



## REAPPRAISAL OF THE NIGERIAN TRIPOD LEGAL SYSTEM IN THE ADMINISTRATION OF JUSTICE

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### Abstract:

The Nigerian legal system is an intricate blend of three coexisting legal traditions: English Common Law, Islamic Law (Shari'ah), and Customary Law, collectively forming what is commonly known as the "tripod" legal system. This paper provides a comprehensive reappraisal of this unique legal framework, critically assessing its role in the administration of justice across Nigeria.

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The study begins by tracing the historical development of the tripod legal system, rooted in Nigeria's colonial past, and the subsequent fusion of indigenous legal practices and religious norms. By examining the structure and interaction of these legal traditions, the paper explores the complexity of legal pluralism in Nigeria, where jurisdictional boundaries often blur, leading to tensions between traditional, religious, and statutory laws. A key focus is placed on how each component of the tripod system influences contemporary legal practice, particularly in areas of family law, criminal justice, and human rights. The paper scrutinizes the friction that arises from conflicting principles within the system, particularly between customary laws and international human rights norms, or between Shari'ah law and constitutional guarantees. Furthermore, the research highlights the challenges of jurisdictional overlap and legal inconsistencies, which frequently lead to delays in the judicial process and unequal access to justice, particularly for marginalized groups, such as women and ethnic minorities. Through a critical analysis of landmark case studies, this paper identifies the strengths and limitations of the Nigerian tripod system. It argues that while the system reflects the country's rich cultural diversity, it also requires significant reforms to enhance its efficiency and fairness. The paper concludes by proposing recommendations for harmonizing these legal systems, advocating for judicial reforms that strengthen the rule of law, uphold human rights, and ensure greater coherence in the administration of justice across Nigeria.

**Keywords:** Legal System, Tripod, Customary, Islamic, administration of justice, legal pluralism



## إعادة تقييم النظام القانوني الثلاثي في نيجيريا في إدارة العدالة

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### المستخلص:

النظام القانوني النيجيري هو مزيج معقد من ثلاثة تقاليد قانونية متعايشة: القانون الإنجليزي العام، والقانون الإسلامي (الشريعة)، والقانون العرفي، والتي تشكل معاً ما يعرف عادةً بالنظام القانوني "الثلاثي". يوفر هذا البحث إعادة تقييم شاملة لهذا الإطار القانوني الفريد، مع تقييم نقدي لدوره في إدارة العدالة في جميع أنحاء نيجيريا. تبدأ الدراسة بتتبع التطور التاريخي للنظام القانوني الثلاثي، المتجذر في الماضي الاستعماري لنيجيريا، والاندماج اللاحق للممارسات القانونية المحلية والمعايير الدينية. من خلال دراسة هيكل هذه التقاليد



القانونية وتفاعلها، تستكشف الورقة تعقيد التعددية القانونية في نيجيريا، حيث تتداخل الحدود القضائية غالبًا، مما يؤدي إلى توترات بين القوانين التقليدية والدينية والقوانين التشريعية. تركز الدراسة على كيفية تأثير كل مكون من مكونات النظام الثلاثي على الممارسات القانونية المعاصرة، وخاصة في مجالات قانون الأسرة، والعدالة الجنائية، وحقوق الإنسان. تفحص الورقة الاحتكاك الذي ينشأ من المبادئ المتعارضة داخل النظام، خاصة بين القوانين العرفية والمعايير الدولية لحقوق الإنسان، أو بين الشريعة والضمانات الدستورية. علاوة على ذلك، تسلط الأبحاث الضوء على تحديات تداخل الاختصاصات وعدم التناسق القانوني، والتي تؤدي كثيرًا إلى تأخيرات في العملية القضائية وعدم المساواة في الوصول إلى العدالة، وخاصة للفئات المهمشة، مثل النساء والأقليات العرقية. من خلال تحليل نقدي لدراسات حالات بارزة، تحدد الورقة نقاط القوة والقيود في النظام القانوني الثلاثي النيجيري. تجادل بأن النظام، رغم أنه يعكس التنوع الثقافي الغني للبلاد، يتطلب أيضًا إصلاحات كبيرة لتعزيز كفاءته وإنصافه. تختتم الورقة بتقديم توصيات لتنسيق هذه الأنظمة القانونية، داعيةً إلى إصلاحات قضائية تعزز سيادة القانون، وتحافظ على حقوق الإنسان، وتضمن اتساقًا أكبر في إدارة العدالة عبر نيجيريا.

**الكلمات المفتاحية:** النظام القانوني، الثلاثي، العرفي، الإسلامي، إدارة العدالة، التعددية القانونية.

## Introduction

The concept of the Nigerian Tripod refers to the three major ethnic groups in Nigeria—Hausa-Fulani, Yoruba, and Igbo. This tripod metaphor has been central to understanding Nigeria's legal system, political, social, and economic structures, particularly during and after the colonial period. However, its relevance in contemporary times is complex, given Nigeria's plurality of ethnicities, religions, and legal systems. A legal system may be





construed as the interface of laws within the legal order and the society. The Nigeria legal systems have experienced many transformations throughout its history. The Nigerian legal system epitomizes the entire laws in the country and the instruments through which these laws are enforced.<sup>1</sup> Nigeria legal system therefore, as found in many other jurisdictions, is grounded on an important standard from the constitution of Nigeria where all laws derive their legal standing.<sup>2</sup>The constitution is the main foundation of the any other law and authority, any law inconsistent with the constitution cannot stand.

Prior to Nigeria's attainment of sovereignty status from Britain, the ultimate law was then were those made by the Queen of England but after gaining independence in 1960, the constitution became the fundamental law of the country. Consequently, all basic laws in Nigeria derive the legality from the 1999 Constitution of the Federal Republic of Nigeria (as altered). It provides in the provision of section 1(1) that, the constitution is supreme and its provisions shall have binding force on every authority and person and it further states in section 1(3) that any law that is inconsistent with the any provision of the constitution is null and void to the extent of its inconsistency. These sections establish the supremacy of the constitution over all other laws in the country.<sup>3</sup>

It is instructive to note that like any other countries around the world Nigeria has its own unique types of legal system which regulates the affairs of the various communities and settlements before the introduction of the English type of legal system. This explains the rationale behind the





existence of tripod legal regimes in Nigeria and justifies the state and federal laws co-existing with English and customary laws. However, notwithstanding this arrangement, there are noticeable similarities in the legal systems of different countries which allow them to be classified as sharing a legal system. The legal system is determined by the fundamental tenets and values which underlie the entire body of laws and not the laws themselves. This is why even though the age of majority is in Nigeria and it is in the United Kingdom, they both still practice the common law legal system.<sup>4</sup>

Unlike African countries, the major legal systems found in countries around the world are the civil law system and the common law system. The civil law was derived from Roman law. The laws are usually codified and there is no adoption of judicial precedents and so judgments are not binding on later decisions. This legal system may be found in much of continental Europe, Central America, South America and several other regions. While in the African countries aside from the civil and common systems, there are several native laws based on the peculiarity of the community operating the native laws. In Nigeria for instance, the native law and custom differ from one community to the other and applicable in Southern part of the country, except the Islamic law which is applicable in the Muslims dominated Northern part of Nigeria. The common law, on the other hand, is a system based on rules and doctrines developed over time by judges and have now formed precedents that are often binding.<sup>5</sup> One easily noticeable difference is that while the courts in civil law countries do not follow judicial precedents, the common





law countries have organized hierarchy of courts to enable the practice of judicial precedence. Common law is practiced in countries like the United States of America, the United Kingdom, etc.<sup>6</sup>

Just like many other African countries which were colonized by Britain, Nigeria practices the common law system. It has been argued by some that the pre-colonial societies had a legal system, and this may be true. However, the current legal system being practiced in Nigeria is mostly adopted from the legal system of England. In order to function properly and allow for the unique features of Nigeria like its customary laws and military dispensation in the past, the Nigerian legal system possesses some unique characteristics. Some of the characteristics are: duality, volume of external influence, fusion of the legal profession, accusatorial/adversarial criminal system<sup>7</sup>, diversity, judicial hierarchy and precedents.

### **Development of The Nigerian Legal System**

The role of laws in any society cannot be underestimated. Laws serve as a set of rules and guidelines that govern the behaviour and actions of individuals in society. Therefore, it is inconceivable for any civilized society to exist in the absence of legal system that provide a framework for maintaining peace, law and order as well as resolving conflicts, promoting rule of law, protecting fundamental rights and justice.<sup>8</sup> As such a legal system is a catalyst for ensuring that there is acceptable standard for conducting private and public affairs as well as a procedure for the administration of justice. A legal system is necessary to





maintain civilization and obedience of laws in any society. It is therefore a misconception of historical fact that Nigeria has no legal regime before the advent of the British colonialists.<sup>9</sup>It is historically established that the communities which later form the present day Nigeria had a legal system long before colonization. Historically, British colonialists, through their policy of indirect rule, reinforced the dominance of these three ethnic groups by leveraging their traditional institutions. This created a form of political balance between the northern region (dominated by Hausa-Fulani), the western region (Yoruba), and the eastern region (Igbo). These groups became the dominant political actors in the lead-up to and after Nigeria's independence in 1960. For instance, in the period before 1862, the laws administered in most of the areas in present Northern Nigeria were the Muslim law of the Maliki School. These laws were administered through the Alkali courts by the Alkali, knowledgeable Islamic jurisprudence. While in the south there was an unwritten customary law. Law is dynamic, continually changing to fit the needs of whatever society it exists in.<sup>10</sup>

The English common law was introduced by the British government firstly to the Lagos colony in 1862, administered by some established courts. The first Supreme Court was established in 1863 by the Supreme Court Ordinance 1863. Other courts were established, like the Court of Civil and Criminal Justice which replaced the Supreme Court and the West African Court of Appeal (WACA). A number of other courts were established before 1874 and in 1876, the Supreme Court Ordinance 1876 established a new supreme court which was to







administer the common law of England, the doctrines of equity, and the statutes of general application in force in 1876.<sup>11</sup> The Supreme Court was made up of the Full Court which served as a court of appeal, the Divisional Courts with both original and appellate jurisdiction, and the District Commissioners' Courts. Appeals from the District Commissioners' Court went to the Divisional Courts while the appeals from the decisions of the Divisional Courts went to the Full Court.<sup>12</sup>

The colonialists allowed the received English law to coexist simultaneously with the customary laws. The territories that now constitute southern Nigeria were amalgamated by the Southern Nigeria Order in Council 1899 which took effect on the 1st of January, 1900. The Order provided for the appointment of a high commissioner who was empowered to make laws for the protectorate through proclamations.<sup>13</sup> The high commissioner established a Supreme Court through the Supreme Court Proclamation 1900 and the Supreme Court was to administer the common law of England, the doctrines of equity and the statutes of general application in force in England on 1st of January, 1900. Courts were established through the Native Courts Proclamation 1900 to administer the customary laws which were previously administered by the indigenous courts. In any jurisdiction where a native court had been established, not indigenous court could be in force as the native courts exercised their jurisdiction exclusively. The native court system has been said to have been a failure.<sup>14</sup>





A High Commissioner was also established for the protectorate of Northern Nigeria who established a Supreme Court, provincial courts and cantonment courts through the Protectorate Courts Proclamation 1900. The Native Courts were established by a separate proclamation which was the Native Courts Proclamation 1900. It should be noted that the native court system fared better in the north than it did in the south. While the indigenes were allowed to appoint the heads of their native courts, no such privileges were given to the southerners.<sup>15</sup>In 1914, the colony and protectorate of southern Nigeria was amalgamated with the protectorate of northern Nigeria to form the colony and protectorate of Nigeria. Three types of courts were established for the country, which were the Supreme Court, the Provincial courts and the native courts. The Supreme Court was similar to the one established in both the north and south in 1900, applying the common law of England, doctrines of equity and the statutes of general application in force in England on the 1st of January, 1900. It had civil and criminal jurisdiction. The provincial courts had civil and criminal jurisdiction, with appeals from its civil decisions going to the Supreme Court while there was no opportunity to appeal its decision in criminal cases.<sup>16</sup> The provincial courts were widely criticized as it did not make provision for legal representation and the courts were manned by administrative personnel instead of judicial personnel and they could hardly be expected to deliver justice properly. While the government claimed that it was to enable litigants get justice cheaply, there is no point in it being cheap if justice cannot be gotten, especially since the decision of the provincial courts could not be appealed in





criminal cases.<sup>17</sup>The judicial system attracted so much criticism that in 1933, the Protectorate Courts Ordinance 1933 established a High Court and Magistrates' courts for the protectorate. The high court had practically the same jurisdiction as the Supreme Court, except that only the Supreme Court had jurisdiction in probate, divorce and matrimonial cases, admiralty cases and proceedings under specified Ordinances. The decisions of the high court and Supreme Court could be appealed to the West African court of appeal. The jurisdiction of the native courts was also increased.<sup>18</sup>

The 1954 constitution was the first truly federal constitution, with Nigeria being a federation consisting of three regions. A Federal Supreme Court was established. There was also a High Court for each region and Lagos. A magistrates' court was established for each region and appeals from the courts went to the High Court of that region. There were also statutory courts which were known as Customary Courts in the eastern and western region and native Courts in the northern region. The northern region had a customary court of appeal which was known as the Moslem Court of Appeal and was to entertain appeals from the native courts in civil and criminal cases where Moslem law was applied.<sup>19</sup> The Sharia Court of Appeal was established in 1960 to replace the Moslem Court of Appeal. Even though Nigeria gained independence in 1960, the Privy Council still remained the highest court of the country, entertaining appeals from the Federal Supreme Court. It was in 1963 that a new difference was introduced, with the federal Supreme Court abolished to establish a new court known as the Supreme Court of Nigeria to be the





highest court in the country. This Supreme Court exists till present, headed by the Chief Justice. There are also other courts like the Court of Appeal, High Courts of states, High Court of the federal capital territory, High Court of the federation, Sharia court of Appeal, Customary court of Appeal, National industrial court, Magistrate courts, Customary courts, Sharia Courts, inter alia.

### **Basic Features of The Nigerian Customary Laws**

In most southern and central regions of Nigeria, customary law is practiced, particularly in family, land, and inheritance matters. Each ethnic group has its customary practices, which are usually unwritten but are accepted as binding by members of the group. As earlier discussed, the Nigerian Legal System Nigeria operates tripod legal system derived from English common law, Customary and Islamic Laws. This makes the Nigerian legal system complex stemming from its nature, sources, operation and the implementation of laws. Aside, its complexity sometimes accounted for the difficulty in determining the law applicable to a given situations and persons. Though, the English common law and enacted legislations apply to all Nigerians as public law but limited when it affect individual personal issues in which situation individuals enjoy right to choose the law they prefer to control their conduct. The options of laws an individual has a right to pick is either customary law or Islamic law contingent on person's personal status.

### **Rules accepted by specific community**

One of the features of customary law is that it is an unpackaged of rules and regulations accepted as binding by





a community. Thus, a rule applicable to a community or native may not be applicable in another community.<sup>20</sup> As such customary law is a ‘rule which, in particular community has, from long period of application has obtained the force of law. Consequently it is the approval of the native community that gives a validity as regard conduct it is supposed to regulate. Though, Islamic law was considered a customary laws in context, its application is universal to all Muslims to which it applies.<sup>21</sup> The apex court has put to rest the arguments on the status of Islamic Law as customary law, and upheld the view that Islamic Law cannot be construed as customary law as the former is not peculiar to a particular tribe.<sup>22</sup>

### **Legitimacy of Customary Law**

Another important features of customary law is that it derives legitimacy from tradition, by nature not for been unwritten but because of its flexibility. Flexibility of customary laws refer to the fact that it appears to have been subject to motives of expediency, and it’s unquestionable adaptability to altered circumstances without entirely losing its character and evolutionary.<sup>23</sup> In the realm of Islamic law as customary law, its legitimacy is derived from the primary sources the Quran and Hadith and subsidiary laws such as Ijam’a, Qiyas and Ijithad. They are by nature and application written in the sources mentioned.

### **Customary law and repugnancy test**

Application of customary law more often than not depends on the interpretation of the person enforcing or advocating the application of the custom. Consequently, it is judicial pronouncement that gives a custom its legitimacy





especially when its legitimacy is test in court. It is the court in the circumstances that determines what it considers appropriate as to what the custom is to be, and so from that point, judicial notice may be taken of that custom. When a customary law is an issue before the courts, the custom asserted must pass the ‘repugnancy test’. Repugnancy clause in Nigerian legislation has its origin from the Supreme Court Ordinance of 1876.<sup>24</sup> In event for a custom to be accepted as rule governing a specific circumstance it must not be repugnant to natural justice, equity and good conscience; contrary to public policy, incompatible, either directly or by implication, with any law in force.

### **Islamic Law**

Prior to the apex court position in 1998<sup>25</sup>, Islamic Law was considered as customary within the context of the Nigerian Legal System. Although, Islamic law usage is still limited primarily to Muslim personal law, its operations is also limited to civil matters such as marriage, custody of a child, and succession.<sup>26</sup> The application of Islamic law in the realm of crimes in Nigeria is limited to such aspects as contained in the Penal Code which was enacted to take care of the Muslims’ interest and its applicable only in the Northern part of the country.<sup>27</sup> It is pertinent to note that some states in Northern part of the country enacted Shariah Penal codes but it application and constitutionality has been a subject of controversy in view of section 10 of the 1999 constitution of Nigeria which prohibits the adoption of state religion.<sup>28</sup>





## **Challenges Of The Nigerian Tripod Legal System Bringing together of the tripod laws**

There is the challenge of harmonizing the Nigerian tripod legal system of common law, customary and Islamic laws, especially the unwritten customary laws and adoption of religious-based law. On one hand, the problem is based on the fact that there are so many customary laws peculiar to each of the different communities in Nigeria which are unwritten, thus incorporating these divergent laws with the common law is difficult. In the same vein, customary law is a fact which must be established before its acceptance as a rule regulating the community practicing or asserting the law.<sup>29</sup> The question thus, is how many of these customary laws have been tested and the validity of which court has made pronouncements? Though the courts have declared some customary laws valid such as the right of female child to inheritance, but many of such laws still exist.<sup>30</sup> On the other hand, incorporating Islamic law into the Nigeria common law is another challenge, this is because Nigeria is a multi-religious community and the constitution of Nigeria forbids adopting any religion. This is historically evident from the problem faced by Muslims at the 1978 constitutional conference on the recognition and establishment of Shari'ah court. Though some states in the North enacted Shariah Penal Code, it was not without serious criticisms on its application to non-Muslims.

### **Limitation on the implementation of customary laws:**

The constitution is the primeval source of law in Nigeria from which the validity of every other law, acts of persons, authorities and institutions is derived.<sup>31</sup> The constitution, through the National Assembly, has given birth to a





plethora of enactments within the jurisdiction without giving any consideration to the Islamic and customary laws. The implementation of these laws forms a basic challenge in the legal system.<sup>32</sup>It is indisputable that the 1999 Constitution of Nigeria recognizes customary and Islamic laws, however, the implementation of the laws is limited to personal laws. By implication, customary (District or Customary Court)<sup>33</sup> and Islamic law courts (Area Court) have no jurisdiction over certain matters such as powers to determine criminal allegation.

In the same vein, while it is certain that dealing with the issues of corruption is a globally recognized goal for which legislations have been enacted to regulate such as the Independent Corrupt Practices and other Related Offences Commission Act, the Criminal Code Act/Penal Code Act, ICPC Act, Money Laundering Act, and the EFCC Act. However, there are no provisions therein the laws from Shari'ah or Customary Law model of fighting corruption. Arguably, notwithstanding the existence of these laws and their capacity to complement the government anti-graft policy in view of the rate of corruption in the country they were not factor into the area of legislation on fighting corruption in Nigeria. Corruption remains a significant challenge within the legal system, affecting the administration of justice and eroding public trust. Corruption remains the biggest problem which the Nigerian society including the Nigerian legal system fails. From corrupt Judges to legal practitioners and court staff, corruption has eaten deep into the fabrics of the Nigerian society.







### **Inadequate experts in the realm of customary laws:**

Another serious challenge confronting the two of the tripod Nigeria legal system is inadequacy of expert trained in the legal system. There is no university in Nigeria where native law and customary is being taught as a course, and even in the Nigerian Law School no provision is made for training lawyers to be any aspect of the law or its procedure. However, few Universities in Nigeria have Islamic law department with window for training experts in the area. In the same vein, some aspects of Islamic law procedure are taken under civil procedure. This is a serious challenge for the effective implementation of customary and Islamic laws even with the limited personal law allowed by the constitution. Similarly, due to nonexistence of adequate forum for formal training of expert in customary and Islamic laws, there no sufficient judges to efficiently address issues of Islamic law in particular and native law and custom.

### **Impact of external legal influence**

The Nigerian tripod legal system has been greatly impacted by external influence. The first area of influence is the received English common law which succeeded in relegating the customary system it met before its introduction by the colonialists. Another point of allusion is the Sharia'ah law which was introduced into the country by the jihadist such as Usman Dafodiyo. The Islamic legal system displaced the customary legal system it met on ground in many Northern communities. Similarly, a substantial aspect of the Nigeria the legal system was transported into the country from the English legal system. For example the Criminal Code and the Matrimonial





Causes are sculpted after those of Queensland in Australia while the Penal Code which was enacted in response to the Muslims agitation for a legal criminal law that take care of their interest and applicable in the North, is equally designed in line with the Sudanese Penal Code. Lastly, not until our court system has been established and well grounded, foreign judicial authorities can be cited in the Nigerian courts but now as only having persuasive authority. All of these contribute to the challenges the Nigeria tripod legal system is confronting.

### **Ethnicity and plurality**

Nigeria is a heterogeneous society with over 300 ethnic groups; consequently affect the call comprehensive and uniform customary law legislations applicable throughout Nigeria just as the English common law.<sup>34</sup>First, is that each community constituting Nigeria has customary law different from the other. Second, is the requirement of repugnancy test, meaning that for a custom to be applicable subject matter of dispute its non-repugnant to justice, equity and good conscience must be established and the need for the custom to be judicially noticed. This ethnic and linguistic diversity of Nigeria is also affecting its tripod legal system.<sup>35</sup> This is because, different communities even where they are neighbours can have different native laws guiding a similar issue (i.e. Inheritance, marriage etc.)). The reason being that has its own customary laws different from the other even amongst the same ethnic group, two tribes might have different laws.

### **Inadequate Reporting of customary laws:**

Inadequate reporting of judicial decisions on customary laws and Islamic laws especially from lower division of





court makes it difficult for legal practitioners and citizens to access relevant case law to advance their cases. Though, in Kwara State there is Sharia'ah Law Reports, but it has not be so consistently published and the available ones are not within the reach of the public.

### **Impacts of The Nigerian Tripod Legal System**

Nigeria's legal system, often described as a tripod, rests on three distinct legal traditions: English common law, customary law, and Islamic (Shari'ah) law. This pluralistic legal framework reflects the country's cultural, religious, and ethnic diversity. However, while the system allows for flexibility and cultural sensitivity, it presents significant challenges for the effective administration of justice. The impacts of this pluralistic legal system on the Nigerian justice administration can be observed in areas such as legal consistency, access to justice, human rights protection, and conflict resolution.

### **Legal Inconsistency and Conflicts**

The coexistence of multiple legal systems in Nigeria often leads to legal inconsistency, particularly when the same case is subject to different legal traditions. For instance, while English common law emphasizes codified rules and precedent, customary law is often unwritten and flexible, reflecting the norms and values of local communities. Similarly, Islamic law, particularly in the northern regions, is rooted in religious texts and practices that may differ from both customary and statutory law. One of the primary impacts of Nigeria's pluralistic legal system is the conflict of laws, especially in areas such as family law, inheritance, and land tenure. For instance, customary law may permit





practices like polygamy or disinheritance of women, which conflict with statutory laws promoting gender equality and the constitutional guarantee of non-discrimination.<sup>36</sup> There are frequent overlaps in the jurisdiction of customary, Sharia, and statutory courts, leading to confusion and delays in legal proceedings. Sharia courts, for example, have jurisdiction over Muslims in some states, but this can result in different rulings for citizens in similar cases, depending on whether they are governed by Sharia or common law.<sup>37</sup>

### **Access to Justice**

While Nigeria's pluralistic legal system allows for a more culturally sensitive approach to justice, it has also created challenges in terms of equal access to justice. Customary and Shari'ah courts: These courts tend to be more accessible to rural populations and individuals from lower socio-economic backgrounds, as they operate in familiar languages and settings, often with fewer procedural complexities than common law courts. This accessibility is a positive aspect of the pluralistic system, particularly for marginalized groups who may not have the means to navigate the formal legal system.<sup>38</sup> Disparities in legal outcomes: However, the different standards of justice applied in customary and Shari'ah courts can result in unequal outcomes. For example, in some customary legal systems, women may face significant disadvantages in inheritance and family disputes, as customary laws often prioritize male heirs.<sup>39</sup> This inequality can be exacerbated in Shari'ah courts, particularly where punishments prescribed under Islamic law conflict with constitutional guarantees of fair trial and human rights.<sup>40</sup>





## Human Rights and Gender Equality

One of the major criticisms of Nigeria's pluralistic legal system is its impact on human rights, particularly concerning gender equality. Customary law and Islamic law often contain provisions that contradict Nigeria's constitutional and international human rights obligations. Under many customary legal systems, women are subject to discriminatory practices in matters such as inheritance and land ownership. While Shari'ah law, while widely accepted by the Muslim population, prescribes gender-specific rules for inheritance and testimony that can disadvantage women.<sup>41</sup> In some parts of Nigeria, customary law prevents women from inheriting property, particularly when male relatives are available to inherit.<sup>42</sup> For instance the *Chituru Ukeje v. Gladys Ada Ukeje*<sup>43</sup> established judicial synergy in preventing discrimination against women right to inheritance in Igbo Land. In the case the Supreme Court held that;

No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law, which disentitles a female child from partaking in the sharing of her deceased father's estate, is in breach of Section 42(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian." In fact the judgment reaffirms the supremacy of the Nigerian Constitutional over Customary Law: In this case, the discriminatory inheritance practices under Igbo customary law were rendered void as they conflicted with the constitutional right to gender equality.





Similarly, both customary and Islamic laws have been associated with early marriage practices, as these legal systems permit marriages involving minors under certain conditions. This practice is at odds with Nigeria's obligations under international treaties like the Convention on the Rights of the Child (CRC), which set 18 as the minimum age for marriage.<sup>44</sup>

### **Judicial Burden and Delays**

The pluralistic legal system creates a substantial burden on Nigeria's judiciary. The need to navigate between different legal systems and reconcile conflicting laws often results in delays and procedural inefficiencies. Nigeria's judiciary is often overwhelmed with the task of hearing cases that span multiple legal traditions. Courts must sometimes determine which legal system applies in a particular case, leading to prolonged legal battles and case backlogs.<sup>45</sup> In particular, the overlapping jurisdictions of customary, Sharia, and statutory courts create confusion about which court has the authority to hear specific cases. Notwithstanding, the judiciary frequently plays a critical role in resolving conflicts between the different legal systems, especially when customary or Islamic laws contradict statutory law or the Constitution. Courts have invalidated customary practices deemed repugnant to natural justice, equity, and good conscience, as seen in cases involving women's rights and inheritance.<sup>46</sup> However, the process of harmonizing these legal systems through court rulings remains slow and fraught with challenges.

### **Cultural Sensitivity and Social Cohesion**

Despite the challenges posed by Nigeria's pluralistic legal system, it plays a crucial role in promoting cultural





sensitivity and social cohesion in a country with over 250 ethnic groups and a diverse religious landscape. Thus, by allowing the continued application of customary and Islamic laws, the legal system respects Nigeria's cultural and religious diversity. This fosters a sense of identity and belonging among different ethnic and religious groups, contributing to social stability.<sup>47</sup> Customary law, in particular, reflects the communal values of many Nigerian societies, emphasizing restorative justice and reconciliation rather than punitive measures. This can be beneficial in resolving local disputes and promoting peace in rural areas.

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It is pertinent to note however, that efforts to reform Nigeria's legal system have focused on addressing the tensions between customary, Shari'ah, and statutory law, particularly in areas where human rights are concerned. In the same vein legal scholars have proposed the codification of customary law to ensure greater consistency and alignment with constitutional principles. Codification would help clarify the rules of customary law and make them more predictable, reducing the potential for conflict with statutory law.<sup>49</sup> While there have also been ongoing discussions about harmonizing Nigeria's pluralistic legal systems to ensure that customary and Islamic laws comply with international human rights standards, particularly in areas such as gender equality, child rights, and access to justice.<sup>50</sup> In summary, the Nigerian tripod and pluralistic legal system significantly impact the administration of justice, with both positive and negative consequences. While the system provides flexibility, cultural sensitivity, and accessibility for diverse populations, it also creates





challenges in terms of legal consistency, human rights protection, and judicial efficiency. Moving forward, legal reforms aimed at harmonizing these systems and ensuring that they uphold constitutional and human rights standards will be crucial in improving the administration of justice in Nigeria.

### **Recommendations For Reforms:**

1. **Establishment of a Unified Legal Code:** Develop a unified legal code that harmonizes conflicting aspects of English Common Law, Islamic Law, and Customary Law. This code should prioritize constitutional principles, especially in areas of fundamental human rights, while allowing for cultural and religious diversity where it does not conflict with human rights standards.
2. **Jurisdictional Clarification:** Clearly define the jurisdictions of each legal system, particularly in family law, land disputes, and criminal law. This can be done by creating a legal framework that delineates the scope of each system's authority, reducing the overlap and conflicts that often arise from competing legal claims.
3. **Judicial Training and Capacity Building:** Implement comprehensive training programs for judges, lawyers, and legal practitioners across the three systems to ensure they are well-versed in the principles of each legal tradition. This will foster better coordination and a more holistic understanding of the interaction between the systems, ensuring fairer judgments and reduced legal contradictions.







4. Human Rights Integration: Ensure that human rights are at the center of legal interpretations across all systems. This involves reviewing and amending laws within the Shari'ah and Customary systems that may conflict with Nigeria's constitutional and international human rights obligations, particularly in relation to gender equality, due process, and freedom from discrimination.
5. Judicial and Procedural Reforms: Streamline judicial processes to enhance the efficiency and accessibility of justice. This includes reducing delays in the court system by adopting alternative dispute resolution (ADR) mechanisms that integrate principles from all three legal traditions, while also improving transparency, accountability, and fairness in judicial proceedings.

## Conclusion

The Nigerian legal system is a complex network of laws, regulations, and processes that govern the country. It has evolved over time and is influenced by various historical, cultural, and legal factors.<sup>51</sup> Particularly, the Nigerian legal system presupposes a combination of common law, Islamic law, and customary law with its foundation being based on the English legal system, which was introduced during the colonial era. It is thus often pontificated that Nigeria has a pluralized legal system as a result of the nature and sources of its law.<sup>52</sup> The historical background of the Nigerian legal system resonates around the pre-colonial era, colonial era and the post-independence era.

The tripod nature of the Nigerian legal system reflects the cultural and religious diversities of the country, promotes





local relevance and community interconnection, participation, allows for flexibility and adaptability, fosters legal pluralism and diversity, encourages legal innovation, and supports legal (and judicial) activism. By harnessing the strengths of its legal traditions, Nigeria can build a more inclusive, responsive, and effective legal system that serves the needs of its diverse population and adequate dispensation of justice without limitation or restriction on any of the component of the tripod legal system.

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<sup>2</sup>Peter Fitzpatrick, 'Law and Societies (1984) 22 *Osgoode Law Journal* 115

<sup>3</sup>Akintunde O O., *The Nigerian Legal System* (Spectrum Books Limited, Ibadan 1979) 1522

<sup>4</sup> *ibid*

<sup>5</sup> Obilade, *The Nigerian Legal System* (Spectrum Ltd, 1977)

<sup>6</sup>Clifford G., *Local Knowledge: Further Essays in Interpretative Anthropology* (Basic Books, New York 1983) 3

<sup>7</sup> *Adetoun Oladeji v. Nigerian Breweries Ltd.*

<sup>8</sup> Ojo, E.O., "Federalism and the Search for National Integration in Nigeria." (2009), 25(33), *African Journal of Political Science and International Relations*, 384-395.

<sup>9</sup>Obilade A, *The Nigerian Legal System*, (London: Sweet & Maxwell, 1979) p.83.

<sup>10</sup> *ibid*

<sup>11</sup>Obilade, *the Nigerian Legal System*

<sup>12</sup>*ibid*

<sup>13</sup> *ibid*

<sup>14</sup>*ibid*

<sup>15</sup>Dr Maryam IshakuGwangndi, *The Socio-Legal Context of the Nigerian Legal System and the Shariah Controversy: An Analysis of Its Impact on Some Aspects of Nigerian Women'S Rights* (2016), 45, *Journal of Law, Policy and Globalization*.

<sup>16</sup> Yadudu, A. H. (1993). "Colonialism and the Transformation of Shari'ah in the Northern States of Nigeria." *Journal of Legal Pluralism and Unofficial Law*, 25(33), 103-132.

<sup>17</sup>Obilade, *The Nigeria Legal System*

<sup>18</sup>*ibid*





<sup>19</sup>Maryam, The Socio-Legal Context of the Nigerian Legal System and the Shariah Controversy:

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<sup>22</sup> *Ila Alkamawa v. Alhaji Hassan Bello & Ord* (1998) 6 SCNJ 127

<sup>23</sup> Nwabueze, B.O. The Presidential Constitution of Nigeria, (C. Hurst & Co Publishers. 1982)

<sup>24</sup>*Eshubayi Eleko v. Officer Administering the Government of Nigeria* [1931] Appeal Cases p.662 at p.673

<sup>25</sup> *Ila Alkamawa v. Alhaji Hassan Bello & Ord* (1998) 6 SCNJ 127

<sup>26</sup> Yadudu, A. H.. "Colonialism and the Transformation of Shari'ah in the Northern States of Nigeria." (1993), 25(33), *Journal of Legal Pluralism and Unofficial Law*, 103-132.

<sup>27</sup>Peters, R., "Islamic Law in Nigeria: A Historical Perspective." (2003), 10(3), *Islamic Law and Society*, 365-405.

<sup>28</sup> *Ibid.*

<sup>29</sup>Oyebanji A, 'Codification of Customary Law: Prospects and Problems', in Oshinbanjo O, and Kalu A, (eds.), Towards a Restatement of Nigerian Customary Law, (Lagos: Federal Ministry of Justice, 1991) p.93.

<sup>30</sup>John Griffiths, 'What is Legal Pluralism?' (1986)24 *Journal of Legal Pluralism* 1 2

<sup>31</sup> AG Abia State v. AG Federation

<sup>32</sup>*ibid*

<sup>33</sup> See for example section 1, Customary Court Law, Cap. 40 Law of Akwa Ibom State of Nigeria, 2010.

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