

PART IV – JURISDICTION OF CUSTOMARY COURTS

- Persons subject to the jurisdiction. 19. A customary court shall have jurisdiction over all persons.
- Civil jurisdiction. 20. (1) The jurisdiction and power of a customary court in civil causes and matters shall be as set out in the *First Schedule* to this Edict.
- Cap. 89 (2) It is hereby declared that the provisions of the limitation law shall apply to proceedings in customary courts.
- (3) An area customary court shall have power to issue prerogative orders of *mandamus*, *certiorari* and prohibition in causes or matters relating to customary law.
- Criminal jurisdiction. 21. (1) A customary court shall have jurisdiction to try and determine criminal causes and to impose such punishment therefor as are prescribed in the *Second Schedule* of this Edict.
- (2) Subject to the provisions of this section, the Military Governor may by order confer upon all or any customary court jurisdiction to enforce within the local limits of the jurisdiction of such court all or any of the provisions of any law of the State specified in such order and to impose penalties on persons who being subject to the jurisdiction of the court offend against such provisions, subject to such restrictions and limitations, if any, as may be specified in the order.
- Reconciliation in civil Causes or matters 22. In civil causes or matters a customary court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof.
- Reconciliation in criminal causes. 23. In criminal causes a customary court may promote reconciliation and encourage and facilitate in any amicable way, the settlement of all proceedings within its competence of any terms of payment of compensation or other terms approved by the court, and may there-upon order proceedings to be stayed.

PART V – LAW TO BE ADMINISTERED

- Law to be administered. 24. Subject to the other provisions of this Edict, a customary court shall administer
- (a) the appropriate customary law specified in section 25 of this Edict in so far as it is not repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being in force;
- (b) the provisions of any written law which the court may be authorised to enforce by an order made under *sub-section (3)* of *section 20* of this Edict.
- (c) the provisions of any enactment in respect of which jurisdiction is conferred on the court by that enactment; and

(d) the provisions of all rules and bye-laws made by the appropriate local government council, or having effect as if so made, under the provisions of any enactment and in force in the area of jurisdiction of the court.

25. (1) In land matter the appropriate customary law shall be the customary law of the place where the land is situated.

Application of
customary law

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

(3) Subject to the provisions of *sub-sections (1) and (2) of this section* –

(a) in civil causes or matters where –

(i) both parties are not natives of the area of jurisdiction of the court; or

(ii) the transaction the subject of the cause or matter was not entered into in the area of the jurisdiction of the court; or

(iii) one of the parties is not a native of the area of jurisdiction of the court and the parties agreed or may be presumed to have agreed that their obligations shall be regulated wholly or partly by the customary law applying to that party, the appropriate customary law shall be the customary law binding between the parties.

(b) in all other civil causes and matters the appropriate customary law to be administered shall be the customary law prevailing in the area of jurisdiction of the court.

(4) Where the customary law applying to land prohibits, restricts or regulates the devolution on death to any particular class of persons of the right to occupy such land, it shall not operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance or under any other applicable customary law.

(5) Where there is a contravention of any customary law, a customary court may, subject to the provisions of this Edict, impose a penalty authorised by or consistent with the customary law.

Provided that no such penalty shall involve mutilation, torture or other personal violence and is inhuman or repugnant to natural justice.

(6) Evidence of customary law shall be adduced in a customary court in all such cases as may be provided in the rules made under *section 68 of this Edict*.

26. (1) Criminal causes shall be tried and determined by a customary court having jurisdiction over the area in which the offence was committed.

Place of trial
of causes

(2) Where --

(a) it is uncertain in which area of jurisdiction of a customary court an offence was committed; or

(b) an offence is committed partly in one area of jurisdiction of a customary court and partly in an area of jurisdiction of another customary court; or

(c) an offence is a continuing one, and continues to be committed in the area of jurisdiction of two or more customary courts; or

(d) an offence consists of several acts committed in areas of jurisdiction of two or more customary courts; the offence may be tried and determined by a court established for any of such areas.

(3) Whenever any doubt arises as to the court in which any offence shall be tried and determined, the customary court, or the accused, may make a report thereof in writing to the President of the Customary court of Appeal.

(4) Where a report is made under subsection (3) of this section the President of the Customary Court of Appeal shall decide in which court the offence shall be tried and determined and shall instruct the court accordingly and where necessary transfer the case to another court for trial and determination.

(5) Any decision made by the President of the Customary Court of Appeal under subsection (4) of this section shall be final and conclusive.

(6) Civil causes other than land causes shall be tried and determined by a customary court having jurisdiction over the area in which the defendant was at the time the cause of action arose.

(7) Land causes shall be tried and determined by a customary court having jurisdiction over the area in which the land which is the subject matter of the dispute is situated.

(8) Notwithstanding the provisions of sub-section (i) (2) to (5) of this section, where all the parties to any cause or matter which by virtue of the said sub-sections would normally be outside the jurisdiction of a customary court, agree to submit to the jurisdiction of the court, it may, if it considers it expedient to do so in the interest of justice and convenience assume jurisdiction in such cause or matter.

Guardianship of children.

27. (1) In any matter relating to the guardianship of children, the interest and welfare of the child shall be the first and paramount consideration.

(2) Whenever it shall appear to a customary court that an order made by such court shall, in the interest of a child be reviewed, the court may of its own motion or upon the application of any interested person vary or discharge such order.

PART VI -- PRACTICE AND PROCEDURE IN CUSTOMARY COURTS

28. The practice and procedure of a customary court shall be regulated by rules of court made under section 68 of this Edict.

Practice and procedure.

29. (1) In any cause brought by or against a local government council, the council may be represented before a customary court at any stage of the proceedings by an employee of the council.

Representation before customary court.

(2) A customary court may permit --

(a) the husband, wife, guardian, servant, master or inmate of the household of any party, who shall give satisfactory proof that he or she has authority in that behalf; or

(b) a relative of person administering an estate subject to the jurisdiction of the court to appear for any party in a civil cause or matter before the customary court.

(3) Any party may be represented by a legal practitioner in any cause or matter before an area customary court but no legal representation shall be permitted in any cause or matter before a district customary court.

30. (1) The room or place in which a customary court shall sit to hear and determine any cause or matter shall be an open and public court to which the members of the public shall have a right of access while they shall be of good behaviour and to the extent to which the capacity of the court shall allow.

Proceedings to be in open court.

(2) Provision may be made by rules of court made under section 68 of this Edict for the exclusion of the public from any customary court in cases --

(a) in which persons under the age of seventeen years are involved; or

(b) where the administration of justice would be rendered impracticable by the presence of the public.

PART VII -- TRANSFERS

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

Transfer of causes and matters.

(2) An area customary court in the exercise of its original jurisdiction shall have the power at any time and at any stage before judgment of its own motion or on the application of any party, transfer any cause or matter pending before it to any district customary court exercising jurisdiction in the area of jurisdiction of the area customary court or to any other area customary court, if it is of the view that on grounds of convenience and having regard to all the circumstances of the case, it is desirable or expedient that the cause or matter be so transferred.

(3) The President of the Customary Court of Appeal may at any time and at any stage before judgment, of his own motion or on the application of any party transfer any cause or matter pending before a district or area customary court to any other district or area customary court if he is of the view that on grounds of convenience and having regard to all the circumstances of the case, it is desirable that the cause or matter be so transferred.

(4) where a cause or matter is transferred pursuant to *subsections* (1) (2) or (3) of *this section*, the customary court to which it is transferred, shall commence the cause or matter *de novo* as if it has been instituted originally before that court.

(5) The power of transfer conferred by *sub-sections* (1) (2) and (3) of this section, shall be exercised by means of an order under the hand of the supervising authority or the customary court president or member as the case may be, and may apply either to any particular cause or matter pending, either entirely or in respect of any part thereof or in respect of the procedure required to be taken thereon, or generally to all such causes and matters as may be described in such order and in the latter case, may extend to future causes or matters as well as to such as may, at the time of making such order, be pending.

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

(7) The supervising authority or a customary court president or member as the case may be, may if it appears expedient, by means of a telegram transmit in the first instance the contents of any such order made by him to the parties concerned and such telegram shall, until the receipt of the said order, have the same validity and effect as if it were the said order.

Customary Court
may report causes
for transfer.

32. (1) A customary court may of its own motion or on the application of any party, report to the supervising authority, the pendency of any causes or matter, civil or criminal, which in the opinion of that court ought for any reason to be transferred from that court to any other customary court having jurisdiction in the cause or matter.

(2) The supervising authority shall order in what mode and where the causes or matters transferred under *sub-section* (1) of *this section* shall be heard and determined.

Effect of order
of transfer.

33. Every order of transfer under this part shall operate as a stay of proceedings in the court to which it may be addressed in any cause or matter to which the order extends or is applicable, and the process or proceedings in any such cause or matter, and attested copy of all entries in the books of the court relative thereto, shall be transmitted to the

Court to which the matter is transferred and thenceforth all proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein.

34. Any order or direction given under this part shall not be subject to appeal.

Order of
direction to be
final.

PART VIII – ANCILLIARY POWERS OF CUSTOMARY COURTS

35. Any person sentenced by a customary court to imprisonment or taken in execution of the process such court shall be detained in a Nigerian Prison in the State nearest to the area of jurisdiction of the court.

Place of
imprisonment.

36. (1) A customary court may order that any fine which it may impose shall be paid at such time or times and by such instalments as it may think fit.

Recovery of
fines.

(2) Where there is default in the payment of any fine or of any instalment of the same when due, the court may –

(a) order that the amount of the fine or of the instalment, as the case may be, shall be levied by the sale of any movable property of the person in default which is situated within the area of jurisdiction of the court; or

(b) order such person to be imprisoned.

(3) A sentence of imprisonment passed upon a person in default of payment of a fine or the total of any sentence passed in default of the payment of instalments of a fine as the case may be, shall not exceed in the aggregate the maximum sentence of imprisonment which the court is empowered to impose.

(4) Where a term of imprisonment is imposed together with a fine, such term together with either the sentence of imprisonment passed in default of the payment of the fine or the total of the sentences passed in default of the payment of instalments thereof, as the case may be, shall not exceed in the aggregate the maximum sentence of imprisonment which the court is empowered to impose.

(5) Where any person has been committed to prison by a customary court for non-payment of a fine and such person thereafter pays the whole or a part of the fine, his imprisonment shall be reduced by number of days bearing as nearly as possible the same proportion to the total number of days for which such person was committed as the sum paid bears to the amount of the fine for which such person is liable.

37. In every case in which imprisonment is ordered in default of payment of a fine, a customary court shall have power to award to any person injured or aggrieved by the act or omission in respect of which such fine or imprisonment has been imposed, reasonable compensation.

Compensation
to aggrieved
persons.

“defendant” includes every person served with any writ of summons or process or with notice of, or entitled to attend, any proceedings in a civil cause and also every person charged with any crime or offence;

“district customary court” means a district customary court established under *sub-section (1)* of section 3 of this Edict;

“execution creditor” includes every person having title to enforce a judgment or order of court by process of execution;

“High Court” means the High Court of Justice of the State;

“Judge” includes the Chief Judge of the State or a Judge of the High Court or a Judge of the Customary Court of Appeal;

“judgment” includes a decree or order or ruling of the court;

“judgment debtor” includes every person ordered by a judgment or order in a civil cause or matter to pay money or to do or to abstain from doing any act;

“matter” includes any proceeding in a court not in a cause;

“member” in relation to a customary court means a member of that court and includes the president thereof;

“Military Governor” means the Military Governor of the State;

“native” in relation to the area of jurisdiction of a court means person who is a member of a community indigenous to that area;

“oath” includes solemn affirmation and statutory declaration;

“order” includes a rule;

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

“petitioner” includes every person making any application to the court, either by petition, motion or summons, otherwise than as against any defendant;

“plaintiff” includes every person seeking any relief (otherwise than by way of counter-claim as a defendant) against any person by any form or proceeding by action suit, petition, motion, summons or otherwise;

“pleading” includes any petition summons and also the statements in writing of the claim or demand of the plaintiff and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant;

“prescribed” means prescribed by the rules of court;

"president" means the president of a district or area customary court;

"public service" means the public service of the State;

"Registrar" means a registrar appointed or designated as such in accordance with section 15 of this Edict and shall include all Registrars of Court by whatever title called;

"rules of court" includes forms;

"State" means Bendel State of Nigeria;

"suit" includes action;

"supervising authority" in relation to a customary court means the person empowered in accordance with section 46 of this Edict to supervise that court.

PART II - ESTABLISHMENT AND COMPOSITION OF CUSTOMARY COURTS

3. (1) There is hereby established for the State the following grades of customary courts, that is to say -

(a) district customary courts; and

(b) area customary courts.

Establishment
of district and
area custo-
mary courts.

(2) Every customary court shall be a court of record.

(3) The Military Governor may in consultation with the committee assign to each district or area customary court established under this section such name as he may think fit and shall issue a warrant under his hand in respect of every such customary court.

(4) Every warrant establishing a customary court shall be operative and take effect from the date specified therein.

(5) The Military Governor may at anytime after consultation with the committee suspend, vary or cancel any warrant issued in pursuance of this section.

(6) The Military Governor shall cause to be published in the *State Gazette* -

(a) the warrant issued in respect of every customary court; and

(b) the order of suspension, variation or cancellation of a warrant in respect of such customary court.

4. (1) An area customary court shall consist of a president and two other members.

Composition
of customary
courts.

(2) A district customary court shall consist of a president and two other members.

Appointment and
tenure of office
of presidents
and members.

5.(1) Subject to sub-sections (2) and (3) of this section, the appointment of the presidents and members of area and district customary courts shall be made by the committee on such terms and conditions as the Committee may determine.

(2) The terms and conditions of service of the president of an area customary court shall be similar to and not less favourable than the terms and conditions of service of chief magistrate grade II employed in the service of the State.

(3) Subject to section 8 of this Edict the president and members of district customary court shall hold office for a period of three years but shall be eligible for re-appointment subject however to satisfactory annual evaluation report.

Qualifications
for Appointment.

6. Subject to the other provisions of this Edict, a person shall not be qualified to be appointed as -

(a) a president of an area customary court unless he is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than five years;

(b) a president of district customary court or a member of an area or district customary court unless he is literate and versed in the customary laws and usages prevailing in the area of jurisdiction of the customary court of which he is a president or member and is of good character;

Disqualification
from appointment.

7. Notwithstanding the provisions of section 6 of this Edict, a person shall be disqualified to be a member of a customary court if that person -

(a) is a member of any legislative body or a local government council in Nigeria or is an executive member or other officer of any political party; or

(b) has been convicted by a court in Nigeria or elsewhere of an offence involving fraud or dishonesty and has not received a free pardon; or

(c) has under any law for the time being in force in Nigeria been found or declared to be of unsound mind or adjudged to be a lunatic and has not received a certificate of sanity; or

(d) has been declared bankrupt.

Removal from
or cesser of
members.

8. The Committee may remove from office a member of an area customary court or a district customary court who -

(a) is unable to perform the functions of his office due to physical or mental illness or of any other reason;

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

(c) appears to the Committee to be unworthy of being a member for any other reason considered sufficient by the Committee.

(2) Notwithstanding any other provision of this Edict, a member of a customary court shall automatically cease to be a member thereof if circumstances arise or become known which disqualify him from being a member of the court by virtue of the provisions of *section 7* of this Edict.

9. (1) A district customary court shall exercise original jurisdiction conferred upon it by or under this Edict within the territorial limits of any one or more areas in a local government council area as specified in its warrant.

Area
of juris-
diction

(2) No two or more areas in a local government council area shall be served by one district customary court unless the areas concerned belong to one ethnic group and have or are reputed to have a common historical origin or community of interests in traditional and customary matters.

(3) An area customary court shall exercise such original and appellate jurisdiction as are conferred upon it by or under this Edict within the territorial limits of any one or more local government council areas or as may by warrant under the hand of the President of the Customary Court of Appeal be directed.

(4) No two or more local government council areas in the State shall be served by one area customary court unless the local government council areas concerned belong to one ethnic group and have or are reputed to have a common historical origin or community of interests in traditional and customary matters.

10. The President shall preside at each sitting of a customary court save that in the case of a district customary court where at any sitting date the president is absent at the commencement of the hearing of any cause or matter, the two other members shall elect one of themselves to preside at the hearing of the cause or matter on that date.

Presi-
ding at
sittings
at cus-
tomary
courts.

11. (1) For the purpose of hearing any cause or matter in an area or district customary court two members of that court as the case may be shall form a quorum.

Quorum
and
voting.

(2) In any cause or matter before a customary court the opinion of the majority of the members sitting at the hearing of the same shall, in the event of the members disagreeing, be deemed and taken to be the decision of the court.

(3) In the event of an equality of votes the president or other member presiding shall in addition to his original vote have a casting vote.

Oath to be taken
by customary courts
presidents and
members.

12. (1) No person who has been appointed a president or a member of a customary court shall sit or in any way act in that capacity until he shall have taken and subscribed to the oath prescribed by section 254 of the Constitution of the Federal Republic of Nigeria, 1979.

(2) The oaths shall be administered by the President of the Customary Court of Appeal or in his absence the Chief Judge of the State.

Session.

13. (1) A customary court shall hold sessions at such times and in such places as may be necessary for the convenient and speedy dispatch of the business of the court and may for this purpose the President of the Customary Court of Appeal may divide the area of jurisdiction of a customary court into such number of circuits as he may deem fit.

(2) The President of the Customary Court of Appeal may direct that the sessions of customary courts shall be held at such times and places as he may think fit.

Legal protection
for customary
court presidents
and members.

14. (1) No customary court president, or member shall be liable to be sued in any court of law for or on account of any act or thing done or purported or ordered to be done by him in exercise of jurisdiction or power conferred under this Edict or thing being within the limit of his jurisdiction or power, if he at the time of doing the act or thing, believed in good faith that he had the jurisdiction or power to do or order to be done the act or thing in question.

(2) The Public Officers Protection Law shall apply in respect of any action instituted against the president or member of a customary court or any other person duly authorised on account of anything done by him in the course of performing any duty assigned to him under this Edict.

PART III – OFFICERS OF CUSTOMARY COURTS

Office of Court.

15. (1) Subject to the provisions of this Edict, the State Civil Service Commission shall appoint in respect of each area or district customary court, an Officer to be designated as the registrar who shall perform such duties in the execution of such powers and authorities of the court as may be assigned to him under this Edict or by rules of court or by any special order of the court and in particular the registrar of an area customary court shall in relation to the customary court to which he is deployed -

(a) prepare for issue all warrants and writs;

(b) register all orders and judgments of the area customary court;

(c) maintain an account showing all monies received or paid by the area customary court; and

(d) supervise the staff under him as well as clerks and other staff of the district customary courts under the area of jurisdiction of the area court.

(2) The registrar shall be assisted in the discharge of his functions by such other supporting staff employed in the State Civil Service as may be posted to him by the Chief Registrar.

16. (1) Every registrar shall be a commissioner of oaths with power to administer oaths in accordance with the oaths and affirmations, law and to take affidavits and declarations, to receive documents produced for the purpose of any cause or matter, to examine and interrogate witnesses and to receive other evidence in respect of any proceedings before the court.

Registrar to be
commissioner
of oaths Cap

(2) Any order of the court for the attendance and examination of a witness or production of any document before any such commissioner of oaths within the jurisdiction of the court shall be enforced in the same manner as an order on a witness to attend and be examined or to produce any document before the court.

(3) Every act performed or order made by a commissioner of oaths in want or excess of his powers shall be liable to be revised, altered, amended or set aside by the court upon the application of an aggrieved party.

17. (1) The State Civil Service Commission shall appoint such number of fit and proper persons to be bailiffs and messengers of a customary court as the business of the court may require.

Bailiff and
messengers

(2) It shall be the duty of any person appointed under the provisions of *sub-section (1) of this section* --

(a) to effect the service and execution of all writs and other processes which he may receive from the customary court to which he is attached;

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

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

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

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

Indemnity of
officers of cu-
stomary courts