

CUSTOMARY COURT AS A TOOL FOR ACHIEVING THE UNITED NATIONS SUSTAINABLE DEVELOPMENT GOAL NUMBER 16

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1.0 INTRODUCTION

A veritable starting point in dealing with this topic is to state in clear terms the nature and concept of the Sustainable Development Goals (SDGs)²⁴ of the United Nations (UN). The SDGs are a collection of Seventeen (17) interlinked objectives designed by the UN to serve as a “shared blueprint for peace and prosperity for people and the planet now and into the future”. This global vision set to be actualized from 2016-2030 was adopted by the UN Sustainable Summit held in September 2015 with a view to catching on to the successes of a similar development goal which is the Millennium Development Goals (MDGs).

The SDGs consist of seventeen (17) goals and one hundred and sixty-nine (169) achievable targets geared toward eradicating poverty and realizing a sustainable world. It is noteworthy that these seventeen SDGs²⁵ are universally applicable and not limited to developing countries but inclusive of developed countries. It pledges to leave no one behind through its implementation processes.

The SDG number 16 seeks to promote just, peaceful, and inclusive societies, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels. In other words, people everywhere should be free of fear from all forms of violence and feel safe as they go about their businesses regardless of their sex, ethnicity, or faith. It is noted that high levels of armed violence and insecurity have a destructive impact on a country’s development. Sexual

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²⁴. Also known as Global Goals or 2030 Agenda.

²⁵. No Poverty – Goal No. 1; Zero Hunger – Goal No. 2; Good Health and Wellbeing – Goal No. 3; Quality Education – Goal No. 4; Gender Equality – Goal No. 5; Clean Water and Sanitation – Goal No. 6; Affordable and Clean Energy – Goal No. 7; Decent Work and Economic Growth – Goal No. 8; Industry, Innovation and Infrastructure – Goal No. 9; Reduced Inequality – Goal No. 10; Sustainable Cities and Communities – Goal No. 11; Responsible Consumption and Production – Goal No. 12; Climate Action – Goal No. 13; Life Below Water – Goal No. 14; Life on Land – Goal No. 15; Peace and Justice, Strong Institution – Goal No. 16; and Partnerships to Achieve the Goal – Goal No. 17.

violence, crime exploitation, and torture are prevalent where there are conflicts and insecurity. Strengthening the rule of law, ensuring unfettered access to justice, maintaining strong democratic and legal institutions, and promoting human rights is key in successfully combating the malaise and menace previously mentioned.

Sustainable Development Goals in outlook appear only to be international but not municipal due to the beneficial advocacy it enjoys from international, continental, and regional organisations like the United Nations (UN), African Union (AU), and the Economic Community of West African States (ECOWAS). These organisations amongst others are at the forefront of making sure the SDGs especially SDG 16 is implemented by member states.

It is interesting to note that the international efforts bestowed on the SDGs are blessed with domestic flavor and trickle down to municipal legal institutions. The international legal instruments encourage and create the enabling atmosphere that trickles down to institutions in municipal enclaves administering justice delivery which is the fulcrum of SDG 16.

SDG 16 is seen in Article 3 of the African Charter on Humans and Peoples' Rights to the effect that "every individual shall be equal before the law", and "Every individual shall be entitled to equal protection of the law.

Of course, for Article 3 of the charter to be effective, there must be institutions to implement these provisions. Such institutions can only be effectively managed by state parties to the charter in their various locales. Article 26 of the Charter came to the rescue because "State parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedom guaranteed by the present Charter". As a result, state parties have gone along to develop their hierarchy of courts for the smooth implementation of the provisions aforesaid in the charter crystalized in our municipal law. Nigeria has its hierarchy of courts as provided for in the Constitution of the Federal Republic of Nigeria (CFRN) 1999 and the Customary Court is a part of that hierarchy. The Customary Court is the closest to the grassroots in the administration of justice and justice delivery.

Customary Courts²⁶ became modernized over time. They were previously christened native courts. In the Southern parts of Nigeria, they are known as customary courts presently, and in the northern parts of Nigeria they are called Area Courts. Both the Customary and Area Courts are similar in their provisions, as the law regulating them are contained in the various laws enacted by those States. The difference between them is usually in respect of jurisdiction. Some states confer wider jurisdiction on their courts than others. And these courts are subject to the supervision of the Customary Court of Appeal or Sharia Court of Appeal of that State as the case may be and where there are no such courts established in that state, the supervisory role is bestowed on the High Court of that State.²⁷

This paper shall focus on SDG Number 16, that is, peace and justice, strong institutions, and how customary courts serve as a tool in the achievement of this goal.

Customary Court as a Tool for Achieving Sustainable Development Goal Number 16

Law and the entire gamut of our legal system crystalized conditions for not just development²⁸ but sustainable development²⁹.

Accordingly, we shall commit the rest of this paper under the following:

1. *Access to Justice;*
2. *Promotion of Human Rights;*
3. *Rule of Law; and*
4. *Strong Institutions.*

²⁶. In this paper all references to customary courts includes Area Courts, Sharia Court of Appeal and Customary Court of Appeal and the laws applied by these courts. Customary courts and customary law is used interchangeably.

²⁷. See Sections 262, 267, 272, 277 and 282 of the Constitution of the Federal Republic of Nigeria 1999.

²⁸. Development is what we do or engage in, in order to improve ourselves and abode. See also K.S.A. Ebeku, *"Human Rights Approaches to Environmental Protection: Some Tips for the Nigerian Legal Practitioner"*, being a paper presented on 20/12/10 at the End-of-year Ceremonies of the Nigerian Bar Association, Ahoada Branch, Ahoada Town, Rivers State.

²⁹. See Chapter 2 of *Our Common Future*, a 1987 Report by the World Commission on Environment and Development (WCED) created by UN General Assembly Resolution 38/161 of 19th December 1983 defines sustainable development as *"development that meets the needs of the present without compromising the ability of future generations to meet their own needs"*.

2.0 ACCESS TO JUSTICE

Access to justice implies an enabling environment whereby citizens and members of the society can not only access institutions both public and private responsible for legal services and justice delivery but also ensures a smooth and unfettered flow of administration of justice. Access to justice, therefore, is a basic principle of law that describes how citizens have equal access to legal systems both substantive and procedural mechanisms existing in any particular society designed to ensure that citizens have the opportunity of seeking redress for violations of their legal rights within that legal system.

Conversely, delays, cost of litigation, complex legal rules and procedures, and lack of awareness and knowledge of the law become setbacks and barriers to access to justice.

However, by the instrumental functionality of customary courts, these barriers are dealt with or they become manifestly non-existent. Here are some examples:

a.) Lack of Awareness and Knowledge of the Law

Unlike the conventional laws or the received English law operative in Nigeria, customary laws are said to be the peoples' laws. The mere existence of a society, the mere plurality of individuals, gives rise to customs from which no single member or the totality of members can completely divorce themselves. Customary law is a law of the people, made by them, having its roots among them, and governing their relations *inter se*. It is an organized and homegrown law. This is why the historical school of jurisprudence³⁰ led by Friedrich Karl von Savigny³¹ postulates that a good law should be customary in origin and that such law develops by internally silently operating powers which grow with the growth of the people and strengthens with the strength of the people, and because the people are familiar and accustomed to their customary laws, the customary courts become easily accessible and serve as a means of access to justice.

The customary court on its part is seized with the jurisdiction to administer and uphold among others, the customary law of the area of its jurisdiction. Section 10(1)(a) of the Rivers State

³⁰.A school of ethnology that emphasizes empirical study of the historical continuity of a specific culture or culture area as contrasted with comparative study of diverse or related cultures or culture areas.

³¹.1779–1861.

Customary Courts Law³² provides that a Customary Court shall administer the appropriate customary law provided it is not repugnant to natural justice, equity, and good conscience, or incompatible directly or by necessary implication with any written law in Nigeria.

b.) Delay

One of the legal monsters bedeviling access to justice and justice delivery is a delay in our conventional courts. The language of legislation or enacted law or statutory provision, the rules of court, employment of technicalities in the interpretation of statutes and the perennial demand for the appointment of more judges and magistrates, the occasional displays of legal gymnastics employed by litigation lawyers in the face of lacuna or vagueness of statutes or statutory provisions, occasion delay and cause untold hardship to litigants and citizens. It must further be noted, that several innovations have been deployed by the rules of court of various High Courts in Nigeria to curb this delay malaise like the introduction of the frontloading system³³, pretrial proceedings³⁴, and filing of cases online³⁵ but in practice these innovations have only yielded little or no success.

However, under the customary law system, delay to access to justice and justice delivery is reduced to the barest minimum. The maxim, *justice delayed is justice denied* seems a far cry! The law and rules of the customary court have made it such that the entire process, from the institution of cases to proceedings in court and final judgment, has been made very simple for litigants that in most cases, the vagaries and rigours of the involvement of legal practitioners become less mandatory. In most cases, parties or litigants have the right to self-representation³⁶.

Section 13(1) & (2)³⁷ empowers a customary court to encourage and facilitate amicable settlement practices or among persons without the need for trial whilst Order 8 of the Rivers State Customary Courts Rules 2011 allows for motions to be moved orally in the alternative to written application.

³². Law No. 3 of 2014.

³³. See Order 3 of the High Court of Rivers State (Civil Procedure) Rules 2023.

³⁴. Op. cit, Order 28.

³⁵. Ibid at Order 3 Rule 2 Sub Rule 1.

³⁶. See Sections 26(1) & 27 of the Rivers State Customary Courts Law (No. 3) 2014.

³⁷. Ibid

The most far-reaching provisions in the customary court's law are those made with regard to doing away with technicalities. This is because a court of law must have a human face and “must at all times prevent undue adherence to technicalities and do substantial justice”³⁸. In *Ojah v. Ogboni*³⁹, the Supreme Court observed that:

Our courts in appropriate cases have shifted away from the narrow technical approach to justice which characterized some earlier decisions. Instead, they now pursue the course of substantial justice, a situation which clearly deserves great commendation.

Customary courts in Nigeria are in tandem with this position. In Rivers State, for example, the Customary Court and the Customary Court of Appeal is empowered to do substantial justice against technicalities in cases filed before them. Sections 15 of the Customary Courts Law 2014 aptly provides as follows:

No proceedings, summons, warrant, order, decree or other process issued or made by a Customary Court shall be varied or declared void on appeal solely because of a defect in procedure or want of form; but a court exercising appellate jurisdiction under this Law or any other law, shall decide matters brought to it on appeal from a Customary Court according to substantial justice without undue regard to technicalities.⁴⁰

c.) Cost of Litigation

The cost of litigation, consultation, and generally the cost of legal services have soared so high that it has become a major barrier to access to justice. Many indigent and low-income earners could not seek redress when they are wronged or their rights have been violated because of the high and humongous cost of procuring essential legal services.

However, under the customary law system, access to justice and justice delivery is cost-effective. The court may waive the cost of filing and other processes like the cost of applying for a Record

³⁸. Fidelity Bank PLC v. Monye [2012] All FWLR (pt. 631) p. 1412 @ 1442 per Rhodes-Vivour JSC.

³⁹. [1996] 6 NWLR (pt. 454) 272 @ 292 Paras D-E, per Iguh JSC; See further the case of Odua Investment Co. Ltd v. Talabi [1997] 10 NWLR (pt. 532) 1 @ 52 paras E-F, per Ogundare JSC.

⁴⁰. See also Section 56 of the Rivers State Customary Courts Law (No. 3) 2014.

of Proceedings where a person is unable to afford the court fees⁴¹. The beauty of this situation is captured in Section 25 (3) of the Rivers State Customary Court Law No. 3, 2014 as follows:

A person who desires the free services of the court shall make an oral or written application to the President of the Customary Court of Appeal, stating his case and circumstances, and if the President of the Customary Court of Appeal is satisfied, he may grant that person free services of the court.

Furthermore, the cost of litigation under the customary law system is not limited to the individual but covers corporate or collective persons. Government ministries, departments, agencies, a local government, or other body corporate can be represented by any of its members or staff thereby dispensing with the need to pay a lot of money to procure the services of legal practitioners, especially where to do so might be too much of a cost to such body corporate or government ministry or agency.

d.) Complex Legal Rules and Procedure

One of the debilitating effects of the adoption of the adversarial method of adjudication especially in Common Law countries is the institution or allowance of complex legal rules and procedures. These have occasioned delays in justice delivery and generally, denial of access to justice. A situation where a case or action in court will take five, ten, or at times twenty years or more before a party can have justice is tantamount to denial of justice. Many times, this is occasioned by complex legal rules, technicalities, and complex procedures. Parties have died awaiting justice. Most court rules and procedures allow for these complex and technical rules in conventional courts. For example, filing of cases even with the innovation applied via online platforms comes with its attendant bottlenecks of network failure delaying the process. When it eventually comes before the judge, it goes through pretrial proceedings before the actual trial. Sometimes issues such as tendering of exhibits, motions, amendments, and preliminary objections which ought to have been dealt with at the pretrial stage are overlooked and allowed to surface again at the trial proper thus occasioning delay in the administration of justice and justice delivery. These complex rules also affect the cost of filing processes. Where rules of court

⁴¹. See Sections 22(2) & 25 of the Rivers State Customary Courts Law (No. 3) 2014.

make provisions for the high cost of filing processes or initiating a suit, certainly the judiciary is the last hope of the common man is defeated.

But even at the superior courts, sometimes rules of evidence are relaxed when it has to do with some form of native law and custom. We have noticed that native law and custom as well as the traditions of the people are homegrown and where necessary and if they do not offend principles of natural justice, strict evidential niceties and the rigid application of extant rules of evidence is relaxed. One such strict rule of evidence in the superior courts of record is the rule against hearsay but traditional evidence which ought to be hearsay and inadmissible is made admissible as an exception. The Supreme Court made this clearer, *per* Edozie JSC (as he then was) in ***Ewo v. Ani***⁴² where it was held thus:

Traditional evidence is evidence derived from tradition. It is made by persons, since deceased, in regard to questions of pedigree, ancient boundaries, where no living witness can be produced having knowledge of the facts. By its very nature, traditional evidence is hearsay evidence, which by strict rules of evidence is inadmissible but is made admissible by Section 44 of the Evidence Act⁴³. ***Traditional evidence is evidence beyond living memory.***

However, under customary law, this is not accommodated as an exception but is root-grown as the rules of the customary court make provision for simple procedures which is a product of courts of summary jurisdiction, as such, technicalities and complex legal rules are dispensed with. Whereas filing of summons in the Customary Courts initiates an action, pleadings are not necessary. The Nigerian Supreme Court has this to say⁴⁴:

Customary Courts are not superior courts of record and no pleadings are filed in them either. Accordingly, the technical rules and or procedure which govern the trial of actions in the superior courts of records are not stringently applied in those courts. The only material before customary court is the plaintiff's claim which is the initiating

⁴². [2004] 3 NWLR (pt. 861) p. 610 @ 637 paras F-G.

⁴³. Formerly Section 44 of the Evidence Act 1945 now Section 58 of the Evidence Act, 2011.

⁴⁴. See *Erhunwunse v. Ehanire* (2003) 13 NWLR (Pt. 837) 353.

process in all civil suits filed in those courts. Trials are conducted in the customary courts in a summary manner and the opportunity a defendant has to prove his case is by oral evidence when he and his witnesses testify before the court in his own defence. See also Adeyemi v. Opeyori (1976) 9-10 SC 31.

By Section 56 (1) of the Rivers State Customary Courts Law, No. 3, 2014 no proceedings or order of court shall be varied or declared void on appeal based on a defect in procedure or want of form but that matters shall be decided according to the principles of substantial justice. By Order 23 Rule 1 of the Rivers State Customary Courts Rules 2011, where a suit is pending before the customary court, the court may promote reconciliation among the parties and encourage and facilitate an amicable settlement.

Interestingly, Order 3 Rule 3 of the Customary Court Rules of Rivers State provides that application for a summons may be made in writing or orally in person. Going by this provision, a cause or matter can commence or be instituted simply by oral complaint. Again, Order 3 Rule 4 states as follows:

The court may dispense with the requirements of these rules as to the issue and service of a summons or as to any steps to be taken before any cause or matter is ready for trial, and, if all the necessary parties are present, may proceed forthwith to the trial of the cause or matter.

Whereas the provisions of the Evidence Act 2011 are not applicable in the customary courts, Order 12 Rule 5(1) made provision of admission of evidence that in every cause or matter the court shall admit only the available evidence, having regard to the circumstance of the case. By this provision, a photocopy of an original document without the need for certification shall be admissible in the customary court. The totality of all these provisions is to the effect that under customary law, complex legal rules and procedures have no place and can be done away with, where they may serve as a clog to the speedy dispensation of justice and by implication, the customary court and indeed customary law serve as a means to access to justice.

3.0 PROMOTION OF HUMAN RIGHTS

Human Rights like other concepts have no precise definition. Even the International Bill of Rights⁴⁵, the embodiment of human rights principles presents no precise definition. While there seems to be widespread acceptance of the importance of human rights, there is considerable confusion as to their precise nature, role, and meaning. This is evidenced in the debate between relativists and universalists.

Human rights have been defined as artifacts of state action to the extent that there are no human rights where there is no state to recognize them. The view of human rights established on the pedestal of recognition of a State to give it legal teeth is objectionable because human beings deserve dignified treatment irrespective of whether the States where they live recognize the right or not.⁴⁶ *Akuffo, Ngoepe, and Thompson JJ*⁴⁷, in their dissenting opinion in the case of *Atemnkeng v African Union*,⁴⁸ agrees with the expressive articulate stance of the Applicant as follows:

... this restriction placed on the enforcement of human and peoples' rights by Article 34(6)⁴⁹ should further be placed in the light that human rights are not rights granted by states, but rights that attach to each individual person by virtue only that he or she is human. States may articulate them, but states are not their origin. Therefore, not even states have the right to obstruct the enjoyment of those rights, and worse, to be given the right to do so under the instruments of a continental organization purporting to stand for justice. Given that human rights are not derived from states but from our status as human beings, every state that violates those rights ought to be held accountable.

⁴⁵. The Universal Declaration on Human Rights, 1948; The International Covenant on Civil and Political Rights, 1966; and the International Covenant on Economic, Social and Cultural Rights, 1966. They are all together referred to as the International Bill of Rights.

⁴⁶. For instance, even before the abolition of slavery, the right to the dignity of the human person inures in the individual and whether people recognize it or not does not make it a non-human right.

⁴⁷. Learned Judges of African Union Court

⁴⁸ *Atemnkeng v African Union* [2013] 1 AfCLR 182; See also *Femi Falana v. African Union* [2012] 118.

⁴⁹. Article 34(6) of the Protocol to the African Charter of Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

To speak of human rights requires a conception of what rights one possesses by virtue of being human. That does not mean human rights in the self-evident sense that those who have them are human, but rather, the rights that human beings have simply because they are human beings and independent of varying social circumstances and degrees of merit.⁵⁰

Broadly speaking, human rights are those fundamental and inalienable rights that are essential for life as human beings. They are rights possessed by every human being regardless of nationality, race, religion, or sex. **Kapoor**⁵¹ defined ‘human rights as:

Those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedom allows us to fully develop and use our human qualities, our intelligence, our talents and our conscience and satisfy our physical spiritual and other needs. They are based on mankind’s increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

For the sake of brevity,

*“human rights are those rights that inhere in the very nature of the human person. They define and affirm humanity, exist to ensure that human life remains sacred and guarantee that humanity and injustice are prevented or redressed”.*⁵²

Since human rights are rights that are intrinsic to the very essence of being human, there are certain compulsory principles that cannot be wished away but diligently applied especially in justice delivery. These are the very ethos of SDG 16 and are fully supported by international human rights instruments and courts.

The customary courts (or any court for that matter) in Nigeria cannot deviate from them. These are principles of natural justice. Principles of natural justice encapsulate the right to a fair hearing

⁵⁰. J. J. Shestack, “The Philosophic Foundation of Human Rights” (1998) in Christ of Heyns and Karen Stefiszyn, eds, *Human Rights, Peace and Justice in Africa: A Reader*, (Pretoria: Pretoria University Law Press, 2006) p. 3.

⁵¹. S. K. Kapoor, *International Law and Human Rights*, 18th ed., (Allahabad: Central and Agency, 2011) p. 806.

⁵². Speech by J. B. Daudu (SAN) on the occasion of the 1st Nigerian Bar Association (N.B.A.) President’s Round Table on An Agenda for Human Rights in Nigeria, Rockview Hotel, Abuja, 9th December, 2010.

which means a trial is conducted according to legal rules formulated to ensure that justice is done for all the parties.⁵³In *Malam Sadau of Kunya v. AbudulKadir of Fagge*⁵⁴, the court held that:

It is a fundamental principle of the administration of natural justice that a defendant and his witnesses should be heard before the case against him is determined, and it is, in my view, a denial of justice to refuse to hear a defendant's witnesses.

Everyone appearing before the customary court either as a party in a civil or criminal cause or matter is entitled to a fair hearing within a reasonable time and any rule or procedure that derogates from these principles must be null and void.

It is further interesting to note that principles of natural justice in Nigeria with respect to the application of customary rules are circumscribed by the repugnancy as well as the incompatibility test. This is the beauty of the application of customary law even where the customary court as a trial court errs in adjudication, the administration of the justice system has an appellate process⁵⁵ that is geared towards the upturning of a principle of native law and custom that is repugnant to natural justice, equity, and good conscience or that is against public policy or incompatible with any law in force.

For example, in Nigeria, it was usually the custom that a female child is precluded in rights of inheritance over her father's estate. This is not unconnected with the presupposition that women actually in the long run belong to their matrimonial homes as against their paternal homes.

Even though this principle of native law and custom has gained wide acceptance over the generations and has obtained the force of law, it is antithetical to principles of natural justice and therefore infringes on the human rights of the female child and will hinder the actualization of the SDG 16. In essence, there will be no equality before the law.

⁵³.See Egbo & Ors v. Agbara & Ors [1997] 1 NWLR 293, SC.; T.A. Aguda, *The Law of Evidence*, (Ibadan: Spectrum Publishers, 1999) p.12

⁵⁴. [1956] 1 FSC 39 @ 41.

⁵⁵. In many States where customary courts are established in Nigeria, appeals lie from the customary courts of a State to the Customary Court of Appeal of that State. Where there's no Customary Court of Appeal. Appeals lie to the High Court of that State. See Sections 50 – 57 of the Rivers State Customary Courts Law No. 3, 2014.

Conversely, steps have been taken to whip such native law and custom in line with the natural justice principle. Although the initial steps were statutory and not fully fledged as could be seen as an example in Section 80 of the Rivers State Customary Courts Law,⁵⁶ which provides as follows:

A child of the deceased whether male or female shall succeed to the deceased's property to the exclusion of any other relation except where the applicable custom provides otherwise.

The expression, “except where the applicable custom provides otherwise” shows that if it can be shown that a particular custom dictates that it is only a male child of the deceased that shall inherit the deceased's property, then the preceding part of the section before the phrase, “except where the applicable custom provides otherwise”, becomes useless and of no effect.

Happily, in line with SDG 16 and human rights dictates, this principle of native law and custom was judicially cured in the case of ***Mrs. Lois Chituru Ukeje v. Mrs. Gladys Ada Ukeje***⁵⁷ where the Supreme Court held that the Igbo native law and custom which discriminates against female children from inheriting their father's property upon their father's demise is repugnant to natural justice, equity, and good conscience⁵⁸. This is one very illustrative case because it covers both the repugnancy and incompatibility tests.

For a custom to be valid, it must not be incompatible with a law in force. The said Igbo native law on inheritance is incompatible with a law in force, the Constitution of the Federal Republic of Nigeria (CFRN) 1999.

Whether the Igbo native law and custom which deprives children born out of wedlock from sharing the benefit of their father's estate is unconstitutional, Ogunbiyi JSC (as he then was) held:

"The trial court, I hold did rightly declare as unconstitutional, the law that dis-inherits children from their deceased father's estate. It follows

⁵⁶. NO. 3, 2014

⁵⁷. [2014] 11 NWLR (pt. 1418) 384 @ 405; See also, *Mrs Maria Nweke v. Onyibor Anekwe & Anor* [2014] 4 SC (pt. 111) p. 65.

⁵⁸. See also Section 18 (3) of the Evidence Act, 2011

therefore that the Igbo native law and custom which deprives children born out of wedlock from sharing the benefit of their father's estate is conflicting with section 42(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The reproduction of the section states thus:- "42(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth."

Every child is equal before the law and can freely have access to the courts to ventilate a grievance. This is what SDG 16 stands for.

Equality before the law constitutes in itself an important value. Its conception in Nigerian law, and customary law as applicable in customary courts, includes amongst other applications, equality of justice administration in the courts, equality of rights, and equality of obligations. Even in the absence of strict application of evidential rules, customary courts must apply rules of natural justice and fairness with regard to the laws. When this is done, human rights prevail and the rule of law is entrenched.

4.0 RULE OF LAW

No matter who we are or where we live, the rule of law affects us all. The concept of the rule of law made popular by Albert Venn Dicey⁵⁹ is to the effect that those entrusted with the administration of a country should administer in accordance with the established law of the land. The rule of law is the supremacy of law over every citizen and institution in a defined environment. It is the foundation for communities of justice, opportunity, and peace— a veritable platform for development, accountable government, and respect for fundamental rights and correlates to greater peace, less inequality, and more education.

According to the World Justice Project (WJP) an international organization that produces independent research and data, in order to build awareness, and stimulate action to advance the rule of law⁶⁰, the rule of law is governed by universal principles such as *accountability, just law, accessible and impartial justice* etc. These universal principles constitute a working definition of

⁵⁹. Albert Venn Dicey (February 4, 1835 – April 7, 1922) was a British jurist and constitutional law theorist who wrote *An Introduction to the Study of the Law of the Constitution (1885)*, which is considered part of the British Constitution.

the rule of law. They were developed in accordance with internationally accepted standards and norms and were tested and refined in consultation with a wide variety of experts worldwide.

a. Accountability

The government and its officials and agents are accountable under the law. In Nigeria, the Supreme Court has emphasized on many occasions the rule of law even in times of military rule⁶¹. The principles of natural justice which are a requirement of the rule of law must be respected and observed because if they are not observed, it is far more unlikely that citizens will be able to assert effectively their rights before the courts. If citizens cannot assert effectively their rights, then the rule of law will only exist on paper⁶², and SDG 16 will be mere wishful thinking.

Customary Courts are part of the judiciary which is an independent arm of the government. Customary Courts and the practice and procedure applicable in customary courts are a creation of statutes. Accordingly, enabling statutes impose accountability on the government, its officials, and as well as individual private citizens. As a result, accountability of all juristic persons is invoked by its jurisdictional limits in terms of the local population, subject matter, ethnic affinity of the people and volume of judicial work that is likely to emerge in the area, and the proximity of the customary court to the community.

b. Just Law

This principle of the rule of law presupposes that the law applicable in a locality must be *clear, publicized, and stable, and is applied evenly*. It ensures human rights as well as property, contract, and procedural rights.

The law applicable in customary courts is clear, publicized and stable, and applied evenly. In Nigeria, a custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence, and the burden of proving such custom shall lie on the person alleging its existence⁶³. In essence, the clear, publicized, and

⁶¹. See *Governor of Lagos State v. Ojukwu* [1986] 1 NWLR (pt. 18) 621; *Saidu Garba v. Federal Civil Service Commission & Anor* [1989] 1 NWLR 449; *Eleso v. Government of Ogun State & Ors* [1990] 2 NWLR (pt. 133) 420.

⁶²J. M. Elegido, *Jurisprudence*, (Ibadan: Spectrum Law Publishing, 1994) Pp. 192-193.

stable nature of the law in customary courts is predicated upon its notoriety and how frequently it has been acted upon. No wonder customary law is a set of rules and practices that has after long usage in a particular locality obtained the force of law. It is homegrown law.

But the beauty of the customary courts, as opposed to the superior courts of record, is that proceedings in customary courts are not tied to the strict application of evidential rules⁶⁴. In fact this makes more sense against the backdrop of ethnic affinity as a consideration in establishing customary courts in Nigeria and the court is presumed to know the customary law prevailing in its area of jurisdiction unless and until the contrary is shown. Order 6 Rule 2 of the River State Customary Court Rules 2011 drives home this point. It states that:

Where in any cause or matter before a Customary Court any party wishes to rely on the customary law of the area of jurisdiction of the Court, there shall be no need to prove the customary law before the Court unless the Court thinks otherwise.

Furthermore, as a just law, the customary law applicable in customary courts made provisions that ensure contractual and property rights. The jurisdiction of customary courts in Rivers State in civil causes and matters covers causes and matters in civil actions in contract and torts at Common Law and at Customary law⁶⁵ as well as causes and matters relating to inheritance upon intestacy under customary law and grant of power or authority to a person to administer the estate of an intestate under customary law⁶⁶.

For the smooth running of the provision referred to above, the JUST LAW must also make provisions for human and procedural rights. An example of a procedural and human right promoted by the customary court is that during a proceeding hearing in the customary court, the right to a fair hearing which is a human right is given utmost priority in the defendant taking a plea. At such trial, the matter or claim shall be read out by the Clerk of Court to the Defendant,

⁶⁴. Section 256, Evidence Act, 2011.

⁶⁵.Section 6 (1) and Item 6 Column 1 to the 1st Schedule of the Rivers State Customary Courts Law, No. 3 of 2014

⁶⁶.Section 6 (1) and Item 5 Column 1 to the 1st Schedule of the Rivers State Customary Courts Law, No. 3 of 2014

who shall be asked how he pleads to it, and his answer shall be recorded⁶⁷. The implementation of a just law as described herein can only be achieved through access to and impartial justice.

c. Accessible and Impartial Justice

In the promotion of the rule of law, justice must be delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

Customary courts are seen to fulfill this index in terms of qualification for its adjudicators. In Rivers State, the law provides thus:

A person shall not be qualified for appointment as a Chairman or Member of a Customary Court unless he is fit and proper; has a good knowledge of the language which is predominantly spoken in the area in which the Customary Court is situated; has sufficient knowledge of the customary laws and usages prevailing in the area of jurisdiction of that customary Court; and is not less than thirty years of age.

Where the appointment and qualification provision of the law as stated above is followed, it gives force and colour to the provision of the law to the effect that when a customary court is to be established, consideration must be given to the ethnic affinity of the people to be served⁶⁸. This reflects the makeup of the communities these adjudicators will serve. **H. A. Nnokam**⁶⁹ succinctly puts:

Being a Customary Court, it is expedient that the ethnic and cultural affinity of the people to be served by a particular court must be considered. This is more so because Nigeria as a nation is multifaceted

⁶⁷. See Order 9 Rule 1 of the Rivers State Customary Courts Rules 2011. See also Sections 16 – 29 Rivers State Customary Courts Law for practice and Procedure in Customary Courts regulating procedural rights of litigants.

⁶⁸. Section 2 (2) (b) of the Rivers State Customary Courts Law No. 3, 2014.

⁶⁹. Henry Achor Nnokam, Esq, *Practice and Procedure in Customary Courts* (Annotation of the Rivers State Customary Courts Law No. 3 2014 with Specific Reference to the Rivers State Customary Courts Rules 2011), (Port Harcourt: Hopes on Printing Press) 2020.

*when it comes to Native Laws and Customs. Rivers State being a state of diverse ethnic nationalities, is not an exception*⁷⁰.

We have earlier in this article copiously discussed access to justice. Customary laws don't just promote access to justice but those dispensing justice must do it judicially, judiciously, and timeously. In the Customary Court unlike the Superior Courts of Record, the Customary Court may dispense with the requirements as to the issuance and service of a summons or as to any steps to be taken before any cause or matter is ready for trial, and if all the necessary parties are present, may proceed forthwith to the trial of the cause or matter.⁷¹ In essence, the beauty of the Customary Court is that it is a court of record with summary jurisdiction.

The Customary Court is an institution of the judicial arm of the government. If it is not built on a strong democratic foundation the rule of law will not prevail and the court will not thrive in dispensing justice. The rule of law thrives in a society with strong independent institutions.

5.0 STRONG INSTITUTIONS

History has revealed that establishing a solid foundation for nation-building can only be achieved through strong institutions. Former United States president, Barack Obama made this clear on July 11, 2009, during a state visit to Ghana when he said ***"Africa doesn't need strongmen, it needs strong institutions,"***.

Goal number 16 of the Sustainable Development Goals has one of its cardinal focuses on "Strong Institutions". SDG 16 amongst other things aims to improve access to justice and promote effective, accountable, and inclusive institutions. Without a doubt, strong institutions are pivotal for a society to move towards sustainable prosperity and, strong institutions can birth future prosperity.

Strong institutions, in essence, legitimize and implement rules. Institutions in a democratic society are necessarily the entities that will fulfill the elements of democracy such as independence of the judiciary, separation of powers, rule of law, the entrenchment of fundamental human rights, and, ensure accountability as well as transparency of government officials. Strong institutions are essential for Africa for the actualization of SDG 16.

⁷⁰ . *ibid*, p. 4

⁷¹ . Order 3 Rule 4 of the Rivers State Customary Courts Rules 2011.

In terms of developing strong institutions, recourse should necessarily be made to an international customary law system that shares same customary ethos and values. Africans to a large extent share similar customary practices which is why the African Charter On Humans and People's Rights, 1979 (African Charter)⁷² provides that “*every individual may freely take part in the cultural life of his community*”⁷³ and “*the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State*”⁷⁴.

The African Charter left the promotion and actualization of these traditional values in the domain of State parties knowing that States are closest to the people in terms of geographical spread and proximity, but did not leave the state without guidance in terms of institutions that evenly maintain and promote these values. The Charter further provides:

State parties to the present charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedom guaranteed by the present charter.⁷⁵

By the above provision, international customary law has helped to establish a framework for the municipal legal system and provide guidance on the appropriate functioning of institutions.

Municipal customary law can provide a basis for the development of legal systems that are grounded in local traditions and customs. The effect of this in Nigeria is made manifest in constitutional provisions in enabling integral states to enact laws setting up the Customary Courts which is a grass root court grounded in local traditions and customs.

⁷². Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986). In accordance with Section 12 of the Constitution of the Federal Republic of Nigeria the African Charter became domesticated by the African Charter on Humans and Peoples' Rights (*Ratification and Enforcement*) Act, Cap A9 Laws of the Federation of Nigeria (LFN), 2004. This Act upon domestication becomes an Act of the National Assembly applicable in all States of the Federation.

⁷³. See Article 17 (2) of the African Charter.

⁷⁴. Ibid at Article 17 (3)

⁷⁵. Article 26, African Charter.

For these reasons, the laws setting up these customary courts granted them far-reaching enabling powers which strengthen them and make them strong democratic institutions that will enable them to realize SDG 16.

For starters, the customary court is part of an independent institution, the judiciary, which is regulated by its circumscribed jurisdiction as contained in extant provisions of the Constitution of the Federal Republic of Nigeria (CFRN) 1999.

Certain parameters are crystalised in identifying a strong democratic institution. These amongst others include independence in justice delivery but with checks and balances. Let us take some examples in the extant laws setting up the customary court in Rivers State.

There is immunity for the Chairmen, members, and officers of the customary courts in Rivers State. Accordingly, Section 111 (1) & (2) of the Rivers State Customary Courts Law, No. 3, 2014 provides that no Chairman or member or officer or servant of a customary court is liable to be sued for an act done or ordered to be done by them in the performance of their functions. This is very much commendable so that administrators of justice will be free and unfettered in the dispensation of justice. They will administer equal justice without fear or favour or ill will or affection. This is a veritable tool for a strong institution.

Not to be overlooked is the fact that one may frown at the word immunity for them. We should avert our minds to the fact that there are no absolutes. The immunity bestowed on them to effectively administer can only avail them in the “performance of their duties” or in the “execution of a warrant, order or process” of the court as envisaged in the aforesaid section 111 of the law.

Legally circumscribed independence exuding checks and balances is the hallmark of strong institutions. This may be administrative, civil, or criminal in nature. These are replete in the provisions of the Rivers State Customary Courts Law.

The supervisory powers over the customary courts are conferred on the Customary Court of Appeal by Section 282 of the CFRN 1999. In this instance, the Customary Court of Appeal shall inspect the records of proceedings of a customary court⁷⁶, or report an irregularity or excess of a

⁷⁶. Section 41 (a) of the Rivers State Customary Courts Law, No. 3, 2014

chairman or member of the customary court⁷⁷. The customary courts are expected to submit a list of cases filed within a quarter of the year, cases disposed of, and cases pending at the end of such quarter⁷⁸. This is to ensure quality control in the administration of justice. As rightly stated by Nnokam⁷⁹ and with which I agree,

“the essence is to evaluate the performance of the Chairmen and members. The viability of the courts are also assessed therefrom and ultimately how the course of justice is thriving in that arm of the judiciary”.

In both civil and criminal causes parties before the customary courts aggrieved of proceedings or decisions reached have the right of appeal⁸⁰. This is a constitutional right and cannot be derogated from.

Chairmen, members, officers, or servants of the customary courts who exact fees or fines in excess of those authorized or accept, demand, agree, attempt to accept or demand for themselves or another person a bribe or reward, whether in money or otherwise for doing or for forbearing to do an act which they are authorized to do in the exercise of their functions or shows favour or disfavor to a person with the intent to accept or demand a reward or willfully defaults in the performance of their duty commits an offence and is liable upon conviction to a fine or term of imprisonment or both. With these administrative, civil or criminal intended checks and balances, no one individual will be above the institution. In effect, a strong institution is maintained for the dispensing of equal and timely justice which actualizes SDG 16.

6.0 CONCLUSION

Customary courts within the Nigerian legal system contribute significantly to sustainable development goals, especially SDG 16, by overcoming barriers to access to justice and fostering strong institutions. Customary courts provide a familiar and accessible forum for resolving disputes, reducing delays, minimizing costs, simplifying legal processes, and upholding cultural traditions, making justice more attainable for individuals and communities. By embracing the

⁷⁷ . Ibid, Section 41 (b).

⁷⁸ . Ibid, Section 42 (a) (b).

⁷⁹ . Op. cit, n. 48 above.

⁸⁰ See Part 8, Sections 50 – 57 of the Rivers State Customary Courts Rules, No. 3, 2014.

principles of customary law and recognizing the importance of Customary courts, societies can enhance access to justice, promote the rule of law, and ultimately contribute to sustainable development and ensure that the legal system benefits all members of the community.

Access to justice is a fundamental principle that ensures we have equal opportunities to seek redress for violations of our legal rights. However, conventional courts often face challenges such as delays, high costs, and complex legal rules and procedures, which impede access to justice. Customary courts, on the other hand, effectively tackle these barriers. One advantage of customary courts is their deep-rooted connection to the traditions and customs of the people. Customary law, being grounded in the cultural context of the community, is more accessible and familiar to its members. Customary courts administer this law and uphold the principles of natural justice, equity, and good conscience, ensuring justice is accessible at the grassroots level. These courts simplify the legal process, minimizing delays by emphasizing amicable settlements and allowing oral motions in addition to written applications.

Customary courts provide cost-effective access to justice. They grant waivers for court fees to individuals who cannot afford them, ensuring that financial constraints do not hinder their ability to seek redress. Collective entities such as government ministries can be represented by their members or staff, eliminating the need for expensive legal practitioners. This approach ensures that indigent and low-income individuals can seek justice without financial burdens.

The purity of customary courts is their avoidance of complex legal rules and procedures. The adversarial nature of conventional courts often leads to prolonged litigation, causing injustice and denying access to justice. Customary courts prioritize simplicity and substantial justice over technicalities. The relaxed application of strict rules of evidence allows for the admission of traditional evidence, which would be considered hearsay in conventional courts. By dispensing with unnecessary formalities and focusing on the essence of the case, customary courts promote efficient and fair justice delivery.

Strong institutions are indispensable for achieving sustainable development and prosperity. They serve as the bedrock of democracy, upholding key democratic principles such as the independence of the judiciary, separation of powers, the rule of law, protection of fundamental human rights, and transparent governance. Customary courts, as grassroots institutions,

contribute to the promotion of the rule of law. They play a pivotal role in ensuring justice is dispensed judiciously, timely, and following democratic principles. For the rule of law to flourish, it is crucial to build a solid democratic foundation and establish strong, independent institutions. Customary courts, grounded in local traditions and customs, exemplify the integration of strong democratic principles. These courts possess far-reaching enabling powers, ensuring their independence within a circumscribed jurisdiction. Immunity provisions protect their members and officers, fostering an environment where justice is administered freely and impartially. This immunity, however, is confined to acts performed in performing their duties or the execution of court processes.

To further ensure accountability, supervisory powers are vested in higher-level customary courts. The existence of oversight and review mechanisms by the Customary Court of Appeal provides an administrative control mechanism to inspect records of proceedings, report irregularities or excesses, and evaluate the performance of Chairmen and Members. Additionally, the right of appeal for aggrieved parties in civil and criminal cases reinforces the principles of justice and fairness.

It is worth noting that the law regulates the establishment and operation of customary courts. The legislation governing Customary courts defines their jurisdiction, scope, composition, and procedures. It sets out the rights and obligations of litigants, compels Customary courts to operate within their territorial jurisdiction, and prescribes disciplinary actions for erring officers. By establishing a legal framework that regulates the operations of Customary courts, societies strike a balance between preserving their cultural heritage and ensuring justice is administered in a fair and accountable manner.

All in all, customary courts, with their accessibility, cost-effectiveness, simplified procedures, and adherence to cultural traditions, offer a valuable avenue for advancing access to justice and strengthening the rule of law at the grassroots level. Their integration into the legal system contributes to sustainable development by overcoming barriers to justice, upholding cultural traditions, and fostering strong institutions. By recognizing the interconnectedness of these factors and embracing their principles, societies can work towards creating a more equitable and prosperous world for all.