

CONSTITUTION (SUSPENSION AND MODIFICATION)
DECREE 1984

CUSTOMARY COURT EDICT, 1984

BENDEL STATE

BENDEL STATE OF NIGERIA

EDICT NO.2 OF 1984

Date of Commencement: 3rd May, 1984

The Military Governor of Bendel State of Nigeria hereby issue this Edict as follows:

PART I - PRELIMINARY

1. This Edict may be cited as the Customary Courts Edict, 1984 and shall come into force on the 3rd day of May, 1984.

Short title
and Com-
mencement.

2. In this Edict unless the context otherwise requires -

Interpretation.

"action" means a civil or criminal proceeding instituted in a customary court in accordance with this Edict or rules made thereunder;

"area customary court" means an area customary court established under *sub-section (f) of section 3* of this Edict;

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

"Chief Judge" means the Chief Judge of the State;

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

"Committee" means the State Judicial Service Committee established under *sub-section (1) of section 178* of the Constitution of the Federal Republic of Nigeria, 1979;

"Court" includes the High Court of the State, a magistrate's court or a customary court as the case may be;

"Customary Court of Appeal" means the State Customary Court of Appeal;

to be paid by the accused on condition that such person if he shall access the same shall not thereafter have or maintain any suit for the recovery of damages for the loss or injury sustained by him by reason of the act or omission in question.

Power to summon witnesses.

38. Subject to the provisions of any rules under *section 68* of this Edict, every customary court shall have power to summon before it for the purpose of giving evidence any person within the area of jurisdiction of the court or any person outside such area but within the State.

Person present may be required to give evidence

39. Any person present at a customary court, whether a party or no party to any cause or matter before the court, may be required by the court to give evidence in the same manner as if he had been summoned to attend and give evidence.

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

Execution of judgment.

40. Subject to the provisions of any rules made under *section 68 of this Edict*, any judgment or order given or made by a Customary Court in a civil cause or matter may be enforced by seizure and sale of the movable property of the person concerned therein, or by such other methods of enforcing judgments and orders as may be prescribed by the rules.

Execution of order of other courts.

41. Customary courts shall where appropriate carry into execution any decrees or orders of any other court of law established under any enactment in Nigeria, which may be lawfully directed to them, and shall execute all warrants and serve all processes issued by any such courts as aforesaid and directed to such customary courts for execution or service, and shall generally give such assistance to any of the aforesaid courts as may be required.

Power to grant interim injunction or impound property.

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

Power to appoint receiver and manager.

43. (1) A customary court may, whenever it shall think it necessary so to do for the preservation, proper custody or management of any property in dispute in a cause, appoint any person as a receiver or manager to receive and to take charge of the property and to deal with it in such manner as shall be directed by the customary court.

(2) Any person or persons appointed as receiver and manager under *sub-section (1) of this section* shall be responsible to the customary court for all things done as receiver or manager, and shall account for or pay to the customary court all money received in respect of any property referred to in *sub-section (1) of this section*.

(3) A customary court may make such order as it shall think fit but subject to the rules of court or the direction of the president of the Customary Court of Appeal, in regard to the remuneration of any person appointed as receiver and manager and shall pay to the party entitled thereto all moneys in the custody of the customary court due in respect of any property referred to in sub-section (1) of this section.

44. (1) The president of a customary court may by warrant under his hand authorise -

Search warrant and effect thereof.

(a) any premises to be searched for property alleged to be stolen or wrongfully obtained; and

(b) the seizure of any such property.

(2) The information upon which an application for a search warrant is based shall be given in writing and upon oath.

(3) Any property seized as a result of any search shall be taken before the court to be dealt with according to law.

(4) A person residing in or being in charge of a premises ordered to be searched shall allow the person holding the warrant free entry thereto and shall afford all reasonable facilities for a search therein, and where entry cannot be so obtained it shall be lawful for the person holding the warrant to enter into such premises and in order to effect such entrance to break open any outer or inner door or window of such premises.

45. In any cause or matter it shall be lawful for a customary court, on the application of either party or of its own motion -

Power of Court to order inspection.

(a) to make such order as the court may think fit for the inspection by the customary court of the parties or any witness, or any immovable or movable property the inspection of which may be material to the proper determination of the question in dispute; and

(c) to give such direction as the court may think fit in regard to such inspection.

PART IX - SUPERVISION AND CONTROL OF CUSTOMARY COURTS

46. (1) The president of the Customary Court of Appeal is hereby designated as the supervising authority in respect of all customary courts in the State.

Supervising authority.

(2) The duty of the supervising authority shall be of the nature of general administrative supervision and control of customary courts in accordance with this Edict:

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

Return and
report on cases
to be submitted.

47. Every customary court shall when required so to do, submit the supervising authority a report of any case or of any class of case tried in such court and such report shall be made at such times and at such form as may be prescribed by rules made under this Edict.

Right of
access.

48. The supervising authority shall at all reasonable times have access to customary courts in respect of which he is appointed and to the records and proceedings of such courts.

PART X -- APPEALS

Right of
Appeal.

49. Any party, including a complainant or a prosecutor in a criminal cause or matter, who is aggrieved by a decision or order of a customary court, may within thirty days of the date of such decision or order appeal --

(a) in the case of the decision or order of a district customary court, to the appropriate area customary court;

(b) in the case of the decision or order of an area customary court to the customary court of appeal.

Conditions
of appeal.

50. The right of appeal to any court referred to in section 49 of this Edict shall be subject to the conditions and in accordance with the provisions of any law or rules of court, if any, for the time being in force regulating the practice and procedure of that court with respect to appeals.

Appeals out
of time.

51. Leave to appeal out of time may, upon reasonable cause being shown be granted by the appellate court upon such terms as it shall consider just.

Power of appellate
court in criminal
appeals.

52. (1) An appellate court exercising appellate jurisdiction in criminal matters under the provisions of this Edict shall, in exercise of the jurisdiction-

(a) if it considers that there is no sufficient ground for interfering with the decision appealed against, confirm that decision and dismiss the appeal;

(b) if it considers that there is sufficient ground for interfering with the decision appealed against, set aside that decision and either -

(i) acquit the appellant; or

(ii) order the retrial of the appellant before a customary court of competent jurisdiction on the same charge or on any charge which might have been laid on the facts as disclosed by the evidence; or

(iii) re-try the appellant on the same charge or any charge which might have been laid on the facts as disclosed by the evidence, and make such order or pass such sentence as the court may seem just; or

(iv) substitute any other decision (whether as to guilt or punishment) which the court of first instance could have made on the facts disclosed by the evidence but so that by the decision so substituted, the appellant shall not be found guilty on any offence with which he was not charged before the court of first instance, unless the appellate court is satisfied that the defence of the appellant before the court of first instance could not have been substantially affected if he had been so charged; or

(v) substitute a special finding to the effect that the appellant was guilty of the act or omission charged, but was instance so as not to be responsible by virtue of the provisions of section 28 of this Criminal Code Law, for his conduct at the time when he did the act or made the omission, and thereupon the appropriate provisions of Part XXV of the Criminal Procedure Law shall apply.

(2) Any powers conferred by subsection (1) of this section may be exercise notwithstanding that the decision of the court of first instance is correct under customary law;

(3) At any stage of the proceedings on appeal the appellate court may order evidence to be adduced.

53. In exercise of its appellate jurisdiction in civil matters under this Edict, an appellate court may -

Power of appellate court in civil appeals.

(a) whether after hearing the whole case or not reverse, vary or confirm the decision of the court from which the appeal is taken and may make such order as the court of the first instance could have made in such cause or matter or as it shall consider the justice of the case required.

(b) quash any proceedings and thereupon, where it is considered desirable, order any such cause or matter to be reheard *de novo* before the court of first instance or before any other customary court or before any appropriate appellate court.

54. Where any appeal lies from the decision or order of a customary court, the court to which the appeal is brought shall have power to inspect the records or books of such customary court relative to the appeal.

Power of court to inspect records.

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

Substantial justice to be done.

PART XI — OFFENCES

Adjudications
without authority.

56. (1) Any person who -

(a) exercises or attempt to exercise judicial powers vested in a customary court, except in accordance with the provisions of any enactment or this Edict; or

(b) sits as a member of such court without due authority;

shall be liable on conviction before an area customary court to a fine of two hundred Naira or imprisonment for twelve months or to both such fine and imprisonment.

(2) Any person, other than a member of a customary court, adjudicating as an arbitrator upon any civil matter in dispute (other than a petition for divorce) where the parties there-to have agreed to submit the dispute to his decision shall not be regarded as exercising judicial powers for the purposes of *paragraph (a) of subsection (1) of this section*.

(3) No prosecution under this section shall be instituted without the consent in writing of the Attorney-General.

Penalty for ob-
structing persons
executing court
order.

57. Any person who -

(a) assaults, obstructs, molests or resists; or

(b) aids or incites any other persons to assault, obstruct, molest or resist, any person acting or proceeding to act in the execution of his duties under the provisions of section 38 of this Edict shall be guilty of an offence and shall be liable on conviction to a fine of one hundred Naira or to imprisonment for six months or to both such fine and imprisonment.

Exaction of fees or
fines in excess of
those authorised.

58. (1) No fees or fine in excess of those authorised by or pursuant to this Edict or any other written law shall be demanded or exacted from any person in respect of any cause or matter in customary court.

(2) Any member, officer or servant of a customary court who contravenes the provisions of *subsection (1) of this section* shall be guilty of an offence and shall be liable on conviction to a fine of one hundred Naira or to imprisonment for six months or to both such fine and imprisonment.

(3) The court may order any amount exacted in excess to be refunded to the person entitled thereto.

(4) If default shall be made by any person against whom an order to refund has been made under *subsection (3) of this section*, the amount ordered to be refunded may be levied by distress and, in default of sufficient distress, the persons defaulting may be committed to prison for any term not exceeding six months in addition to any sentence imposed under the provisions of *subsection (2) of this section*.

59. (1) Any member or officer or servant of any customary court who accepts, claims or obtains, for himself or for any other person, any gratification, advantage, bribe or reward whatsoever, whether in money or otherwise, for -

Corruption by judges and officers of customary courts.

(a) doing or forbearing to do any act which he is authorised or required to do in exercise of his jurisdiction, authority or function as a member, officer or servant of a customary court, as the case may be; or

(b) corruptly showing favour or disfavour to any person; shall be guilty of an offence.

(2) Whosoever -

(a) gives or offers; or

(b) accepts or obtains; or

(c) agrees to give or offer or accept, or obtain for any other person any gratification, advantage, bribe or reward whatsoever whether in money or otherwise, for inducing by any corrupt or illegal means or by corrupt personal influence any officer or any servant of any customary court -

(i) to do or to forbear to do any act which the said member, officer or servant, as the case may be, is authorised to do in exercise of his jurisdiction, authority or function; or

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

(3) Any person convicted of an offence under this section shall be liable to such penalty as may be prescribed for such offence under the Criminal Code Law of the State.

60. Any person who -

Refusal to produce document etc.

(a) omits to produce or deliver up a document on the Lawful order of a customary court; or

(b) refuses to answer any question lawfully asked by a customary court; or

(c) intentionally interrupts the proceedings of a customary court at any stage.

shall be guilty of an offence and shall be liable on conviction to a fine of fifty Naira or imprisonment for three months or to both such fine and imprisonment.

- Refusal to obey. 61. Any person who, without reasonable cause or excuse, fails to obey any valid summons issued under the provisions of *section 38 of this Edict* shall be arrested and brought before the customary court issuing such summons or before such other court as may have jurisdiction over such person and shall be liable to a fine of ten Naira or in default of payment of such fine to imprisonment for seven days.
- Refusal to evidence. 62. Any person who without reasonable cause or excuse refuses to give evidence on being required so to do by a customary court under the provisions of *section 39 of this Edict* shall be liable to a fine of ten Naira or imprisonment for seven days.
- Giving false evidence. 63. Any person who in any proceedings before a customary court gives evidence, whether on oath or otherwise, which he knows to be false or believes to be false or does not believe to be true shall be liable on conviction to a fine of four hundred Naira or to imprisonment for a period of two years or to both such fine and imprisonment.
- Causing persons to delay in or refrain from giving evidence. 64. Any person who with intent to defeat, obstruct or pervert the course of justice in any cause or matter in a customary court -
- (a) causes any person to delay in giving or to refrain from giving evidence before the court; or
 - (b) attempts wrongfully to interfere with or influences a witness whether before or after that witness has given evidence in connection with such evidence; or
 - (c) prevents any person from giving evidence before the court, shall be guilty of an offence and shall be liable on conviction to a fine of one hundred Naira or to imprisonment for six months or to both such fine and imprisonment.
- Rendering false returns. 65. Any clerk or member of a customary court who shall knowingly render false returns of the cases tried or the penalties imposed by such court shall be guilty of an offence and shall be liable on conviction to a fine of two hundred Naira or to imprisonment for twelve months or to both such fine and imprisonment.
- Falsification of the record or proceedings. 66. Any person being charged in accordance with this Edict or rules made under *section 68 of this Edict* with the duty of recording the proceedings of a customary court who knowingly makes a false record of the proceedings of the court shall be guilty of an offence and shall be liable on conviction to a fine of two hundred Naira or to imprisonment for twelve months or to both such fine and imprisonment.

PART XII – FINANCIAL PROVISIONS

67. The personal emoluments and other allowances of the presidents and members of area and district customary courts shall be paid by the State Government.

(2) The personal emoluments and other allowances of other staff of any customary court shall be paid by the State Government.

(3) All monies paid to and received by a district or area customary court in the course of discharging its functions under this Edict shall be paid into and form part of the consolidated Revenue fund of the State.

(4) The premises inclusive of buildings and other structures used by a customary court shall be provided and maintained by and shall be the property of the State Government.

PART XIII - RULE OF COURT

68. Subject to the provisions of this Edict, the president of the customary court of appeal shall make rules providing for any or all of the following matters -

Power to make rules.

(a) the practice and procedure of customary courts in their original jurisdiction and in respect of appeals;

(b) the recording of the proceedings of customary courts;

(c) prescribing the powers of customary courts to issue process for the institution of causes and matters and to compel the attendance of accused persons before the court;

(d) the exclusion of the public from a customary court in accordance with the provisions of *sub-section (2) of section 30 of this Edict*.

(e) the issue of summons to witnesses;

(f) the carrying into execution of the orders of customary courts, whether such customary courts are established under this Edict or under any other written law;

(g) the execution of the decrees, orders, warrants or other processes of customary courts and the service of the processes of such courts or grade of courts where such decrees or orders are made or such warrants or processes are issued in respect of persons or property not within the area of jurisdiction of the customary court making or issuing the same;

(h) prescribing the courts or authority by which the decrees, orders, warrants or processes mentioned in paragraph (g) shall be carried into execution, executed or served;

(i) the recording and perpetuation of the decisions of customary courts in land cases by reference to plan and fixing of land marks;

(j) the fees which may be charged by surveyors for any work done for the purpose of any rules made under *paragraph (l) of this section*;

(k) any matters relating to the costs of proceedings in customary courts;

(l) the maximum fees which may be charged -

(a) in customary courts;

(b) for appeals from customary courts;

(m) the reduction of prescribed maximum fees in respect of all or any customary courts or proceedings, the application of such maximum or reduced fees to such customary courts or proceedings and manner in which and the persons by whom such reduction and application may be made;

(n) the grant of bail to accused persons and to convicted persons pending an appeal and the regulations of the conditions of and the procedure for the granting of such bail;

(o) the duties of any officers of customary courts;

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

(q) the powers of customary courts to impose consecutive or concurrent sentences of imprisonment;

(2) Any rules made under this section may apply to all customary courts or to any class of customary courts or to any particular customary courts or to such customary courts or particular customary courts as may be determined under the rules.

PART XIV - TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Transitional provisions.

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

(2) Until the rules of court are made in accordance with section 68 of this Edict, the Customary Court Rules of 1978 shall apply with respect to the practice and procedure of customary courts notwithstanding the provisions of section 2 of the Customary Courts (Abolition) Law, 1980.

Repeal of Law No.5 of 1981.

70. The Customary Courts Law, 1980 is hereby repealed but without prejudice to the validity of anything done or caused to be done thereunder.

FIRST SCHEDULE

(Section 20 (1))

JURISDICTION OF DISTRICT CUSTOMARY COURTS AND AREA
CUSTOMARY COURTS IN CIVIL CAUSES AND MATTERS

Limit of Jurisdiction and Power

<i>Types of Causes or Matters</i>	<i>Area Customary Courts</i>	<i>District Customary Courts</i>
1. Land when the value does not exceed amount specified in columns hereof	Unlimited	Unlimited
2. Matrimonial causes or matters	Unlimited	Unlimited
3. Causes or Matters under customary law, whether or not the value of the debt, demand including dowry or damages is liquidated	Unlimited	Unlimited
4. Guardianship and custody of children under customary law	Unlimited	Unlimited
5. Inheritance upon intestacy under customary law and grant of power to administer the estate on an intestacy under customary law ..	Unlimited	Up to N5,000.00
6. Causes or matters under any law (other than customary law) including bye-laws where the amount of debt, demand or damages do not exceed the amount indicated in the columns hereof	Above N2,000.00 Up to N2,000.00 but not exceeding N7,000.00	

SECOND SCHEDULE

(Section 21 (1))

JURISDICTION AND POWER OF DISTRICT CUSTOMARY COURTS AND
AREA CUSTOMARY COURT IN CRIMINAL CAUSES AND MATTERS

Limit of Power

<i>Types of Offences</i>	<i>Area Customary Courts</i>	<i>District Customary Courts</i>
Where any person is charged with doing any act or with omitting to do any act required under any written law	Not exceeding 7 years imprisonment or a fine not exceeding N5,000.00	Not exceeding 6 months imprisonment or a fine not exceeding N200.00

Limit of Power — *continued*

<i>Types of Offences</i>	<i>Area Customary Courts</i>	<i>District Customary Courts</i>
2. Contempt of Court committed in the face of the Court	Not exceeding 14 days imprisonment or ₦20.00 fine	Not exceeding 7 days imprisonment or ₦10.00
3. Statutory offences as may be provided	As provided in the bye-law	As provided in the bye-law

MADE in Benin City this 14th day of May, 1984

BRIGADIER JEREMIAH TIMBUT USENI, PSC. MNI
Military Governor,
Bendel State of Nigeria