CHALLENGES TO THE RECOGNITION AND ENFORCEMENT OF CUSTOMARY LAW IN NIGERIA: LESSONS FROM SOUTH AFRICA AND GHANA*

Abstract

Customary law is fundamental to African legal systems, embodying indigenous values, customs, and communal beliefs. Nonetheless, throughout the continent, it faces challenges that hinder its acknowledgement, development, and implementation. This article analyses the issues facing customary law in Nigeria and juxtaposes them with those in South Africa and Ghana. Nigeria persists in adhering to colonial-era concepts that prioritise foreign standards over customary practices, but South Africa has implemented transformative measures by acknowledging customary law as an integral part of its constitutional structure. This article employs a doctrinal approach to compare the complex difficulties facing customary law in Nigeria with those in other African countries, emphasising the necessity for balanced strategies that maintain the vitality of customary practices while maintaining justice and inclusivity. The article concludes that, despite varied experiences, African customary law encounters shared challenges stemming from colonial legacies, gender inequality, legal pluralism, fragmentation, and conflicts with statutory and constitutional law. The article advocates for constitutional reforms, flexible codification, the removal of repugnancy tests, and alignment with human rights standards as means to fortify customary law throughout Africa.

Keywords: Customary Law, Recognition and Enforcement, Challenges, Nigeria, South Africa, Ghana

1.0 Introduction

Customary law embodies the traditional norms, rules, and practices that regulate various facets of life for many African societies. In Nigeria, as in most African nations, customary law coexists with statutory and constitutional legal systems within a pluralistic legal framework.[1] Nonetheless, the implementation and enforcement of customary law encounter enduring challenges that impede its effective operation as a legal framework. Key challenges encompass the unwritten and variable characteristics of customary norms across ethnic groups; the enforcement of colonial-era principles, exemplified by Nigeria's repugnancy rule, [2]which requires customary law to conform to notions of justice derived from English law; and the marginalization of women under certain customary practices. The lack of codification contributes to uncertainty and inconsistency in judicial decisions, while efforts to codify customary law risk freezing its dynamic nature and entrenching discriminatory provisions.

Other African jurisdictions experience similar issues. In South Africa, customary law is constitutionally recognized but faces enforcement challenges due to its unwritten character and the dominance of traditional authorities who may uphold patriarchal customs. Codification efforts in South Africa have aimed to reconcile customary law with constitutional rights, particularly gender equality, but practical enforcement remains problematic. This article investigates whether the obstacles bedeviling Nigerian customary law are mirrored in other African jurisdictions. It provides a comparative analysis of Nigeria, South Africa and Ghana focusing on the historical, philosophical, and constitutional positioning of customary law, and the practical difficulties that impede its development. The article then offers recommendations for reform that could strengthen customary law as a legitimate and rights-compatible system of law.

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[1]Allott, A., *Essays in African Law* (Butterworths 1960).

[2]Eze, J., 'The Nigerian Customary Law Practices and Repugnancy Test' (2022) *Synsto Journal* https://synstojournals.org accessed 2 October 2025.

2. Concept of Customary Law

Black's Law Dictionary defines custom as a practice that, through widespread acceptance and consistent application, has acquired the force of law. It also characterises customary law as a body of norms derived from conventions recognised as legal mandates or required conduct, practices, and beliefs that are integral to a social and economic system, regarded as if they were statutory laws.[3] Customary law can be defined as a practice or use of the populace that, through collective acceptance and consistent application, has become obligatory and has attained the status of law concerning the specific locale or subject matter it addresses.[4] The Nigerian Evidence Act did not define customary law but it did define custom as a rule, which in a particular district, has, from long usage, obtained the force of law[5] . In *Olubodun v. Lawal*[6], the Supreme Court of Nigeria defined custom or customary law to mean a set of rules of conduct applying to persons and things in a particular locality. It went further to state that it is of the characteristics of a custom or customary law that it must be recognized and adhered to by the inhabitants of the community to make it binding. To emphasize the unwritten nature of customary law, the Court stated that it is a well-established principle of law that documentary evidence is unknown to native law and custom. In *Owoniyin v. Omotosho*[7] , the Court described customary law as a mirror of accepted usage.

Customary law is the rules, practices and norms of a particular community which regulate the lives of the adherents and which they accept as binding upon them[8] . Customary law has also received definite judicial exposition as to it meaning. In *Nwaigwe v. Okere*[9] , the Supreme Court per Tobi JSC (as he then was) defined customary law thus:

> And what is customary law? Customary law generally means relating to custom or usage of a given community. Customary law emerges from the tradition, custom and usage and practice of 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 which it has acquired over the years by constant, consistent and community usage, it attracts sanctions of different kinds and is enforceable. Putting it in a more simplistic form, the custom, rules, traditions, ethos and cultures which concern the relationship of members of a community are generally regarded as the customary law of the people.

A major feature of customary law is that it is unwritten. Its rules are well known by members of the community whose conduct it regulates. It was handed down the ages, from generation to generation. Like a creed, it seems to live in the minds of people.

3. Application of Customary Law in Nigeria

Nigeria comprises 36 states and a federal capital territory located in Abuja. Nigeria is subdivided into six geopolitical zones: Northeast, Northwest, North Central, Southwest, Southeast, and South-South. Each zone comprises six states, with the exception of the Northwest, which has seven states, and the Southeast, which consists of five states.[10] The nation is a heterogeneous society characterised by a diversity of cultures, religions, languages, and customary laws. The northern region of the country is predominantly inhabited by the Hausa, Fulani, and other ethnic groups that adhere to Islam and Sharia rule.[11] Obilade[12] asserts that in Nigeria, customary law can be categorised into two distinct classes based

[3] Garner, B. A. Ed. (2009). *Black's Law Dictionary* (9th.ed.). Minesota: West Publishing Co.
[4] Kolajo, A. A. (2001). *Customary Law in Nigeria through the Cases*. Ibadan: Spectrum Books Ltd.
[5] Evidence Act, CAP. E14 Laws of the Federation of Nigeria, 2010.
[6] 2 (2009) 35 NSCQR 570
[7] 1961) All NLR 304. The Supreme Court also adopted the definition in *Zaiden v Mohssen* (1973) 11 SC 1 and *Kindley v Military Governor of Gongola State* (1988) 2 NWLR (Pt 77) 445.
[8] Hilary, N. (2017) The Subjection of Customary Laws to Repugnancy Tests by Nigerian Courts: The Need to Broaden the Horizon. *International Journal of Law*, Vol. 3, P. 70
[9] (2008) ALL FWLR (Pt. 431) 870
[10] Trost, J. et al. (2005). *Handbook on World Families*. London: Sage Publications.
[11] Ibrahim, H. (2012). *Practicing Sharia Law*. Illinois: ABA Publishing.
[12] Obilade, A. O. (1979). *The Nigerian Legal System*. Ibadan: Spectrum Books Ltd.

on its nature: ethnic or non-Muslim customary law and Muslim law. Ethnic customary law in Nigeria is indigenous in nature. Each customary law system is applicable to individuals of a specific ethnic group. Islamic law is a religious legal system derived from the Islamic faith and applicable to its adherents. In Nigeria, the legal framework is not based on indigenous law; rather, it consists on received customary law that was imported through Islam. [13] The Southern States or regions of the country are primarily non-Muslim and governed by indigenous customary laws [14] Kolajo [15] has noted that, in certain instances, statute, common law, and customary law coexist and are appropriate. Nonetheless, while customary law is often practiced by its adherents in their daily lives, its application in Nigerian courts is considerably restricted. Section 16 of the Evidence Act stipulates two requirements under which a custom may be incorporated into the legislation applicable to specific circumstances: it must either be subject to judicial notice or be demonstrable through evidence. The responsibility of demonstrating the existence of a custom rests on the individual asserting it. Section 17 of the Evidence Act stipulates that a custom may be judicially recognised if it has been previously adjudicated by a superior court of record. The customary law applicable in the court's jurisdiction is obligatory for the parties, provided it does not contradict natural justice, equity, and good conscience, nor is it directly or implicitly incompatible with any current written law in the State. [16] This position has been upheld in a number of cases including *Kopek vs. Ekisola*[17]

4. Challenges to the Effective Implementation of Customary Law in Nigeria

Customary legal systems are an inherent aspect of African communities, existing long before colonial administrations or the concept of legal positivism. In Nigeria, customary law can adjudicate property conflicts, marital rights, inheritance issues, and communal responsibilities, frequently aligning more closely with local norms than foreign legal systems. Nonetheless, its existence is jeopardised by numerous challenges:

Unwritten and Fluid Nature: A major feature of customary law in Nigeria is that it is unwritten. Its rules are well known by members of the community whose conduct it regulates. It was handed down the ages, from generation to generation. Like a creed, it seems to live in the minds of people. Customary law is primarily oral and varies widely between communities, resulting in difficulty for courts to ascertain precise rules and precedent. This often leads to inconsistent judgments and undermines legal certainty.

Colonial Repugnancy Doctrine: In Nigeria, Colonial authorities imposed the repugnancy test. Customary law would be recognized only if not repugnant to natural justice, equity, or good conscience. This doctrine not only privileged European norms over local practices, but created uncertainty. The term ‘repugnancy clause’ has not been defined in any Nigerian statute, and also Nigerian courts have not explained in details, its meaning.[18] According to Lord Wright, the clause was intended to invalidate ‘barbaric’ custom.[19] In *Eshugbayi Eleko v Officer Administering the Government of Nigeria*, [20] Lord Atkins explained that a barbarous custom must be rejected on the ground of being repugnancy to natural justice, equity and good conscience. In the same vein, the phrase ‘natural justice, equity and good conscience’ defies precise definition. Controversies and uncertainties surround its exact meaning.[21] Speed, Ag CJ expressed the difficulty thus I am not sure that I know what the term ‘natural justice and

[13] Obilade, A.O., (1979). *The Nigerian Legal System*. Ibadan, Spectrum Books Ltd; Section 2 of the High Court Law Cap. 49 Laws of Northern Nigeria, 1963, provides that native law and custom includes Moslem Law.
[14] States in the South where this obtains include Ebonyi, Abia, Imo, Enugu, Anambra, Cross River, Akwa Ibom, Rivers, Bayelsa, Delta, Edo, Lagos, Ekiti, Ondo, Oyo, Kwara and Ogun.
[15] N4
[16] Cap 47, Laws of Ebonyi State, 2009. Ebonyi is one of 36 States that make up Nigeria as Country with a Federal Capital in Abuja
[17] (2010) 41 NSCQR 553 ratio 9. See also the High Court Laws of Lagos and Ebonyi States.
[18] Ibid.
[19] ibid
[20] [1931] AC 662.
[21] For example, in *Abott v Sullivan* (1952) 1 KB 189 at 195, Lord Evershed expressed this difficulty and mentioned that the principles of natural justice are easy to proclaim, but their extent is far less easy to ascertain.

good conscience' means. They are high sounding phrases and it would of course not be difficult to hold that many of the ancient customs of the barbaric times are repugnant thereto, but it would not be easy to offer a strict and accurate definition of the term.[22] Nigerian courts have equally applied the doctrine on numerous cases and this impacted greatly on the rules of customary law. Many of the customary law rules which offended the clause were either modified or completely jettisoned.

The case of *Ekpenyong Edet v Young Uyo Essien*[23] is quite illustrative on this point. In that case, the appellant had paid the dowry in respect of a woman when she was a child. Later, the respondent also paid dowry in respect of the same woman to the woman's parents and took her as wife. The appellant, though not the biological father, claimed custody of the children of the marriage on the grounds that under the customary law, he was the husband of the wife until the dowry paid by him was refunded. The court ruled that any customary law rule which has the effect of giving the paternity of a child to a person other than his natural father is barbaric and should be rejected as repugnant to natural justice, equity and good conscience. Similarly, in *Mariyama v Sadiku Ejo*, [24] the court rejected the rule of Igbira customary law that any child born within ten months of a divorce belongs to the former husband who may not necessarily be the biological father. Rejecting the rules, the court held: The native law and custom which the respondent asked us to enforce would have this girl taken for life away from her natural parent. We feel that to make such an order would be contrary to natural justice equity and good conscience and we are therefore not prepared to do so.[25]

Gender Discrimination: An additional effect of customary rules pertains to succession and estate management. Courts now assert that for a customary law rule of succession to be deemed legal, it must be equitable and non-discriminatory based on sex or any other banned basis. The principles of equality and non-discrimination are acknowledged in national and international human rights accords. The two basic principles of succession in customary law are primogeniture of males through males and universal succession. The rule of primogeniture permits only male issues to inherit the property of a person who dies intestate. Under the rule, on the death of a Native, his estate devolves on his eldest son, or his eldest son's eldest male descendant.[26] If the eldest son has died leaving no male issue, the next son or his eldest male descendant inherits, and so on through the sons respectively.[27] No female child is permitted to inherit under this customary law rule.[28] Also, a widow is equally excluded from the succession.[29] If a man dies without a son, his property is inherited by his nearest male relative in the collateral line, usually his brother or his brother's male descendant. This rule has been in existence in Africa since the early times as part of the African culture. The concept of universal succession under many customary norms leaves women disadvantaged, especially in inheritance and property rights, contradicting constitutional commitments to equality as seen in recent Nigerian cases and South African reforms.

Legal Positivism: Nigeria operates a plural legal system comprising received English law, statutory law, customary law, and Islamic law. Despite constitutional recognition of customary law, its practical

[22] *Lewis v Bankole* (1908) 1 NLR 83 at 84
[23] (1935) 12 NLR 4.
[24] (1961) NRNLR 81
[25] Also, in *Meriba v Egwu* (1976) 1 All NLR 266, the traditional practice in the Igbo land of Nigeria that allowed marriage between two women to cater for well-to-do female members of the society who were unable to conceive was declared a repugnant by the Supreme Court. The court found the practice inconsistent with natural justice, equity and good conscience. Similarly, the customary law rule which had the tendency of perpetuating slavery in the society was also declared repugnant to natural justice, equity and good conscience. See *Re-Effiong* (1930) 10 NLR 65; *Abasi Ukot Akpan v Chief Elijah Henshaw* (1932) 11 NLR 47; *Kodieh v Affram* (1930) 1 WACA 12; See Ajayi 1958:569.
[26]Ocran, M., 'The Clash of Legal Cultures: The Treatment of Indigenous Law in Colonial and Post-Colonial Africa' (2006) 39 *Akron L Rev* 465.
[27] *Sonti v Sonti* 1929 NAC (C&O) 23 24
[28] See *Madolo v Nomawu* (1896) 1 NAC 12; *Mahashe v Hahashe* 1955 NAC 149 (S) 153; See Mbatha 2002:260-261.
[29] The daughter however, has the right to be maintained while the widow equally has servitude over her late husband's land and a personal right against the heir to be maintained.

operation has been significantly constrained by the dominance of legal positivism. A jurisprudential ideology that privileges written, state-enacted law as the primary source of legal validity. This positivist orientation, inherited from colonial administration and reinforced by post-independence constitutionalism, poses profound challenges to the recognition, development, and legitimacy of customary law in Nigeria.[30] Nigeria's legal system was structured during colonial rule along positivist lines, with English common law and statutes occupying a superior normative position. Customary law was recognised only as a subordinate system, enforceable subject to external validation through the repugnancy test and compatibility with statutory law.[31]This hierarchy reflects positivist assumptions that law must be ascertainable, certain, and traceable to state authority. One of the clearest expressions of legal positivism in Nigeria is the application of the repugnancy test, which invalidates customary law rules deemed repugnant to 'natural justice, equity and good conscience.'[32]This test, rooted in colonial jurisprudence, imposes external moral and legal standards on indigenous norms, thereby undermining the autonomy of customary law. In *Laoye v Oyetunde*,[33] the court held that customary law would be enforced only if it satisfied repugnancy and compatibility criteria, reinforcing the positivist hierarchy between written law and custom.

Another positivist constraint is the classification of customary law as a question of fact rather than law, requiring strict proof unless judicially noticed.[34] This approach reflects scepticism toward unwritten norms and privileges formal documentation. In *Angu v Attah*, [35]the court insisted that customary law must be proved by evidence, reinforcing its inferior status within the legal system.This requirement places an evidentiary burden on litigants and often results in the exclusion of living customary practices from judicial consideration.

Codification Dilemmas: Attempts to codify customary law often led to freezing practices that should evolve, entrenching outdated and sometimes unjust norms. Codification refers to the process of reducing customary norms traditionally unwritten and community-based into written and authoritative legal texts enforceable by courts.[36] In the Nigerian context, this has taken limited forms, such as recorded customary rules in statutes, restatements by customary courts, and judicial precedents crystallising certain customs. Customary law, however, is inherently dynamic, oral, and context-specific, deriving legitimacy from communal acceptance rather than legislative enactment.[37]Codification, by contrast, is rigid, state-centric, and often static. This fundamental incompatibility lies at the heart of the dilemma. The most significant criticism of codification is that it fossilises customary law. Customary norms evolve organically in response to social, economic, and cultural changes. Codification risks freezing customs at a particular historical moment, thereby undermining their adaptive capacity.[38]This concern was echoed judicially in *Lewis v Bankole*, [39]where the court recognised customary law as a 'mirror of accepted usage' capable of change. Codification often involves interpretation by colonial or post-colonial elites who may misunderstand or selectively record customs. This has historically resulted in distorted versions of customary law that reflect external values rather than indigenous realities.[40]Many codified customs in Nigeria trace their origins to colonial administrative convenience rather than authentic community practices.

[30]Ogabo, G.A., 'Preserving African customary laws from the dangers of legal positivism' (2024) https://journals.jozacpublishers.com/index.php/asshj/article/view/728 [accessed 3 October 2025]
[31] ibid
[32] *Eshugbayi Eleko v Government of Nigeria* (1931) AC 662 (PC).
[33] (1944) 10 WACA 180.
[34] Evidence Act 2011 s 18.
[35] (1916) 1 NLR 5.
[36] Ibid.
[37] ibid
[38] Ogbu, O., 'Codification of Customary Law: A Critical Appraisal' (1986) 30 *JAL* 30.
[39] (1908) 1 NLR 81.
[40]Chanock, M., *Law, Custom and Social Order* (Cambridge University Press 1985) 4.

Customary law traditionally derives legitimacy from community consensus and enforcement by traditional institutions. Codification transfers normative authority from communities to the state, thereby weakening local ownership and participatory legitimacy.[41] This shift undermines the communal philosophy underpinning customary law. Even where codification occurs, customary law remains subject to the repugnancy test, statutory compatibility, and constitutional supremacy.[42] Codified customary rules that conflict with fundamental rights such as gender equality under section 42 of the 1999 Constitution may be invalidated, raising questions about the utility of codification if such norms remain vulnerable to judicial nullification.[43]

Nigerian courts have adopted a cautious and sometimes sceptical approach to codification. In *Agbai v Okogbue*, the Supreme Court warned against treating customary law as static, emphasising its living character. [13] Similarly, in Olowu v Olowu, the court acknowledged the capacity of customary law to evolve through social change and judicial interpretation. [14] Rather than comprehensive codification, the judiciary has favoured incremental development through precedent, allowing customary law to adapt while remaining subject to constitutional safeguards. Unlike Nigeria, South Africa constitutionally recognises customary law as an independent and equal source of law, subject to the Constitution.[44] South Africa's approach avoids rigid codification and instead promotes living customary law, developed through community practice and constitutional values. This comparative experience highlights Nigeria's overreliance on colonial frameworks and underscores the need for reform

Conflicts between Customary and English Laws of Succession: conflict between customary and English laws of succession. The question here is whether a Native who went through a Christian marriage, that is, a monogamous marriage, and died intestate, had by that uncustomary marriage excluded the application of the customary law of succession to his or her estate. In other words, is a Christian marriage a transaction unknown to customary law? The importance of these questions, and the answers thereto, can only be fully appreciated when one understands the different effects of customary and English laws of succession. Some of them are:

i) Under customary law, a wife has no succession rights beyond that of actual abode in her late husband's house;[45] but English law gives her well-defined succession rights. Though a wife's non-succession right under customary has been re-stated by the Nigerian Court of Appeal in the recent cases of *Akinnubi v. Akinnubi*[46]*and Obusez v. Obusez,*[47]it has a discriminatory effect, and it is thus doubtful whether a frontal challenge of the customary law will survive a constitutional test.

ii) Under customary law, the children and wife of a deceased, in matrilineal societies, have no rights of succession to the deceased's estate; but English law gives them full rights of succession. However, the customary law position here, as in many other instances considered in this itemization, may be altered by the use of a testamentary instrument. In *Adesubokan v. Yunusa*,[48]the Supreme Court of Nigeria held that a Moslem subject to Moslem law, that is, customary law, could by means of a Will validly made under the applicable Wills Act 1837, deprive a son of that son's inheritance right under Moslem law.

iii) Under Boki (in eastern Nigeria) customary law, only the father, eldest brother or uncle of the deceased, to the exclusion of the children and wife, have rights of succession; but with application of the English law of succession, the children and wife of the deceased would be entitled to succession rights.

[41] S Roberts, 'The Recording of Customary Law' (1979) 21 *JAL* 25.

[42] High Court Laws of various States; see also *Laoye v Oyetunde* (1944) 10 WACA 180.

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

[44] Constitution of the Republic of South Africa 1996 ss 39(2), 211.

[45] (1963) ALL N.L.R. 352

[46] (1997) 2 NWLR (Pt. 486) 144

[47] (2001) 15 NWLR (Pt. 736) 377

[48] (1971) 1 ALL N.L.R. 225

iv) Among the Kalabari and Nembe (in south-eastern Nigeria), children of an Igwa marriage belong to and have succession rights in their mother's family; but the application of the English law of succession entitles such children to succession rights in their father's estate.

v) Under customary law, a husband's succession rights to the wife's estate are inferior to and subjected to the succession rights of the children; however, English law gives a husband defined rights in his wife's estate.

These differences show the importance and implication of a determination of the question: which law of succession, English or customary, governs the estate of a Nigerian Native who went through a Christian form of marriage and died intestate? The Nigerian courts have grappled with this problem over the years. The decisions show a cleavage of approaches. One view maintains that, since the incidents of a Christian marriage are unknown to customary law, it is the English law of succession that applies to the estate of persons who married thereunder and died intestate. In other words, a Christian marriage transaction is unknown to customary law, the application of which should therefore be excluded. The contrary view rejects any notion that Christian marriage has such a talismanic and automatic effect on the law of succession. It holds that the applicable law depends on the facts and circumstances of each case.

5. Comparative Insights: Nigeria, South Africa and Ghana

In Nigeria, customary law is legally recognised but plagued by obstacles. Courts require proof of custom as fact through witnesses, undermining its authority as law.[49]The repugnancy and incompatibility tests inherited from colonialism persist, subordinating custom to statutory and common law.[50] Judicial reluctance to uphold customary practices that appear discriminatory, such as male-only inheritance, is reflected in *Mojekwu v Mojekwu*, where the Court of Appeal struck down the *oli-ekpe* custom for gender discrimination.[51] While this promotes human rights, it also weakens the perception of customary law as an autonomous system. Customary law further suffers from fragmentation across ethnic groups, lack of codification, and inconsistency in judicial enforcement.[52]

South Africa presents a different trajectory. Section 211 of the 1996 Constitution recognises customary law as an integral part of the legal system, subject only to the Constitution.[53]The courts have moved from treating custom as inferior to recognising its equal status, as seen in *Alexkor Ltd v Richtersveld Community*, where the Constitutional Court affirmed indigenous title based on customary law.[54] Similarly, in *Shilubana v Nwamitwa*, the Court affirmed the ability of traditional communities to develop their own customs.[55]Nonetheless, challenges persist. A tension exists between 'official customary law' (as codified and recognised by the state) and 'living customary law' (as practised in communities).[56] Gender inequality in areas such as succession remains a recurring obstacle, addressed in *Bhe v Magistrate Khayelitsha*, where male primogeniture was declared unconstitutional.[57]Thus, while South Africa provides a model for transformative constitutionalism, the practical harmonisation of custom with rights remains an ongoing struggle.

[49]Eze, J., 'The Nigerian Customary Law Practices and Repugnancy Test' (2022) *Synsto Journal* https://synstojournals.org accessed 2 October 2025

[50]Nwauche, E., 'The Nigerian Constitution and the Repugnancy Doctrine' (2010) 10(1) *Oxford U Commonwealth L J* 5.

[51] (1997) 7 NWLR (Pt 512) 283 (CA).

[52]Owasanoye, B., 'Customary Law and Gender Equality in Nigeria' (2001) 9(2) *African Journal of International and Comparative Law* 87.

[53] Constitution of the Republic of South Africa 1996, s 211

[54] 2004 (5) SA 460 (CC).

[55] 2008 (9) BCLR 914 (CC).

[56]Himonga., C & Nhlapo, T., *African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives* (Oxford University Press 2014).

[57] 2005 (1) SA 580 (CC).

In Ghana, the 1992 Constitution of Ghana recognises customary law as part of the legal system, subject to consistency with the Constitution.[58] Section 55 of the Courts Act 1993 provides that customs repugnant to natural justice, equity, and good conscience shall not be enforced.[59]Thus, the repugnancy doctrine remains a significant obstacle. Ghanaian customary law also faces challenges of fragmentation. The diversity of ethnic groups means that customs differ substantially across regions, complicating uniform application.[60]Codification efforts have been limited, and uncertainty persists in areas of marriage, succession, and chieftaincy. Moreover, discriminatory customs relating to widowhood rites and inheritance persist, though courts have occasionally intervened to strike down such practices.[61]

6. Conclusion and Recommendations

This term paper concludes that the obstacle of Repugnancy and inconsistency tests remain in Nigeria and Ghana, this term paper concludes that customary inheritance and marriage practices disproportionately disadvantage women. Courts in South Africa (Bhe), have intervened to reform such practices. Also, Diversity of customs across communities leads to unpredictability in Ghana and Nigeria, while the proof-as-fact requirement in Nigeria diminishes customary law's legitimacy. It is concluded that Courts struggle to balance respect for cultural traditions with constitutional imperatives of equality and human rights. South Africa, however, distinguishes itself by having advanced the constitutionalization of customary law and enabling communities to cultivate it, but the issue of gender equality persists unaddressed. It is recommended that Nigeria replace colonial-era standards with constitutional and human rights assessments throughout Africa. Establish statutory frameworks that formalise essential elements of customary law while permitting communities to adjust their customs flexibly. Align customary law with duties under CEDAW and the African Charter, safeguarding women's rights in succession, marriage, and land ownership. In accordance with South Africa's precedent, Nigeria ought to acknowledge customary law as equivalent in standing to statute and common law, subordinate solely to the Constitution.

[58] Constitution of the Republic of Ghana 1992, art 11(3).

[59] Courts Act 1993 (Act 459), s 55 (Ghana).

[60] K Kludze, *Modern Law of Succession in Ghana* (Blackmask 2012).

[61] M Ocran, 'The Clash of Legal Cultures: The Treatment of Indigenous Law in Colonial and Post-Colonial Africa' (2006) 39 *Akron L Rev* 465.