

## **ETHICAL AND CULTURAL CONSIDERATIONS IN ARTIFICIAL INTELLIGENCE (AI) APPLICATION TO CUSTOMARY LAW**

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### **Abstract**

*Artificial Intelligence (AI) is a new phenomenon in adjudication of cases in Nigeria. Globally, Artificial Intelligence (AI) has gradually transformed various sectors, including the legal system. The society where we live is dynamic and as a result Nigerian legal system must thrive to cope up with this new development in other not to be left behind in adapting to AI in the adjudication of cases in Nigeria. AI's integration into the legal sphere involves the use of technology to analyze legal data, predict case outcomes, automate routine legal tasks, and even assist in judicial decision-making. The application of AI in legal contexts is not uniform across jurisdictions, but there has been a discernible trend towards its adoption, particularly in advanced legal systems in the United States, the European Union and in Asia countries like China. The integration of Artificial Intelligence (AI) into the Nigerian legal system holds significant potential for enhancing the efficiency and accuracy of legal proceedings. In applying Artificial Intelligence (AI) to customary law, there are concerns about bias in algorithms, privacy issues in data collection, and the need for transparency in Artificial Intelligence (AI) decision-making processes. Due to Nigeria's complex socio-cultural landscape, cultural considerations are integral in applying AI to customary law. Customary law in Nigeria is deeply rooted in the traditions and practices of various ethnic groups. The primary objective of this paper is to explore the ethical and cultural considerations in the*

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*integration of Artificial Intelligence (AI) into the Nigerian customary law judicial system.*

**Keywords:** Ethical and Cultural Considerations, Artificial Intelligence (AI), Customary Law

## 1.0 Introduction

Artificial Intelligence (AI) has come to stay in the adjudication of disputes globally. AI tools are being utilized in areas such as legal research, where platforms like ROSS Intelligence,<sup>1</sup> Lex Machina<sup>2</sup> have been utilized. These technologies have redefined legal research and decision-making, enabling more efficient legal processes and reducing human error. In the European Union, AI has been embraced cautiously, with a strong emphasis on ethical considerations and regulatory oversight. The EU Artificial Intelligence Act<sup>3</sup> seeks to establish a legal framework for AI, ensuring that its deployment in sectors like the judiciary does not compromise fundamental rights or lead to discriminatory outcomes. The EU has also promoted the use of AI in legal adjudication through some projects,<sup>4</sup> which explores the implications of AI on law and society. In Asia, countries like China have made significant strides in integrating AI into their legal systems.<sup>5</sup> The court employs AI tools to process cases, from filing to judgment, and uses AI-generated judicial opinions to guide judges in their decision-making process. Nigeria should not be left out in this dynamism and that necessitated this paper aimed at exploring the ethical and cultural considerations in Artificial Intelligence (AI) application to customary law in Nigeria. This work looks at the statutory framework that could support

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<sup>1</sup> Where AI to help lawyers find relevant case law faster and more accurately.

<sup>2</sup> This employs AI to analyze legal data, providing insights into litigation trends, judge behaviors, and case outcomes.

<sup>3</sup> The EU Artificial Intelligence Act, 2021.

<sup>4</sup> Like the COHUBICOL (Counting as a Human Being in the Era of Computational Law).

<sup>5</sup> For example, the Hangzhou Internet Court, established in 2017, is a pioneering example where AI is used extensively in adjudicating internet-related disputes.

this integration in Nigeria as well as analyze the various ethical and cultural considerations that may arise from the integration of AI into judicial adjudication of customary laws in Nigeria.

## **2.0 Concept and Meaning of Artificial Intelligence (AI)**

Artificial Intelligence (AI) refers to the simulation of human intelligence in machines that are designed to think and act like humans. These systems can perform tasks that typically require human intelligence, such as learning, reasoning, problem-solving, perception, and language understanding. AI operates through algorithms and can be categorized into various types, including narrow AI<sup>6</sup> and general AI.<sup>7</sup> In *State v Loomis*,<sup>8</sup> Eric Loomis was sentenced based on a risk assessment score generated by an AI-based algorithm, COMPAS.<sup>9</sup> Loomis argued that the use of the AI algorithm violated his due process rights, as he could not assess the accuracy or reliability of the algorithm due to its proprietary nature. The Wisconsin Supreme Court upheld the use of the AI algorithm, stating that while it can be used, it should not be the sole determinant of a sentence. This case highlights the potential risks and challenges associated with the use of AI in judicial decision-making. Section 2(1)<sup>10</sup> mandates that any processing of personal data must be lawful, fair, and transparent. This provision is crucial in the context of AI, as the processing of data by AI systems must adhere to these principles to protect individual rights and prevent misuse. Article 22<sup>11</sup> provides individuals the right not to be subject to a decision based solely on automated processing, including profiling, which significantly affects them. This statutory provision is critical in AI, as it ensures that

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<sup>6</sup> Designed for specific tasks like facial recognition or speech translation.

<sup>7</sup> This can theoretically perform any intellectual task a human can do.

<sup>8</sup> 881 N.W.2d 749 (Wis. 2016).

<sup>9</sup> Correctional Offender Management Profiling for Alternative Sanctions.

<sup>10</sup> Nigeria Data Protection Regulation (NDPR) 2019, National Information Technology Development Agency (NITDA).

<sup>11</sup> European Union General Data Protection Regulation (GDPR) 2016.

humans have a say in decisions that impact their lives, rather than being entirely subject to AI-driven outcomes.

### **3.0 Meaning and Concept of Ethical and Cultural Considerations in AI Application to Customary Law in Nigeria**

Ethical considerations in AI application to customary law in Nigeria focus on ensuring fairness, transparency, and accountability. The introduction of AI into legal systems, particularly in customary law in Nigeria, brings concerns about bias in algorithms, privacy issues related to data collection, and the need for transparency in AI decision-making processes. Ethical guidelines seek to prevent discrimination based on ethnicity, religion, or other social factors, ensuring that AI operates within the bounds of justice and human rights. In Nigeria, AI systems must respect cultural diversity, recognizing that customary law varies significantly across regions and communities.

Cultural Considerations are integral in applying AI to customary law in Nigeria because of the country's complex socio-cultural landscape. Customary law in Nigeria is deeply rooted in the traditions and practices of various ethnic groups. The challenge lies in ensuring that AI systems are tailored to accommodate these cultural distinctions without imposing a uniform interpretation of law. The preservation of cultural identity and autonomy of local communities are key aspects that must be maintained. Introducing Artificial Intelligence (AI) into this domain requires sensitivity to cultural norms, especially concerning dispute resolution mechanisms, marriage customs, inheritance laws, and land rights. In *Oyewumi v Ogunesan*,<sup>12</sup> the case involved a dispute over inheritance under Yoruba customary law. The appellant, a female child, was denied inheritance rights by the respondents, who argued that only male children could inherit under customary law. This case highlights the ethical challenges AI could face in interpreting customary laws that appear discriminatory, like gender-based

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<sup>12</sup> (1990) 3 NWLR (Pt 137) 182.

inheritance rules. AI must balance between respecting customary laws and upholding constitutional provisions on gender equality. The AI system applying customary law must be able to recognize the inherent cultural values of the Yoruba people and apply the law while being sensitive to potential changes in societal views regarding gender equality. The case of *Lewis v Bankole*<sup>13</sup> is one of the pioneer cases that addressed the nature of customary law and its application in Nigerian courts. The court examined the importance of customs in dispute resolution within the Yoruba community. The case exemplifies the importance of ethical considerations in ensuring that AI systems respect the fundamental principles of customary law while aligning with the rule of law. It underscores the need for AI to understand the historical and cultural significance of customs, ensuring that technology supports rather than overrides local traditions. Also in *Anekwe & Anor v Nweke*,<sup>14</sup> the case involved a widow who was disinherited by her late husband's family under Igbo customary law, which forbids women from inheriting property. An AI system must ethically process such cases, considering the conflict between customary practices and constitutional protections against gender discrimination. While interpreting Igbo customary law, an AI system must be programmed to respect the cultural heritage of the Igbo people but also be able to reconcile this with evolving human rights standards.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended)<sup>15</sup> prohibits discrimination on the basis of gender, ethnicity, or religion. This is essential in guiding AI systems to ensure that customary law practices that are discriminatory are addressed within the bounds of the constitution. The prohibition of discrimination under Section 42<sup>16</sup> guides the ethical application of AI to ensure that customary laws, particularly those that disadvantage women or certain groups, are reviewed through a human

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<sup>13</sup> (1908) 1 NLR 81.

<sup>14</sup> (2014) LPELR-22697(SC).

<sup>15</sup> By section 42 thereof.

<sup>16</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

rights lens. Section 17<sup>17</sup> allows courts to take judicial notice of customary laws, provided that these customs are not contrary to public policy or natural justice. AI systems that apply customary law must incorporate this provision to ensure that decisions are consistent with national standards of justice. This section emphasizes that AI applications must align customary law with broader legal principles, ensuring that customs deemed unjust are not enforced. Though Nigerian Artificial Intelligence Regulatory Framework is not yet fully codified, the framework proposes guiding principles for the ethical use of AI in various sectors, including the legal system. This framework stresses the importance of fairness, transparency, and accountability. As the legal framework for AI evolves, it is crucial to integrate ethical standards that consider both the technical and human elements of decision-making in customary law applications. In *Agbai v Okogbue*,<sup>18</sup> that dealt with land inheritance under Igbo customary law. The appellants challenged the customary law as discriminatory against women. AI systems must navigate the complexities of customary laws that may conflict with constitutional rights, ensuring ethical adherence to both. The cultural significance of land in Igbo tradition must be acknowledged, with AI ensuring that solutions respect local customs while addressing fairness concerns. In *Duru v Nwosu*,<sup>19</sup> the case questioned the legitimacy of certain customs that were deemed outdated and contrary to public policy. AI systems must be programmed to recognize when customary practices violate modern ethical standards, ensuring that outdated laws are not enforced. The system should retain the ability to distinguish between evolving customs and those that are entrenched in tradition, providing culturally sensitive judgments.

### **Meaning and Concept of Customary Law**

Customary law refers to traditional norms, practices, and rules that have been accepted by a community as binding, and govern the personal and

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<sup>17</sup>Evidence Act, 2011.

<sup>18</sup> (1991) 7 NWLR (Pt 204) 391.

<sup>19</sup> (1989) 4 NWLR (Pt 113) 24.

communal relationships of the people. In Nigeria, customary law typically applies to matters of family, property, and inheritance. It is often unwritten and recognized by courts as long as it does not conflict with statutory law or principles of natural justice, equity, and good conscience. Customary law refers to the rules, practices, and customs that are traditionally observed and adhered to by a particular community or group. Customary law derives its authority from long-standing practices that are generally accepted by the community and followed over time. The nature of customary law in Nigeria is pluralistic, with variations in application depending on ethnic, religious, and regional communities. It operates alongside statutory law, with courts determining its applicability based on established norms and practices. Section 18(1) of the Evidence Act 2011 recognizes the existence of customary law as one of the laws applicable in Nigeria, alongside English law and statutory law. It also provides that customary law must be proved in court unless it is so well established as to be judicially noticed.<sup>20</sup> In *Oyewunmi v Ogunesan*,<sup>21</sup> the parties disputed the ownership of land in Ijebu-Ode, which was governed by the customary law of the community. The appellant claimed to have inherited the land under the traditional inheritance system. However, the respondent argued that they acquired the land under different circumstances. The Supreme Court held that customary law would apply since the land was located in a community that recognized the inheritance system governed by their customs. The court recognized the customary law on inheritance and ruled in favor of the appellant. This case illustrates the court's willingness to uphold customary law on land ownership, provided it does not conflict with statutory law. Similarly the case of *Adeseye v Taiwo*,<sup>22</sup> involved a dispute over marriage under Yoruba customary law. The appellant claimed that a valid marriage had occurred under Yoruba customs, but the respondent denied its validity. The court had to examine the elements of customary law marriage, including the

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<sup>20</sup> S 18(1) of the Evidence Act 2011.

<sup>21</sup> (1990) 3 NWLR (Pt 137) 182.

<sup>22</sup>(1956) 1 FSC 84.

performance of traditional rites. The Federal Supreme Court held that the marriage was valid under the recognized Yoruba customary law, since all traditional ceremonies were duly performed. This case demonstrates the importance of customary law in personal matters such as marriage, where statutory law might not provide specific guidance. In *Kimdey v Military Governor of Gongola State*,<sup>23</sup> the court addressed the issue of whether customary law could be applied in the recognition of chieftaincy titles. The appellants contended that they were denied their traditional title under the customary law of their community. The Supreme Court emphasized that customary law is valid and applicable, provided that it does not violate statutory provisions. The court recognized the customary law governing the appointment of chiefs and ruled in favor of the appellants. This case showcases how customary law governs cultural aspects like chieftaincy, where statutory law is silent or leaves discretion to local customs.

It should be noted that customary law serves as an essential component of the Nigerian legal system, particularly in areas where statutory law does not fully cover the norms or practices of indigenous communities. Courts often recognize and enforce customary law as long as it is consistent with statutory law and does not breach the principles of fairness or public policy.

#### **4.0 Intersection between AI and Customary Law**

The advent of Artificial Intelligence (AI) has revolutionized various sectors globally, including the legal domain. AI's integration into legal systems promises enhanced efficiency, predictive analytics, and streamlined legal processes. When applied to customary law, particularly in contexts like Nigeria where customary practices play a significant role, AI offers opportunities for preserving, documenting, and standardizing diverse customary norms across different ethnic groups.<sup>24</sup> However, this

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<sup>23</sup>(1988) 2 NWLR (Pt 77) 445.

<sup>24</sup>ME Ananny, "Customary Law and Artificial Intelligence: Bridging Traditional Practices and Modern Technology," *Journal of Legal Technology*, vol. 12, no. 3, 2020, pp. 45-67.

intersection also raises critical questions about the appropriateness, adaptability, and impact of AI on deeply entrenched cultural practices and legal traditions that are often oral, fluid, and context-specific.<sup>25</sup>

## **5.0 The Role of Culture and Ethics in Nigerian Customary Law**

Nigerian customary law reflects the diverse cultural, religious, and social norms of its various ethnic groups. It governs personal matters such as marriage, inheritance, and land ownership, embodying the values and ethics intrinsic to these communities.<sup>26</sup> Unlike statutory laws, customary laws are not always codified and often rely on traditional authorities and community consensus for interpretation and enforcement.<sup>27</sup> Ethics play a central role, as these laws are designed to uphold communal harmony, respect for elders, and social justice as defined within specific cultural contexts.<sup>28</sup> Therefore, any external influence or modification, including through technological means like AI, must be carefully considered to preserve the integrity and authenticity of these traditional legal systems.

### **6.1 Ethical Concerns**

#### **6.1.1 AI's potential to disrupt cultural norms and values**

The implementation of AI in the realm of customary law poses significant risks of disrupting established cultural norms and values. AI systems, primarily developed based on data-driven models, may not fully capture the nuances and contextual subtleties inherent in customary practices.<sup>29</sup> For

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<sup>25</sup> SK Adekunle, "The Challenges of Integrating AI into African Customary Law Systems," *African Journal of Legal Studies*, vol. 8, no. 2, 2021, pp. 89-102.

<sup>26</sup> AO Oba, "The Future of Customary Law in Nigeria," *Nigerian Law Journal*, vol. 15, no. 1, 2019, pp. 23-40.

<sup>27</sup> NL Okeke, "Codification of Customary Law: Prospects and Challenges," *International Review of Law*, vol. 7, no. 4, 2020, pp. 112-129.

<sup>28</sup> EC Nwogugu, *Family Law in Nigeria*, 3rd ed., Ibadan: Heinemann Educational Books, 2018, p. 56.

<sup>29</sup> J Smith and L Watson, "Artificial Intelligence and Cultural Sensitivity: A Critical Analysis," *Technology and Society*, vol. 10, no. 2, 2021, pp. 77-91.

instance, the Igbo customary law of inheritance, which traditionally favors male heirs, could be misrepresented or oversimplified by AI algorithms that do not account for evolving interpretations and exceptions acknowledged within the community.<sup>30</sup>

A pertinent case highlighting the sensitivity of customary norms is *Ukeje v Ukeje*,<sup>31</sup> where the Supreme Court of Nigeria held that female children have the right to inherit from their father's estate under Igbo customary law, marking a significant departure from traditional norms. This decision underscores the dynamic nature of customary law and the importance of contextual understanding, which AI systems may struggle to replicate accurately.

Furthermore, reliance on AI could lead to homogenization of diverse customs, eroding the rich cultural tapestry that characterizes Nigerian society.<sup>32</sup> The standardization inherent in AI processing may inadvertently marginalize minority customs or impose majority practices across different communities, leading to cultural displacement and loss of identity.

### **6.1.2 Issues of bias and fairness in AI Algorithms**

AI systems are susceptible to biases that stem from the data they are trained on and the assumptions embedded within their algorithms.<sup>33</sup> In the context of customary law, such biases can lead to unfair and unjust outcomes, particularly when the training data does not adequately represent the diversity and complexity of customary practices across different Nigerian

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<sup>30</sup> K Adeyemi, "The Complexities of Customary Inheritance Laws in Nigeria," *Nigerian Journal of Legal Studies*, vol. 9, no. 3, 2020, pp. 145-160.

<sup>31</sup> (2014) 11 NWLR (Pt 1418) 384.

<sup>32</sup> D Oluwole, "Preserving Cultural Diversity in the Age of AI," *African Cultural Review*, vol. 5, no. 1, 2019, pp. 34-50.

<sup>33</sup> S Barocas and A Selbst, "Big Data's Disparate Impact," *California Law Review*, vol. 104, no. 3, 2016, pp. 671-732.

communities.<sup>34</sup> For example, if an AI system used for legal decision-making is predominantly trained on data from Yoruba customary law, its application in Igbo or Hausa contexts could result in misinterpretations and biased judgments.<sup>35</sup> This concern is exacerbated by historical biases present in legal documentation and records, which may reflect colonial or patriarchal perspectives that do not align with contemporary understandings of justice and equity within these cultures.

The case of *Mojekwu v Mojekwu*<sup>36</sup> illustrates how entrenched biases can impact legal interpretations. In this case, the Court of Appeal challenged the discriminatory "oli-ekpe" custom of Nnewi, which denied women inheritance rights, deeming it repugnant to natural justice, equity, and good conscience. An AI system lacking awareness of such judicial progressions and societal shifts may perpetuate outdated and biased practices. Addressing these biases requires deliberate efforts to ensure diverse and representative data sets, as well as inclusive algorithmic design that accounts for multiple perspectives and interpretations within customary law.<sup>37</sup> Additionally, continuous monitoring and auditing of AI systems are essential to identify and mitigate biases that may arise over time.

## **7.0 Challenges the Intersection of AI, Human Dignity and Customary Contexts**

Respecting human dignity is a fundamental ethical requirement in any legal system, including customary law. AI applications must be designed and implemented in ways that uphold and protect the dignity of individuals and communities, particularly when dealing with sensitive and personal matters

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<sup>34</sup> T Chukwu, "Mitigating Algorithmic Bias in Legal AI Applications," *Journal of African Law and Technology*, vol. 3, no. 2, 2021, pp. 88-105.

<sup>35</sup> RN Okoro, "Challenges of Applying AI Across Diverse Customary Laws in Nigeria," *Nigerian Law and Tech Journal*, vol. 2, no. 1, 2020, pp. 67-81.

<sup>36</sup> (1997) 7 NWLR (Pt 512) 283.

<sup>37</sup> AO Fasanya, "Ensuring Fairness in AI Legal Systems through Inclusive Data Practices," *International Journal of Law and AI*, vol. 1, no. 1, 2019, pp. 23-39.

governed by customary practices.<sup>38</sup> One challenge is that AI systems may lack the empathy and contextual sensitivity necessary to handle cases involving personal and communal relationships appropriately. For example, dispute resolution processes in many Nigerian cultures involve not only legal considerations but also rituals, dialogues, and reconciliatory practices aimed at restoring social harmony.<sup>39</sup> An AI system focused solely on legal outcomes may neglect these important cultural processes, leading to resolutions that, while legally sound, fail to respect the social and emotional dimensions of the disputes.

The statutory framework in Nigeria emphasizes the importance of human dignity. Section 34(1)<sup>40</sup> guarantees the right to dignity of the human person. Any AI application in the legal domain must, therefore, align with this constitutional mandate, ensuring that automated processes do not dehumanize or disrespect individuals involved in legal proceedings.

A relevant case is *Eshugbayi Eleko v Government of Nigeria*,<sup>41</sup> where the Privy Council stressed that courts must consider the principles of natural justice and respect for individual rights when dealing with customary law matters. This precedent underscores the necessity for AI systems to incorporate principles that safeguard human dignity and justice. To address this challenge, AI developers and legal practitioners should collaborate closely with cultural experts and community leaders to embed cultural

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<sup>38</sup> MK Yusuf, "Human Dignity and AI in African Legal Systems," *Journal of Ethics and Technology*, vol. 6, no. 2, 2021, pp. 102-118.

<sup>39</sup> O Adeoye, "The Role of Culture in Dispute Resolution Mechanisms," *African Journal of Conflict Resolution*, vol. 4, no. 3, 2019, pp. 55-70.

<sup>40</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>41</sup> (1931) AC 662.

competence and respect for human dignity into AI systems.<sup>42</sup> Incorporating mechanisms for human oversight and intervention is also critical to ensure that automated decisions are balanced with human judgment and empathy.<sup>43</sup>

## **8.0 Ethical and Cultural Considerations in AI Application to Customary Law**

### **8.1 Cultural Sensitivity in AI Design**

Cultural sensitivity in AI design is crucial, particularly when applying these systems to contexts like customary law, where legal norms are deeply intertwined with cultural values and traditions. AI systems that fail to incorporate cultural nuances risk misinterpreting or oversimplifying legal principles, leading to outcomes that may be legally correct but culturally inappropriate.<sup>44</sup> For instance, in Nigeria, customary laws vary significantly across ethnic groups, reflecting the diversity in cultural practices regarding marriage, inheritance, and land ownership. An AI system designed to handle customary law must be capable of recognizing and respecting these variations to avoid imposing a one-size-fits-all approach that could disrupt established cultural practices.<sup>45</sup>

A relevant case here is *Lewis v. Bankole*,<sup>46</sup> where the court recognized the validity of Yoruba customary law concerning the family property system, emphasizing the importance of understanding the cultural context in legal determinations. This case illustrates the need for AI systems to be culturally

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<sup>42</sup> LM Nkomo, "Integrating Cultural Expertise in AI Development for Legal Applications," *Journal of African Legal Studies*, vol. 5, no. 1, 2020, pp. 78-93.

<sup>43</sup> SO Ibekwe, "Human Oversight in AI-Powered Legal Systems," *International Review of Law and Technology*, vol. 3, no. 2, 2021, pp. 45-60.

<sup>44</sup> MR Islam, "Cultural Sensitivity in AI Systems: A Necessity for Legal Applications," *Journal of AI and Law*, vol. 9, no. 3, 2021, pp. 34-50.

<sup>45</sup> OA Aluko, "The Role of AI in Nigerian Customary Law," *Nigerian Journal of Legal Technology*, vol. 6, no. 1, 2020, pp. 78-92.

<sup>46</sup> (1908) 1 NLR 81.

aware and adaptable to different customary practices, ensuring that legal decisions align with the cultural expectations of the communities involved.

## **8.2 The need for Community involvement in AI Development**

Community involvement in AI development is essential to ensure that these systems are not only technically sound but also culturally appropriate and ethically aligned with the values of the communities they serve. Engaging community members, including traditional leaders, legal practitioners, and cultural experts, allows for the incorporation of local knowledge and perspectives into AI systems, ensuring that the technology respects and upholds customary norms.<sup>47</sup>

The statutory framework in Nigeria supports the involvement of communities in legal matters, as seen in the Local Government (Traditional Councils) Law, which provides for the establishment of traditional councils to advise on matters related to customary law.<sup>48</sup> Involving these councils in AI development could ensure that the technology is tailored to the specific needs and values of different ethnic groups. A case illustrating the importance of community involvement is *Edet v Essien*,<sup>49</sup> where the court upheld the decision of the local native court based on the customs of the Efik people, recognizing the authority and expertise of local institutions in interpreting customary law. This case underscores the value of local input in legal decision-making, a principle that should be extended to AI development to ensure culturally sensitive outcomes.

## **8.3 Case studies of AI applications in culturally sensitive contexts**

Several case studies demonstrate the potential of AI in culturally sensitive contexts, highlighting both successes and challenges. One such case is the

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<sup>47</sup> SN Okon, "Community Participation in AI Development: A Pathway to Ethical AI," *African Journal of Law and Technology*, vol. 7, no. 2, 2021, pp. 54-70

<sup>48</sup> Local Government (Traditional Councils) Law, Laws of the Federation of Nigeria, Cap. L6, 2004.

<sup>49</sup> (1932) 11 NLR 47.

use of AI in Kenya's judiciary, where the system has been applied to streamline case management while respecting local customs and practices.<sup>50</sup> The Kenyan judiciary implemented AI tools to manage the backlog of cases, ensuring that the algorithms incorporated local legal principles and customs, particularly in family law cases. This approach has been successful in reducing delays while maintaining the integrity of customary legal practices. Another example is the use of AI in the Canadian legal system to address indigenous law issues. The Canadian AI tool, designed to assist in land claims and treaty rights cases, incorporates traditional knowledge and cultural practices of indigenous communities, ensuring that the legal outcomes are culturally respectful and relevant. These case studies illustrate the importance of designing AI systems that are not only technically proficient but also culturally aware, ensuring that they support rather than undermine the legal traditions they are intended to serve.

## **9.0 Prospects for Ethical AI in Customary Law**

### **9.1 Guidelines for ethical AI implementation**

To ensure ethical AI implementation in customary law, several guidelines must be followed. First, AI systems should be transparent and explainable, allowing users to understand how decisions are made and ensuring accountability.<sup>51</sup> Second, these systems should be designed with fairness and non-discrimination in mind, particularly in contexts where cultural diversity is a significant factor. AI should be trained on diverse datasets that accurately reflect the cultural variations within customary law, avoiding biases that could lead to unjust outcomes.<sup>52</sup>

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<sup>50</sup> PN Wambua, "AI in the Kenyan Judiciary: Balancing Efficiency and Cultural Sensitivity," *Journal of East African Law*, vol. 10, no. 1, 2020, pp. 112-126.

<sup>51</sup> T Berger, "Indigenous Law and AI in Canada: A Case Study," *Canadian Journal of Law and Technology*, vol. 14, no. 2, 2021, pp. 33-50.

<sup>52</sup> AJ Adebayo, "Ensuring Fairness in AI-Driven Legal Systems," *Nigerian Journal of Law and Technology*, vol. 5, no. 2, 2020, pp. 67-80.

A critical guideline is the inclusion of human oversight in AI systems, particularly when dealing with complex legal issues that involve cultural and ethical considerations. Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right to a fair hearing, which must be upheld in any AI application used in legal proceedings.<sup>53</sup> This principle ensures that AI tools complement rather than replace human judgment, preserving the integrity of the legal process.

A relevant case that highlights the importance of fairness and non-discrimination in legal decisions is *Onwuchekwa v Onwuchekwa*,<sup>54</sup> where the court rejected a customary practice that was deemed discriminatory against women, emphasizing the need for equality and justice in customary law applications. AI systems must be designed to uphold these principles, ensuring that they contribute to equitable legal outcomes.

## 9.2 Possible Frameworks for Cultural adaptation in AI systems

To adapt AI systems to culturally diverse contexts, several frameworks can be developed. One approach is the establishment of cultural advisory boards that work alongside AI developers to ensure that cultural nuances are accurately represented in the algorithms.<sup>55</sup> These boards would include traditional leaders, legal experts, and cultural anthropologists who provide insights into the specific needs and values of different communities.

Another framework involves the development of customizable AI tools that allow users to input cultural variables specific to their community. This would enable the AI system to adjust its recommendations or decisions based on the cultural context, ensuring that the outcomes align with local practices and expectations.<sup>56</sup>

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<sup>53</sup>Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>54</sup> (1991) 5 NWLR (Pt 194) 739.

<sup>55</sup>CO Uka, "Cultural Advisory Boards: A Framework for Ethical AI Development," *Journal of AI and Society*, vol. 2, no. 2, 2021, pp. 89-104.

<sup>56</sup> FO Ekpo, "Customizable AI Tools for Culturally Sensitive Legal Systems," *Nigerian Journal of Legal Technology*, vol. 7, no. 3, 2021, pp. 55-70.

In Nigeria, the introduction of community-based AI frameworks could be guided by statutory provisions such as the Nigerian Communications Act 2003, which emphasizes the importance of promoting and safeguarding national and cultural heritage in the development of technology.<sup>57</sup> This legal foundation could support the creation of AI systems that are culturally adaptable and sensitive to the diverse legal landscapes in Nigeria. A relevant case is *Oyewumi v Ogunesan*,<sup>58</sup> where the Supreme Court of Nigeria emphasized the importance of adhering to local customs in legal matters, highlighting the need for legal systems (including AI) to be flexible and responsive to cultural differences.

### **9.3 Long-term Impact of culturally aware AI on Nigerian Legal systems**

The long-term impact of culturally aware AI on Nigerian legal systems could be transformative, enhancing both the efficiency and fairness of legal processes while preserving the rich cultural heritage embedded in customary law. By integrating cultural sensitivity into AI systems, Nigeria can develop a legal framework that is both modern and respectful of its diverse traditions, ensuring that technological advancements do not come at the expense of cultural identity.

Over time, culturally aware AI could lead to the standardization and codification of customary laws across different regions, providing greater legal clarity and consistency without undermining cultural diversity. This could strengthen the rule of law in Nigeria, as citizens would have greater confidence in a legal system that reflects their values and traditions. However, it is essential to remain vigilant about the potential risks associated with AI, such as the possibility of cultural homogenization or the marginalization of minority customs.

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<sup>57</sup> Section 4(1) of the Nigerian Communications Act 2003, Cap. N97, Laws of the Federation of Nigeria.

<sup>58</sup> *Supra*.

## **10 Conclusion**

Artificial Intelligence (AI) has come to stay. All hands must be on deck to ensure its reception into the Nigerian legal system, including its application in customary law contexts. All stakeholders in the Nigerian legal system must ensure that ethical and cultural considerations in Artificial Intelligence (AI) application to customary laws are adhered to for the preservation of our cultural heritage.