

APPRAISAL OF THE ADVANCEMENT OF JUDICIAL ENFORCEMENT OF CUSTOMARY LAW IN NIGERIA: CHALLENGES AND PROSPECTS*

Abstract

Customary law is one of the oldest legal systems in the world, and it continues to play an important role in Nigerian society today. It is a system of laws and customs that is based on the beliefs and traditions of a particular community or region. This article is aimed at presenting a critical appraisal of the enforcement of customary law in Nigeria. It adopted doctrinal methodology by applying legal principles and doctrines to a set of facts in order to solve a legal issue. It involves analysis and appraisal the applicable principles and doctrines on enforcement of rights under customary law in Nigeria. As an important source of law in Nigeria, Customary law plays a significant role in the day-to-day life of the people. Despite its importance, the enforcement of customary law in Nigeria has been weak and ineffective. This article recommends legislative measure to improve the enforcement of customary law, including the development of legal aid services and increased access to justice. It seeks to contribute to a better understanding of the enforcement of customary law in Nigeria and to provide potential solutions to the challenges faced. It explores potential solutions to the challenges of enforcement, such as increasing access to information, enhancing judicial training and education, and promoting public awareness of customary law. It concludes that, although the enforcement of customary law in Nigeria faces numerous challenges, its success is essential for the protection of indigenous rights and the promotion of justice and stability in the country.

Keywords: Customary law, Juridical, Enforcement, Indigenous and Rights

1. Introduction

Customary law is the law of the various indigenous peoples of Nigeria. It predated other forms of law in Nigeria.¹In any given society, there are laws regulating the affairs of life. It is the established pattern of behavior that can be objectively verified within a particular social setting. Customary law is law which evolves from the established practices, customs and way of life of a people. Customary law is an important source of Nigerian law primarily because it governs many aspects of the people's lives e.g. marriage according to native law and

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¹ D. Asiedu-Akrofi, 'Judicial Recognition and Adoption of Customary Law in Nigeria', available at <https://www.jstor.org>, accessed on 9th May, 2020.

custom, divorce, succession or inheritance, land tenure, chieftaincy matters, religion, burials etc. Customary law as well as its enforcement system was the only legal system that existed among the indigenous peoples and communities, long ago before the colonial era. Accordingly, customary law can serve as the fundamental legal basis or source of law for indigenous peoples and local communities' legal rights. Customary law is intrinsic to the life of the indigenous peoples and local communities. It makes reference to an established pattern with binding quality within a community.²

In terms of dispute settlement, family heads settled disputes within the immediate and extended family circle. The kings such as Obas, Emirs, Obis or other rulers sat in council with their chiefs as court and heard and settled disputes and claims, and generally administered justice in such communities. Customary law is recognized by the Nigerian Constitution. The legal and constitutional basis of customary law is section 315(3)-(4)(b) and (c) of the Constitution of the Federal Republic of Nigeria. By virtue of these provisions, customary law which includes customary arbitration is an existing law which is in force immediately before and after the coming into force of the 1999 Constitution. However, customary law just like any other source of law, system of law or law is subject to such necessary modification as will bring it into conformity with the Nigerian Constitution. Therefore, customary law which is a mirror of acceptable usage or conduct is one of the sources of Nigerian Law. It is a source of law which is no less important in comparison to any other source or system of law as long as it involves an idea of obligation.³ It is not the intention of the Nigerian Constitution to destroy customary law or reduce it to the background in the Nigerian legal system. Neither is it the intention of Nigerian statutes which make provision for application of customary law to erode or abolish customary law. However, the courts will nullify any customary law which is unconstitutional, repugnant to natural justice, equity and good conscience, incompatible with existing law, or contrary to public policy. The Constitution establishes the Customary Court of Appeal and also empowers the States to establish a customary court system.

This paper examines the enforcement of customary law in Nigeria, with a focus on the judicial system. The paper provides an overview of customary law, and the legal status of customary law within the Nigerian legal system. The paper then critically assesses the enforcement of customary law in Nigeria, taking into account the social, economic, and political environment. It examines the current enforcement mechanisms and the

² 'Customary Law, Traditional Knowledge and Intellectual Property: An Outline of the Issues', available at: <https://www.wipo.int>, accessed on 9th May, 2020.

³A.O. Obilade, *The Nigerian Legal System* (Ibadan: Spectrum Books Ltd., 1979) p. 3.

challenges faced, including access to justice, informal dispute resolution mechanisms, and the inadequacy of enforcement of customary law.

It begins by briefly examining the nature of customary law, its scope and the legal framework for its enforcement. It then considers the challenges in enforcing customary law, including the lack of a unified legal system, the difficulties of accessing the law, and the prevalence of corruption and political interference.

2. Judicial Mechanism for Enforcement of Customary Law

In Nigeria, there are laws and a system of law enforcement machinery established to secure an orderly and peaceful society propitious to the realization of the self-worth and aspirations of the people.⁴ Customary law is a set of unwritten rules and regulations that are observed by communities in Nigeria. These rules and regulations are based on ancient customs and practices that have been followed in the country for centuries. They are usually not written down and are passed down orally through generations. Customary law is an integral part of Nigeria's legal system and is an important source of law in the country. Customary law is of great importance to the people of Nigeria as it helps to maintain order and stability in the society. It regulates traditional practices and provides a sense of security and justice to the people. Hitherto, customary law does not have any statutory or judicial enforcement mechanism in place. This means that if a customary law is violated, it cannot be enforced in a court of law. To address this issue, the Nigerian government has developed a mechanism for enforcing customary law. This mechanism is known as judicial enforcement. It involves the use of the judiciary to enforce customary laws. This mechanism is used to ensure that customary laws are followed and respected. Under this mechanism, any violation of right under customary law can be brought before the court. The court can then decide whether the alleged violation has taken place and, if so, how it should be resolved. In some cases, the court can even impose punishment on the violator. This mechanism of judicial enforcement of customary law has been very beneficial to the people of Nigeria. It has helped to ensure that customary laws are respected and followed by the application of judicial precedent.⁵ It also ensures that disputes arising from customary law are resolved quickly and fairly. This has helped to maintain order and stability in the society. As a result, customary law has become an important source of law in Nigeria.

⁴E. Malemi, *The Nigerian Legal System: Text and Case* (Fourth Edition, Lagos: Princeton Publishing Co., 2012) p. 4.

⁵E.A. Odike, *Felix's Principles and Practice of Nigerian Legal System* (Enugu: TINK GRAPHICS, 2016) p. 4.

Thus, the judicial enforcement mechanism for customary law in Nigeria has been beneficial for the people of the country. It has helped to ensure that customary laws are respected and followed. It has also helped to resolve disputes arising from customary law quickly and fairly. Thus, it has been an important factor in maintaining order and stability in the society. Importantly, the whole proceedings in customary law is considered with greater latitude and broad interpretation being placed in the proceedings and the judgment of the court. In *Jitte v. Okpolor*,⁶ the court opined that no proceedings in Customary Court and no summons, warrant, process, order or decree issued or made thereby shall be varied or declared void upon appeal solely by reason of any defect in procedure or want of form but every court or authority exercising powers of authority shall decide all matters according to substantive justice without undue regard to technicalities. Thus, a mistake in form shall never vitiate any judgement by the Customary Court. Thus, appellate courts usually adopt a liberal approach to Customary Court proceedings. Attention is focused on substance rather than form. The aim is to do justice and reach a decision that is in accord with common sense and reason, devoid of legal technicalities. What the court is concerned with is that the proceedings were conducted fairly and in accordance with the rules of that court. A decision of a native tribunal on such matters which are peculiarly within its knowledge, arrived at after a fair hearing on relevant evidence, should not be disturbed without clear proof that it is wrong. What is essential in examining the trials in a Customary Court is to look into the entire evidence in the proceedings in order to discover the precise nature and subject matter in controversy between the parties. The form of wordings of the claim and the parties' capacity should not be a germane issue for the impeachment of a Customary Court's judgement.

Essentially, in the Customary Court, the claims and reliefs sought by the plaintiff are usually drafted by the clerks and/or registrars of that court who are not lawyers. Despite the technical defects in drafting such documents, it has been held in *Jitte v. Okpolor*⁷ that the court is bound to act and be guided in the interest of justice. Generally, courts are always enjoined to ensure doing justice rather than being swayed by or resulting to technicality, which will ultimately result in injustice being perpetrated against the parties to the proceeding. A court of law however, does not speculate. Even the unwritten customary law is ingrained with guides and steps that should be followed to enforce the rights conferred and the obligations imposed therein.⁸

⁶ (2016) 2 N.W.L.R. (Pt. 1497) p. 542 at 547.

⁷ *Supra*, p. 550.

⁸ B. Walston Dunham, *Introduction to Law* (Sixth Edition, Delmar Cengage Learning, 2012) p. 102-103.

There are several reasons for the ineffective enforcement of Customary law, including lack of a proper judicial mechanism for the enforcement of customary law in the country. This has made it difficult for people to seek redress and justice when their customary rights have been violated. In order to address this problem, the Nigerian government has established a judicial mechanism for the enforcement of customary law. Under this system, there are two main avenues of recourse: traditional courts and the regular court system. Traditional courts are presided over by a local chief or a panel of elders, and they are responsible for adjudicating disputes between individuals and communities in accordance with customary law. On the other hand, the regular court system is presided over by a judge and the decisions are based on the Nigerian Constitution and other relevant laws. The judicial mechanism for the enforcement of customary law in Nigeria has been successful in ensuring that justice is served in the country. It has enabled people to seek redress and justice when their customary rights have been violated. In addition, it has also ensured that the traditional judicial system is respected and followed in the country. The judicial mechanism for the enforcement of customary law in Nigeria is a positive step towards strengthening the rule of law in the country. It is pertinent to note that customary law embody both substantive and procedural rules, which has helped to ensure that justice is served and that customary law is respected and enforced. This is an important regime towards establishing a more just and fair society in Nigeria.⁹

In the communal legal system, which obtained before the advent of modern legal systems, customary law was the law and it enjoyed respect and observance. Customs nowadays, do not enjoy the privilege of automatic enforcement in the modern court systems as was the case in the days when communal and village courts held sway. Thus, in *Okolonwamu v. Okolonwamu*,¹⁰ the court held that customary law is a question of fact which must be proved or ascertained by evidence. In addition, the court has held in *Giwa v Erinmilokun*,¹¹ that native law and custom are matters of evidence to be decided on the facts presented before the courts in each particular case unless it is of such notoriety and has been so frequently followed by the courts that judicial notice would be taken of it without evidence required in proof. Thus, a party who wants to rely on a custom must prove it to the satisfaction of the court by leading evidence to establish its existence.

In order to be applied as a customary law in our contemporary court system, the custom must pass the validity test, which is a prerequisite for its application. The validity test is a

⁹I.H.J. Grilliot and F.A. Schubert, *Introduction to Law and to the Legal System* (Fifth Edition, Houghton Mifflin Company, 1992) p. 97.

¹⁰ (2019) 9 N.W.L.R. (Pt. 1676) p.1 at 7.

¹¹ (1961) NSCC 157.

reformation machinery of customary law. It allows just, refined, dynamic and progressive customs to survive and remain, thereby continuing to make customary law a relevant and acceptable part of the legal system of Nigeria. For a custom to be valid in Nigeria and therefore be enforced by the courts as a customary law, the custom must pass three main tests as follows:

- (i) It must not be repugnant to natural justice, equity and good conscience.¹²
- (ii) It must not be contrary to public policy.
- (iii) It must not be incompatible with any law for the time being in force.¹²

It is important to note that the validity tests were formulated to ensure the dynamism, survival and development of customary law in our modern legal system. However, in *Rotibi v Savage*,¹³ the court held that a native law and custom may be abolished by subsequent legislation. Also in *Kimdey v Military Governor of Gongola State*,¹⁴ the court held that it is a trite principle of our law that an existing native law and custom may be altered or entirely abrogated by a valid legislation in conflict with it. Thus, where a statute conflicts with any native law and custom, which has developed around it can be controlled by appropriate contrary legislation or altogether abolished.

3. Critically Appraising the Regime of Proof of Customary Law

In Nigeria, customary law is an important part of the legal system. It is recognized by the Constitution of Nigeria and is used to settle disputes in many areas of law. Customary law has been used to help resolve family law disputes, land disputes, labor disputes, and more. The main way that customary law is enforced in Nigeria is through proof. When a dispute arises, the parties involved must provide evidence that the customary law applies to their case. This is done by presenting documents, witness testimony, and other forms of evidence. The court will then evaluate the evidence and decide whether or not the customary law applies in the case at hand. It is essential that parties involved in a dispute provide proof of customary law in order to have their dispute heard and resolved by the court. By presenting the right evidence, parties can ensure that their case is decided in accordance with the customs and traditions of the local people.

In any community of persons in Nigeria, a custom may be adopted as part of the law governing a particular set of circumstances, and its existence must be proved before non-customary courts. Accordingly, proof of such customary laws may be achieved through the testimony of witnesses who are considered versed in that subject matter of customary application. It may also be proved through

¹²*Ojiogu v. Ojiogu* (2011) 45 NSCQR 1291.

¹³ (1944) 17 NLR 77.

¹⁴(1988) 2 NWLR 445; 1 NSCC 827.

the use of books and manuscripts recognized as legal authority by people indigenous to the locality in which such custom is applied. The testimonies from such witnesses as well as such books and manuscripts are admissible before the court.¹⁵ In the case of *Alelu v. Eze*,¹⁶ the court can unquestionably evaluate such evidence and justifiably appraise the facts, and it is not the business of the Court of Appeal to substitute its own views for the findings of the trial court. The legal burden of proving a custom shall lie upon the person alleging its existence.¹⁷ In *Ikpeazu v. Ogah*,¹⁸ the court held that the onus of proof is squarely on a person asserting the existence or non-existence of a fact. The age-long Latin maxim '*incumbit probatio qui dicit non qui negat*' hold sway, implying that the burden of proving a fact rest on the party who asserts the affirmative of the issue and not upon the party who denies it.

However, a custom may be judicially noticed when it has been adjudicated upon once by a superior court of record.¹⁹ In *Jukok Int'l Ltd. v. Diamond Bank Plc*,²⁰ the court shall take judicial notice of all laws or enactments and any subsidiary legislation made thereunder having the force of law now or later in any part of Nigeria. In the event that a custom cannot be established as one judicially noticed, it shall be proved as a fact.²¹ Thus, such facts are to be proved by oral evidence, which shall in all cases be direct.²² Accordingly, where the nature of a custom applicable to a given case is in issue, there may be given in evidence the opinions of persons who would be likely to know of its existence to enable the court form its own opinion.²³ It is therefore, imperative to note that such custom shall not be enforced as law if it is repugnant to natural justice, equity and good conscience, or is contrary to public policy. Notably, proof of customary law by evidence can be dispensed with if judicial notice has been taken of it.²⁴

Customary law is generally unwritten, hence, must be accepted by the natives as a binding authority before it can be enforced. Owing to its unwritten form, customary law is always a difficult law to apply by the courts. However, as observed by the court in *Lewis v Bankole*,²⁵ one of the most propitious characteristics of native custom is its flexibility. Custom appears to have been always subject to motives of expediency and it shows unquestionable

¹⁵ The Evidence Act, 2011, section 70.

¹⁶(2015) 13 N.W.L.R. (Pt. 1475) p. 74 at 80.

¹⁷*Ibid.*, section 16.

¹⁸(2017) 6 N.W.L.R. (Pt. 1562) p. 439 at 459.

¹⁹*Ibid.*, section 17.

²⁰(2016) 6 N.W.L.R. (Pt. 1507) 55 at 73.

²¹*Ibid.*, 2011, section 18(1).

²²E.A. Udu, *Introduction to the Law of Evidence and Practice in Nigeria* (Lagos: Mbeyi & Associates (Nig.) Ltd., 2018) p. 121.

²³*Ibid.*, section 18(2).

²⁴*Ibid.*, section 18(3).

²⁵ (1908) 1 NLR 81.

adaptability to altered circumstances without entirely losing its individual characteristics. It is the assent of the native authorities that gives it validity. It is immaterial whether the custom is barbarous or mild. In accentuating further on this rule, the court in *Esugbayi Eleko v Government of Nigeria*²⁶ held that a custom must be shown to be recognized by the native community whose conduct it is meant to regulate. The court maintained that a custom which originally was barbarous and therefore one to which a court could not give effect may have become recognized by the native community in a milder and acceptable form without losing its essential character of custom but the court cannot itself transform a barbarous custom into a milder one. On the authority of *Alaede v Oguguo*,²⁷ customary law is not static, having the characteristic of changing with time provided that it is accepted by the natives as having the force of law.

Apart from circumstances where customary law is taken judicial notice of, customary law is a question of fact to be proved by evidence. It is extremely important that the custom should be strictly proved. Though such proof is not by number of witnesses called, it is not enough that the party who asserts the custom should also testify. The only exception is where the customary law being relied upon has been so frequently used by the courts that judicial notice would be taken of it without evidence required in proof. Thus, proof of customary law is very essential particularly in non-customary courts such as High Courts. The court in the case of *Tatu v Estate of Late Alhaji I. Adamu*,²⁸ restated that a party who asserts the application of customary law in any judicial proceedings must adduce evidence to establish its existence, except if judicial notice has been taken of such custom by the courts. Thus, the court in *Kimdey v Military Governor of Gongola State*²⁹ noted that customary law is a question of fact to be proved by evidence. One of the characteristics of customary law is that it must be in existence at the relevant time and must be recognized and adhered to by the community. Thus, in *Olabanji v Ajiboye*,³⁰ the court held that native law and custom is a matter of fact to be pleaded and established by credible evidence, save in a case where the particular custom has gained such notoriety and has been so frequently followed by the courts that judicial notice would be taken of same without evidence required in proof. A custom can only be judicially noticed if it had been acted upon by a court of superior or coordinate power in the same area to an extent that it has become notorious.³¹

²⁶ (1931) AC 662.

²⁷ (2007) NWLR (Pt. 349) 1188. See also the case of *Oyewunmi v Ogunesan* (1990) 2 NSCC 240.

²⁸ (2015) 13 NWLR (Pt. 1476) 364 at 373.

²⁹ (1988) 2 NWLR 445; 1 NSCC 827.

³⁰ (1992) 1 NWLR (Pt. 218) 473.

³¹E.A. Udu, *Introduction to the Law of Evidence and Practice in Nigeria* (Lagos: Mbeyi & Associates (Nig.) Ltd., 2018) p. 118.

Thus, a party wishing to rely upon native law and custom must not only plead it but must at the hearing adduce evidence in support of it, unless such native law and custom is one which has often received the approval of the courts that the courts are bound to take judicial notice of it.³² It is pertinent to note that there are two modes of establishing customary law before the court, to wit: proof by evidence and judicial notice.³³ However, where a custom cannot be established as one judicially noticed, it shall be proved as a fact. The onus is on the party who claims the existence of a particular customary law as applicable to a given situation to call evidence to establish the custom. Accordingly, where the existence or nature of a custom applicable to a given case is in issue, there may be given in evidence the opinion of persons who would be likely to know of its existence. In furthering the development of this rule, the court in *Tatu v Estate of Late Alhaji I. Adamu*,³⁴ held that where a party intends to set up and rely upon native law and custom, the custom alleged must be specifically pleaded. Accordingly, evidence on fact not pleaded goes to no issue and must be consigned to the waste bin.

Native law and custom or customary law not judicially noticed can be proved by evidence of witnesses belonging to the community to show that the community regard the alleged customary law as binding upon them. On the authority of *R v Ozogula II, Ex parte Ekpenga*,³⁵ the evidence of a single witness in proof of a native law and custom will not be sufficient evidence. Such evidence must be corroborated by material evidence. Accordingly, in the case of *Tatu v Estate of Late Alhaji I. Adamu*,³⁶ native law and custom is not proved by the number of witnesses called, but it is not enough that the person who asserts the custom should be the only witness.³⁷ So, it is desirable that a person, other than the person who asserts a customary law or custom should testify in support thereof, as native law and custom are regarded as fact until proved. It will thus be unsafe to accept the statement of only one witness asserting the existence of a custom as conclusive.

Thus, in determining questions of customary law, native chiefs and other persons learned in customary law may testify. This principle was earlier given credence in *Mwabugba v Enennuo*³⁸ where the court maintained that it is a matter of common knowledge that old and traditional rulers are by their position not only in a position to know the true facts in land

³²*Fijabi v Odumola* (1955-56) WRNLR 133.

³³E.A. Udu, *Nigerian Legal System in Perspective* (Abakaliki: Omega Global Publishing Company Ltd., 2021) 31-32.

³⁴(2015) 13 NWLR (Pt. 1476) 364 at 373.

³⁵(1962) 1 ALL NLR 265; (1962) 2 NSCC 193.

³⁶*Supra*.

³⁷*Lipede v Shonekan* (1995) 1 NWLR (Pt. 374) 668.

³⁸(1988) 1 NSCC 930.

disputes but also find it difficult to twist the truth. In deciding questions of customary law and custom, the court in *Tatu v Estate of Late Alhaji I. Adamu*³⁹ has held that by virtue of section 70 of the Evidence Act, 2011, the opinions of traditional rulers, chiefs and other persons having special knowledge of the customary law and custom and any book or manuscript recognized as legal authority by people indigenous to the locality in which such law or custom applies, are admissible. In other words, the section provides three levels of evidence in proof of customary law, and they include: (i) opinion of traditional rulers and chiefs; (ii) opinion of other persons having special knowledge of customary law and customs; and any book or manuscript recognized as legal authority by people indigenous to the locality in which such law or custom applies.⁴⁰

Essentially, there are two modes of establishing customary law before the court, to wit: proof by evidence and judicial notice. In virtue of section 18(1) of the Evidence Act, 2011, where a custom cannot be established as one judicially noticed, it shall be proved as a fact. The onus is on the party who claims the existence of a particular customary law as applicable to a given situation to call evidence to establish the custom. Thus, where the existence or nature of a custom applicable to a given case is in issue, there may be given in evidence the opinion of persons who would be likely to know of its existence. Advancing the development of this rule, the court held in *Tatu v Estate of Late Alhaji I. Adamu*,⁴¹ that where a party intends to set up and rely upon native law and custom, the custom alleged must be specifically pleaded. It is nonetheless trite law that evidence on fact not pleaded goes to no issue and must be consigned to the waste bin. It is extremely important that the custom should be strictly proved. Although such proof is not by number of witnesses called, it is not enough that the party who asserts the custom should also testify. The only exception is where the customary law being relied upon has been so frequently used by the courts that judicial notice would be taken of it without evidence required in proof.

Native law and custom or customary law not judicially noticed can be proved by evidence of witnesses belonging to the community to show that the community regard the alleged customary law as binding upon them. In *R v Ozogula II, Ex parte Ekpenga*,⁴² the evidence of a single witness in proof of a native law and custom will not be sufficient evidence. Such evidence must be corroborated by material evidence. Accordingly, in the case of *Tatu v*

³⁹*Supra.*

⁴⁰E.A. Udu, *Nigerian Legal System in Perspective* (Abakaliki: Omega Global Publishing Company Ltd., 2021) 32-33.

⁴¹ (2015) 13 NWLR (Pt. 1476) 364 at 373.

⁴² (1962) 1 ALL NLR 265; (1962) 2 NSCC 193.

Estate of Late Alhaji I. Adamu,⁴³ native law and custom is not proved by the number of witnesses called, but it is not enough that the person who asserts the custom should be the only witness.⁴⁴ So, it is desirable that a person, other than the person who asserts a customary law or custom should testify in support thereof, as native law and custom are regarded as fact until proved. It will thus be unsafe to accept the statement of only one witness asserting the existence of a custom as conclusive.

Besides, native chiefs and other persons learned in customary law may testify. This principle was earlier given credence in *Mwabugba v Enennuo*⁴⁵ where the court maintained that it is a matter of common knowledge that old and traditional rulers are by their position not only in a position to know the true facts in land disputes but also find it difficult to twist the truth. In deciding questions of customary law and custom, the court in *Tatu v Estate of Late Alhaji I. Adamu*⁴⁶ has held that by virtue of section 70 of the Evidence Act, 2011, the opinions of traditional rulers, chiefs and other persons having special knowledge of the customary law and custom and any book or manuscript recognized as legal authority by people indigenous to the locality in which such law or custom applies, are admissible.⁴⁷

Customary law is an important part of the Nigerian legal system because it reflects the values and beliefs of the people who live in the country. As a result, it is often used to resolve disputes and ensure justice is served. This is especially true in family law matters, where customary law can be used to settle disputes between family members, as well as to ensure that inheritance rights are respected. In Nigeria, customary law is based on the concept of duty. This means that each person has a responsibility to act in a certain way, and failure to do so can result in punishments or sanctions. This concept is important because it ensures that justice is served and that the rights of individuals are respected. For example, in Nigeria, customary law dictates that a husband must provide for his wife and children. If he fails to do so, then he can be held accountable for his actions and punished accordingly. Similarly, a wife is expected to be faithful to her husband and not engage in any extra-marital affairs. If a wife does not fulfill her duties, then she can be held accountable and punished as deemed fit by the court. Proof of customary law is very essential in non-customary courts such as the High Courts, Magistrate's Court and other

⁴³*Supra*.

⁴⁴*Lipede v Shonekan* (1995) 1 NWLR (Pt. 374) 668.

⁴⁵ (1988) 1 NSCC 930.

⁴⁶*Supra*.

⁴⁷E.A. Udu and C.A. Igwe, *Nigerian Legal System in Perspective* (Abakaliki: Omega Global Publishing Company Ltd., 2021), pp. 25-35.

non-customary courts of coordinate jurisdiction. Before these courts, customary law is initially a question of fact to be proved by evidence.

Consequently, a party who asserts the application of customary law in any judicial proceedings must adduce evidence to establish its existence, except if judicial notice has been taken of such custom by the courts. In *Tatu v Estate of Late Alhaji I. Adamu*,⁴⁸ the court restated that the burden of proving a custom shall be upon the person alleging its existence. By virtue of section 133(1) of the Evidence Act, 2011, it is incumbent upon a party who asserts the existence of a fact to prove same. Customary law is also used to settle disputes between communities, as well as to resolve conflicts between different individuals. This is because customary law is based on the beliefs and traditions of the people of Nigeria, and it reflects their values and sense of justice. As a result, it is often used to ensure that justice is served and that the rights of individuals are respected. In conclusion, customary law is an important part of the Nigerian legal system. It is based on the concept of duty and is used to ensure justice is served and that the rights of individuals are respected. As a result, it is often used to settle disputes between family members and communities, as well as to resolve conflicts between different individuals.

Customary law is distinct from the formal system of laws found in the Nigerian Constitution and other written laws. Admissibility of Evidence In Nigeria, the admissibility of evidence in customary law is governed by the Evidence Act of 2011. The Act defines evidence as any matter of fact, opinion, or document, which is presented to the court for its consideration. Under the Act, evidence can be admissible if it is relevant, credible, and material to the case. This means that evidence must be both relevant to the case and have probative value in order to be admissible. In addition to the Evidence Act, the Nigerian Supreme Court has also laid down guidelines for the admissibility of evidence in customary law cases. Accordingly, evidence must be adduced in good faith and must be supported by credible witnesses. In some cases, testimony from witnesses must be corroborated by other witnesses in order to be admissible. Custom may, by virtue of section 16(1) and (2) of the Evidence Act, 2011, be adopted as part of the law governing a particular set of circumstances if it can be noticed judicially or can be proved to exist by evidence. The court in *Tatu v Estate of Late Alhaji I. Adamu* relied on section 17 of the Evidence Act, 2011, to explain what amounts to judicial notice.⁴⁹ The nature of evidence admissible before the court in proof of customary law or custom is the evidence of persons who would be likely privy of the existence of any custom or customary right and whose opinions may

⁴⁸ (2015) 13 NWLR (Pt. 1476) 364 at 374.

⁴⁹ According to the court, a custom may be judicially noticed by the court if it has been judicially adjudicated by a superior court of record.

be relied upon by the courts, to wit: the traditional rulers, chiefs or other persons having special knowledge of the customary law and custom.⁵⁰ The opinions of the aforementioned persons as to the existence of any general custom or right are admissible in evidence before the court.⁵¹ The admissibility of evidence in customary law cases in Nigeria is governed by the Evidence Act of 2011 and the guidelines set out by the Nigerian Supreme Court. Evidence must be relevant, credible, and material to the case in order to be admissible. It must also be adduced in good faith and supported by credible witnesses. The admissibility of evidence in customary law cases can be a complex process, but following these guidelines can help ensure that the evidence presented is both relevant and admissible.⁵²

4. Challenges and Prospects to Enforcement of Customary Law

Customary law is the unwritten set of laws in Nigeria that are based on the customs and traditions of the different ethnic groups in the country. It is an important source of law in Nigeria and has been in existence for centuries. However, in recent times, there has been an increased focus on the enforcement of customary law in Nigeria, with many stakeholders advocating for its enforcement. Despite this increased focus, there are several challenges to the enforcement of customary law in Nigeria. These challenges include limited jurisdiction. Customary law is limited to the scope of the particular ethnic group that it applies to. This means that it cannot be enforced beyond the boundaries of the particular ethnic group and its system of customary law. This limits the effectiveness of enforcement of customary law in Nigeria.

Customary law in Nigeria is not standardized. There are different versions of customary law across different ethnic groups, making it difficult to enforce a single set of rules across the country. Customary law is not recognized by the Nigerian legal system. This means that it is not enforceable in courts or other legal forums except upon proof.

The enforcement of customary law in Nigeria requires resources. These include financial resources to pay for legal services, as well as resources for training, research and development. Besides, Customary law in Nigeria is often in conflict with modern laws and values. This can make it difficult to enforce customary law in a way that is consistent with modern values.

Despite the importance of customary law, it is often difficult to enforce in many areas. This is due to several juridical issues that can arise when trying to enforce it. First, customary law is often unwritten and thus can be difficult to interpret. In some cases, the

⁵⁰ The Evidence Act, 2011, section 70.

⁵¹ The Evidence Act, 2011, section 73.

⁵²E.A. Udu, Nigerian Legal System in Perspective,' *op.cit.*, Fn. 45.

law is based on oral traditions that have been passed down through generations. This can make it difficult to determine exactly what the law says, as there may be different interpretations and versions of the same law. Even if the law is written down, it may still be difficult to interpret, as the language used may be outdated or unclear. Second, customary law can be difficult to enforce because of its lack of clear enforcement mechanisms. Unlike written laws, which often have clear penalties for violations, customary law may lack specific sanctions for violations. This can make it difficult to ensure that the law is followed and can lead to people disregarding the law. Third, customary law is often based on local traditions and values. This can make it difficult to enforce in areas where there are different cultural values. For example, a law that is acceptable in one community may not be accepted in another. Fourth, customary law is often seen as being out of date or outdated. This can make it difficult to enforce in an increasingly globalized world, as it may be seen as not keeping up with changing social norms and values.

Undoubtedly, customary law can be difficult to enforce due to lack of resources. In many areas, there may not be enough resources to enforce the law or to ensure that people understand and follow it. This can lead to people disregarding the law and not taking it seriously. These juridical issues can make it difficult to enforce customary law in many areas. It is important to address these issues in order to ensure that customary law is respected and followed. This can help to ensure that the law is fair and just, and that it is a viable source of law in many areas.

The enforcement of customary rights under customary law in Nigeria is an important area of legal practice and has been the subject of much debate. Firstly, it is important to note that the enforcement of customary rights is often a difficult task. This is because customary law is based on the agreement between the parties involved in the dispute and not on a written set of statutory laws. This means that it is often difficult to enforce customary rights as there is no clear legislation that defines the rights and obligations of each individual. Furthermore, the rights and obligations of the parties are often defined by local custom and tradition and this can be difficult to ascertain.

Thus, the enforcement of customary rights is often hampered by the lack of a uniform system of justice. In many cases, the enforcement of customary rights is left to the discretion of local leaders, who may not be impartial or knowledgeable about the issue at hand. This can lead to a lack of fairness and justice, as local leaders may not be willing to enforce the rights of individuals they disagree with.

Furthermore, there is a lack of legal resources and expertise in the enforcement of customary rights. This is due to the fact that customary law is often seen as an alternative to the more formal legal system in Nigeria. As such, there is a lack of legal professionals with expertise in the area of customary law who can provide advice and assistance to individuals seeking to enforce their customary rights. It is important however, to note that the enforcement of customary rights is often a lengthy and complicated process. This is due to the fact that customary law is based on local custom and tradition and this can make it difficult to ascertain the rights and obligations of each individual. Besides, the enforcement of customary rights often involves a number of different parties and can be difficult to resolve without the assistance of a legal professional.

Nigeria should adopt a more decentralized approach to the enforcement of customary rights under customary law. This should involve the use of traditional forums and processes, such as the village assemblies and local leaders, to resolve disputes and ensure compliance with local laws and regulations.

The government should encourage and support the development of customary law-based adjudication systems that are tailored to the needs of local communities. This should include the provision of legal advice and training and the expansion of access to justice. Government should work to ensure that legal practitioners are familiar with the principles of customary law and the regulations applicable to customary rights. This could be achieved through the provision of legal education and the establishment of specialized legal clinics.

The government should provide adequate resources to strengthen the enforcement of customary rights. This could include the development of a centralized database of customary rights and the establishment of a dedicated enforcement unit to monitor compliance with customary law regulations. It should also ensure that customary rights are respected and protected by the judiciary. This could involve the development of a specialized court system to adjudicate cases involving customary rights, and the provision of adequate resources to support the administration of justice. The government should take steps to raise awareness amongst local communities of their rights and responsibilities under customary law. This could be achieved through the use of traditional media, such as radio and television, or through the organization of seminars and workshops.

5. Conclusion

Nigeria is a multi-ethnic and multi-cultural country with numerous customary laws that govern the people living in the country. Customary law is an ancient legal system of rules

and principles that are based on tradition and practice. It is a type of law that has been handed down through generations, and has been accepted by the community as a whole. Despite the challenges, the enforcement of customary law in Nigeria remains an important goal. It is necessary to ensure that the laws and customs of each ethnic group are respected, and that the rights of individuals within these groups are protected. To ensure this, it is necessary to address the challenges discussed above, and to work towards a unified system of customary law in Nigeria. This will ensure that customary law is respected and enforced in a way that is consistent with modern values and laws. Undoubtedly the enforcement of customary rights under customary law in Nigeria is an important area of legal practice. However, it is also clear that there are a number of challenges that need to be addressed in order for individuals to be able to enforce their customary rights effectively. These challenges include a lack of uniformity in the enforcement of customary rights, a lack of legal resources and expertise and a lengthy and complicated process. It is therefore, important that individuals seek the assistance of a legal professional when seeking to enforce their customary rights.

Customary law in Nigeria is an important part of the legal system and plays an important role in regulating and protecting the land and property rights of citizens, as well as other social and economic rights. However, the enforcement of these rights, particularly in rural areas, has been largely inadequate. This is due to a lack of resources, weak implementation of customary law, and the absence of effective dispute resolution mechanisms. By addressing these issues, the Nigerian government can strengthen the enforcement of customary rights and ensure greater protection of customary law. This will ultimately lead to greater security and justice for citizens, allowing them to enjoy the full benefits of their customary rights.