

PRACTICE AND PROCEDURE OF THE CUSTOMARY COURT OF APPEAL IN SOUTH-WEST NIGERIA UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

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Abstract: *The Customary Court of Appeal occupies a singular place in the judicial architecture of the six South-West states of Nigeria — Lagos, Ogun, Oyo, Osun, Ondo, and Ekiti. It stands as the apex court for matters involving the customary law of predominantly Yoruba-speaking communities, exercising appellate and supervisory jurisdiction derived from sections 280 to 284 of the Constitution of the Federal Republic of Nigeria 1999 and supplemented by a body of state enabling legislation. Despite the constitutional entrenchment of the court, its practice and procedure remain, in significant respects, unevenly developed across the six states, with some states (notably Ogun) completing the formal constitution of their court only as recently as January 2020. This article offers a systematic examination of the practice and procedure of the Customary Court of Appeal in South-West Nigeria. It traces the constitutional and legislative framework of the court, analyses the scope of its appellate and supervisory jurisdiction, examines the procedural mechanisms governing the initiation and conduct of appeals, and identifies the evidentiary rules applicable in a jurisdiction from which the Evidence Act has been formally excluded. It further considers the pathway of appeals from the Customary Court of Appeal to the Court of Appeal and the Supreme Court. The article concludes by identifying the principal challenges facing the court in the region — principally, the restrictive judicial interpretation of the phrase 'questions of customary law' and the absence of harmonised procedural rules across the Southwest states — and advances proposals for reform.*

Keywords: Customary Court of Appeal; South-West Nigeria; customary law jurisdiction; Yoruba customary law; Repugnancy doctrine

1. INTRODUCTION

Customary law is not the private concern of the communities that practice it, Obilade (1979) asserts that it is a living system of law governing the rights and duties of a very large number of Nigerians,” and its administration at the appellate level is a matter of constitutional concern. The Customary Court of Appeal in South-West Nigeria is the institutional expression of that constitutional concern. Established under section 280 of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) and given jurisdiction by section 282, it sits at the summit of the customary law court hierarchy in each of the five south-western states of Ogun, Oyo, Osun, Ondo, and Ekiti. The Court functions as the principal court for reviewing decisions of the lower customary courts on matters of Yoruba customary law (CFRN, 1999).

What makes the court distinctive is not simply its subject matter. It is the combination of constitutional entrenchment, the inapplicability of the Evidence Act in its proceedings, and the enormous social importance of the disputes it resolves. Such disputes relate to land, inheritance, chieftaincy, marriage, and family that touch the daily lives of millions. Yoruba customary law remains vigorously operative in the Southwest, governing matters that the

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received English law, for all its reach, has never fully displaced. The Customary Court of Appeal is the primary institutional mechanism through which this living body of law is subjected to systematic judicial supervision.

Yet, for a court of this standing, scholarship on its practice and procedure is surprisingly thin. Most academic attention in Nigeria has been directed at the substantive questions of customary law such as the repugnancy doctrine, the tests for establishing a custom, the intersection of customary law and constitutional rights. Little or no attention has been devoted to the mechanics of how the court actually functions. The procedural framework has changed substantially since the colonial period, and the establishment of the Ogun State Customary Court of Appeal as recently as January 2020 serves as a reminder that the institutional architecture of the Southwest's customary appeal structure is still, in some respects, being built.

2. HISTORICAL BACKGROUND: CUSTOMARY COURTS IN THE SOUTH-WEST

The administration of customary law in the Southwest has deep pre-colonial roots. Long before the British arrived, the Yoruba maintained elaborate dispute-resolution institutions centred on the lineage head, the ward chief, and ultimately the Oba, who held judicial functions as an expression of sacred political authority (Eso, 1978). Colonial administration did not so much replace these institutions as overlay them with a parallel court structure. The Native Courts Proclamation of 1906 and the subsequent Native Courts Ordinance formalised the recognition of customary courts, though always within a framework that subjected their decisions to the repugnancy doctrine first authoritatively stated by the Privy Council in *Eshugbayi Eleko v Government of Nigeria* (1932): a native tribunal must not exercise its power in a way that is repugnant to natural justice, equity and good conscience.

The post-independence constitutional settlement of 1960 and 1963 left customary courts largely to state regulation. It was the Constitution of the Federal Republic of Nigeria, 1979 that introduced the critical innovation: the constitutional entrenchment of the Customary Court of Appeal as a superior court. The CFRN, 1999 (as amended) in sections 280 to 284, carried that architecture forward with minor modifications. The effect was to elevate the Customary Court of Appeal from a creature of state statute into a constitutional institution, shielded from abolition by ordinary legislation. For the Southwest, a region whose customary law had already attracted the attention of the Privy Council in decisions such as *Oke Lanipekun Laoye v Amao Oyetunde* (1944) and *Dawodu v Danmole* (1958), this constitutionalisation was particularly significant.

Each of the Southwest states (apart from Lagos) has subsequently enacted enabling legislation to operationalise the court within their respective jurisdictions. The Customary Court Law of Oyo State traces a longer statutory lineage, having inherited significant portions of the old Western State framework. Ogun State, as noted, completed the formal constitution of its Customary Court of Appeal only in January 2020. It is one of the most recently established courts in the southwest, though the enabling legislation, the Ogun State Customary Court of Appeal Law 2011, had been on the books for nearly a decade before the court was actually constituted.

3. X-RAYING THE CONSTITUTIONAL FRAMEWORK AND STATUS OF THE CCA

Section 280(1) of the CFRN, 1999 (as amended) provides thus: there shall be for any State that requires it a Customary Court of Appeal for that State. Several features of this provision deserve notice. First, the establishment of the court is framed as a right of each state rather than an obligation. The phrase 'for any State that requires it' confers a degree of discretion, unlike the mandatory establishment of the Customary Court of Appeal of the FCT

and High Court. The practical effect is that states have moved at different paces. Second, section 280(2) prescribes the composition of the court: a President of the Customary Court of Appeal and such number of judges as may be prescribed by the state House of Assembly.

The appointment of the President of the Customary Court of Appeal is made by the Governor of the State on the recommendation of the National Judicial Council, subject to confirmation by the State House of Assembly. This tripartite process that is executive nomination, independent council recommendation, and legislative confirmation mirrors the appointment mechanism for other superior court heads in the country and reflects the broader federal design of ensuring that judicial appointments involve multiple institutional actors rather than residing entirely in one arm of government. Judges of the court are appointed by the Governor on the recommendation of the National Judicial Council. There is no express constitutional requirement of legal qualification for judges of the Customary Court of Appeal, and states have typically specified different qualification thresholds in their enabling laws.

Section 6(5)(f) of the Constitution lists the Customary Court of Appeal of a State among the courts to which section 6 relates, all of which 'shall have all the powers of a superior court of record.' This is a provision of considerable practical consequence. It means that the Customary Court of Appeal has inherent jurisdiction, that its decisions are binding on the lower customary courts in its jurisdiction, and that its records are not subject to challenge on the ground of technical defect that would apply to an inferior court. It also means that disobedience of the decision or orders of the court can constitute contempt of court in the ordinary sense.

Section 283 confers on the Customary Court of Appeal the power to make rules for regulating its own practice and procedure in the exercise of any jurisdiction conferred on it by the Constitution or any law. Section 284 supplements this by providing that, subject to state law, the President of the court may make such rules. These twin provisions are the constitutional basis for the procedural rules of each court. Their practical operation has been uneven: some states have comprehensive and relatively up-to-date rules, while others have been slower to exercise the rule-making power in ways that reflect the modern demands of the docket of the court.

4. EXPLICATING THE JURISDICTION OF THE CCA

The core grant of jurisdiction is in section 282(1): 'a Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.' Three elements of this provision call for careful analysis: the nature of the jurisdiction (appellate and supervisory), the scope of proceedings covered (civil), and the subject-matter trigger (questions of customary law).

The appellate jurisdiction is the primary function of the court in practice. Appeals reach the Customary Court of Appeal from the various grades of customary courts established by state law in each of the southwest states. The supervisory jurisdiction is a less frequently exercised but constitutionally important power, permitting the court to review the practices and procedures of the lower customary courts and to issue directions to ensure that they operate within their constitutional and statutory mandate (Aguda, 1980). The restriction to 'civil proceedings' means that the court does not exercise criminal appellate jurisdiction. Criminal matters from the lower customary courts take a different appellate pathway, typically to the Magistrates' Court or the High Court depending on the state's legislation.

The most contentious aspect of the jurisdiction of Customary Court of Appeal is the scope of 'questions of customary law'. Courts have struggled with whether this phrase covers all appeals from a customary court where any aspect of customary law is in play, or only those appeals where the specific ground of challenge involves a question of customary law (Diala, 2020). The distinction matters greatly in practice. If 'questions of customary law' is read narrowly to cover only grounds of appeal that directly raise a rule of customary law, then

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appeals which raise procedural or evidential grounds though arise from a cause governed by customary law, may fall outside the jurisdiction of the court.

The controversy was sharpened by developments in the treatment of customary law in the southwest. In *Dawodu v Danmole* (1958), the Privy Council affirmed the Yoruba customary law systems of *idi-igi* (distribution per stripes by family branches) and *ori-ojori* (distribution per capita among eligible members) as legally cognisable. Disputes about the application of these systems to specific families and estates are the daily business of the lower customary courts, and they regularly throw up grounds of appeal that involve questions about the content and application of the custom. The author's submission, consistent with the purposive argument advanced in the scholarly literature, is that the Constitution's reference to 'civil proceedings involving questions of customary law' refers to the proceedings as a whole, not merely to individual grounds of appeal, and the jurisdiction of the court should be construed accordingly.

The supervisory jurisdiction of the Customary Court of Appeal is distinct from its appellate function. It operates not through the mechanism of appeals from decided cases but through the power of the court to oversee the general administration of the lower customary courts. This includes, in principle, the power to issue orders and directions for the conduct of proceedings in those courts and to ensure compliance with procedural fairness standards derived from section 36 of the CFRN, 1999. In practice, however, the supervisory jurisdiction has been sparingly used. Most litigants seek recourse through the appeal mechanism rather than through direct supervisory applications, and the supervisory function of the court has remained largely dormant.

Section 282(2) of the Constitution provides that, for the purposes of the section, the Customary Court of Appeal 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. This is the constitutional mechanism by which state Houses of Assembly can expand the jurisdiction of the court beyond the base grant in section 282(1). Several states in the Southwest have made use of this power, conferring, for example, jurisdiction over matters arising from customary marriage registration and dissolution, inheritance disputes involving a customary law element, and in some states a form of original jurisdiction in matters of customary law practice and usage that do not arise from the lower courts.

The exercise of this power has not been without controversy. Academic opinion is divided on whether the grant of original jurisdiction by a state House of Assembly under section 282(2) is constitutional, given that section 282(1) speaks only of appellate and supervisory jurisdiction. The issue has not been squarely resolved by the Supreme Court in the Southwest context, though in *Tukur v Government of Gongola* (1989) *State* the court affirmed the general principle that the content of the jurisdiction of courts established under the Constitution is to be determined by reference to the constitutional provisions, read together with any applicable state law.

The general structure of appeal to the Customary Court of Appeal distinguishes between appeals as of right and appeals with leave. An appeal as of right lies in any civil cause or matter involving questions of customary law. For all other grounds of appeal from the lower customary courts, grounds not raising a question of customary law, an appeal lies only with the leave of either the lower court or the Customary Court of Appeal. This is the scheme that most of the enabling statutes in the southwest re-state, following the constitutional pattern.

5. COMPOSITION, APPOINTMENT, AND QUALIFICATIONS OF JUDICIAL OFFICERS

The President is the head of the Customary Court of Appeal and the individual upon whom the rule-making power under section 284 primarily rests. In the Southwest states, the

Presidents have typically been lawyers with backgrounds in private practice or the state judiciary rather than specialists in customary law studies as an academic discipline. The practical knowledge of Yoruba customary law that the court requires is supplemented by the composition of the bench as a whole, the inclusion of legal practitioners with community roots, and the power of court to receive expert evidence on customary practice when the question is in genuine dispute.

The enabling legislation of each southwest state specifies qualifications for appointment as a judge of the court. The typical threshold is ten years' post-call experience as a legal practitioner, though some states supplement the legal qualification requirement with a requirement of knowledge or experience of the customary law of the relevant communities. The Ogun State Customary Court of Appeal Law 2011 is in this mould: it requires legal practitioners of standing but also contemplates the role of the court in drawing on expert testimony where particular customary rules are genuinely disputed.

The court typically sits as a panel of three judges (including the President or a judge presiding in the President's absence) for the determination of appeals. A quorum of three is the standard practice in the Southwest courts. Where the court sits for administrative or ancillary purposes for instance to consider applications for extension of time to appeal or applications for leave to appeal a single judge may, under the rules of some states, deal with such matters in chambers.

The practice and procedure of the Customary Court of Appeal in the Southwest is governed by three layers of rules. First, and supreme, are the provisions of the CFRN, 1999 (as amended) itself, particularly sections 280 to 284 and section 36 (the right to a fair hearing). Second are the enabling state statutes: in Ogun State, the Customary Court of Appeal Law 2011 in Oyo State, the Customary Court Law (Cap 39, Laws of Oyo State 2000). Third are the procedural rules made by the President of the court under section 284 of the Constitution.

Crucially, and in contrast to the practice in the High Courts, the Evidence Act does not apply to proceedings before the Customary Court of Appeal or the lower customary courts in civil causes or matters. Section 1 of the Evidence (Amendment) Decree No 61 of 1991 formally excluded the Evidence Act from these proceedings, a position now reflected in section 42 of the Evidence Act 2011. This exclusion is of profound practical importance: it means that the formal rules of admissibility that govern High Court proceedings relating to hearsay, opinion evidence, and documentary evidence among others do not bind the Customary Court of Appeal when it is hearing civil appeals.

The consequence is that the court applies a more flexible, contextualised standard of relevance and probative weight, particularly in relation to evidence of customary practice (Evidence Act, 2011). Proof of customary law in the Southwest has historically been achieved through the evidence of knowledgeable witnesses from the community (elders, chiefs, or persons with demonstrated familiarity with the custom), through judicial notice, and in recent decades through expert testimony. As the Supreme Court observed in *Oyewumi v Ogunsesan* (1990), the court can take judicial notice of a well-known Yoruba customary rule without requiring formal proof, though disputed customs must be established through evidence.

An appeal to the Customary Court of Appeal in the Southwest states is initiated by the filing of a notice of appeal. The notice must identify the decision being appealed, state the grounds of appeal, and specify the relief sought on appeal. Most of the state rules impose a time limit for filing: the typical window is 30 days from the date of the decision complained of, extendable by the court on application showing good cause. Some states, notably Ogun allow a longer period of up to 90 days where the appellant can demonstrate that he was unaware of the decision or was prevented from filing by circumstances beyond his control.

A ground of appeal that does not identify a specific question of customary law as being in issue will not, by itself, deprive the court of jurisdiction if the civil proceedings as a whole

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involve such questions. However, prudent counsel will ensure that the grounds are so framed as to make the customary law issue explicit, in order to bring the appeal clearly within the jurisdiction of the court and to avoid the risk of a jurisdictional challenge at a preliminary stage.

Once a notice of appeal is filed and accepted, the lower customary court prepares the record of appeal, comprising: the originating process (complaint or claim); all processes filed in the lower court; the notes of oral evidence taken in the proceedings (often recorded in Yoruba or in a mixture of Yoruba and English, depending on the court and the state); any exhibits tendered in evidence; the ruling or decision appealed against; and any interlocutory rulings that are the subject of a ground of appeal. The record is transmitted to the Customary Court of Appeal Registry and copies are served on the parties. The quality and completeness of records transmitted from the lower customary courts has historically been an area of concern, and some states have addressed this through rules requiring the lower courts to maintain standardised records.

Following the compilation and transmission of the record, the parties are required, in most of the Southwest states, to file written briefs of argument. The appellant files first (appellant's brief), setting out the issues for determination and the arguments in support of each ground of appeal. The respondent then files a respondent's brief. In appropriate cases, the appellant may file a reply brief limited to matters raised in the respondent's brief. The practice of filing briefs has become standard in the Southwest CCA courts, mirroring the practice of the Court of Appeal and the Supreme Court, and it serves the important function of focusing the issues before the court and reducing the consumption of court time in oral argument.

The language of briefs and proceedings presents a practical consideration peculiar to the South-West context. Where the evidence from the lower court was taken in Yoruba, the brief must grapple with the translation of testimony and exhibits into the English that the Customary Court of Appeal uses for its formal proceedings. Translation disputes are not uncommon, and the practice of court (consistent with the exclusion of the Evidence Act) is to receive the best available translation, test its accuracy if challenged by the other party, and proceed on that basis.

At the Customary Court of Appeal level, the principal evidentiary question concerns the finding of customary law made by the lower court. The Customary Court of Appeal, sitting as an appellate body, does not ordinarily hear fresh evidence; it reviews the record of the lower court. In reviewing customary law findings, however, the court applies a more flexible standard than the typical appellate deference to findings of fact, because the existence and content of a customary rule is at least in principle a question of law as much as one of fact (Ebo, 2015).

Three methods of proving customary law are recognised in the Southwest's customary court jurisprudence. The first is judicial notice, available for customs that are well-known, widely practised, and not in genuine dispute. The Supreme Court in *Agbai v Okogbue* (1991) confirmed that courts can and should take judicial notice of notorious customary rules without requiring formal proof. The second is the testimony of witnesses knowledgeable in the custom typically elders or community leaders. The third is expert evidence, which has grown in use as the courts have become more sophisticated. Each method has advantages and limitations, and competent counsel before the Customary Court of Appeal will typically combine them when a customary rule is genuinely in issue.

At the hearing, the parties or their legal representatives present oral argument on the briefs. The court may ask questions of counsel and may, in appropriate circumstances, seek clarification on questions of customary practice from assessors knowledgeable in the relevant custom. The use of assessors is more common at the lower customary court level, but the Customary Court of Appeal in the Southwest has historically availed itself of this resource in contested cases involving obscure or disputed customary rules (Owasanoye, 1995).

On the determination of an appeal, the Customary Court of Appeal has the same powers as the court below and may affirm, vary, or set aside the judgment appealed against. It may substitute a different decision, may remit the case to the lower court for re-hearing with appropriate directions, or may make such order as the justice of the case requires. Where the court reverses the lower court's finding on a question of customary law, it may substitute its own finding on the customary rule and apply it to the facts as found by the lower court. The court's judgment must be in writing and is binding on the lower customary courts within its territorial jurisdiction.

Legal practitioners are entitled to appear before the Customary Court of Appeal in the Southwest states. This distinguishes the CCA from some of the lower customary courts, before which parties may be required or expected to appear in person, and where representation by legal practitioners is not always routine (Osun State Customary Court of Appeal (Establishment) Law, 2006). The involvement of trained legal practitioners at the CCA level has been one of the factors driving the professionalisation of the procedural culture of the court, including the adoption of the brief-filing practice and the increasing sophistication of the arguments made on questions of customary law.

Beyond the main appeal process, a range of interlocutory applications may come before the Customary Court of Appeal in the course of proceedings. The most commonly encountered are: applications for extension of time to file a notice of appeal; applications for stay of execution of the judgment of the lower court pending the outcome of the appeal; applications for leave to appeal on grounds other than questions of customary law (where such leave is required); applications to strike out an appeal for want of prosecution; and, occasionally, applications for injunctive relief ancillary to an appeal (Ekiti State Customary Court of Appeal Rules, 2023).

Applications for stay of execution occupy a particular prominence in the Southwest CCA context. Many of the disputes that reach the CCA such as land disputes, inheritance disputes, chieftaincy contests have immediate practical consequences for possession, income, or status. The losing party at the lower court level will frequently seek a stay of execution while pursuing an appeal, particularly in land matters where the prevailing party might otherwise take possession before the appeal is determined. The court applies the established principles: the applicant must demonstrate that the appeal is arguable, that irreparable harm would result if a stay is refused, and that the balance of convenience favours a stay. It does not follow automatically from the mere filing of an appeal (Oyo State Customary Court of Appeal Rules, 2025).

The court also deals with applications to set aside *ex parte* orders and to regularise procedural irregularities. Given the informality that can attend to the proceedings of the lower customary courts particularly in rural areas where parties may have appeared without legal representation and records may be incomplete, interlocutory applications to correct the record or to supplement it with material that the lower court failed to document are not uncommon. The inherent jurisdiction of the Customary Court of Appeal as a superior court of record gives it broad power to make such orders as are necessary to ensure that the case before it is properly constituted (Ondo State Customary Court of Appeal Rules, 2014). The question of costs in the Customary Court of Appeal follows the general principle that costs are in the discretion of the court. The enabling legislation of the Southwest states typically gives the court power to award costs and to tax such costs. In practice, costs awards in the CCA tend to be modest reflecting the generally lower economic resources of the litigants compared to those appearing before the High Court or the Court of Appeal and the court is alert to the risk that a harsh costs order against an unsuccessful appellant would chill the willingness of customary law litigants to exercise their constitutional right of appeal. Where a party has behaved unreasonably in the conduct of the appeal for example, by raising groundless jurisdictional objections or by failing

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to file a brief within time without adequate excuse the court will reflect that conduct in its costs order.

The Customary Court of Appeal, as a superior court of record, has the full range of enforcement powers available to such courts. Its orders may be enforced through the sheriff and civil process system applicable in each state. Where a judgment of the court affirms or substitutes a monetary award, enforcement follows the machinery available under the state's civil procedure rules, including attachment of property and garnishment of debts. Where the judgment concerns land as is frequently the case in Southwest customary law disputes, enforcement may involve the execution of a warrant of possession.

Contempt of court is available as an enforcement tool where a party wilfully disobeys an order of the Customary Court of Appeal. The court has committed parties to prison for contempt in appropriate cases, and this power though sparingly used is an essential element of the effectiveness of the court as a final appellate forum within the customary court hierarchy. Its availability distinguishes the Customary Court of Appeal from the lower customary courts, which do not have the full contempt jurisdiction of a superior court of record.

Section 240 of the CFRN, 1999 (as amended) confers on the Court of Appeal exclusive appellate jurisdiction to hear and determine appeals from the decisions of the Customary Court of Appeal of a State. This means that the Court of Appeal, sitting in the appropriate judicial division, is the second tier of appeal from the customary court system in the Southwest. The Court of Appeal then speaks to the Supreme Court under section 233 of the Constitution.

The procedure for appeals from the Customary Court of Appeal to the Court of Appeal follows the (Court of Appeal Rules 2021). A notice of appeal must be filed within 30 days of the date of the decision of the Customary Court of Appeal in civil matters. Parties are required to file and exchange briefs of argument. The Court of Appeal hears the appeal on the briefs and any oral argument. In reviewing decisions of the Customary Court of Appeal, the Court of Appeal treats questions of customary law as questions of law rather than of fact which means that the Court of Appeal will not simply defer to the finding of CCA on what a customary rule provides, but will apply its own independent judgment (*Akintunde v Adisa*, 2003).

The Supreme Court has articulated this approach in a number of decisions. In *Lokoyi v Olojo* (1983) the court reaffirmed the principle that concurrent findings of lower courts on questions of fact will ordinarily not be disturbed, but that questions of the content and existence of a customary rule are reviewable by the appellate courts on the law. For the Southwest, this principle has significant implications: a contested finding by the Customary Court of Appeal that a particular Yoruba custom does or does not exist, or does or does not apply in a particular context, is open to challenge in both the Court of Appeal and, ultimately, the Supreme Court.

6. CHALLENGES CONFRONTING THE CCA

This section examined statutory and administrative challenges confronting the effectiveness and efficiency of the Customary Court of Appeal which serves as a precursor to proffering solutions.

The most persistent challenge to the effective functioning of the Customary Court of Appeal in the Southwest is the restrictive judicial interpretation of the jurisdiction-triggering phrase in section 282(1). Some courts have read 'questions of customary law' narrowly as confined to grounds of appeal that expressly raise a rule of customary law rather than purposively, as covering all civil proceedings in which customary law questions are in play. The effect of the narrow reading is to divert appeals from the Customary Court of Appeal to the High Court, where the formal rules of evidence apply, and where customary law is typically treated as a question of fact to be proved rather than a body of law to be applied.

This interpretive tension has real consequences for litigants in the Southwest. Land disputes, succession disputes, and chieftaincy disputes all of them central concerns of Yoruba customary law frequently involve mixed grounds of appeal. The ground that directly challenges a customary rule may sit alongside a ground that challenges, for example, the evaluation of the evidence by the lower court or its procedural conduct. Under the narrow reading, the latter ground would fall outside the jurisdiction of the CCA and would need to be appealed separately to the High Court a fragmentation of proceedings that is neither efficient nor consistent with the spirit and purpose of the constitution of providing a single apex court for customary law matters (*Mojekwu v Mojekwu*, 1997).

A second and related challenge is the lack of procedural harmonisation across the six Southwest states. Each state has its own enabling legislation and its own court rules, and there are significant variations in the time limits for filing notices of appeal, the requirements for the record of appeal, the format and length of briefs, the procedure for interlocutory applications, and the grounds on which extension of time will be granted. This variation creates practical difficulties for litigants and practitioners who deal with matters touching multiple states, and it produces different outcomes in formally similar procedural situations.

The absence of uniform rules also complicates academic and professional education on the practice of the CCA in the region. A law student or young practitioner learning customary court procedure in Ibadan (Oyo State) is learning a slightly different system from one learning in Abeokuta (Ogun State) or in Ekiti. While some variation is inevitable in a federal system, the level of fragmentation in the Southwest is greater than the constitutional design requires, and it reflects the absence of a coordinating body such as a Southwest Customary Law Committee or a joint rules committee that might rationalise the differences (Bamgbola, 2022).

A third challenge concerns the intersection of customary law and constitutional rights. The CFRN, 1999 (as amended) anti-discrimination provision in section 42 has been used by the appellate courts to strike down customary rules that discriminate on grounds of sex or ethnic origin. The Supreme Court's decisions in *Mojekwu v Iwuchukwu* (2004) and *Ukeje v Ukeje* (2014) have, in different ways, signalled that discriminatory customary inheritance rules will not survive constitutional scrutiny. The Customary Court of Appeal in the Southwest sits at the point where these constitutional questions first arise in the customary court hierarchy, and it has not always been well-equipped by training, resources, or decisional culture to apply the constitutional dimension of the repugnancy analysis with the rigour that the cases require.

The constitutional critique of customary law is in tension with another value: the preservation of the living law of communities that have practised these customs across generations. The Customary Court of Appeal is uniquely placed to hold this tension in balance more so than the High Court, which approaches customary law as a guest in an English-law house, and more so than the lower customary courts, which sometimes lack the analytical tools to apply constitutional standards. Getting this balance right requires not only the correct reading of the cases but ongoing judicial training and, where necessary, clear legislative guidance (Niki Tobi, 1996).

Finally, there are access-to-justice concerns. The Customary Court of Appeal in several Southwest states sits in a single location typically the state capital which means that litigants from remote areas face substantial costs of travel and time. The lower customary courts, by contrast, are distributed across the local government areas. The procedural requirement of filing a formal written notice of appeal and brief of argument disadvantages litigants who lack legal representation, and legal aid for proceedings before the CCA is limited. These structural barriers are not unique to the CCA, but they bear particularly on the communities the court is designed to serve, which often include those with limited access to formal legal services.

7. CONCLUSION AND RECOMMENDATIONS

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First, the southwest states should collaborate, under the auspices of the Council of State or a regional body, to harmonise the procedural rules of their respective Customary Courts of Appeal. A model set of rules broadly patterned on the Court of Appeal Rules but adapted to the specific needs and culture of customary law practice would reduce the fragmentation identified in Part 8.2 and make the court more accessible to practitioners and litigants across the region.

Second, the courts, guided by the principle of purposive constitutional interpretation, should adopt the broad reading of 'questions of customary law' in section 282(1). A civil proceeding before the lower customary court is, by definition, a proceeding involving customary law if its subject matter is one that customary law governs. The Customary Court of Appeal's appellate jurisdiction should track that subject matter, not merely those grounds of appeal that expressly invoke a rule of customary law.

Third, the National Judicial Council, in partnership with the law schools of the Southwest, should develop a continuing judicial education programme specifically focused on the Customary Court of Appeal covering Yoruba customary law, the repugnancy and unconstitutionality doctrines, the constitutional rights dimension of customary law, and the procedural rules of the court. The calibre of decision-making at this level will directly determine whether the court discharges its constitutional mandate.

Fourth, the states that have not yet established their Customary Courts of Appeal should do so without further delay. Section 280 of the Constitution does not impose a fixed timetable, but the constitutional purpose of the provision is clear: there should be a specialist court at the apex of the customary law hierarchy in each state that requires it. Prolonged delay leaves a structural gap that other courts principally the State High Courts fill imperfectly.

The Customary Court of Appeal in South-West Nigeria is a court whose importance far exceeds the attention it has received in legal scholarship. Millions of Yoruba-speaking Nigerians depend on the customary law system for the resolution of their most intimate disputes over land, family, inheritance, and community standing. The Customary Court of Appeal is the institution that gives that system judicial discipline and constitutional grounding. Making it work, in practice as much as in principle, is a task that deserves sustained attention from legislators, judicial officers, and academic lawyers alike.

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