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TOPIC: CUSTOMARY COURT OF APPEAL AS EFFECTIVE JUSTICE DELIVERY CHANNELS

BY

**HON. JUSTICE C. N. OJUGBANA-ORISHEDERE,
PRESIDENT, CUSTOMARY COURT OF APPEAL, DELTA
STATE.**

It is with the greatest sense of humility and gratitude to the Almighty God that I stand here today amongst this array of distinguished Judges of the Superior Courts of Record in Nigeria to contribute to the discourse on the above mentioned topic.

I highly appreciate this rare honour and privilege. I most humbly wish to offer my sincere appreciation to the Honourable, The Chief Justice of Nigeria and Chairman of the Board of Governors of the National Judicial Institute of Nigeria, Hon. Justice Olukayode Ariwoola, GCON, the Administrator of the National Judicial Institute, Hon. Justice Salisu Garba Abdullahi (Rtd.), Management Committee and Staff of the Institute who have nominated me to deliver this paper. I acknowledge with humility that I make no claim of having a better or expert knowledge of the topic under discourse, but to state that in this session, we would be exchanging ideas, sharing our general experiences, and therefrom, grow the Nigerian indigenous jurisprudence.

DEFINITION OF TERMS: (As provided by the Delta State Customary Courts' law, (2019).

"Area Customary Court" means an Area Customary Court established under section 3 (1) of this law;

"Chairman" means the Chairman of a District or Area Customary Court appointed under section 5 of this law;

"Customary Court of Appeal" means the State Customary Court of Appeal;

"District Customary Court" means a District Customary Court established under section 3 (1) of this Law;

"Member" in relation to a Customary Court means a Member of that Court and includes the Chairman thereof;

"President" means the President of the Customary Court of Appeal

The definition of Customary law would be better appreciated by reference to case law. In the case of **NWAIGWE & ORS V. OKERE & ANOR (2008) LPELR-2095 (SC)**, the Apex Court succinctly defined 'Customary Law' thus: "Customary law generally means relating to custom or usage of a given community. Customary law emerges from the traditional usage and practice of a 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 reference to the community. By the element of compulsion 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 customs, rules, traditions, ethos and cultures which

govern the relationship of members of a community are generally regarded as the Customary law of the people”.

Similarly, in the case of **OWONIYI V OMOTOSHO** (1961) 1 All NLR 304; (1961) 2 SCNLR 57, Bairamian, FJ, described customary law as "a mirror of accepted usage."

In the case of **OYEWUNMI V. OGUNESAN** (1990) 1 NWLR (Pt. 137) 182 at 207. Obaseki, JSC defined "Customary Law" as "the organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is a mirror of the culture of the people"

“Native Court” Native Court means a Court established or deemed to have been established under the Native Court Law.

INTRODUCTION:

THE HISTORICAL DEVELOPMENT OF CUSTOMARY COURTS

The historical roots and evolution of the Customary Courts in Nigeria are deeply intertwined with the Country’s rich and diverse cultural heritage. Customary Courts have played a pivotal role in resolving disputes, especially in rural areas, long before Nigeria’s colonial era.

Prior to the British Colonial rule, various indigenous communities in Nigeria had their own traditional systems of

justice and dispute resolution. These systems were rooted in customary practices, cultural norms, and the authority of traditional rulers, local leaders or chiefs who often presided over these courts and made decisions based on customary laws and local traditions.

The formal establishment of Customary Courts as recognized legal institutions began during the British colonial era, which lasted from the late 19th century to 1960. The British colonial administration sought to exert control over the diverse regions of Nigeria by introducing their English Common Law System. This resulted in a dual legal system. This system recognized both the English Common Law for the administration of justice in the urban areas and Customary Law, for handling disputes in indigenous rural communities.

The formalization of Customary Courts was a significant step in the evolution of the Customary Courts of Appeal. These courts were established to administer justice based on customary law and practices. Initially, they were known as “Native Courts”. Native Courts operated at the lower level and were presided over by Native Court Judges. The Native Courts had limited jurisdiction but were instrumental in handling customary disputes.

After Nigeria’s independence in 1960, the Legal System underwent reforms. The Customary Court of Appeal as an institution emerged to address appeals from the Native Courts. These appeals were mainly related to customary and traditional matters, such as land disputes, marriage disputes, inheritance,

and other issues governed by customary law. The establishment of the Customary Court of Appeal served to maintain a connection or nexus between indigenous customs and the formal legal system.

Contemporary Role of the Customary Court of Appeal:

In contemporary Nigeria, the Customary Court of Appeal remains an essential component of the judicial system. It operates at both the State and Federal levels, with a hierarchy of courts to handle appeals from lower Customary Courts. These courts over time continue to play an important role in preserving cultural traditions and resolving disputes which arise from customary practices. They help ensure that indigenous communities have access to justice while upholding their cultural heritage.

The emergence of Customary Courts of Appeal in Nigeria can be understood within the context of both the legal and cultural landscape of the nation which shaped the establishment of these courts.

THE LEGAL CHARACTERISTICS OF THE NIGERIAN JUDICIAL SYSTEM:

Some of the legal characteristics are outlined below:

British Colonial Influence:

The British Colonial Administration had a profound impact on the legal system in Nigeria. British Colonial authorities

introduced their legal framework, which was primarily based on the English Common Law. However, they recognized the importance of accommodating indigenous legal customs and practices, leading to the co-existence of customary law alongside the English Common Law.

Legal Pluralism:

Nigeria's Legal System is characterized by legal pluralism, where multiple legal traditions co-exist. Customary Law, based on the customs and traditions of various ethnic and cultural groups, played a significant role in the lives of the people. This pluralistic legal environment led to the recognition of Customary Courts as an essential part of the Nigerian legal system.

Nigerian Independence:

Nigeria's independence in 1960 marked a significant turning point in the development of its legal system. The post-independence era saw efforts to consolidate and harmonize the legal system, ensuring that indigenous legal traditions were integrated into the national legal framework. Customary Courts therefore played a crucial role in maintaining the balance between customary law and the English Common Law.

THE CULTURAL CHARACTERISTICS OF THE NIGERIAN JUDICIAL SYSTEM:

Diverse Ethnic and Cultural Groups:

Nigeria is endowed with a vast array of ethnic and cultural groups, each with its own varying customs, traditions, and legal

practices. The cultural diversity in Nigeria is peculiar, with over 250 distinct ethnic groups. Customary Law therefore varies significantly across regions, and it reflects the unique values, heritage and practices of each group.

Community-Based Justice System:

Traditional dispute resolution mechanisms have always been an integral part of Nigeria's culture. Communities often handled their disputes locally, relying on the wisdom of traditional leaders, chiefs and elders.

It has been observed that most of these indigenous communities have over the years developed their peculiar methods for the administration of both criminal and civil justice suitable and manageable by them. For instance, in the Delta North Senatorial District of Delta State, in the South-South region of Nigeria, the Ibo people practice a common general custom in the administration of Criminal and Civil Justice. If a person is caught stealing, the person is named and shamed. Whatever was stolen is either put on the person's neck or tied to his or her waist and such a person is exposed at the village square. The culprit is sanctioned, fined and made to vow that such an action will not be repeated. It should be noted that after such an experience, these type of offenders truly repent as they would not want to be disgraced before their kinsmen a second time. This method has most times proven to be very effective in curbing crimes and deterring would-be offenders in the rural communities. The communities own and drive the whole process

and therefore imparts on the people directly. This is unlike **someone** who is tried and convicted for stealing in the village by a common law court in the town. He or she serves his/her term in a prison in the town distant from the local community. The community is thus, oblivious of the whole proceedings and its aftermath. It is only where such a person ventures into politics and attempts to contest for an elective position that the opponents may raise the issue of being an ex-convict. Due to the fact that the community did not participate in the process, the culprit's sentence/ sanction does not directly impact such a community either positively or negatively.

Equally, in the adjudication of civil matters, most Ibo communities in Delta State have long adopted the principles of fair hearing and equitable procedures for Customary Arbitration. For instance, if a person has a civil grievance against another person in the community, the following procedures would be adopted in the adjudication of such a case: the aggrieved person is expected to make an oral report of his grievance to the village arbitral panel and request that the other party be summoned for the resolution of the case. He is to do so with a bottle of local gin, some kola nuts and a meager fee. Thereafter, the village messenger is directed to summon a meeting to that effect, after duly informing the alleged offender of the complaint against him and requesting him to come along with his witnesses, (if any) and any exhibits he may seek to tender in his defense. The Complainant is thereupon requested to state his case in the presence of the other party, when all witnesses have been ordered out of the venue. After both parties have stated their

cases, they are ordered out of the venue, to enable the Arbitral Panel **deliberate and** arrive at a decision. When the panel has arrived at a decision, most times by consensus, they call in the parties and deliver their verdict. Anyone who is dissatisfied with such verdict has a right of appeal. In some communities, there exist as much as 5 hierarchies of Appellate Arbitral panels depending on their structural preference. For example, Family, Village, Quarter, Town, King-in-Council. Most times, both parties resolve their issues before it gets to the highest hierarchy.

Customary Courts emerged as a way to formalize these community-based systems and provide a structured avenue for resolving disputes.

Preservation of Cultural Identity and Heritage:

The establishment of the Customary Court of Appeal is aimed at preserving and promoting the cultural identity of various communities. These courts allow for the continuation of customary practices and norms, which are essential elements of cultural heritage. Nigeria is a country with diverse valuable cultures and traditions which have brought order, respect and decorum, especially amongst the youths and by extension, the entire rural population.

It is pertinent to highlight at this stage that there is some negative perception that most customs and traditions are repugnant to natural justice, equity and good conscience. In all humility, I would beg to differ, as it is our culture that makes us unique and different. No doubt a few of our cultures and traditions might be offensive, but generally speaking, there is

logic or reason and history behind any culture or tradition and custom. It is the duty of the Customary Court of Appeal, and all other courts to profile such customs and discard those which are inhumane, while adopting and modifying those that are not cumbersome. This approach was adopted and sanctioned by the Supreme Court in the case of **OKONKWO V OKAGBUE** (1994) 9 NWLR (Pt. 368) P. 301, wherein it was held inter alia, at page 308, Ratio 4, that;

“A custom which is not linked with any crime and has not been declared repugnant through the action of any interested party who has been affected by it will continue to have a legal force, being a manifestation of the inner consciousness of those who give their consent to its application. However, once a custom is challenged in a court of law by anyone who is interested or adversely affected by its application as a call has been made to examine whether it offends natural justice, the courts would pursue such complaint diligently in order to establish whether the custom is inconsistent with the principles of sound reason and good conscience”.

In the above case, the Supreme Court declared the Onitsha Native Law and custom of “ghost marriage” as being repugnant.

In the case of **GLORY ANIEZE V JOSEPHINE ANIEZE** (unreported), a woman married a younger woman who was a distant relation under the Ukwu-Nzu Native Law and Custom.

The mother of her “woman husband” introduced her to about three different men in a period of five years for whom she had three children. A further attempt to introduce her to the fourth man provoked the Appellant and her refusal to continue with the said relationship gave rise to this action. The court held that it is not in all cases that a woman to woman marriage is repugnant to natural justice. But that in this case on appeal, the arrangement is distasteful as it encourages promiscuity, resembles some sort of slavery, certainly against public policy and therefore unenforceable. *See judgement of the Delta State Customary Court of Appeal, Per Ogene J. in Appeal No. **DCCA/24A/2011** delivered on the 7th of February, 2012.*

There is a Nigerian Ibo parable to the effect that you do not throw away the baby with the bath water. Nigeria is a country rich in culture and tradition, which until recently, has helped to shape our societal values, in the maintenance of peace, order, enhancing equality, equity and justice for the general wellbeing of the citizens. For example, the Delta North people practice a custom known as “Idegbe” and the child born in such circumstance is regarded as “Nwa-Idegbe”. The practice of this custom entails that a man who could not personally bear male children would keep one of his daughters at home to bear male children for him so that his lineage is not brought to an end. Any male child produced therefrom takes his maternal grandfather’s name as his surname and is regarded as a precious child in that family. He is treasured, protected and supported by everyone in the family to ensure that his life is preserved to continue his grandfather’s lineage. He is not discriminated against, and is

entitled to whatever any male member of his maternal grandfather's family is entitled to. He can even grow to become head of the family if he meets the requirements. The Custom enjoins the community to show such a child love and support. The drafters of the Nigerian Constitution seem to support the protection offered such a child by the provisions of section 42(2) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) which provides that:

“42(2) no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”.

Most of our customs and traditional practices help to create psychological and emotional family support systems for members of the community. This is what makes the Nigerian society more family-oriented and stable.

Access to Justice:

Customary Courts, being rooted in the culture of the people, are seen as accessible avenues for justice delivery, especially in rural areas where other adjudicatory institutions are often distant or unfamiliar. This makes them crucial in ensuring access to justice for many Nigerians. The legal and cultural context in which Customary Courts of Appeal emerged in Nigeria reflect the nation's commitment to legal pluralism, cultural diversity, and the preservation of traditional practices. The historical evolution of the Customary Court of Appeal system reflects Nigeria's commitment to recognizing and preserving the rich diversity of its traditional customs and practices within the framework of a

modern legal system. This institution remains significant in bridging the gap between Customary law and formal justice delivery systems, thereby contributing to the nation's cultural and legal heritage.

THE ORGANIZATIONAL STRUCTURE OF CUSTOMARY COURTS OF APPEAL IN NIGERIA:

This structure varies at the State and Federal levels, particularly within the Federal Capital Territory (FCT) and also from one state to another.

Customary Courts of Appeal: In every State where Customary Court of Appeal exist, the qualification of the President and other Judges is uniform. Section, 280(1)(2)(a) & (b) provides for the establishment and Constitution of the Customary Court of Appeal; it provides thus;

- (1) There shall be for any State that requires it a Customary Court of Appeal for that State.
- (2) The Customary Court of Appeal of a State shall consist of-
 - (a) A President of the Customary Court of Appeal of the State; and
 - (b) Such number of Judges of the Customary Court of Appeal as may be prescribed by the House of Assembly of the State.

Divisions:

Some States may have multiple divisions within their Customary Courts of Appeal, one panel in each of the Senatorial District, (depending on the size and population of the state). These divisions help manage the caseload and ensure efficient justice delivery

The Customary Courts of Appeal are constituted of Judges of over ten (10) years post call experience. These Judges are responsible for hearing and adjudicating cases brought before the court, involving disputes related to customary practices, family law, land matters, administration of interstate estates and other issues where questions of customary law are raised.

To properly illustrate the Organizational Structure of the Customary Court of Appeal system, I will highlight the structure of the Delta State Customary Court of Appeal as a case study. It comprises the Honourable President, who is the Head of that Court, seven (7) Honourable Judges of the Customary Court of Appeal, sitting in Asaba and Warri, 42 Area Customary Courts and 63 District Customary Courts. Appeals lie directly from either the District or Area Customary Courts to the Customary Court of Appeal.

The Area Customary Courts are constituted of a Chairman who presides, sitting with two members. In a similar manner, the District Customary Courts are constituted of a Chairman and two members. Both Courts have the compliment of support staff similar to that of the Customary Court of Appeal, except the Legal Research **Officers**.

Court Officials: The Customary Courts of Appeal have administrative staff, including Registrars, Legal Research Officers, Clerks, Bailiffs, Messengers and Secretaries, who assist in the management of Court proceedings, day to day running of the court, record keeping, and other administrative tasks.

The composition of these Courts, appointment and tenure of office of Chairmen and Members, qualification for appointment, disqualification from appointment, area of Jurisdiction, presiding at sittings of Area/District Customary Courts, and quorum/voting are reproduced herein under.

The Delta State Customary Courts law, 2019, which provides for the establishment of District and Area Customary Courts, states as follows:

“3(1). There is hereby established for the State the following Grades of Customary Courts:

- (a) District Customary Courts; and
- (b) Area Customary Courts.

4 (1) An Area Customary Court shall consist of a Chairman and two other Members.

(2) A District Customary Court shall consist of a Chairman and two other Members.

5 (1) Subject to subsections (2) and (3) of this Section, the Commission shall appoint the Chairman and Members of the Area and District

Customary Courts on such terms and conditions as the Commission may determine.

(2) The terms and conditions of service of Chairman of an Area Customary Court and Chairman of District Customary Court shall be similar and not less favourable than the terms and conditions of service of Chief Magistrate Grade II and Senior Magistrate employed in the Service of the State respectively.

6. Subject to the Provisions of this Law, a person shall not be qualified to be appointed as:

(a) A Chairman of an Area Customary Court unless he is qualified to practice as a Legal Practitioner in Nigeria for a period of not less than seven years.

(b) A Chairman of a District Customary Court unless he is qualified to practice as a Legal Practitioner in Nigeria for a period of not less than five years; and

(c) A Member of an Area or District Customary Court unless he is a native versed in the Customary Laws and usages prevailing in the area of jurisdiction of the Customary Court where he is a Member, and a holder

of a Senior School Certificate or its equivalent and is of good character.

7. Notwithstanding the provisions of Section 6 (c) of this law, a person shall be disqualified to be a Member of a Customary Court if that person: -
 - (a) Is a member of any Legislative Body or a Local Government Council in Nigeria or is an Executive Member or Officer of any Political Party; or
 - (b) Has been convicted by a Court in Nigeria or elsewhere of an offence involving fraud or dishonesty and has not received a full pardon; or
 - (c) Has under any law for the time being in force in Nigeria been found or declared to be of unsound mind or adjudged to be a lunatic; or
 - (d) Had been declared bankrupt.

9. (1) A District Customary Court shall exercise such jurisdiction conferred upon it by or under this law within the territorial limits of any one or more areas as specified in its warrant.

(2) No two or more areas in a Local Government Council Area shall be served by one District Customary Court unless the areas concerned belong to one ethnic group and have or are reputed to have a common historical origin or community of interests in traditional and customary matters.

(3) An Area Customary Court shall exercise such jurisdiction as is conferred upon it by or under this law within the territorial limits of any one or more Local Government Council Areas or as may by warrant under the hand of the President of the Customary Court of Appeal be directed.

(4) No two or more Local Government Council Areas in the State shall be served by one Area Customary Court unless the Local Government Council Areas concerned belong to one ethnic group and have or are reputed to have a common historical origin or community of interest in traditional and customary matters.

10. The Chairman shall preside at each sitting of a District Customary Court and an Area Customary Court.
11. For the purpose of hearing any cause or matter in a District Customary Court or an Area

Customary Court, the Chairman and one Member of the Court shall form a quorum.

(1) In any cause or matter before a Customary Court, the opinion of the majority of the Members sitting at the hearing of the same shall in the event of the Members disagreeing be deemed and taken to be the decision of the Court.

(2) In the event of an equality of votes, the Chairman shall in addition to his original vote have a casting vote.

13. (1) A Customary Court shall hold Sessions at such times and in such places as may be necessary for the convenient and speedy dispatch of the business of the Court and for this purpose the President of the Customary Court of Appeal may divide the Area of jurisdiction of a Customary Court into such number of zones as he may deem fit.

(2) The President of the Customary Court of Appeal may direct that any session of a Customary Court be held at such times and places, as he may think fit”.

Constitutional Jurisdiction of the Customary Court of Appeal; Section 282(1)(2) of the (1999) Constitution of the Federal Republic of Nigeria (As amended); provides for the limit of the jurisdictional powers of the Customary Courts of Appeal thus;

- “1. A Customary Court of Appeal of a State shall exercise Appellate and Supervisory jurisdiction in civil proceedings involving questions of Customary Law.
2. For the purpose of this section, a Customary Court of Appeal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established”.

In furtherance to the provisions of section 282 (2) of the 1999 Constitution (As amended), the Delta State House of Assembly in 2019, enacted the Delta State Customary Courts law. The provisions of this law in Section, 50(2) (a) (b), (c), (d) and (e) state thus;

“Section 50 (2);

Any party who is aggrieved by the decision of a Customary Court in a civil cause or matter may within 30 days of the date of such decision appeal to:

- (a) The Customary Court of Appeal on issues involving questions of Customary Law,

practice and procedure, misdirection; and items 1-6 of the first schedule of this law.

- (b) Evaluation and findings under customary law, including misdirection where subject matter is customary law or under items 1 – 6 of the First Schedule of this Law.
- (c) In any decision or matter.
- (d) Any infringement of fair hearing during trial.
- (e) In a case which the jurisdiction of the Court is challenged”.

The items 1- 6 referred to in the first schedule of this law are reproduced herein- under for a proper elucidation of the causes or matters covered therein;

“JURISDICTION AND POWER OF AREA CUSTOMARY COURTS AND DISTRICT CUSTOMARY COURTS IN CIVIL CAUSES AND MATTERS

LIMIT OF JURISDICTION AND POWER

S/NO	TYPES OF CAUSES OR MATTERS	AREA CUSTOMARY COURTS	DISTRICT CUSTOMARY COURTS
1.	Land when the value does not exceed the amount specified in columns hereof.	Unlimited.	Unlimited.
2.	Matrimonial causes or matters.	Unlimited.	Unlimited.
3.	Causes or matters under Customary law, whether or not the value of the debt, demand, including dowry or damages is liquidated.	Unlimited.	Unlimited.
4.	Guardianship and custody of children under customary law.	Unlimited.	Unlimited.

5.	Inheritance upon intestacy under Customary Law and grant of power to administer the estate or intestacy under Customary Law.	Unlimited.	Up to ₦ 5,000,000.00
6.	Chieftaincy Causes or matters.	Unlimited.	Unlimited

JURISDICTION AND POWER OF AREA CUSTOMARY COURTS AND DISTRICT CUSTOMARY COURTS IN CRIMINAL CAUSES AND MATTERS

LIMIT OF JURISDICTION AND POWER

S/N	Types of Offences	Area Customary Court	District Customary Court
1.	Where any person is charged with doing any act or with omitting to do any act required under any written law.	Not exceeding 8 years imprisonment or a fine not exceeding N50,000.00	Not exceeding 4 years imprisonment or a fine not exceeding N20,000.00
2.	Contempt of Court committed in the face of Court	Not exceeding 14 days imprisonment or N20,000.00 fine or both fine and imprisonment.	Not exceeding 7 days imprisonment or N10,000.00 fine or both fine and imprisonment.
3.	Statutory offences as may be provided in a bye-law.	As provided in the bye-law.	As provided in the bye-law.

It is important to highlight at this point that by the provisions of section 50 subsection (2) of the Delta State Customary Courts Law, 2019 the Delta State Customary Court of Appeal is empowered to hear and determine issues that border on practice, procedure, and misdirection by the Trial District/Area Customary Courts. And also in matters wherein the subject matter is Customary Law under items 1 – 6 of the first schedule

of section 20 (1) of this law, from which appeals emanate in issues involving questions of Customary law.

There is the necessity to mention that some States in the Federation are yet to activate the provisions of section 282 (2) of the 1999 Constitution and so may not have this additional powers conferred on the Delta State Customary Court of Appeal. Consequently, it would not be right to generalize that all Customary Courts of Appeal are on the same pedestal on this issue.

Organizational Structure in the Federal Capital Territory (FCT).

The Federal Capital Territory (FCT), which includes Abuja, the capital of Nigeria, has its own specific organizational structure for the Customary Court of Appeal:

Customary Court of Appeal, Federal Capital Territory: The Customary Court of Appeal in the FCT is responsible for handling appeals from Customary Courts operating within the territory. It is headed by a President who is appointed by the President and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria.

Customary Courts: Within the FCT, there are several Customary Courts which handle Customary Law matters at the lower level. These Courts are presided over by Customary Court Judges who have expertise in customary law and traditional practices. They handle cases such as matrimonial issues, land

disputes, inheritance matters, and other customary law-related disputes.

Appeals: Appeals from the Customary Courts within the Federal Capital Territory lie to the Customary Court of Appeal in the Federal Capital Territory.

Court Officials: The FCT Customary Court of Appeal also has Administrative Staff, similar to those at the state level and they include Registrars, Clerks, Legal Research Officers, Secretaries, Messengers and Bailiffs who assist with court proceedings, day to day running of the Court and administrative tasks.

CHARACTERISTICS OF CUSTOMARY LAW:

1. **Non-codification of Customary Laws:** Customary Laws are mainly practiced in the Southern geo-political zone and middle belt region of Nigeria. However, Nigeria has diverse cultural communities and various ethnic groups with different customary laws and traditions. The resultant effect is that with over 250 tribes in Nigeria, it is difficult to identify and ascertain these numerous customary laws. Consequently, any attempt to codify these customary laws presents with remarkable challenges.
2. **The indigenous customary laws are simple, flexible and organic:** These characteristics of Customary Laws make them generally acceptable. Most Customary Laws have undergone and will continue to undergo changes as the communities continue to evolve and develop. This is aimed at aligning them with changing needs of the communities.

For example, amongst the Ibos of Delta State, most of the repugnant customs and traditions expected to be performed by a widow as part of the funeral rites for her deceased husband have been abolished. Examples of these customs/traditions are: drinking the water used in bathing the deceased husband and taking of an oath by the widow to prove her innocence in connection with her husband's death, being isolated outside in a small house with only one wrapper tied on her chest without taking a bath for seven (7) days and so many others.

3. **General Recognition and Acceptability:** Almost all indigenes of a community have knowledge of their customary laws and traditions. At very tender ages, the people are locally enlightened on their various customs and traditions, and the sanctions or punishment attached for non-compliance. It is important to mention that because these sanctions are community based, the people can relate with them and this helps to ensure compliance and enforcement.

The Customary Court of Appeal as an effective Channel of justice delivery:-

It is important to note that while Customary Courts of Appeal handle matters related to Customary Law, there is an interplay between Customary Law and the general legal system. Customary Courts of Appeal exist alongside other courts, including High Courts, and the Court of Appeal, to

ensure that customary practices and traditions are respected and upheld within the broader legal framework of Nigeria.

1. **Enforcement of Customary Law:** The Customary Court of Appeal plays a crucial role in the interpretation and enforcement of customary law in cases brought before it. It ensures that customary practices and traditions are respected and upheld while adhering to the principles of equity, fairness and justice.
2. **Traditional Dispute Resolution:** One of the key areas of authority for the Customary Court of Appeal is the resolution of traditional disputes. It provides a formalized and structured mechanism for resolving disputes which arise from traditional customs and practices, ensuring that community-based justice is accessible and consistent.
3. **Land and Property Matters:**

Land disputes are a common category of cases adjudicated upon by the Customary Court of Appeal. These disputes often involve issues related to land ownership, boundaries and land rights, which are governed by customary land tenure system in various regions of Nigeria. The Customary Courts as grass root courts by their very nature, can make inquiries and visit the locus-in-quo to determine the boundaries and the real issues for adjudication.

4. Chieftaincy and Succession Disputes:

Cases related to chieftaincy and successions are within the jurisdiction of the Customary Court of Appeal, as local chieftaincy disputes are rooted in customs and traditions of the communities. Disputes over traditional leadership positions, the appointment of chiefs, and succession to traditional thrones are often heard and adjudicated upon by customary courts. Having members of the adjudicatory panel who come from these communities as advisors on the prevailing customs and traditions, the court is well guided in reaching considered decisions.

5. Cultural and Customary Practices: The Customary Court of Appeal is responsible for the handling of cases which involve the interpretation and application of cultural and customary practices. This includes cases where individuals or communities seek resolution based on their traditional norms and rituals. Although the specific jurisdiction of the Customary Court of Appeal is limited to matters governed by Customary Law and Practices, the first and second tiers of its courts; the Area and District Customary Courts have statutory jurisdiction to hear common law criminal and civil causes and matters, especially in the case of Delta State. When it comes to cases outside this scope, they fall under the purview of the regular courts within the Nigerian Legal System. This duality ensures that both Customary and Common Law are appropriately addressed in the Country's Legal Framework.

6. **Proximity and Accessibility:** The Customary Court of Appeal plays a significant role in providing accessible justice, particularly in the rural areas of Nigeria. Their function is vital in ensuring that justice is available and attainable for individuals residing in remote and traditional communities. In the Customary Court of Appeal system, the Trial Courts are often strategically located in rural areas, making them easily accessible to the local population. This proximity eliminates the need for rural dwellers to travel far distances to access justice in urban centres. These Courts offer an avenue for resolving conflicts that may not be accommodated in the framework of statutory law.
7. **Familiarity with Local Customs:** The Judges and officials in these courts are well-versed in local customs and traditions. This cultural familiarity allows for a deeper understanding of the cases and disputes which arise in rural communities, making the legal process more relatable and accessible to the people. It also helps in proper interpretation and application of the necessary customs.
8. **Language and Cultural Sensitivity:** Customary Courts allow the use of local languages and dialects during proceedings through interpreters, ensuring that individuals can express themselves comfortably. This linguistic approach eliminates language barriers and enhances communication between the court and litigants.

This enhances the confidence of the local population in their use of the court.

9. **Cost-Effective Justice:** The costs associated with filing cases in Customary Courts and Customary Courts of Appeal are often lower than those in other courts. This affordability is crucial for rural residents who may have limited financial resources and struggle to afford legal representation. The fact that this court system is devoid of most legal technicalities makes it grass-root friendly, as oftentimes, parties can personally conduct their cases.
10. **Community-Based Dispute Resolution:** These Courts provide a familiar and community-based forum for dispute resolution. Rural residents often prefer resolving issues within their local context, and the Customary Court of Appeal facilitates this, ensuring that traditional practices are respected while still adhering to principles of justice. The rules of the court encourage reconciliation by the parties.
11. **Speedy Resolution of Cases:** Customary Courts are known for their speedy dispensation of matters. This swift resolution is particularly beneficial for rural communities where lengthy legal processes can be burdensome and time consuming.
12. **Promotion of Customary Law:** By providing an accessible platform for the application and enforcement of customary law, the Customary Court of Appeal supports

the preservation of cultural heritage and traditions in rural areas. It ensures that these customs remain a part of the legal system while adapting to the needs of contemporary society.

13. **Ease of Enforcement:** Oftentimes, the Chiefs, Age grade leaders and important persons in the communities who testify as witnesses in the Customary Courts also effectively ensure the enforcement of the judgments from these courts.
14. **Conflict Resolution and Preservation:** The Customary Court of Appeal not only resolves existing disputes but also contributes to conflict prevention by promoting peaceful coexistence and cooperation within the rural communities especially at the lower courts' level where the enabling statutes encourage reconciliation or out of court settlement. Efficient resolution of disputes can prevent conflicts and maintain social stability for good governance, especially under a thriving democracy.
15. **Increased Legal Awareness:** The presence of these courts in rural areas raise awareness about legal rights and processes among residents. This education empowers individuals to seek justice when needed and fosters a culture of legality instead of resort to self-help. In summary, the Customary Courts of Appeal are instrumental in providing accessible justice in the rural areas of Nigeria.

16. **Non-insistence on Technicalities:** The Customary Court of Appeal does not insist on compliance with form or technicalities. Instead, it aims for substantial justice devoid of undue legal complications, making it more user friendly.
17. **The Appellate Nature of the Adjudicatory Panel:** The array of erudite Judges sitting in the panels of the Customary Courts of Appeal create varying views and rationales, thereby resulting in the production of enhanced and robust cerebral judgments and rulings.
18. **Rule of Law and Democracy:** The effective functioning of Customary Court of Appeal contributes to the rule of law and democracy by providing legal mechanisms which are accepted and understood by local communities. This fosters respect for the law and legal institutions, which are essential for democratic governance.
19. **Land and property disputes:** This mainly arises from the non-application or misapplication of local customs and traditions which are eventually adjudicated upon by the Customary Courts of Appeal. These Courts ensure that land rights and property ownership are resolved in accordance with the appropriate customary laws to avoid unending communal crises and inter/intra tribal wars.
20. **Familiarity and Trust:** These courts operate based on customary laws and indigenous customs which are well-understood and trusted by the local population. This

familiarity and trust encourages people in rural areas to seek justice through the Customary Courts of Appeal.

Operational Challenges of the Customary Courts of Appeal

1. There exists a constitutional limitation on the jurisdiction of the Customary Court of Appeal. Section 282(1) confers Appellate jurisdiction only to hear and determine questions of Customary Law on the Customary Court of Appeal. This implies that even when a cause or matter was tried in any of its lower two tiers of court, if the appeal does not raise issues or questions of Customary Law, the Customary Court of Appeal is devoid of jurisdiction. This is very detrimental to all the efforts aimed at increasing the productivity of this Court system. In spite of the fact that many civil cases are disposed off by its lower courts, it does not have any positive impact on inflow of Appeals to the Customary Court of appeal.
2. The non-existence of a uniformed or centralized body of customary case laws which the Judges of the Customary Court of Appeal or Chairmen of Area/District Customary Courts can reference, makes it difficult to ensure predictability and consistency.
3. The quest for development has led to the drastic declaration of villages and hamlets as urban areas, thereby, eroding the jurisdiction of the Customary Courts to adjudicate on matters involving issues of Customary Right of Occupancy of lands in the Rural Areas. In Delta State for example,

almost all big towns have been designated as urban, in a bid to attract development and governmental social amenities. This has largely reduced the jurisdiction of the Customary Courts.

4. There is lack of uniformity in the functioning, organization and adjudication of causes or matters in the various Customary Courts of Appeal across different states in Nigeria. By reason of the provisions of section, 282(2), most state laws and regulations vary, leading to disparities in their operations and procedures.
5. The Customary Court of Appeal System is bedeviled with the problem of inadequate case law Reporting. It is quite difficult for any Customary Court of Appeal to keep pace with another on the new adjudicatory developments in their jurisdiction.
6. There is a subsisting challenge of lack of Judicial Precedent. In the regular legal system, the decisions of Higher Courts become binding legal precedents. In the Customary Court of Appeal system, however, due to inadequate case law reporting, the Lower tiers of Customary Courts hardly find decisions of the Customary Courts of Appeal to reference and rely on, in their adjudications. The Judges consequently, interpret and apply the customary laws based on their own personal understanding and knowledge. Even the Judges of the Customary Court of Appeal also hardly find persuasive authorities to reference. It is pertinent to state that the

Supreme Court has admonished the Customary Courts of Appeal not to rely on their personal knowledge of any customary law in arriving at a decision. In the case of **OGIUGO V OGIUGO** (1990) 73 LRCN Page 3681, Ratio 14, the Apex Court held that;

“In conclusion, the Customary Court of Appeal went out of its way and brought its presumed personal knowledge of Bini Customary Law into its Judgment, when there was no contrary evidence before it as provided by the rules of that Court. It is only the members of the Trial Customary Court that can state the appropriate customary law from their personal knowledge. Neither the Customary Court of Appeal nor the Court of Appeal can do so”.

7. The Customary Court of Appeal experiences some technological challenges in their operations. Customary Courts of Appeal in some states lack access to modern technology and technological tools, such as computerized case management systems, digital court recording equipment and so on. This can result in inefficient record-keeping and slower processes.
8. The country is constantly undergoing social and cultural changes. These changes in societal norms and values, as well as urbanization, can sometimes lead to a disconnect between traditional customs and the demands of a

changing society. Customary Courts of Appeal would have to struggle to adapt to these shifts.

9. There is the problem of ambiguity in the nature of cases filed in these Courts. Oftentimes, cases could involve a mixture of statutory law and customary law issues, thereby resulting in some difficulty in identifying the appropriate courts for their adjudication.

Recommendations:

1. I most humbly advocate for an alteration of Section 282 (1) of the (1999) Constitution (As Amended) that in addition to the already existing Appellate jurisdiction, the Customary Courts of Appeal should be granted further jurisdiction to hear all appeals in civil causes or matters where the subject matter is Customary Law from the Lower tiers of the Courts system.
2. It is recommended that in order to increase the jurisdiction of the Customary Courts of Appeal, an additional alteration be made to the 1999 Constitution to provide for original jurisdiction in the adjudication of chieftaincy matters. This is very imperative as almost all Chieftaincy causes and matters revolve on Customary Laws and the traditions of the communities and parties concerned. This is to align with the already applicable jurisdiction of the Federal Capital Territory's (FCT) Customary Court of Appeal.
3. In order to resolve the issues of jurisdictional disputations concerning the Customary Courts of Appeal, clear channels

of communication or consultations should be established to clarify which cases fall within their purview.

4. It is recommended that the requirements for the publication of the award of customary arbitration should not be made mandatory since documentation is unknown to Customary Law. In the alternative, a customary approach could be adopted to such publication, by oral announcement of the customary arbitration award in a meeting of the extended family and village members of the parties concerned by the head of the panel. Therefrom, the evidence of two or more members of the arbitration panel and the extended family members of the party would in my respectful view suffice in proof of same. This is akin to what is obtainable in other Customary Law transactions, like sale of land and transfer of title to land by gift.
5. In cases involving issues of Women Property Rights, it is suggested that all Customary Courts of Appeal should in uniformity make or uphold necessary pronouncements that entitle women to inherit from their deceased father's estate without discrimination. As no custom should override any right already protected by the Nigerian Constitution.
6. Considering the complexity and diverse nature of Nigeria's customary laws, there is a need for periodic exchange programmes, workshops and seminars especially for Judges of the Customary Courts of Appeal from the same geo-political zone. This will help update their knowledge and skills. It will also enhance harmonization of their

adjudicatory rationales and reduce inconsistencies in their decisions, thereby ensuring uniformity in customary law interpretations and applications.

7. There is the need for improved funding of the Judiciary. It is recommended that the Customary Courts of Appeal and indeed all courts system in Nigeria be better funded to enable these courts systems leverage on the benefits of modern information technology tools to enhance efficiency in adjudication, case management, communication, record keeping, and human capital development.
8. The State Judiciaries should continue to sue for the full implementation of the financial autonomy law to enable the State Courts exercise some level of financial independence. It could be implemented according to an agreed proportion or percentage of the revenues which accrue to the State from the Federation account and the internally generated revenue. This will no doubt enhance improved infrastructure and welfare for Judicial Officers and support staff. It will also help provide more conducive work environment resulting in better productivity.
9. It is suggested that in the appointment of Judges for the Customary Court of Appeal of a State, cognizance should be taken of each Senatorial District and the customs and traditions prevalent therein. This will ensure equality and fairness amongst the people and enhance their confidence in the court system.

10. The increasing number of the customary courts of appeal in the Federation, and the important role of these courts in the development of Nigeria's indigenous jurisprudence, has created an urgent need for a proper case law reporting of their adjudications.

Conclusion:

It is imperative to note that the Customary Courts of Appeal play a crucial role in the efficient administration of justice in Nigeria. The accessibility and proximity of the Customary Courts and Customary Courts of Appeal to the rural communities help in bridging the gap between customary law and formal legal system. These Courts ensure that customary practices and traditions are respected and upheld while adhering to the principles of equity fairness and justice.

Mi Lords, I thank you most sincerely for your time and attention.