11? All right, it is on the other page. That will be Clause 10. We will re-number the rest accordingly.

Senator Isiaka Adetunji Adeleke (Osun West): Mr. President, Section 10 says: *The Council shall determine the conditions of service including salaries, pensions and gratuities as appropriate for its employee.*

What will be the role of the Revenue Mobilisation and Fiscal Commission and Wages and Salaries Commission?

The Chairman: There are so many Commissions actually that have this Clause and it caused a bit of problems, and I think you are right. When there is crisis, they use it against them. The Electricity Commission has the same Clause. They went and fixed salaries and wages and that is one of the things they are charging them for. I do not know whether we should leave it? But what the intention means is that they are not subjected to government regulation. I think that is the intent here. They should not; they want this body to distance itself as much as possible from government so that they are not influenced. I think we should leave it to remain.

Clause 10 – (FUND OF THE COMMISSION) – ordered to stand part of the Bill.

Clause 11- (BORROWING POWER, ETC) - ordered to stand part of the Bill.

0448

Clause 12 - (ESTABLISHMENT OF HUMAN RIGHTS FUNDS) - ordered to stand part of the Bill

Clause 13- (ANNUAL ESTIMATES, ACCOUNTS AND AUDIT) - ordered to stand part of the Bill

Clause 14 – (ANNUAL REPORTS) - ordered to stand part of the Bill

Clause 15 - (LIMITATION OF SUITS AGAINST THE COMMISSION ETC.) - ordered to stand part of the Bill.

The Chairman: There is no Clause 16 here. Leader, is it possible for us to ask that this Bill be re-numbered properly? It is getting rather confusing. The numbering, right from Clause 7 (a), (b) and so on, is getting rather confusing.

Senator Victor Ndoma-Egba: Mr. Chairman, I suggest we step down the Bill so that we can re-number the clauses properly.

Some Distinguished Senators: We have almost finished it.

The Chairman: If your wish is to finish it, if you go to page 19 which is where we were, Clause 16 there, is it the correct numbering?

Several Distinguished Senators: No.

The Chairman: There is also Clause 18 on page 23. I do not think we can go ahead this way. The renumbering has to start from page one, but we will note the fact that we have done up to page 19.

Senator Teslim K. Folarin: Mr. Chairman, I move that we suspend further action on this Bill till another legislative day.

Senator Maina Ma'aji Lawan: I second the Motion that we suspend further deliberation on the Bill till another legislative day.

Question put and agreed to.

Resolved: That the Senate do suspend further consideration of the Bill till another legislative day.

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

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Senator Maina Ma'aji Lawan: I second the Motion that the Chairman do now report progress.

Question put and agreed to.

(The President resumed the Chair)

The President: The Senate in the Committee of the Whole considered the Report of the Committee on Judiciary, Human Rights and Legal Matters, on the National Human Rights Commission Act, (Amendment) Bill, 2009 and approved as follows:

Clauses 1 and 2 - as recommended.

Clause 3 - as amended.

Clauses 4 - 10 - as recommended.

The Bill is referred back to the Committee for further legislative action, that is, to re-number the clauses appropriately.

Is that a true reflection of what transpired in the Committee of the Whole?

Several Distinguished Senators: Yes.

The President: Thank you very much.

Suspension of Items on the Order Paper

Senator Teslim K. Folarin: Mr. President, I now move that we step down all the remaining Items on the Order Paper till another legislative day.

Senator Maina Ma'aji Lawan: I second the Motion that we step down the remaining Items on the Order Paper till another legislative day.

Question put and agreed to.

(By leave of the Senate, other items on the Order Paper stood down till another Legislative day)

ADJOURNMENT

Senator Teslim K. Folarin: Mr. President, I move that this Senate do now adjourn till tomorrow, 19th November, 2009 at 10.00 a.m.

I so move.

Senator Maina Ma'aji Lawan: Mr. President, I second the Motion that the Senate do now adjourn till tomorrow, Thursday, 19th November, 2009 at 10.00 a.m. prompt.

Question put and agreed to.

Resolved: That the Senate do adjourn till Thursday, 19th November, 2009 at 10.00 a.m.

The Senate adjourned accordingly at 1.30 p.m.