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AN APPRAISAL OF THE CUSTOMARY LAW AND WOMEN'S RIGHTS: BRIDGING THE GAP BETWEEN TRADITION AND EQUALITY

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ABSTRACT

This paper critically appraises the interaction between customary law and women's rights in Nigeria, with the aim of addressing the persistent gap between traditional legal norms and the constitutional principle of gender equality. Using a doctrinal research methodology, the study draws upon Nigerian statutory provisions, judicial decisions, and international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on Human and Peoples' Rights. It explores how customary law—while integral to cultural identity and community governance—often enshrines patriarchal values that result in systemic discrimination against women, particularly in areas of inheritance, land rights, and marital relations. The paper finds that despite constitutional guarantees and progressive judicial pronouncements invalidating discriminatory customs, harmful practices remain prevalent due to inadequate enforcement and societal resistance. It concludes that bridging the gap between tradition and equality requires a multifaceted strategy, including legislative reform, proactive judicial interpretation, and sustained public advocacy. The paper recommends inclusive engagement with traditional leaders and broader public sensitization as necessary steps toward achieving gender justice within plural legal systems.

Keywords*: Customary Law, Women's Rights, Gender Equality*

1. Introduction

Customary law, defined as the body of customs and traditions accepted as binding by a particular community, is recognized as a legitimate source of law in Nigeria under the nation's pluralist legal system (Nwauche, 2011; Oba 2002). The 1999 Constitution of the Federal Republic of Nigeria acknowledges the operation of customary law in areas such as marriage, succession, and land tenure. For many communities, customary law is not merely a set of rules but a lived system of values that shapes social relations and cultural identity (Yusuf, 2010).

Despite its cultural relevance, customary law often reflects deeply entrenched patriarchal norms and practices that perpetuate discrimination against women. In many cases, these practices conflict with constitutional guarantees of equality and international commitments to women's rights (African Charter on Human and People's Rights, 1981; the 1999 Constitution of the Federal Republic of Nigeria). Discriminatory norms in inheritance, marriage, divorce, and access to land serve to marginalize women socially and economically, hindering their full participation in society (Oba 2002).

This tension between tradition and equality presents a critical challenge to law and development. On one hand, there is a need to respect cultural diversity and the autonomy of communities to govern themselves according to their values. On the other hand, the principles of justice and human rights demand that all individuals, regardless of gender, be treated with dignity and afforded equal protection under the law (Nwauche, 2011).

The judiciary has made important strides in challenging discriminatory customary norms, as seen in landmark cases such as Mojekwu v. Mojekwu (1997) and Ukeje v. Ukeje (2014), where the courts held that customs denying women inheritance rights were unconstitutional.

The paper seeks to appraise the interaction between customary law and women's rights, with a focus on identifying the key areas of conflict and proposing practical and culturally sensitive reforms.

This paper is subject to certain limitations. First, its analysis is confined primarily to the Nigerian legal system, which may limit the generalisability of its conclusions to other jurisdictions. Additionally, customary law in Nigeria is inherently diverse, varying significantly across ethnic groups and communities; as such, the study relies on general principles and documented practices that may not capture every local variation. Furthermore, the research does not include fresh empirical fieldwork, and therefore depends on existing literature, reported cases, and secondary data, which may not fully

reflect current community practices or evolving attitudes toward women's rights. In spite of these constraints, the paper provides a robust doctrinal and comparative foundation for understanding the interaction between customary law and gender equality.

This paper adopts a doctrinal legal research methodology, supported by a socio-legal approach where necessary. The doctrinal method involves a critical examination of primary legal sources, including the 1999 Constitution of the Federal Republic of Nigeria (as amended), relevant statutory provisions, judicial decisions, and customary law norms across selected Nigerian communities. Secondary sources such as textbooks, journal articles, reports of international organizations, and conference papers are also reviewed to provide scholarly perspectives on the interaction between customary practices and women's rights.

It examines statutory and judicial responses to gender discrimination in customary law and explores how Nigeria can fulfill its constitutional and international obligations to promote gender equality while respecting cultural traditions.

2. Conceptual Clarifications

2.1 Customary Law

Customary law has been defined both judicially and statutorily. According to Section 18 (1) of the Evidence Act 2011"Customary law means a rule which, in a particular district, has, from long usage, obtained the force of law."

In the case of *Aghenghen v. Waghoreghor* (1974) 1 All NLR (Pt. 1) 134, the Supreme Court of Nigeria held that" customary law is a mirror of accepted usage. It is a body of rules which are seen to be binding on a given community and are enforced by its members."

Although customary law is unwritten and dynamic, its application must meet the repugnancy test-ensuring that it is not contrary to natural justice, equity, and good conscience. This principle was reaffirmed in *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283, where the Court of Appeal stated that "any form of societal practice that discriminates against women or is oppressive and suppressive must be held to be inconsistent with the fundamental rights guaranteed by the Constitution."

2.2 Women's Rights

Women's rights encompass the legal entitlements and freedoms that promote gender equality and protect women from discrimination and abuse. Section 42(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that "a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person- be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities...are not made subject."

In *Ukeje v. Ukeje* (2014) LPELR-22724(SC), the Supreme Court held that "no citizen of Nigeria shall be subjected to any form of disability or restriction by reason of the circumstances of his birth, sex or other status. Customary laws that seek to disinherit women on the basis of gender are inconsistent with the provisions of the Constitution and therefore null and void."

Internationally, women's rights are enshrined in legal instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Article 2 of CEDAW provides that "states Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women."

Similarly, the African Charter on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), emphasize non-discrimination, equal protection of the law, and the eradication of customs harmful to women.

2.3 **Culture**

Culture refers to the shared beliefs, values, norms, practices, and material objects that are learned and transmitted within a social group, shaping how people understand and behave in their society. (Scott and Marshall, 2014) Culture is the characteristics of a particular group of people encompassing language, religion, cuisine, social habits, music and arts. Culture encompasses religion, food, what we wear, how we wear it, our language, marriage, music. What we believe is right or wrong, how we sit at table, how we greet visitors, how we behave with loved ones and a million of other things (Namdi A. J., 2018).Culture is therefore the way and manner people in a particular society live and conduct their daily affairs.

2.4 **Gender**

Gender refers to the socially constructed characteristics of women, men, girls, boys, which include norms behaviours, and roles associated with being female or male, as well as the relationship between them. (World Health Organization, 2004). It is a group of people in a society who share particular qualities or ways of behaving which that society associates with being male, female or another identity (Cambridge University Press. n.d). From the foregoing therefore, it is apparent that gender is the distinction of sex into masculine (male, boy or man), feminine (female, girl or woman) or neuter.

3. Customary Law and Gender Discrimination

3.1 Inheritance and Succession

Customary rules often deny women the right to inherit property, particularly land, on the basis that they will marry and join another family. In *Mojekwu v. Mojekwu* (1997) 7 NWLR (Pt. 512) 283, the Court of Appeal condemned the Igbo custom of "oli-ekpe" and declared it discriminatory and inconsistent with the principles of natural justice, equity, and good conscience. The Court stated that "it is the view of this court that the ‘oli-ekpe’ custom of Nnewi is repugnant to natural justice, equity and good conscience. It is also contrary to the provisions of the Constitution."

3.2 Marriage and Divorce

Under many customary systems, women are regarded as subordinate to men. Practices such as bride price, polygamy, and unequal rights in divorce proceedings reflect entrenched gender inequality. Women often lack autonomy in marital decisions and face barriers in seeking redress for marital grievances.

Child marriage, which is another customary practice in most communities, defined as a formal marriage or informal union before age 18is a reality for both boys and girls, although girls are disproportionately the most affected. It is a situation where female adolescent and teenagers are married to adult husbands. In these instances, sometimes, the men can be twice their ages and these females become child brides. Early marriage robs a girl of her childhood-time necessary to develop physically, emotionally and psychologically (Odiaka N. O., (2013).

Early marriage inflicts great emotional stress as the young woman is removed from her parents’ home to that of her husband and in-laws. Her husband who will invariably be many years her senior will have little in common with a young teenager. Early marriage devalues women in some societies

(Odiaka N. O., (2013) and the Child brides face health complications, including obstetric fistula, and are deprived of educational opportunities (Adeyemi N. K., et al, 2023).

More so, widows in some communities face harmful practices that subject them to psychological trauma, including forced remarriage, disinheritance, social ostracization and under some cultures the widow is regarded as part of the chattel or property to be inherited and, as such, she has no inheritance rights in her husband's property (Odiaka N. O., 2013).

Though, it has being outlawed by section 6 of the Violence Against Persons (Prohibition) Act (2015), female genital mutilation (FGM) remains practiced and is deeply embedded in the culture of many ethnic groups, especially the southern Nigeria (Namdi A. J., (2018) causing severe health complications, physical and psychological trauma. It is thought as an ageless ancestral edict that pre-qualifies women for marriage and non-compliance significantly impairs marital prospects and subjects the woman and her family to shame, ridicule and condemnation.

3.3 Land Rights

In most rural communities, land ownership and control are vested in male members of the family. Women's access to land is generally mediated through male relatives, undermining their economic independence and food security. This inequality directly impacts development, as land is a critical resource for livelihood.

4. Legal Framework for the Protection of Women's Rights

4.1 The Nigerian Constitution

Section 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) prohibits discrimination on the grounds of sex. It provides that no citizen shall be subjected to any form of disability or restriction by virtue of gender. The courts have invoked this section in striking down discriminatory customary practices. For example, in Ukeje v. Ukeje (2014), the Supreme Court held that the Igbo custom of disinheriting female children was unconstitutional.

4.2 The Violence Against Persons (Prohibition) Act, 2015 (VAPP Act)

The VAPP Act represents a landmark in Nigeria's legislative framework for protecting women. It criminalizes various forms of violence including domestic abuse, harmful traditional practices (e.g., female genital mutilation), and economic and emotional abuse. It is significant because it defines

violence broadly and protects both women and other vulnerable groups. Although the Act initially applied only in the Federal Capital Territory, several states have since adopted it. However, full implementation remains hindered by lack of public awareness, institutional capacity, and resistance from traditional structures.

4.3 International Human Rights Instruments

Nigeria is a signatory to key international human rights instruments that prohibit gender discrimination. These include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1985. CEDAW requires state parties to eliminate discriminatory laws and practices and take affirmative steps to address cultural and societal norms that perpetuate inequality.

Additionally, the African Charter on Human and Peoples' Rights (ratified in 1983) obliges Nigeria to promote and protect all human rights, including non-discrimination based on sex (Article 18(3)).

4.4 The Maputo Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, popularly known as the Maputo Protocol, was ratified by Nigeria in 2004. It is a progressive legal instrument that addresses African-specific challenges affecting women, including gender-based violence, reproductive health, and access to land and resources. Article 2 mandates the elimination of all forms of discrimination against women. Article 21 guarantees women's rights to inheritance. Article 19 emphasizes the right to sustainable development and access to land. Article 5 prohibits harmful practices like female genital mutilation.

The Maputo Protocol has helped frame policy advocacy in Nigeria, but full implementation remains a challenge due to weak domestic enforcement and cultural resistance.

4.5 Case Law Developments

Judicial pronouncements have gradually begun to challenge discriminatory customs. In *Ukeje v. Ukeje* (2014) LPELR-22724(SC), the Supreme Court invalidated the Igbo custom that disinherits female children, affirming its inconsistency with the Constitution. The Court stated that "no culture or custom can override the constitutional guarantee of freedom from discrimination on the basis of gender."

Similarly, in *Anekwe v. Nweke* (2014) LPELR-22697(CA), the Court of Appeal condemned customs that deprive women of inheritance rights, holding that such practices violate the Constitution and are repugnant to natural justice.

5. Bridging the Gap: Strategies and Recommendations

5.1 Legal Reform

There is a need for comprehensive legislative reform to abolish discriminatory customary laws and align them with constitutional and international standards. The Maputo protocol should be domesticated and the National Assembly and State Houses of Assembly must work towards codifying customary law in a way that protects women's rights.

5.2 Judicial Activism

Courts should continue to invoke constitutional provisions and international human rights norms to invalidate customs that perpetuate gender inequality. Judicial courage is essential in transforming discriminatory traditions into progressive norms.

5.3 Education and Advocacy

Public enlightenment and advocacy campaigns are essential to change societal attitudes and challenge the socio-cultural basis of gender discrimination. Legal literacy initiatives can empower women to assert their rights.

5.4 Community Engagement

Engaging traditional leaders and local communities in dialogue can foster culturally sensitive reforms and encourage the evolution of gender-equitable customs. Reform from within the community is more sustainable and impactful.

6. Conclusion

Customary law, though deeply rooted in cultural identity, must evolve to reflect contemporary standards of human rights and gender equality. Bridging the gap between tradition and equality requires a multifaceted approach involving legal reform, judicial intervention, and societal transformation. The recognition of women's rights as human rights is not only a legal imperative but also a prerequisite for sustainable development and social justice.

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