

THE ROLE OF CUSTOMARY LAW IN THE NIGERIAN JUDICIAL SYSTEM

MODUPE NANCY WIWOLOKU, PhD.*

ABSTRACT

This article examines the roles of customary law within the Nigerian judicial system, exploring its historical significance and contemporary relevance. Customary Law are a system of law that is based on the established patterns of behaviour, traditions, and customs of a particular community or society which is known to have evolved over time with the community's changing customs. While it is usually not codified it is passed down and practiced by members of the society. These established culture and traditions of Nigeria as a State have played very pivotal role in its methods of dispute settlement across all facets of the people's life. Despite the pre-eminence of the inherited statutory laws, customary law has remained a relevant part of the nation's legal system. This paper analyses the relationship between customary law and the formal legal system. It also assesses how the court navigates the complexities of incorporating customary law while safeguarding individual rights and maintaining legal uniformity. The enduring importance and relevance of customary law is underscored in the paper.

1.0 INTRODUCTION

We may therefore say that the ultimate purpose of law in a society, be it African or European, is to secure order and regularity in the conduct of human affairs and to ensure the stability of the body politic. Where there is a divergence in approach is that whereas African law strives consciously to reconcile the disputants in a law suit, English Law often tends to limit itself to the bare resolution of the conflict by stopping at the mere apportionment of blame as between the disputants.¹

The end of Law in any society is justice. This assertion as alluded to in the words of Teslim Olawale Elias above has been settled and severally reaffirmed by the Courts.² The important area of divergence however is the concern for what law is within contemplation at any particular point in time. Law in the traditional African society refers to what is today known as the Customary Law or Traditional African Customary Law which evolved long time ago but has metamorphosed through the thick and thin of civilisation, colonisation, and modernization into a carcass of itself.

The Nigerian Customary Law is not an exemption to this evolution, and much ink has been spilled in documenting the evolution of Nigerian Customary Law as a source of Law in Nigeria. The general agreement has always been that our Customary Law, due to heavy pruning, bashing, panel beating, deletion and selective conservation has evolved much leaner than it originally was. But then, the poser here is just how much has our Customary Law

* Ph.D., Director, Department of Restorative Justice and Community Service, Ekiti State Ministry of Justice, Ado Ekiti.

¹ Elias T.O., (1956); 'The Nature of African Customary Law', Manchester University Press, p. 268.

² The Judgement of Oputa, J., in *Godwin v State*(1985) 2 N.W.L.R.125

contributed to the Nigerian judicial system and what role has our Customary Law played, is playing and is expected to play in our judicial system in Nigeria. These are my pre-occupation and target in this paper.

2.0 WHAT IS CUSTOMARY LAW?

There have been many efforts to define Customary Law. According to one source;³

Custom in general is essentially the perception of a way to behave and, as a source of law, a common perception of how to behave in accordance with the other members of society. Custom is not word or writing; it is gesture.

The above definition is centred more on custom than Customary Law, two concepts which are not the same. It however shows that Customary Law emanates from societal beliefs and behavioural pattern. Two writers however defined Customary Law as “*a set of established norms, practices, and usages derived from the lives of people*”.⁴

Similar to the above definition was the one given by Niki Tobi⁵ who defines Customary Law as generally meaning;

“A Law relating to custom or usage of a given community. Customary Law emerges from the traditional usage or practice of a people in a given community, which, by common adoption and acquiescence on their part, and by long and unvarying habit, has acquired, to some extent, element of compulsion, and force of law with reference to the Community.

In the Nigerian case of **Owoniyin V Omotosho**⁶ Bairamian F.J., described Customary Law as “*a mirror of accepted usage*”. Customary Law is therefore a reflection of acceptable behaviour by a group of people in a community.

3.0 CHARACTERISTICS OF CUSTOMARY LAW:⁷

- i. It must be in existence: if a customary law is moribund or dead, it no more qualifies as customary law. Although society can always remember a customary law which had existed earlier, it has no force of law and therefore completely outside the ambit of customary law.
- ii. It must be custom as well as law: the element of ‘law’ in custom is important because it is that which in reality carries sanction in event of breach. While in truth, disobedience of a custom may attract some form of societal punishment,⁸ it lacks that rigid institutional sanction which is definite and precise. Law on the other hand, has all the elements of force, coercion and sanction flowing from the authority.

³ Jacques Vanderlinden (2007); “What kind of Law Making in a Global World? The case of Africa”, 67 LA. L. REV. 1043, 1065

⁴ Davies J.A & Dangbaja D.N., “The Role and Future of Customary Tort Law in Ghana: A Cross-Cultural Perspective

⁵ Niki Tobi, “Sources of Nigerian Law,” MIJ Professional Publishers Limited, Lagos P. 104

⁶ (1961) 1 ALL N.L.R 304. In a more recent case of **Kimdey & Ors. V Military Governor of Gongola State & Ors** (1988) 2 N.W.L.R. (Pt. 77) 445, the Supreme Court adopted the definition above.

⁷ Niki Tobi, op.cit.

⁸ Elias T.O. Op. cit. at pp. 212-272

- iii. Acceptability: the definition of Customary Law by Bairamian, F.J above⁹ as the “*mirror of accepted usage*” clearly confirms the acceptability characteristic of customary law. Usage is a repetition of acts and differs ordinarily from customary law in the sense that the latter is the law which arises from such reception. The essence of acceptability by the local community in which the customary law operates is important. It is only by the local acceptability that the effectiveness of customary law is largely determined. A customary law which is harsh cannot stand the test of time as it will not be acceptable to the people, or the polity.¹⁰
- iv. Its Unwritten Nature:
Customary law is largely unwritten: This makes it generally vague, and nebulous both in content and application. Generally, customary law is not written down in a statute book as it is, for example, the case with Nigerian legislation. Customary law is generally not codified. It arises from the traditional rules of conduct governing the people as well as the opinions of text writers.¹¹

In **Alfa & Ors v Arepo**,¹² Duffus, J. recognized the Unwritten nature of Customary Law when he said:

Customary law may be defined as the unwritten law or rules which are recognised and applied by the community as governing its transactions and code of behaviour in any particular matter. This law is unwritten and I agree with the above passage from Lloyd’s book that it owes its authority to the fact that the custom has been established from ancient days.

Similarly, in **Zaidan v Mohssen**,¹³ Elias, C.J.N., by necessary implication recognized the unwritten nature of customary law thus;

Customary Law is any system of Law not being the common law and not being a law enacted by any competent legislature in Nigeria but is enforceable and binding within Nigeria as between the parties subject to its sway.

- v. **Flexibility**
Closely related to the unwritten nature of customary law is its flexibility. Because customary law is unwritten, it is flexible and can, therefore, be applied easily to particular situations at particular times. It is easily adaptable to changing circumstances. In **Lewis v Bankole**,¹⁴ Osborne C.J, recognized the characteristics of customary law when His Lordship said:

...indeed, one of the most striking features of West African native custom, to my mind, is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable

⁹ Owoniyin V Omotosho (Supra)

¹⁰ Niki Tobi Op. cit. at p. 107.

¹¹ Ibid.

¹² (1963) W.N.L.R. 95

¹³ (1973) 11 S.C. 1

¹⁴ (1908) 1 N.L.R 81

adaptability to altered circumstances without entirely losing its individualistic characteristics.

The changing nature of customary law over the years is enormous. For example, in early times, land held under customary law was inalienable because it was regarded as a most valuable property which must be preserved for posterity in traditional Nigerian Society. Some societies even regarded land as a god on which seasonal libation were poured in recognition of its ability to protect the populace from death either from enemy attack or from disease. As a matter of practice, land was jealously and zealously guarded and guided in traditional society.¹⁵

Apart from the foregoing, decisions abound in which customary law which existed at a particular time changed with time,¹⁶ including the change in trend of customary transactions which were reduced into writing.¹⁷ Also, the trend of inalienability of land has since changed, with land acquiring a commercial status, which has instigated so much demand in contemporary society. In modern society, land could be alienated by a number of ways, including outright sale,¹⁸ gift,¹⁹ pledge,²⁰ borrowing,²¹ and partition.²² The change from the traditional concept of inalienability of land to the modern concept of alienability²³ is a clear example of the flexibility of customary law.

vi. **Universality of Application**

Generally, customary law is universally applied within the area of acceptability. There is no single body of customary law that is applicable throughout the whole country without some form of local variation, however, inarticulate. The form and content may be similar but the method of application may vary. Customary law may, therefore, vary from tribe to tribe and even from one ethnic group to another, as far as the method of application is concerned. This is not to lose sight of the fact that there is to some extent, a large measure of uniformity of the different customary laws in the country, at least in terms of substance.²⁴

4.0 HISTORY AND DEVELOPMENT OF NIGERIAN CUSTOMARY LAW

Customary Law is the oldest source of Nigerian law, having existed in the various communities and tribes long before the advent of the British into Nigeria. Alluding to its

¹⁵ Niki Tobi, op. cit

¹⁶ See *Dawodu V Danmole* (1962) 1 N.L.R.W 1053

¹⁷ See *Rotibi V Savage* (1944) 17 N.L.R 77

¹⁸ See *Odejoke & Ors V John Holt and Co Ltd. & Anor* (1942) 8 W.A.C.A 152

¹⁹ See *Oloto V Dawuda* (1904) 1 W.L.R 58

²⁰ *Adjei V Dabanka & Anor* (1930) W.A.C.A 63

²¹ *Adeyemo V Ladipo & Anor.* (1958) W.R.N.L.R 138

²² *Balogun v Balogun* (1943) 9 W.A.C.A. 78

²³ See generally, James and Kasunmu, (1966); *Alienation of Family Property in Southern Nigeria*, Ibadan University Press.

²⁴ Niki Tobi, op. cit. at Pp. 110-111

character in **Oyewunmi Ajagunbade III v Ogunsetan**,²⁵ Obaseki J.S.C., described Customary Law as:

The organic or living law of an indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is a mirror of culture of the people. I would say that customary law goes further and imports justice to the lives of all those subject to it.

Administration of justice in the traditional society, in which the natives of what is now geographically called Nigeria, was in their own indigenous way. It is a historical fact that before the arrival of the British around 1861, the natives had set down system for the administration of justice in their different societies. Although the system was not as sophisticated as the British system, it was designed to ensure stability of society and maintenance of the social equilibrium. The most important objective was to promote communal welfare by reconciling the divergent interests of the different people.

For the the purpose of the administration of justice, Nikki Tobi discussed the unique methods of justice administration in traditional Nigerian societies, highlighting the existence of chiefly societies in the Northern and Western regions, and chief less societies in the Eastern region. These distinctions influenced the administration of justice in these communities. The dichotomy had an impact on the method and style of administration of justice in the different societies. The chiefly societies were mostly found in Hausa Fulani Communities in the Northern Provinces, the Yoruba Land, and Benin in the Southern Provinces. An example of a chief less society was the Igbos, also in the Southern Provinces.²⁶

In the empires of the North as well as the chiefly societies in the South, authority was exercised along vertical lines, authoritarian and despotic in nature. Their legal system was centralised, exercise of judicial power was territorially delimited, and coercive. At the same time, there were features of democracy. For example, the monarchs held consultations with their council of chiefs, Queen mothers, priestly officials, secrete cult, etc. Powers were decentralized particularly in the Northern empires where Emirs, Serikis and others exercised delegated authorities. There were also checks and balances.

The East of the Niger was made up of chiefless societies and these societies were less integrated. Authority was organized along horizontal lines. Relatively, they were democratic and egalitarian. They relied more on synonym bonds, lineage and Kinship within the clans and other social groups. The legal system was decentralized and judicial power was based primarily on the attainment of a specific rank, age or status within the social unit.

In both the chiefly societies of the North and the West and the chiefless society of the East, the members of the communities had no cause whatsoever to entertain any fear that the monarch or Other Rulers would be absolutist or tyrannical. There were broad similarities among the custom and cultures transcending ethnic boundaries as there were conflicting ones.

²⁵ (1990) 3 N.W.L.R 182 at 207

²⁶ Ibid.

The broad similarities served as bonds between the different communities and the people. They also served to regulate the relationship among the members of communities. In effect, there was conformity with the social norms and this was reinforced by the strong belief in myths, dogmas, and ancestral spirits. Everywhere, be it chiefly or chiefless, the legal system was the same – the enterprise of subjecting human conduct to the governance of rules. The law was no respecter of persons or ethnic group and the legal system based on customary laws served as instruments for abridging the gaps between them.²⁷

4.1 Limitations to Customary Law

Although the British Government recognized the customary laws of the people on colonization, they did not leave them intact all through the period of their administration. They enacted Ordinances which abolished or abrogated some of the customary laws which they regarded as barbaric, primitive and uncouth. There were yet others they decided to retain. Since they were unable to do a comprehensive or complete study of the sociology and anthropology of the people, vis-à-vis their multifarious customs, they enacted ordinances providing general guidelines on the criteria for the validity of customary law.²⁸ The initial policy was provided for in Section 13 of the Supreme Court Ordinance, 1900 which provides as follows;

Nothing in this proclamation shall deprive the Supreme Court of the right to observe and enforce the observance, or shall deprive any person of the benefit of any law or custom existing in the protectorate such law and custom not being repugnant to natural justice, equity and good conscience.

Above mentioned policy was judicially recognized in the Nigerian case of **Laoye & Ors V Oyetunde**.²⁹ With the establishment of the different High Court in the Regions, and the Federal Territory of Lagos, the 1900 policy was re-enacted, in the different High Court Laws. Thus Section 27(1) of the High Court of Lagos Act³⁰ provided as follows;

The High Court shall observe and enforce the observance of every native law and custom which is applicable and is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in this Act shall deprive any person of the benefit of any such native law or custom.

Thus, the High Court Laws did not only re-enact the 1900 proclamation, but moved further by the inclusion of another validity test or criterion. It is the incompatibility test, which became the second test after the repugnancy test.

It is equally important to mention the provision of section 14(3) of the Evidence Act³¹ and particularly the proviso thereto, which is as follows;

Provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public

²⁷ Smith, S. (1976), *Welfare and Diplomacy in Pre-Colonial West Africa* (2nd ed.), The University of Wisconsin Press.

²⁸ Niki Tobi, *op. cit.* pg. 11

²⁹ (1944) A.C 170

³⁰ Cap 80, Laws of the Federation and Lagos

³¹ Cap E14, LFN 2004

policy and is not in accordance with natural justice, equity and good conscience.

As it is, the proviso introduced another validity test or criterion, which is public policy culture. Thus, the limitation or test of repugnancy to natural justice, equity, and good conscience, contrariness to public policy and the incompatibility tests were mounted as barriers to the applicability of customary law in the administration of justice. It is important to consider the three tests as follows;

(a) The Repugnancy Doctrine.

The word 'repugnant' ordinarily means offensive, distasteful and contrary. In our context, it means 'contrary: and consists of three components roped into one. They are natural justice, equity and good conscience. They are all large expressions not capable of any precise legal meaning and definition. But the courts have tried to limit or delimit the scope of their application in the context of the relevant facts in a given case.

(i) Natural Justice

The term 'natural justice' does not carry the same meaning as 'natural law'. Natural justice has a narrower ambit. It has been reduced to two expressions in Roman etymology known as *audi alteram partem*³² and *nemo iudex in causa sua*³³ which in ordinary parlance meant that the parties to a case be given adequate notice and opportunity of being heard, and the court be disinterested and unbiased, respectively.

(ii) Equity

The word 'equity' in the context of the enabling statutes conveys both its technical English meaning as well as its general blanket meaning of fair play and justice.

(iii) Good Conscience

Conscience means the consciousness within oneself of the choice one ought to make between right or wrong governing a person's words and actions. And in the context, a customary law which is not right or consistent with the thoughts of human being cannot be applied or invoked on the ground that it is offensive or distasteful to humanity.³⁴

The next pertinent question to ask here is what is the standard of the test? Is it English Law or Customary Law itself? The standard of test is not English Law. A customary law is not necessarily repugnant to natural justice, equity and good conscience merely because it is contrary to principles of English Law or English sense of justice. This was rightly pointed out by Brown, C.J., in the case of **Rufai V Igbira** N.A.³⁵ where it was said that a rule cannot be said to be repugnant to natural justice, equity and good conscience merely because it is inconsistent or contrary to English Law.

³² 'hear both parties'

³³ 'no one can be a judge in his own case'.

³⁴ Niki Tobi, op. cit. P.114

³⁵ (1957) N.R.N.L.R 178

Another pertinent question here is what if the Customary Law is only partially bad? In the administration of justice, can the law be modified or the good aspect implemented?

The answer to the above questions were contained in the criterion for applying the repugnancy doctrine as stated by Lord Atkin in the case of **Eleko V Government of Nigeria**³⁶ in which His Lordship, while dealing with the native customs on deposition of chiefs said;

The court cannot itself transform a barbarous custom into a milder one. If it still stands in its barbarous character it must be rejected as repugnant to natural justice, equity and good conscience.

It is clear from the above that the repugnancy doctrine is absolute and leaves no room for the exercise of any discretionary power by the Court. The Court has to reject the totality of the customary law if it is repugnant to natural justice, equity and good conscience. It cannot accept a watered down or adulterated version of the law or what it subjectively thinks the correct law should be. In **Laoye & Ors V Oyetunde**,³⁷ the Court referred to the decision in **Eleko(supra)** and held that the Courts which have been established by the British Government have the duty of enforcing the native laws and custom, as part of the law of the land so far as they are not barbarous.

1. **The Incompatibility Test:** The question with respect to incompatibility test is whether the phrase “**any law for the time being in force**” includes the English Law. The Courts have not been consistent in their interpretation of the phrase. In some cases, it has been held that the legislature intended English Law that was in force. In some other cases, it has been held that what is intended is local enactment.

In **Adesubokan v Yinusa**³⁸ the Court held that as a result of the provision of section 33 of the High Court Law, the jurisdiction of the High Court in probate cases is the law and practice for the time being in force in England, i.e the Wills Act of 1837. But in **Rotibi v Savage**,³⁹ it was held that the phrase “**any law for the time being in force**” in Section 16 of the Protectorate Courts Ordinance, 1933 had reference only to local enactments.

Could the legislature have intended the application of English Law in determining the incompatibility theory of customary law? If it is so, then the whole concept of customary law will be destroyed because a number of customary laws will definitely be incompatible with English law, and this will violate the conceptual analysis of Lord Atkin in **Eleko’s case**.⁴⁰ It is submitted that the statute should be constructed in the context of any local enactment and not in relation to English Law.⁴¹

2. Public Policy

The question here is what is Public Policy within the meaning of Section 14(3) of the Evidence Act? One of the most troublesome expressions in Law is Public Policy. It is perhaps because of its very vague nature that it is described Per Burrough, J., in

³⁶ (1931) A.C 170

³⁷ (1944) A.C 170

³⁸ (1971) N.W.L.R 77

³⁹ (1944) N.L.R 77

⁴⁰ Supra

⁴¹ Niki Tobi op. cit. P. 121

Richardson v Mellish⁴² as “a very unruly horse and when once you set astride it you never know where it will carry you.”

But in **Enderby Town Football Club v Football Association**,⁴³ Lord Denning did not agree with the point. He said;

*I know over 300 years ago, Hobart C.J., said that public policy is an unruly horse. It has often been repeated since. So unruly is the horse, it is said by Burrough, J. in Richardson v Mellish that no judge should ever try to mount it lest it run away from him. I disagree. With a good man in the saddle, the unruly horse can be kept in control. It can jump over obstacles. It can leap the fences put up by fictions and come down on the side of justice, as indeed was done in Nagle v Feiden.*⁴⁴

Lord Denning’s pronouncement here does not resolve the difficulty associated with determining what is public policy in any factual situation and that is why the Courts rarely invoke it.

In **Cole V Akinyele**,⁴⁵ the deceased was married to a wife under Marriage Ordinance. He also had two children by another woman – one born during his wife’s lifetime, and another born shortly after her death; and he acknowledged both as his children. They sued for a declaration that they were his legitimate children and were entitled to share in his estate, he, having died intestate. They relied on the Yoruba Custom accepted by the Courts in **Alake V Pratt**⁴⁶ that if paternity is acknowledged, a child born out of wedlock shares equally with children born of marriage contracted under the Marriage Ordinance. It was held that;

- (a) As regards the illegitimate child born during the continuance of the marriage of the deceased wife to a wife under the Marriage Ordinance, it would be contrary to public policy to enable him to legitimate that child by any other method than that provided for in the Legitimate Ordinance;
- (b) As regards the son who was born after the death of the wife, there was no principle of public policy to exclude the rule under which he, as the acknowledged son of his father, born at a time when his father was free to marry, is to be regarded as legitimate.

3. Ascertainment of Customary Law

Section 72 and 73 of the Evidence Act make provision for the facts of which a Court must take judicial notice thereby dispensing with the need to prove such facts by evidence. These include all Laws or enactments and any subsidiary legislation made thereunder having the force of law in any superior Court in England or Nigeria. These laws are deemed to be embedded in the knowledge of the judges. But section 14 of the same Act denies customary law the same pre-eminent status,⁴⁷ an alleged custom

⁴² (1824) 2 Bing Ch. 591

⁴³ (1971) Ch. 591

⁴⁴ (1966) Q.B. 633

⁴⁵ (1960) 5 F.S.C 84

⁴⁶ (1955) 15 W.A.C.A 20

⁴⁷ Asein, J.O., (2005); Introduction to Nigerian Legal System, Ababa Press Ltd. Pg. 120

is treated as a fact that has to be strictly proved, not only by the evidence of the person alleging it, there should be corroborating evidence.⁴⁸ The only instance when strict proof may be dispensed with is where the particular custom has been judicially noticed. The burden of proving a custom lie on the party who asserts and seek to rely on it.⁴⁹ Though it is a question of fact to be proved by evidence, the mere fact that a custom has been breached is not evidence that it is not in existence.⁵⁰

The above restrictions and limitation on the Nigerian Customary Law is a pathetic one as pictorially painted by the Supreme Court Per Nnaemeka Agu, J.S.C, in **Ugo V Obiekwe** when he lamented that;

Our customary law is still bogged down by this annoying vestige of colonialism. There is strictly no difference or at least a clear divide between customary law and custom as such: both are subject to the same treatment. The result is that our customary law is still treated like foreign law in our own country (more than three decades) after our independence from colonial rule. This is far from satisfactory. Much as I agree with those who believe that codification will have the effect of stratifying customary law and inhibiting its growth, I believe that something can be done to rescue it from the fluttering uncertainty and contemptible inferior status to which it is now subjected....⁵¹

One cannot but agree with the Learned Justice of the Supreme Court especially when it is obvious that Ghana after its independence in 1957 has designated issues of customary law as questions of law for the Court, not question of fact.⁵²

The 1992 Constitution of Ghana recognizes customary law as part of the country's legal system, provided it aligns with principles of equity and good conscience. The Courts Act of 1993, further stipulates that customary law can be applied by state courts if it does not conflict with statutory law. Additionally, the Chieftaincy Act of 2008 provides a legal framework for the institution of chieftaincy, empowering traditional authorities to adjudicate matters within their jurisdictions.⁵³

Furthermore, Ghana has established mechanisms to integrate traditional and formal judicial systems. The Courts Act of 1993 (Act 459) includes provisions for the recognition of traditional councils and their role in dispute resolution. Furthermore, the Alternative Dispute Resolution Act of 2010 (Act 798) promotes the use of traditional methods, such as mediation and arbitration, in resolving disputes outside the formal court system.⁵⁴

⁴⁸ Oba Lipede V Shonekan (1995) 1 N.W.L.R 668

⁴⁹ Nsirim V Nsirim (2002) 12 W.R.N 1 at 17-18

⁵⁰ Kimdey V Military Governor of Gongola State (Supra)

⁵¹ (1989) 1 N.W.L.R 566

⁵² See Section 55(1), Courts Act of Ghana.

⁵³ The 1992 Constitution of Ghana, The Courts Act of 1993 (Act 459), the Chieftaincy Act of 2008 (Act 759)

⁵⁴ Alternative Dispute Resolution Act of 2010 (Act 798)

In order to harmonize customary practices across different ethnic groups and regions, efforts have been made in Ghana to codify and standardize customary laws to ensure consistency and clarity. The National House of Chiefs, established under the Chieftaincy Act, is tasked with the progressive study, interpretation, and codification of customary law.

3.1 Contribution of Nigerian Customary Law to the Growth of Nigerian Judicial System.

Despite the historical challenges faced by Nigerian Customary Law ranging from the distortions imposed by colonial administrations to the neglect by successive post-independence governments it has continued to play a vital role in shaping the Nigerian legal landscape. Its enduring relevance and contributions can be highlighted as follows:

1. Preservation of Cultural Identity and Legal Heritage

Customary law has preserved the historical experiences, values, and cultural beliefs of Nigerian communities. Some of these customs have received judicial recognition and are now judicially noticed in courts of record. For example, in *Alake v. Pratt*,⁵⁵ the court recognized traditional practices, thereby validating indigenous norms within the formal legal system.

2. Development of Chieftaincy Jurisprudence

Chieftaincy laws, deeply rooted in customary principles, have evolved into a significant body of law now codified in various states under the Chiefs' Laws. These laws regulate succession, kingship disputes, and community leadership structures. The Supreme Court and other appellate courts have delivered landmark decisions that continue to shape this unique area of law.

3. Strengthening of Land Tenure Systems

Customary land law remains one of the most robust aspects of indigenous jurisprudence. It governs the vast majority of land transactions in rural and semi-urban areas. Despite the introduction of the Land Use Act (1978), which sought to centralize land ownership, criticisms persist over its failure to fully align with traditional land practices. Many scholars and practitioners advocate for reforms that will better harmonize statutory and customary land rights.

4. Victim-Centric and Restorative Justice in Customary Criminal Law

Although largely abrogated, customary criminal law provided a victim-centered justice system that prioritized reconciliation, restitution, and the reintegration of offenders into the community. Modern reforms, such as the Administration of Criminal Justice Act (ACJA), increasingly reflect these restorative principles demonstrating the enduring influence of customary norms on contemporary criminal justice policies.

5. Codification and Integration into Statutory Framework

⁵⁵ (1955) LIR- WACA

Over the years, some of our customary legal principles have been codified into statutory laws, enriching Nigeria's legal corpus (*corpus juris*). Examples include aspects of marriage, inheritance,⁵⁶ and family law.⁵⁷ These codified norms guarantee predictability while preserving the traditional context.⁵⁸ Challenges remain in ensuring uniform application and protection of rights across diverse communities.

6. Promoting Legal Pluralism and Judicial Inclusivity

Nigeria operates a plural legal system that recognizes customary, Islamic, and statutory law. This diversity enriches the jurisprudence, ensures inclusivity, and strengthens the legitimacy of the justice system among different ethnic and religious groups.

7. Conflict Resolution through Traditional ADR Mechanisms

Customary law fosters Alternative Dispute Resolution (ADR) mechanisms such as mediation, conciliation, and negotiation, which are deeply embedded in traditional society. These mechanisms are increasingly adopted by modern courts and arbitration centers to decongest litigation dockets and promote community harmony.

8. Strengthening Communal Governance and Customary Institutions

Traditional institutions such as village heads, councils of elders, and community courts are supported by customary law. These institutions continue to function as quasi-judicial bodies and governance structures, particularly in rural areas where state institutions are weak or absent.

9. Influence on Legal Education and Scholarship

There is a growing interest in customary law within academic and legal education curricula. Law faculties across Nigerian universities are dedicating more research to documenting, systematizing, and critically analyzing indigenous legal systems—ensuring they evolve in line with constitutional and human rights standards.

5.0 CONCLUSION

The rich heritage of Nigeria's traditional justice system represents a cornerstone of our cultural identity and legal legacy, one that distinguishes us across the African continent. To enhance the legitimacy, accessibility, and cultural relevance of the Nigerian judicial system, it is imperative that these indigenous legal traditions be meaningfully integrated into our modern legal framework. This must be done in a manner that aligns with constitutional principles and international human rights standards, much like the approach currently being advanced in Ghana.

A critical step in this direction involves the proper recognition of customary law within our legal hierarchy. Specifically, customary law should be treated as a question of law, to be determined by the courts, rather than as a question of fact requiring proof through oral

⁵⁶ The Child Rights Act (2003), *Ukeje. V. Ukeje*(2014) SC

⁵⁷ The Marriage Act, 1914/1990,

⁵⁸ *Sailubi. V.Nwariaku* (1997) SC

testimony alone. This approach would elevate the standing of customary law and promote consistency in its application across jurisdictions.

Moreover, it is essential to revisit and remove the "repugnancy clause" a relic from the colonial-era legal doctrine which has long hindered the growth and legitimacy of customary law. The Nigerian Constitution should be amended to eliminate this outdated provision and instead establish mechanisms for the proper interpretation and validation of customary legal norms.

Where uncertainty arises regarding the existence or content of a particular customary law in judicial proceedings, the Constitution should empower judges to consult authoritative sources such as decided cases, legal texts, and, importantly knowledgeable community elders or traditional legal practitioners. This would preserve the dynamic, community-rooted character of customary law while ensuring its application is consistent with principles of justice and rule of law.

By formalizing and aligning customary law with the national legal framework, Nigeria can ensure that its legal system remains responsive, inclusive, and truly reflective of the people's cultural realities.