CUSTOMARY LAW IN NIGERIA: EVOLUTION, LEGITIMACY AND REFORM WITHIN A PLURAL LEGAL ORDER

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Abstract

Customary law remains a foundational yet contested component of Nigeria's plural legal system. While historically rooted in indigenous normative practices, its continued operation is shaped by statutory regulation, constitutional supremacy and judicial interpretation. This article critically examines the doctrinal foundations, evidentiary regulation, constitutional scrutiny and reform prospects of Nigerian customary law. Drawing upon the jurisprudence of the Nigerian Supreme Court, comparative constitutional practice and the theoretical insights of the Historical School of Jurisprudence, the article argues that customary law is neither obsolete nor merely residual. Rather, it is a dynamic normative order that has survived colonial suppression, post-colonial marginalisation and constitutional transformation. Its future lies in principled harmonisation, selective codification and constitutionally grounded reform—not in displacement. Achieving that future requires the honest engagement of courts, legislators, traditional institutions and the communities that customary law serves.

Keywords: Customary law; Nigeria; legal pluralism; repugnancy doctrine; codification; customary arbitration; constitutional rights; access to justice; Historical School

1.0 INTRODUCTION

To understand Nigerian law without understanding customary law is to understand only part of the picture. Nigeria operates a plural legal

system consisting of statutory law, received English law, customary law and, in certain regions, Islamic personal law. Among these normative orders, customary law is the oldest. It predates colonial intervention by centuries and derives its authority not from the state but from communal recognition and long-standing usage. It has regulated marriage, land tenure, succession, family relations and community dispute resolution since long before the first British administrator set foot on Nigerian soil.

And yet, despite all that history, customary law today finds itself in a complicated position. It is constitutionally preserved but constitutionally constrained. It is judicially recognised but judicially filtered. It is socially vital but institutionally vulnerable. For millions of Nigerians living outside major urban centres, customary law is not an abstract legal category. It is the system through which they organise their families, protect their land, resolve their disputes and experience justice—or its absence. That practical reality deserves to be taken seriously by legislators, judges and legal scholars alike.

This article takes it seriously. It interrogates the doctrinal foundations of Nigerian customary law, traces its treatment in statute and case law, examines the constitutional pressures it faces, explores the significance of customary arbitration as a dispute resolution mechanism, and proposes a set of reforms capable of strengthening customary law's legitimacy without sacrificing the constitutional values that modern governance demands. Throughout, the analysis is grounded in both doctrinal and jurisprudential frameworks, drawing on the theoretical insights of Friedrich Carl von Savigny's Historical School of Jurisprudence as well as the practical wisdom embedded in Nigerian judicial decisions.

The article is organised as follows. Part 2 examines the conceptual and jurisprudential foundations of customary law. Part 3 addresses

statutory recognition and proof. Part 4 analyses the repugnancy doctrine and constitutional supremacy. Part 5 considers gender, equality and the evolving constitutional limits on customary inheritance rules. Part 6 explores customary arbitration. Part 7 addresses access to justice and the practical indispensability of customary law. Part 8 sets out a programme of reform. Part 9 offers conclusions.

2.0 CONCEPTUAL AND JURISPRUDENTIAL FOUNDATIONS

2.1 Defining Customary Law

There is no single, universally agreed definition of customary law, but the essential features are well understood. Customary law consists of rules that a community regards as binding because they reflect its accepted standards of conduct. As T. O. Elias observed in his landmark study, African customary law consists of rules regarded as obligatory by the members of a given community and sanctioned through social mechanisms rather than formal state coercion.[1] The rules in question are not arbitrary or transient. They are characterised by their antiquity, their consistency, their community acceptance and their normative force.

Nigerian courts have engaged with this definition directly. In the celebrated case of Oyewumi v Ogunesan,[2] the Supreme Court described customary law as the "organic and living law" of the indigenous people—a characterisation that captures both its rootedness in social life and its capacity for organic evolution. Similarly, in Kharie Zaidan v Fatima Khalil Mohssen,[3] the court recognised

[1] T O Elias, The Nature of African Customary Law (Manchester University Press 1956) 1–15.

[2] Oyewumi v Ogunesan (1990) 3 NWLR (Pt 137) 182 (SC) 196, per Nnaemeka-Agu JSC.

[3] Kharie Zaidan v Fatima Khalil Mohssen (1973) 11 SC 1, 8.

customary law as an enforceable component of Nigeria's legal system. These decisions reflect a judicial posture that takes customary law seriously as a source of law, not merely as a social curiosity.

2.2 The Historical School and Savigny's Volksgeist

The most illuminating theoretical framework for understanding the nature of customary law is Friedrich Carl von Savigny's Historical School of Jurisprudence. Writing in nineteenth-century Germany, Savigny argued that law does not arise from rational legislative design but grows organically from the "spirit of the people" ("volksgeist")—the distinctive character, customs and values of a particular national community.[4] For Savigny, authentic law was not made but found; it was the crystallisation of the community's lived experience rather than the imposition of an external rational scheme.

This insight resonates powerfully with the Nigerian experience. Nigerian customary law did not emerge from a legislative chamber or a judicial bench. It grew, over generations, from the practical needs and moral intuitions of communities navigating the challenges of social life. It reflects patterns of land use developed over centuries of agricultural practice, family structures refined through long experience, dispute resolution processes that communities genuinely trusted, and inheritance rules embedded in deep social and spiritual commitments. Savigny's framework helps us see this organic quality not as a deficiency—a sign of customary law's primitiveness—but as a source of genuine legitimacy.

Henry Maine's evolutionary jurisprudence offers a complementary perspective. Maine traced the development of law in progressive societies as a movement "from status to contract", from fixed inherited

[4]F C von Savigny, Of the Vocation of Our Age for Legislation and Jurisprudence (Abraham Hayward tr, Littlewood 1831) 24–30.

positions to freely negotiated arrangements.[5] This framework is useful not as a teleological prescription—implying that customary law must evolve towards Western contractual individualism—but as a descriptive account of how legal systems respond to changing social conditions. Nigerian customary law has indeed evolved: it has adapted to urbanisation, to changing gender norms, to the introduction of money economies, and to the demands of constitutional democracy. Maine's framework helps us understand this evolution as normal and healthy rather than as a sign of customary law's instability.

3.0 STATUTORY RECOGNITION AND PROOF

3.1 The Evidence Act Framework

Although customary law originates outside legislative enactment, its recognition within the formal legal system is regulated by statute. Sections 16 to 18 of the Evidence Act 2011 govern the proof of customary law in Nigerian courts.[6] Under this framework, customary law is treated as a matter of fact rather than as a matter of law. A custom must therefore be proved by credible evidence unless it has attained sufficient notoriety to warrant judicial notice by the court.

The foundational authority for this approach is the Privy Council decision in Angu v Attah,[7] in which the court held that customary law must be proved by evidence until it has been so frequently proved that a court can take judicial notice of it. This ruling established the evidentiary asymmetry between statutory law—which courts are bound to know—and customary law, which must be demonstrated.

[5] H Maine, Ancient Law (John Murray 1861) 22–24, tracing the movement of progressive societies from status to contract.

[6] Evidence Act 2011 ss 16–18.

[7] Angu v Attah (1916) PC 43, 44.

The asymmetry has profound practical consequences. Parties relying on customary entitlements before formal courts bear a burden that parties relying on statutory rights do not. In communities where customary norms are undocumented, the risk of misrepresentation or judicial misunderstanding is real.

Section 315(3) of the Constitution provides constitutional backing for existing customary law, preserving it as part of Nigeria's body of law subject to constitutional supremacy.[8] This constitutional preservation does not, however, resolve the practical difficulties of proof. A custom that is constitutionally preserved but practically unprovable offers little protection to the community member who relies upon it.

3.2 Modes of Proof and Their Limitations

Customary law may be proved before a Nigerian court in several ways: through the oral testimony of knowledgeable community elders or traditional authorities; through expert evidence from legal scholars or practitioners familiar with the relevant customary system; through published works recording the relevant custom; and through previous judicial decisions in which the custom was recognised and applied.[9] Each of these modes of proof has limitations. Oral testimony may be partial, inconsistent or subject to manipulation by interested parties. Expert evidence may be expensive and may reflect academic reconstruction rather than living practice. Published works may be outdated. Previous judicial decisions may have applied the custom in a different factual context.

The cumulative effect of these limitations is to place parties relying on customary law at a structural disadvantage before formal courts. This

[8]Constitution of the Federal Republic of Nigeria 1999 (as amended) s 315(3).

[9]Olawoye v Jinadu (1963) LLR 45, illustrating the difficulty of proving customary norms through oral expert testimony before a formal court.

disadvantage is not merely procedural. It reflects a deeper asymmetry in the legal system's treatment of indigenous and state-derived norms—an asymmetry that has roots in the colonial period but which the post-colonial state has not fully addressed. The case for systematic documentation and selective codification of customary norms is, in part, a response to this structural disadvantage.

4.0 THE REPUGNANCY DOCTRINE AND CONSTITUTIONAL SUPREMACY

4.1 Origins and Content

Under Nigerian law, a custom will not be enforced if it is repugnant to natural justice, equity and good conscience, or if it is incompatible with any written law in force. This repugnancy standard has its origins in colonial administration and was designed, in the colonial context, as a filtering mechanism through which British courts could exclude indigenous practices they considered barbaric or morally objectionable. The case of Edet v Essien[10] illustrates its early application: the court refused to enforce a customary rule that purported to vest ownership of a woman's children in her former husband—a result the court found fundamentally inconsistent with the rights and dignity of the persons concerned.

The repugnancy doctrine has attracted sustained scholarly criticism. Its standard—natural justice, equity and good conscience—is inherently vague and susceptible to subjective judicial interpretation. In the colonial context, it was frequently applied in ways that reflected the moral assumptions of foreign judges rather than the genuine evaluation of indigenous norms. This history casts a long shadow, and there are

[10]Edet v Essien (1932) 11 NLR 47, 49, where the court refused to enforce a native custom that purported to vest ownership of a woman's children in a former husband who had paid bride price but from whom she had separated.

legitimate concerns about whether the doctrine continues to operate as a vehicle for the imposition of Western legal values upon Nigerian communities.[11]

4.2 Constitutional Reorientation

Modern constitutionalism has, however, provided an opportunity to reorient the repugnancy doctrine on firmer ground. The Constitution of the Federal Republic of Nigeria 1999 (as amended) contains a comprehensive bill of rights. Section 1(3) declares that any law inconsistent with the Constitution is void to the extent of its inconsistency.[12] Applied to customary law, this provision means that customary rules are subject to constitutional scrutiny rather than to the subjective colonial standard of repugnancy. The shift from "natural justice, equity and good conscience" to explicit constitutional provisions—equality, human dignity, freedom from discrimination—is both more precise and more legitimate.

The Supreme Court affirmed this constitutional dimension in *Okonkwo v Okagbue*,[13] emphasising that customary rules must be tested against constitutional standards of reasonableness and compliance with natural justice. This approach brings Nigerian judicial practice into alignment with international human rights norms and with the constitutional jurisprudence of comparable pluralist jurisdictions. It also provides a more defensible basis for judicial intervention in customary affairs: not the moral preferences of individual judges, but the objective requirements of a constitutional framework democratically adopted by the Nigerian people.

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[11] C A Nweze, 'The Repugnancy Doctrine and the Law-Culture Interface in Nigeria' in C O Okeke (ed), Law and Social Change in Nigeria (Faculty of Law, University of Nigeria 2005) 120, 134.

[12] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 1(3).

[13] Okonkwo v Okagbue (1994) 9 NWLR (Pt 368) 301 (SC) 323, per Ogwuegbu JSC.

5.0 GENDER, EQUALITY AND THE CONSTITUTIONAL LIMITS OF CUSTOMARY INHERITANCE

No area of customary law has attracted more constitutional scrutiny in recent decades than inheritance rules affecting women. Under many Nigerian customary systems, women are excluded from inheriting their fathers' or husbands' estates, on the basis of rules grounded in patrilineal social structures and the view that inheritance belongs to male members of the lineage. These rules have a long history and a genuine social logic within the normative systems from which they emerge. But they sit very uncomfortably alongside section 42(1) of the Constitution,[14] which guarantees freedom from discrimination on grounds of sex or circumstances of birth.

The landmark case in this area is Mojekwu v Mojekwu.[15] The Court of Appeal there invalidated the Nnewi 'Oli-ekpe' custom, under which only male relatives could inherit a deceased man's estate, finding it repugnant to natural justice and incompatible with the dignity and rights of women. The decision attracted both praise and controversy. Supporters argued that it was a necessary constitutional intervention against discrimination. Critics argued that the court had failed to engage adequately with the social context and the systemic functions of the customary rule.

The Supreme Court provided a more constitutionally grounded resolution in *Ukeje v Ukeje*,[16] holding that the Igbo customary rule excluding a daughter from sharing in her intestate father's estate violated section 42(1) and (2) of the Constitution.[17] The court's

[14] ibid s 42(1).

[15] Mojekwu v Mojekwu (1997) 7 NWLR (Pt 512) 283 (CA) 304–306, per Tobi JCA.

[16] Ukeje v Ukeje (2014) 11 NWLR (Pt 1418) 384 (SC) 412–414, per Onnoghen JSC.

[17] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 42(2).

reasoning was explicit: no matter the cultural antiquity of the practice, it cannot survive if it discriminates between citizens on the basis of sex. This ruling establishes a clear constitutional ceiling above which no discriminatory customary inheritance rule can operate.

The implications of these decisions extend beyond inheritance. They establish a general principle: customary law is constitutionally received but constitutionally conditioned. Where a customary rule discriminates on constitutional grounds, the constitution prevails. This principle is both legally sound and, in the view of this article, morally necessary. Nigeria has committed, through its constitution and through international human rights instruments, to equality and non-discrimination. Those commitments must be taken seriously, including in the domain of customary law.

At the same time, courts and legislators should be attentive to the systemic character of customary rules. Inheritance customs are often embedded in broader systems of obligations, including the duty of male heirs to maintain ancestral homes, perform ritual obligations and support dependent family members. Simply invalidating inheritance rules without engaging with these systemic dimension risks producing outcomes that are formally egalitarian but socially disruptive. A more nuanced approach—identifying and severing specifically discriminatory elements while preserving compatible aspects of the broader customary system—is both legally permissible and socially preferable. Nigeria's international obligations under the Maputo Protocol[18] reinforce the imperative to pursue genuine reform rather than superficial compliance.

[18]Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) 2003 art 7 (separation, divorce and annulment) and art 21 (right to inheritance).

6. Customary Arbitration and Restorative Justice

6.1 The Character of Customary Arbitration

Customary arbitration is one of the most practically significant expressions of Nigerian customary law. It is a dispute resolution mechanism rooted in communal consensus and elder authority, oriented towards reconciliation and the restoration of relationships rather than the determination and enforcement of adversarial rights. Unlike formal litigation or statutory arbitration, customary arbitration proceeds from the premise that the parties to a dispute are members of an enduring community whose relationships must be preserved, and that the function of dispute resolution is therefore to restore harmony rather than simply to produce a winner and a loser.

The Supreme Court recognised the legal validity of customary arbitration in Agu v Ikewibe.[19] The court held that a customary arbitral award is binding upon the parties where three conditions are met: the parties voluntarily submitted their dispute to the arbitral body; they agreed in advance to be bound by the outcome; and the proceedings followed the relevant customary procedures. These conditions closely mirror the requirements of a valid arbitration agreement under statutory law, reflecting the underlying principle that consent is the foundation of legitimate dispute resolution in both systems.

Agbai v Okogbue[20] further developed this jurisprudence, with the Supreme Court elaborating on the nature of the voluntariness requirement and the circumstances in which a customary arbitral award may be enforced as a consent judgment. The decision makes clear that courts will give effect to customary arbitral decisions where

[19] Agu v Ikewibe (1991) 3 NWLR (Pt 180) 385 (SC) 396–397, per Karibi-Whyte JSC.

[20] Agbai v Okogbue (1991) 7 NWLR (Pt 204) 391 (SC) 409–411, per Karibi-Whyte JSC, setting out the tripartite conditions for binding customary arbitration.

the process was genuinely consensual and procedurally sound, treating them as a legitimate component of Nigeria's dispute resolution landscape.

6.2 Customary Versus Statutory Arbitration

Statutory arbitration in Nigeria is now governed by the Arbitration and Mediation Act 2023,[21] which represents a comprehensive modernisation of Nigeria's arbitration framework, incorporating provisions aligned with the UNCITRAL Model Law. The 2023 Act provides detailed procedural safeguards: mandatory impartiality requirements for arbitrators; rights of parties to be heard; requirements for written awards with reasons; and structured grounds for setting aside awards.

Customary arbitration differs from statutory arbitration in important respects. It is oral rather than written, informal rather than procedurally structured, vernacular rather than conducted in English. The arbitrators are not appointed by agreement or by a professional body but emerge from the community's own structures of authority and respect. The process is participatory and often iterative, involving extended community discussion rather than sequential presentation of adversarial positions. The outcome is often framed as a settlement to which parties are guided and which they voluntarily embrace rather than as a judgment imposed upon them.

These differences are not deficiencies. They are features that make customary arbitration accessible, comprehensible and culturally resonant to communities who would find formal statutory arbitration impenetrable and alienating. But they do create practical challenges, particularly around enforcement. A customary arbitral award that

[21] Arbitration and Mediation Act 2023 s 1(2) (scope of application); UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended 2006).

parties observe voluntarily is effective and low-cost. An award that one party repudiates must be enforced through the formal court system, which requires demonstrating the conditions set out in Agu v Ikewibe and which may encounter judicial scepticism where the process was not documented. The solution is not to formalise customary arbitration out of existence but to introduce minimum procedural safeguards—simple record-keeping, consent documentation, impartiality standards—that would improve enforceability without destroying accessibility.

7.0 ACCESS TO JUSTICE AND THE INDISPENSABILITY OF CUSTOMARY LAW

It is sometimes suggested, particularly in academic circles, that customary law is a transitional phenomenon destined to wither as formal legal institutions expand and society modernises. This view misreads both the evidence and the needs of Nigerian society. Customary law is not withering; it is serving.[22] For the majority of Nigerians, especially those in rural communities and smaller towns, customary forums are not a second-best substitute for formal justice. They are the primary experience of justice, often the only available one.

The reasons for customary law's indispensability are structural. Nigerian courts face severe challenges of access. Geographic inaccessibility affects rural communities located at considerable distances from the nearest magistrates' court or high court. Legal costs—filing fees, lawyers' fees, the indirect cost of multiple appearances at distant courts—are prohibitive for many households. Procedural complexity and the use of English as the language of

[22]R N Nwabueze, 'The Dynamics and Genius of Nigeria's Indigenous Legal Order' (2002) 1(1) Indigenous Law Journal 153, 170–175.

proceedings place formal courts beyond the effective reach of most Nigerians without professional legal assistance. Delay is perhaps the most discouraging factor: the judiciary's significant case backlog means that civil proceedings may take years or even decades to resolve.[23]

Customary forums address each of these barriers. They are located within communities. They proceed in vernacular languages. They require no filing fees and no lawyers. They are generally concluded within days or weeks. They apply norms that parties recognise and accept. And they produce outcomes that carry social authority because they reflect communal deliberation rather than the decree of a distant institution operating in an unfamiliar language according to rules the parties do not understand.

The practical case for customary law is therefore compelling. But it is more than a practical case. There is a principled argument that a legal system genuinely committed to access to justice cannot afford to marginalise the institutions through which most of its citizens experience justice. To do so is to privilege the few who can navigate formal legal processes over the many who cannot. That is not access to justice. It is access to justice for some, layered over a parallel system of indigenous justice for the rest—a system that the state neither supports nor regulates, leaving those who depend upon it without the protections that constitutional governance should provide.

8.0 PROSPECTS AND REFORM RECOMMENDATIONS

The analysis in the preceding sections points towards a clear conclusion: Nigerian customary law needs reform, but it needs the

[23]P Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global' (2008) 30 Sydney Law Review 375, 381.

right kind of reform. The wrong kind of reform—coercive codification, wholesale displacement by statutory law, uncritical application of the repugnancy doctrine—would destroy the organic legitimacy that is customary law's greatest asset. The right kind of reform would strengthen that legitimacy while bringing customary law into principled alignment with constitutional values. The following proposals are advanced with that distinction in mind.

8.1 Selective Codification

The most commonly proposed reform is codification, and it is a sound proposal if approached with appropriate care. Selective codification of settled customary principles—in the areas of land tenure, succession, family relations and dispute resolution—would address the evidentiary uncertainty that currently disadvantages customary law claims before formal courts. It would make customary norms more predictable, more accessible to legal practitioners and more resistant to misrepresentation.[24]

The critical qualifier is "selective." Comprehensive codification of all customary norms would be impractical, given the diversity of Nigeria's over 250 ethnic groups, and counterproductive, since it would risk fossilising living norms and stripping customary law of the adaptability that is among its most valuable features. The better approach is targeted codification in areas of frequent dispute and clear community consensus, undertaken through inclusive community-led processes that give traditional institutions and community members a genuine voice in the restatement of their own norms.

8.2 Constitutional Reinterpretation of Repugnancy

[24]Nigerian Law Reform Commission, Report on the Review of Customary Law in Nigeria (NLRC 2011) paras 3.14–3.22.

The repugnancy doctrine should be reformulated in explicitly constitutional terms. Judicial scrutiny of customary rules should be anchored in specific constitutional provisions—the equality guarantee in section 42, the human dignity guarantee in section 34,[25] the right to freedom from discrimination—rather than the vague and historically tainted colonial standard of "natural justice, equity and good conscience." This shift is not merely terminological. It is substantive: it replaces judicial subjectivity with constitutional objectivity, strengthens the legitimacy of judicial intervention and aligns Nigerian practice with international human rights standards.

Framework legislation defining the categories of customary practice subject to constitutional review, and establishing clear criteria for that review, would provide statutory support for the constitutional approach. South Africa's legislative experience in this area offers useful guidance: the Recognition of Customary Marriages Act 1998 and the Reform of Customary Law of Succession Act 2009 demonstrate how legislative frameworks can acknowledge customary law while requiring its adaptation to constitutional equality standards.

8.3 Formal Recognition of Customary Arbitration

Customary arbitration deserves formal legislative recognition as a component of Nigeria's dispute resolution architecture. A Customary Arbitration (Minimum Standards) Act, developed in consultation with traditional institutions, should establish basic procedural requirements: voluntary written consent to the process; basic record-keeping of proceedings and outcomes; impartiality standards for arbitrators; and a simplified judicial enforcement mechanism for awards that meet these requirements. The 2023 Arbitration and Mediation Act provides a structural model, although the customary arbitration legislation should

[25] ibid s 34(1).

be significantly simpler and adapted to the resource constraints of community-based institutions.[26]

International human rights standards support this approach. The United Nations Declaration on the Rights of Indigenous Peoples recognises the right of indigenous communities to maintain their customary legal systems and dispute resolution institutions, subject to compliance with human rights standards. Formal legislative recognition of customary arbitration, accompanied by appropriate safeguards, would fulfil this international commitment while improving the practical effectiveness of customary dispute resolution.

8.4 Judicial Training and Documentation

The structural disadvantages faced by parties relying on customary law before formal courts would be substantially reduced by better documentation of customary norms and better training of judicial officers in legal pluralism. The Nigerian Law Reform Commission, adequately resourced and working in close collaboration with traditional institutions, academic researchers and community organisations, should undertake a systematic programme of customary law documentation.[27] The resulting compilations would not have the force of statute but would provide authoritative reference points for courts and legal practitioners, reducing the burden of proof on parties relying on customary entitlements.

Judicial training in legal pluralism should be incorporated into both pre-service and continuing education programmes for judges and magistrates. Training should address the anthropological context of

customary norms, the methodologies for ascertaining living custom, the restorative philosophy of customary dispute resolution, and the constitutional framework for evaluating customary rules. Understanding these matters is a prerequisite for judging them fairly.

8.5 Community-Driven and Gender-Inclusive Reform

The most important requirement for legitimate reform is that it should be driven by communities themselves rather than imposed from above. Top-down codification or statutory displacement of customary norms, however well-intentioned, risks producing outcomes that formal legal actors consider progressive but that communities experience as foreign impositions. Reform that communities own is more likely to be observed, more likely to endure, and more likely to achieve genuine normative change rather than formal compliance.[28]

Gender inclusivity is particularly important. Reform processes affecting customary inheritance, family law and dispute resolution must include women as genuine participants rather than as subjects of reform. Nigeria's obligations under the Maputo Protocol[29] and CEDAW require not merely the formal elimination of discriminatory norms but active measures to ensure that women can participate meaningfully in the customary legal processes that affect their lives. Meeting these obligations through community-driven reform, rather than through top-down legal intervention, is both more legitimate and more likely to produce lasting change.

9.0 CONCLUSION

[28]J Griffiths, 'What is Legal Pluralism?' (1986) 24 Journal of Legal Pluralism and Unofficial Law 1, 38.

Nigerian customary law is not a relic. It is a living normative order, rooted in history, responsive to change and indispensable to the daily experience of justice for millions of Nigerians. Its survival through colonial suppression, post-colonial neglect and constitutional transformation reflects not institutional inertia but genuine social resilience. Communities have maintained their customary institutions because those institutions serve them—because they are accessible, comprehensible, affordable and legitimate in ways that formal legal institutions, for all their technical sophistication, often are not.

The challenge facing Nigerian law today is not whether customary law should survive—it will, regardless of what legislators and judges decide—but how it should be integrated into the constitutional framework that governs the Nigerian state. The answer proposed in this article is integration rather than displacement: principled harmonisation that preserves customary law's organic legitimacy while bringing it into alignment with constitutional equality and dignity guarantees.

This integration requires action on multiple fronts. Selective codification would address the evidentiary disadvantages that customary law claims face before formal courts. Constitutional reinterpretation of the repugnancy doctrine would replace colonial subjectivity with constitutional objectivity. Formal recognition of customary arbitration, with minimum procedural safeguards, would strengthen enforcement and protect parties' rights without destroying accessibility. Judicial training would equip courts to engage with customary law fairly and contextually. And community-driven, gender-inclusive reform would ensure that the changes made are owned by the communities they affect.[30]

[30]United Nations Declaration on the Rights of Indigenous Peoples 2007 (UNGA Res 61/295) art 34.

None of this is easy. But it is necessary. The alternative—leaving customary law unregulated and unsupported at the margins of the formal legal system—serves no one well. It leaves those who depend on customary institutions without the constitutional protections that governance owes them. It leaves formal courts without reliable tools for engaging with customary claims. And it leaves Nigeria with a fractured legal system in which the gap between constitutional aspiration and lived reality remains wide.

Customary law has endured because it is genuinely valued. The task now is to build a legal framework worthy of that value: one that takes customary law seriously, holds it to constitutional standards, and gives it the institutional support it needs to continue serving Nigerian communities justly and effectively for generations to come.