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Pluralismo Jurídico na Nigéria: limites às migrações internas e à integração nacional.

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Área de Concentração: Desenvolvimento no Estado Democrático de Direito

Orientadora: Prof.ª Dra.ª Cynthia Soares Carneiro

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DEDICATION

I dedicate this thesis to my darlings Olakunle, Iteoluwakiisi and Pipennuoluwakiiba, in gratitude for your all-round support and understanding.

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My sincere gratitude goes to my supervisor Cynthia Soares Carneiro, for your love and directions in the course of this research, and for teaching me through your actions that research can be a perfect blend of fun, passion and hard work.

EPIGRAPH

Fear has been a constant in every tension and confrontation in political Nigeria. Not the physical fear of violence, not the spiritual fear of retribution, but the psychological fear of discrimination, of domination. It is the fear of not getting one's fair share, one's dessert.

(Kirk Greene, 1975, 19).

ABSTRACT

JAIYESIMI, Bukola Ifeoluwa**. Legal Pluralism in Nigeria: limits to internal migration and national integration.** 2019**.** Dissertation (Master). Faculdade de Direito de Ribeirão Preto, Universidade de São Paulo, Ribeirão Preto, 2019.

Legal Pluralism in Nigeria is traceable to her colonial history, when the British colonizers through a system of indirect rule maintained the independence of the customary legal systems that existed in the various regions occupying the geographical location now known as Nigeria. To serve a supervisory role over the native legal systems, the English legal system was also introduced into the Nigerian legal system. Thus, even during the colonial period legal pluralism became permanently woven into the Nigerian legal system. In the post-colonial period, the scope was expanded to include not only the customary legal systems, but also some parts of the English legal system that were ratified, and also the new Nigerian Constitution. The coexistence of these legal systems raises the issue of conflict of laws. These conflicts of laws have effects on Nigerian institutions, but graver is its impact on the internal migrants. The objective of this study therefrom is an analysis of the implications of legal pluralism on the internal migrant in Nigeria, for the purpose of identifying the limitations it poses to development in a Democratic State of Law. Subsequently, reforms and recommendations are made based on this situation, opting for the strategy of integration of coexisting legal systems. To achieve this, a bibliographic study is undertaken in analyzing the effect of the conflict of laws on the internal migrant in the areas of Succession, Marriage, and Education. After establishing the existence of discrimination and unequal treatment and pointing out that they were limits to internal migration and national integration in the face of legal pluralism, recommendations from authors on the solutions to the problems arising from legal pluralism are analyzed giving their applicability to the current situation, discussing precisely the need for reforms to enable compliance with the constitutional provisions on national integration.

Keywords: Legal Pluralism; Conflict of Laws; Internal Migration; Inequality; Integration.

RESUMO

JAIYESIMI, Bukola Ifeoluwa. **Pluralismo Jurídico na Nigéria: limites às migrações internas e à integração nacional.** 2019. Dissertação (Mestrado). Faculdade de Direito de Ribeirão Preto, Universidade de São Paulo, Ribeirão Preto, 2019.

O pluralismo jurídico na Nigéria remonta à sua história colonial, quando os colonizadores britânicos, através de um sistema de regras indiretas, mantiveram a independência dos sistemas legais costumeiros existentes nas várias regiões que hoje correspondem à localização geográfica do país conhecido como Nigéria. Para desempenhar um papel de supervisão nos sistemas jurídicos locais e costumeiros, o sistema jurídico inglês também foi introduzido no sistema jurídico nigeriano. Assim, mesmo durante o período colonial, o pluralismo jurídico tornou-se permanentemente incorporado ao sistema jurídico nigeriano. No período pós-colonial o escopo foi ampliado para incluir não apenas os sistemas legais consuetudinários, algumas partes do sistema jurídico inglês que foram ratificadas e, inclusive, a nova legislação nigeriana. A coexistência desses sistemas legais levantou a questão relativa ao conflito de leis e suas consequências. Esses conflitos de leis têm efeitos sobre as instituições jurídicas, mas mais grave é o impacto sobre os migrantes internos. O objetivo deste estudo é analisar as implicações do pluralismo jurídico no migrante interno na Nigéria, com o objetivo de identificar as limitações ao desenvolvimento de um Estado Democrático de Direito. Ao final, são feitas recomendações de reforma tendo como base esta situação, optando pela integração dos sistemas jurídicos coexistentes. Para isso, foi realizado um estudo bibliográfico para determinar o efeito do conflito de leis sobre o migrante interno nas áreas de Sucessão, Casamento e Educação. Após identificar a existência de discriminação e tratamento desigual, portanto, os limites à mobilidade interna e integração nacional em face ao pluralismo jurídico, foram analisadas recomendações de autores para solução dos problemas daí decorrentes para sua aplicabilidade à situação atual. A necessidade de reforma visa, justamente, cumprir disposições constitucionais relativas à integração nacional.

Palavras-chave: Pluralismo Jurídico; Conflito de Leis; Migração Interna; Desigualdade; Integração.

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INTRODUCTION

In this study, we analyze legal pluralism in Nigeria to understand its effects on national integration and consolidation of a democratic rule of law in Nigeria.

The study begins with the formulation of an initial question: does legal pluralism in Nigeria have an effect on the internal migrant?

From this problem we formulate our goals: analyzing the implications of legal pluralism on the internal migrant in Nigeria, for the purpose of identifying the limitations that it poses to the integration of citizens in the Democratic State of Law, and subsequently, suggesting some recommendations and reforms towards the successful integration of the diverse Nigerian legal systems.

Here we present a summary of what is done and will be presented as a result of this research.

Nigeria is famously called the giant of Africa and there is no mistake in this affirmation as it is the most populous country in the whole of Africa. However, her greatness and diversity seem to also be a source of her many problems, and one of them is the fact that there are diverse legal systems in the country. This aspect results in legal pluralism that makes for conflicts of laws, especially in some fields of Private and Public Law that have a negative effect on the internal migrant in Nigeria.

To achieve all-round development in the Democratic State of Law, it is expected that every situation of discrimination and inequality be tackled, especially where such involves internal migrants who are key participants in the development of a nation. Therefore, this work hypothesizes that legal pluralism has a substantial negative impact on internal migrants in Nigeria and there is a need to address this because of the importance of internal migration to development and integration in a democratic state.

There exists wealth research by foreign and local authors on the subject of legal pluralism and its effect in Nigeria and Africa as a whole. There are authors forming a link

between migration and legal pluralism in the fields of Sociology, Geography, History and Anthropology. However, studies proffering solution or recommendation to this problem, particularly considering legal pluralism as a direct limitation to migration are scarce. This work proposes Nigerian tailored strategies and reforms towards the alleviation of the negative effect of legal pluralism on the internal migrant.

In line with the Master Program research area, Development in the Democratic State of Law, it is noted that the effect of legal pluralism on the internal migrant in Nigeria cuts across the social, cultural and economic thread of its development. Hence there is a need to address any form of inequality or discrimination that may affect directly the internal migrant and indirectly internal migration that we consider important to the development of Nigeria in its entirety.

Legal pluralism is the coexistence of more than one legal system within a specific area. This often arises as a result of social diversity. At this point, We believe it is important to highlight that prior to colonization, the geographic region now regarded as Nigeria, consisted of diverse independent communities, it was during colonization that these regions were integrated, and were given the collective name Nigeria by a British journalist named Flora Shaw, who eventually married Lord Lugard; the British colonial administrator in Nigeria. Hence, legal pluralism in Nigeria dates back to the pre-colonial era, when there existed independent communities with established legal systems. In the North, there was an established system of Islamic law, while in other parts of the country there were established customary law systems.

Colonialism witnessed the emergence of another legal system; the English legal system of the British colonizers. The colonial authorities inserted themselves in the target colonies where they established the colonizers' state legal system as the colonies' state laws. Post colonialism, the Nigerian constitution was enacted to ratify, unify, repudiate, validate, amend and integrate all existing legal systems. Some customary laws of the pre-colonial era are still in force in Nigeria, alongside the Nigerian Constitution and the received English law, thereby making legal pluralism an intricate part of the Nigerian Legal System. This analysis of the Nigerian legal system will be developed in chapter one which is titled the Nigerian Legal System, this chapter expatiates the sources of laws in Nigeria, stating their significance

and hierarchy in the Nigerian legal system. The chapter also emphasizes that each of the legal systems from which these laws emanate enjoy relative independence but that the Nigerian constitution is supreme and any law from any of the other legal systems that contradicts any provision of the constitution shall be declared null and void to the extent of its inconsistency.

The peculiarity of each legal system determines its coexistence with others in a legally plural environment. This implies therefore that legal pluralism and its effects could vary in form, and structure, based on established standards of the relationship amongst the legal systems. Hence in the analysis of legal pluralism and its effects on the national integration of its citizens in a democratic state, it is important to this study that legal systems be understood based their relationship with other legal systems. For this purpose we use the studies of SWENSON (2018) that identifies four archetypes of legal pluralism, this serves as a framework in discussing legal pluralism in Nigeria. The choice of this framework helps us to understand legal pluralism based on the relationship that exists among the legal systems, first by classifying them as state and non-state legal systems, and then, as theoretic archetypes identified as the combative, competitive, cooperative, and complementary legal pluralism. This analysis is undertaken in the second chapter of this study. The second chapter is titled Legal Pluralism in Nigeria, it starts by attempting a definition of legal pluralism, to achieve this, definitions from renowned authors in the field of legal pluralism are analyzed. The study then points out that the difficulty encountered in defining law has an indirect impact on defining legal pluralism. An Authors definition of legal pluralism is however adopted, with reasons given for such adoption. Within the framework of the archetypes of legal pluralism offered by SWENSON (2018), this work uses its adopted definition of legal pluralism to identify instances of legal pluralism in Nigeria.

Legal pluralism in the Democratic State of Law results in a conflict of laws situation where the decision has to be made on which of the legal systems applies to the matter at hand. establishing the importance of internal migration and that a triad relationship exists between legal pluralism, conflict of laws and population mobility, it becomes important to analyze the effect of legal pluralism and the resulting conflict of laws on the internal migrant in Nigeria. This is undertaken in the third chapter, which is titled Internal Conflict of Laws and the Internal Migrant. This chapter begins by establishing that with the pluralism of laws

in Nigeria, issues of conflict of laws arise, the courts have to decide which of the laws to apply to a case. The chapter goes on to establish that there exists an interrelationship between migration, legal pluralism and conflict of laws, stating specifically that there are cause and effect relationships between them. Subsequently, the effects of legal pluralism on the internal migrant are analyzed in the fields of; Private Law, especially in succession and marriage matters, and in Public Law, specifically education. The choice of these fields is intended to emphasize that the effects of legal pluralism on the internal migrant are not restricted to a particular field of law. In each of the chosen fields, case laws and constitutional provisions are analyzed, this enables us to conclude that owing to the conflict of laws that arises from legal pluralism in Nigeria, acts of discrimination and inequality against the internal migrant emanate. The chapter concludes by stating that the role of the internal migrant in a Democratic State of Law is an important one and to alleviate the negative effects of legal pluralism on the internal migrant, the plural national laws should be amalgamated.

The fourth chapter, titled Strategies for Amalgamating National Laws, begins by suggesting that the amalgamation of the legal systems is germane to avoid this problem of legal pluralism i.e. the resultant discrimination and inequality against the internal migrant. The strategies of unification and integration towards the amalgamation of the national laws are then analyzed given their applicability to the situations at hand. In analyzing these strategies for the amalgamation of plural laws, we state their problems and effectiveness and then agree that integration is a better strategy than unification. We then point out that integration of Nigerian citizens is a prerequisite for the integration of the Nigerian legal system. Finally, the Nigerian law on integration is analyzed and a lack of implementation and inability of the judiciary to implement the integration objectives stipulated in the Nigerian Constitution is pointed out as a key factor inhibiting successful integration of the legal systems in Nigeria. This chapter then concludes by emphasizing the need for strategies and reforms towards the integration of the people and the legal systems in Nigeria.

The conclusion part of this study gives an overall summary of the results, implementation strategy and reforms towards the attainment of legal integration in the Democratic State of Nigeria and final considerations and recommendations are made.

Following two years of research and reflection, it is our observation that it would take more time to overcome the legal challenges that the issue raises: the legal obstacles to internal migration in Nigeria and the consolidation of national integration, in line with the provisions of the current Nigerian Constitution.

To arrive at these results an interdisciplinary bibliography study on legal pluralism is carried out using primary and secondary legal sources. The primary sources used includes; statutes and decided cases. The secondary sources used include; reviews on decided cases, scholarly articles and seminar papers, completed project works, newspaper excerpts, textbooks on law, judicial opinions of jurists, journals, excerpts from website and internet sources, and statistics conducted by writers.

Conducting this study in Brazil, raises an initial problem of having access to primary materials on legal pluralism and conflict of laws in Nigeria, however, in the absence of these materials recourse is had to authors from different countries and their frameworks and definition are then applied in the Nigerian context. This broadens the scope of this study by providing an international outlook to this study on Nigeria. Noting however the importance of primary Nigerian texts on this study, a lot of references are made to Nigerian case laws and articles of Nigerian authors that are available on the internet. Additionally, indirect references from articles are made of works of key Nigerian authors which we have no ready access to.

It is my desire that in addition to contributing in the field of knowledge on legal pluralism, this work will also be a guide to policymakers on the effects, strategies, and reforms that can be undertaken in the amelioration of discrimination and inequality against the internal migrant in Nigeria particularly and in the world as a whole.

CHAPTER 1

1. THE NIGERIAN LEGAL SYSTEM

Nigeria is a Constitutional republic situated in West Africa, with a population of about 199,095,088, (WORLDOMETER, 2017) because of this she is popularly regarded as the giant of Africa. She boasts of about 526 individual languages (ETHNOLOGUE, 2018), 3 of which are spoken by more than half of the Nigerian population. Nigeria has her origin from the amalgamation of people with diverse indigenous languages, traditions and cultures, historical past and social frameworks (FALOLA; HEATON, 2008). This diversity of culture, religion and ethnicity has had a significant impact on the nature and sources of the Nigerian legal system. The sources of law in the Nigerian legal system include the received English law, The Nigerian Constitution, legislation, judicial precedents, customary laws and also Islamic law (MWALIMU, 2005).

For a better understanding of the Nigerian legal system a brief introduction into each of the sources of law mentioned above shall be given.

1.1 The received English law

A part of Nigerians legal system originates from its colonial history, dating as far back as 1861; the English law became a vital source of the Nigerian legal system (NWABUEZE, 2002). Following the attainment of independence in 1960, Nigeria was no longer obliged to apply the English law; however, she decided to inherit the English legal system that operated during colonialism, and this system has remained mainly unaltered, or

slightly modified. The received English law[1] is still in use in Nigeria today, except in specific situations where such laws have been expressly repealed or substituted by domestic law.

This can be deducted from the provisions of Section 32(1) (Interpretation Act, 1990) which provides:

> Subject to the provisions of this section and except in so far as other provision is made by any Federal law, the Common Law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria.

This section implies that in the absence of a Federal law repealing any provisions of the received English law, such English law - that relate to matters contained in the exclusive legislative list[2]- shall continue to be in force in Nigeria. In the case of *Ibidapo v. Lufthansa Airlines*[3], the issue in question was if the provisions of Article 29(1) of the First Annex to the First Schedule to the Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953[4] were still binding in Nigeria following the country's independence in 1960. The said article required that an action for damages against an airline be instituted within two years of the event giving rise to the action, WALI said:

> (...) from 1960 to date, all the received English laws, multilateral and bilateral agreements concluded and extended to Nigeria, unless expressly repealed or declared invalid by a Court of law or tribunal established by law, remain in force subject to the provisions of Section 274(1) of the 1979 Constitution[5]… I have not been able to find any legislation that repealed the 1953 Order or any Court decision that has declared it illegal, irrelevant or obsolete. An important international convention like the Warsaw Convention cannot be said to be impliedly repealed (...) Nigeria shall continue to adhere to, respect and enforce both the multilateral

[1] In Nigeria, the received English law is a collective name used for the common law of England, doctrines of equity and the statutes of general application.
[2] The exclusive legislative list as shall be discussed in details later in this work is a list of 68 items containing both criminal and civil matters over which the federal legislative body h The exclusive legislative list as shall be discussed in details later in this work is a list of 68 items containing both criminal and civil matters over which the federal legislative body has exclusive power. Some of the matters included therein are; Taxation, Marriage under the Act, Nuclear energy.as exclusive power. Some of the matters included therein are; Taxation, Marriage under the Act, Nuclear energy.
[3] [1997] (SC 238/1994) 5
[4] Which is a received English law
[5] Now 351(1) of the 1999 Constitution (as amended)

> and bilateral agreements where their provisions are not in conflict with our fundamental law.

The received English law includes: The Common Law of England, doctrines of equity and the Statute of General Application (AMADI, 2019), that we will briefly describe below.

1.1.1 The Common Laws of England

These were developed by Judges of the old Common Law Courts of England[6]. To gain access to these courts the King's subjects who had grievances brought the same to the Chancellor, who was the king's secretary; he then sold writs, which directed the court to hear the matter. However these courts were faulted for their rigidity and bad rulings stemming from the origin of their laws, for example, the laws of these courts were arrived at from the doctrine of *Stare Decisis*[7], the implication of this was that when there were novel matters before the Court for which there were no precedents, the Courts were often at a loss on what to do. Additionally, there were stringent adherence to previously decided, hence when a decision was reached erroneously, such decision continued to be the applicable law until a court of coordinate Jurisdiction or a higher court set aside the decision (SUBRIN, 1987).

An example of the Common Laws of England[8] is the Carriage by Air (Colonies, Protectorates and Trust Territories) Order 1953[9] cited above. On its application in Nigeria, Justice WALI in *Ibidapo V. Lufthansa Airlines*[10] said:

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[6] These Courts were made up of the Common Law Court of the King's Bench, Court of Common Pleas and the Court of the Exchequer. The Courts of the King's Bench exercised supreme jurisdiction over civil and criminal matters, the Court of common pleas had jurisdiction over civil matters, while the Court of Exchequers dealt with matters of equity.

[7] The doctrine of Stare Decisis provides that a court's prior decision should be applicable to subsequent cases with the same fact. For example, if A and B were in a car accident and the issue was before a court which decided that C should be the resolution of the case, if subsequently E and F are in a similar car accident the doctrine of stare decisis posits that the natural resolution of the case should be C.

[8] Also known as the English common laws

[9] ibid

[10] ibid

> Nigeria, like any other Commonwealth country, inherited the English Common Law rules governing the municipal application of international law. The practice of our Courts on the subject matter is still in the process of being developed and the Courts will continue to apply the rules of international law provided they are found to be not overridden by clear rules of our domestic law (...)

1.1.2 The Doctrines of Equity

These started out as petitions to the Chancellor, from the subjects who felt abiding strictly to the provisions of the Common Law will result to great injustice because of the peculiarity of their cases, hence, decisions in the court of equity were based on conscience, reason and justice as opposed to common law that was only justice. This soon lead to the development of the Equity court which beyond the strict provisions of the Common Law, took into consideration the peculiarity of each situation and the intent of the parties; the Common law Court was rigid and limited in its scope while the Equity court was flexible and discretionary (SUBRIN, 1987) The Equity Courts soon developed doctrines of equity which were used to supplement the rules and procedures of the Common Law. The Judicature Act of 1873 - 1875, changed the scope of the doctrines of equity from a body of rules administered by the courts of equity to a body of rules applicable by the courts of equity and the common law courts, hence, the doctrines of equity were applied alongside the rules of Common Law. An important fact however is that equity follows the law, and is only applicable where there is a lacuna in the common law relating to an issue or where the application of such common law will result to great inequality for the party concerned.

An example of a doctrine of equity is the doctrine of specific performance. Under the common law, a contract may be terminated by the unilateral decision of either of the parties, the only remedy available to the wounded party was a payment for damages however, equity deeming such remedy inadequate, employed the doctrine of specific

performance to compel parties to a contract to abide by the terms of the contract. In *Mia Sons Ltd. v. Afrotec*[11], the court held that;

> A decree of specific performance is a form of relief that is purely equitable in origin and is one of the earliest examples of the maxim that equity acts in *personam*[12]. The fundamental rule is that specific performance will not be decreed if there is an absolute remedy at law in answer to the plaintiff's claim, that is to say, where the plaintiff would be adequately compensated by the common law remedy of damages (...). The jurisdiction in specific performance is based on the inadequacy of the remedy at law.

1.1.3 The Statute of General Application

These are laws that were enacted in England and subsequently became applicable in Nigeria during colonization. Till date, Nigeria still has some of these statutes actively in operation; examples include the Statute of Fraud Act 1884, and The Infant Relief Act 1874 to mention a few. It should be noted, however, that by the combined provision of Section 32(1) of The Interpretation Act, stated above and judicial pronouncements, some of these statutes have been annulled by subsequent Nigerian legislation. In the Nigerian case *of Nze Bernard Chigbu v Tonimas Nig. Ltd*[13], one of the issues before the Court was whether the Limitation Act of England 1623 (a statute of general application) was applicable in the present case or The Limitation Edict of Imo State, 1994 (Nigerian legislation). The Court held that under the provisions of the Nigerian legislation, the Limitation Act of England ceased to be applicable in Nigeria.

In conclusion, from the foregoing it becomes evident that the English legal system, originates from the colonial past of Nigeria, and being a feature of the past history of Nigeria, it unfortunately, has not remained in the past but has in fact been -through acts of ratification- brought into the present. The implication of this to the Democratic State of Law is that this source of law consists of rules of foreign origin governing Nigeria citizen, i.e. the

[11] 5 MWLR (Pt. 194) p.724 2000
[12] equity acts in *personam* means that equity acts on a person's intentions and conscience
[13] (2006) 4 SCNJ 262 32.

laws are not of the Nigerian citizens, Neither are they by the Nigerian citizens, hence they should not be applicable to the Nigerian citizens[14].

1.2 The Nigerian Constitution

The current Nigerian Constitution has a history that dates back to the era of colonialism. During colonialism, there were several Constitutions enacted by the then Governor Generals, who were British representatives. These Constitutions included: The Clifford's Constitution 1922, The McPherson's Constitution 1951 and Sir Lyttleton's Constitution 1954. However, in 1960 and 1963, even though the Constitution was enacted directly by The British Government, a significant difference was that Nigeria as at this time had gained independence. Some Nigerians were permitted to attend the Constitutional conferences that gave birth to these Constitutions. Nigeria, however, had her first-ever independent Constitution in 1979 were 50 Nigerians came together to draft it upon the order of the then Military Head of State, General Muritala Mohammed. Subsequently, two failed attempts to amend the Constitution were made in 1989, and 1993 before the promulgation of the present Constitution which is The 1999 Constitution of The Federal Republic of Nigeria (IKPEZE, 2010).

The promulgation of the 1999 constitution began in 1998 when the then military government of General Abubakar inaugurated a Constitution Debate Committee of 25 unelected members to prepare a report, the content of which will serve a persuasive effect in the promulgation of a national constitution. The report from this committee was contained in the Preamble of the Constitution of the Federal Republic of Nigeria (Promulgation) Decree, 1999 which stated thus:

> WHEREAS the Constitutional Debate Co-ordinating Committee benefited from the receipt of large volumes of memoranda from Nigerians at home and abroad and oral presentations at the public hearings at the debate centres throughout the country and the conclusions arrived thereat and also at various seminars, workshops

[14] Though it can be argued that the laws have been ratified by the representatives of the Nigerian citizens, however, it will be shown shortly that the constitution providing for such ratification, and the election of such representation was in fact not promulgated based on the wish of the Nigerian citizens.

> and conferences organised and was convinced that the general consensus of opinion of Nigerians is the desire to retain the provisions of the 1979 Constitution of the Federal Republic of Nigeria with some amendments.

From the report of the committee it was obvious that the desire of the Nigerian citizens was that the 1979 Constitution be retained with some amendments, however, like OGOWEWO (2000) has pointed out, the then military head of State General Abubakar single handedly repealed the 1979 Constitution in total disregard of the report of the committee, and subsequently replaced it with the 1999 Constitution[15]. Hence the current Nigerian constitution was arrived at contrary to the basic tenets of a Democratic State of Law. This constitution has however remained the State *grundnorm*. Section 1(1) (1999 Constitution) provides:

> This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.

Section 1(3) (1999 Constitution) further buttresses this point by providing;

> If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.

The supremacy of the Constitution has been addressed in several judicial cases. One of such is the case of *Attorney General of Bendel State v. A.G. Federation & 22 Others*[16], where the procedure followed in passing a bill into law was in contradiction to the one prescribed by the Constitution. The Supreme Court held that the law was null and void for failure of the National Assembly to follow the legislative procedure provided for by the Constitution. In the words of William JSC: "In my view, a legislature which operates a written Constitution in which the exercise of legislative power and its limits are clearly set out has no power to ignore the conditions of law-making that are imposed by that Constitution which itself regulates its power".

[15] It was however possible, as has been done twice with the present constitution, to make amendments to the 1979 constitution without changing, renaming or promulgating a new constitution.

[16] (1982) 3 N.C.L.R.

It is evident, the constitution of Nigeria, which is the *grundnorm* does not reflect the desires of Nigerians for a constitution. A constitution in a Democratic State of Law should be a representation of the general desire of the people.

1.3 Legislations

In Nigeria, legislations are a major source of law, they are generally divided into primary and secondary legislation.

1.3.1 Primary Legislations

These are laws made by an arm of government established to make laws. These include Federal laws, referred to as Acts which are made by the National Assembly[17] and State laws referred to as laws which are made by the State House of Assembly[18].

The National Assembly is the body charged with the responsibility to make laws for the country at the national level. It is bicameral in nature, comprising of The Senate and the House of Representatives. The Senate arm of the National Assembly, which is the upper house, has 109 members who are elected representatives, 3 from each of the 36 states in Nigeria and one from The Federal Capital Territory[19].The House of Representatives, which is the Lower House, comprises of 360 members representing constituencies[20] of nearly equal population Constitution. The laws made by the National Assembly are referred to as Acts.

At the state level, the House of Assembly is the state equivalent of the National Assembly; it is the lawmaking body of the state. Each of the states has a House of Assembly,

[17] (Section 315(1a) (1999 Constitution)
[18] 315(1b) (1999 Constitution).
[19] For the appointment of Senators who are the representatives from the state. Each state is divided into 3 senatorial districts and elections conducted in each of this district to elect a representative for the district. Section (48) (1999 Constitution).
[20] A constituency is an electoral district or area, from which persons are elected to serve as representatives of the community at the House of Representatives (Section 49) (1999 Constitution).

which comprises not less than twenty-four and not more than forty members who have been elected as representatives of their constituencies[21].

These legislative powers are exercised over matters contained in three legislative lists. Two of which are provided for by the 1999 Constitution and a third that was developed by judges in the course of judicial interpretations. These lists are the *Exclusive Legislative* List, the *Concurrent Legislative* List and the *Residual Legislative* List[22]

The *Exclusive Legislative List* is contained in Part I, Schedule 2 to the Constitution and it contains 68 items. Section 4(2) (1999, Constitution) provides:

> The National Assembly shall have the power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.

The implication of this is that only the National Assembly is vested with legislative powers on matters contained in the Exclusive Legislative List set out Part 1 of the Second Schedule to the Constitution. The reason for this is not far-fetched, the Exclusive legislative list contains, matters of national importance and for which a plurality of legislative powers on such matters will be inimical to development in the Democratic State of Law, for example, item 2 of the list provides that the national assembly shall have exclusive power in matters relating to Arms, ammunition and explosives. Imagine the chaos that will arise if each state within Nigeria has the right to legislate on this issue. Some states may decide make ammunitions, some others may decide to impose Gun control, and so many other possibilities.

In addition to the exclusive powers possessed by the National Assembly, they can also legislate on matters contained in the concurrent legislative list and on other matters which the constitution stipulates[23].

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[21] Section (91) (1999,Constitution).

[22] The source of the legislative powers of the Legislatures, both at the federal and state level, is contained in (Section 4) (1999 Constitution). Section 4(1) to 4(4) (1999 Constitution) provides for the legislative powers of the National Assembly, while section 4(6) and 4(7) provides for the legislative powers of the House of Assembly of a State.

[23] Section 4(4) (a) (b(1999, Constitution)

The *Concurrent Legislative List*, on the other hand, contains 30 items. Jurisdiction over the concurrent legislative list is however shared between the National Assembly and the State House of Assembly[24]; hence, the State House of Assembly has the power to legislate on matters not contained in the Exclusive Legislative List, matter contained in the Concurrent Legislative List set, and any other matter which the constitution stipulates[25].

The Residual List contains matters that are neither in the Exclusive Legislative List nor in the Concurrent Legislative, though there is no such Residual List listed in the Constitution, the list emanated from the judiciary in the course of interpretation.

In *Attorney General of Ogun State v Abeniagba* [26], the court held that:

> A careful perusal and proper construction of section 4 would reveal that the residual Legislative powers of Government were vested in the States. By residual Legislative powers within the context of section 4 is meant what was left after the matters in the Exclusive and Concurrent Legislative lists and those matters which the Constitution expressly empowers the Federation and the State to legislate upon have been subtracted from the totality of the inherent and unlimited powers of a sovereign Legislature. The Federation has no power to make laws on the residual matters" offering from this there it is safe to conclude that all matters in the residual list are exclusive to the state.

It is important to note here, that section 2(a) Part III of the Second Schedule to the Constitution, gives to the National Assembly additional power to make laws on matters incidental to the 68 matters they are entitled to legislate on. In *Attorney General of Ogun State v Attorney General of the Federation*[27], EJIWUNMI, said at page 408: "It is manifest from the provisions of section 2(a) Part III of the Second Schedule to the Constitution that it was enacted to expand the effect and the extent of the provisions of item 68".

It is by this provision that offences may be enacted by the National Assembly if it is shown that such offences as may be created are incidental and supplementary to matters in which the National Assembly is vested to enact laws.

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[24] The National Assembly is the legislative body at the Federal level, while the State House of Assembly is the legislative body at the state level.
[25] Section 4(7) (a)-(c) 1999 Constitution
[26] (202) Vol. 2WRN 52 p. 77
[27] (2002) 18 NWLR (Pt.798) 232

1.3.2 Secondary Legislation

These are also known as Delegated Legislation are laws made by persons or bodies to whom law-making authority has been delegated. Examples of delegated legislation include but are not limited to orders, bye-laws.

One of such is delegated authority of the Executive, though not an arm of government established to make laws, the executive sometimes makes laws in the course of exercising its duties. Section (5) (1) (b) (1999 constitution) provides for the function of the Executive. It states that its powers "shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, the power to make laws".

Stemming from this provision is a delegated authority granted to the executive to make laws in the cause of its duty. This is called the Executive Order; Executive orders are administrative instruments of used in the management of the national economy and other affairs by the President of a country (AMADI, 2018).

Equally important are bye-laws which are regulations made by the Local Government Council which is the lawmaking body at the grassroots, its members are elected representatives from their constituencies, and are empowered to make bye-laws on matters listed out in the Fourth Schedule of the (1999 constitution) (AKPOMUVIRE, 2011).

1.4 Customary Law

Customary laws are laws that have been developed from the ways and practices of a people. These laws are peculiar to a people and are a reflection of their conception of how

their everyday relationship should be governed. In the case of *Oyewumi v Ogunsesan*[28], OBASEKI (1990, p. 207) defined customary law as:

> The organic or living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static. It is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is a mirror of the culture of the people. I would say that customary law goes further and imports justice to the lives of all those subject to it.

Customary law in Nigeria predates colonialism when there were social fields with established normative orders (AFIGBO, 2005). These laws were unwritten and passed orally from generation to generation. Operating in the North was an established system of *Sharia* law, and in the other parts of the country, there were established customary law systems (YEKINI, 2012).

Colonialism, however, affected the customary laws, though these laws were admitted in part. Those that challenged British overrule were suppressed, and those that did not attain the "set the standard"[29] of humanity were abrogated. The Customary laws witnessed a gradual reform in its content and structure like changes from unwritten to written with the introduction of clerks to keep records and report proceedings, training and selection of Court officials based on their qualifications (ALLOT,1984)

Some radical changes made include:

1.4.1 Abrogation and Replacement of Indigenous Courts

The indigenous courts were abrogated and replaced with Native Courts which were established by statute (The Native Courts Proclamation. No 25, 1901). This was done to control the composition of the Courts and to regulate its procedures. With these reforms and

[28] (1990) 3 NWLR PT. 137
[29] British notion of what was good, fair and equitable; this shall be discussed in detail under the repugnancy doctrine

moderations in place, the customary laws took on the form of laws of the colonizers i.e. they were Anglicized. (ALLOT, 1984)

1.4.2 Regionalization and Court Grades

Based on the 1954 Nigeria Constitution Order in Council, Nigeria became a federation with three regions: Western Region, Eastern Region and Northern Region. In the Western and Eastern Regions, these Native Courts were called Customary Courts; while in the Northern Region they were called "The Native Courts" (YAKUBU, 2002). In the Eastern and Western Regions of Nigeria, the Customary Courts were established with warrant chiefs and Judicial officers at village and community levels (NWAGBARA, 2014)

1.4.3 Repugnancy Doctrine

During the colonial era, several customary/native laws were abrogated as they were thought to be barbaric and archaic. To pass the test of an acceptable law, it must be proven that such law did not conflict with the written colonial law and such law had to undergo the repugnancy test, which provided that the native law must not be repugnant to the principles of natural justice, equity and good conscience (OBA,2006). For example, in The case of *Mariyama v Sadiku Ejo*[30], the issue before the Court was on the interpretation of an *Igbirra* native law and custom that stipulated that if a child is born to a woman within 10 months of divorce from her husband, the child belongs to the divorced husband. In this case, Mariyama had been separated from her husband for several months. Ten months after she officially divorced him, she had a baby for her new husband. The *Igbirra* native Court awarded custody of the child to the divorced husband; however on appeal, the high Court ruled that it would be unfair for a man to reap where he did not sow; hence, the child should be returned to its biological father.

[30] (1961) WRNLR 81

In the Nigerian case of *Eshugbaye Eleko v. Government of Nigeria*[31]; where the English system of law rejected some aspects of local customary law, there was a question at the hearing as to the modification of an original customs to kill into a milder custom to banish. Lord ATKIN (1931, p. 672) said "The Court cannot itself transform a barbarous custom into a milder one. If it stands in its barbarous character, it must be rejected as repugnant to natural justice, equity and good conscience."

Another interesting case is that of *Ekpenyong Edet v Young Uyo Essien*[32], where the customary law in question here is on the custody of a child, where dowry of its mother has been paid. In this case, dowry was paid on a lady while she was a child, by both the Appellant and the Respondent. When she became an adult, however, the Respondent married her and had a child with her. The Appellant, however, claimed custody of the child because, under the customary law, he was deemed the husband of the lady until the dowry paid by him was refunded. The Court held that any customary law that gives the paternity of a child to a person other than his natural father is barbaric and repugnant to natural justice, equity and good conscience.

In conclusion, customary law in present-day Nigeria has however been modified in some areas. To be fit for the application, a customary law must now pass the validity test. It must be proven that the law:

- is not repugnant to the principles of natural justice, equity and good conscience;
- is not incompatible either directly or by implication with any law for the time being in force;
- is not contrary to public policy; and is Constitutional.

Additionally, individual states laws have contained in their high Court laws the rules for the application of customary laws; an example is Section 26(1) of the High Court laws of Lagos State which provides:

> The High Court shall observe and enforce the observance of customary law which is applicable and is not repugnant to natural justice, equity, and good conscience,

[31] (1931) 3 NILR 24
[32] (1932) 11 NLR 47-48

> nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of customary law.

1.5 Judicial Precedent

The judiciary, being the third branch of government[33] is vested with the responsibility of interpreting the law. Section 6 (1999 constitution) provides: The judicial powers vested by the foregoing provisions of this section - (a) shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a Court of law."

Like the executive, the judiciary is additionally vested with the power to make laws in the course of performing its duties. Laws made in this process are called judicial precedents. Judicial precedent, which's Latin term is *Stare decisis et non quieta movere*, this means to abide by a previous decision where the facts of the case are the same. This implies that a matter has to be decided in the same way it was decided previously. In the Nigerian case of *Clement v. Iwuanyanwu*[34], OPUTA held that a precedent is an adjudged case or decision of a higher Court considered as furnishing an example or authority for an identical or similar question afterwards arising.

Contentions have however risen over the years on the appropriateness of regarding judicial precedents as a source of law, these arguments stem from the fact that the judiciary is not empowered by the Constitution to make laws, it is only empowered to interpret the laws already made. The Court touched on this issue in the Nigerian case of *Dalhatu vs. Turaki*[35], where the Court held that judicial precedent is a key source of Nigerian law. Lower Courts are bound to abide by the decision of higher Courts. Additionally (EPHRAIM; DURU; DAFE, 2014, p.151) had this to say:

[33] Being a Federal state, government here could imply the federal government, or the state government. Hence, there is a Federal judiciary and a State judiciary
[34] (1988) 3 NWLR Pt (107)
[35] (2003) 15 NWLR (PT 843) 310

> (...) in any case, when a judge decides a particular case, the blackboard is not wiped out; the decision may stand as an authority for future cases on similar facts. The judge may create new rules in applying the law to changed circumstances. And where a lacuna or no law is governing the situation before a Court, the judge may also create new rules. Sometimes judges widen and extend the rule of law.

Hence, judicial precedent is recognized as a source of law in Nigeria.

Judicial precedents could be binding or persuasive.

1.5.1 Persuasive Judicial Precedents

Are precedents that are not binding on the Courts, because they emanate from Court coordinate jurisdiction Courts, for example: decisions from the High Court of the Federal Capital Territory are only persuasive on the decisions of the High Court of another State. Similarly, decisions from the *Sharia* Court of Appeal of a state are persuasive on the decisions of the Customary Court of Appeal of another state.

1.5.2 Binding Judicial Precedent

These are based on the hierarchy of the Court. Section 6(5) a-i (1999 Constitution) lists the superior Courts of record in Nigeria:

(a) the Supreme Court of Nigeria; (b) the Court of Appeal; (c) the Federal High Court; (d) the High Court of the Federal Capital Territory, Abuja; (e) a High Court of a State (f) the *Sharia* Court of Appeal of the Federal Capital Territory, Abuja; (g) the *Sharia* Court of Appeal of a State; (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja; (i) a Customary Court of Appeal of a State;

Precedents emanating from the Supreme Court are binding on all lower Courts; similarly, precedents emanating from the Court of Appeal are binding on all Courts except

the Supreme Court which is superior to it in the hierarchy. In the case of *Dalhatu V. Turaki*[36] where the trial judge in the lower Court refused to apply a precedent set by the Supreme Court, the Supreme Court held that a refusal by a judge of a lower Court to follow and be bound by the Supreme Court's decision is gross insubordination and such a judicial officer is a misfit in the Judiciary. KATSINA (2003, p.336), stating additionally that judicial precedent is a principle of judicial policy that must be adhered to by all lower Courts, emphasizing the binding nature it was pointed out that lower Courts may depart from their own decisions but cannot refuse to be bound by the decisions of higher Courts.

It should be noted that by virtue of the provisions of Section 6(5) k (1999 Constitution), the states are empowered to establish customary and magistrate Courts, these Courts are regarded as Courts of inferior jurisdiction and are bound to follow the precedent of the High Court.

An important fact that stands out from this form of judicial precedent, is the almost ``dictatorial`` power it grants to the court. In Nigeria, superior courts have been known to frown at lower courts that refuse to apply the precedents set by them. The implication of this can be seen in the case of *Dalhatu V. Turaki*[37] in that case, the All Nigeria People's Party (ANPP) scheduled its primary elections to be held in Jigawa State, it subsequently held the election and the first respondents emerged winner, however, a section of the party conducted the primary election in Kano state, where the appellant emerged winner. The party then declared as duly elected the first respondent and there from issued him a certificate to that effect. Displeased the appellant sued for among other things, an interim injunction and a motion on notice for interlocutory injunction. The trial judge granted the injunctions. The respondents challenged the jurisdiction of the court to entertain the matter, relying on the case of *Onuoha v Okafor*[38] which was a judicial precedent, but the trial court dismissed the objection, and ended his judgment stating that He thought the Supreme Court was wrong in its decision and calling on it to re-amend its position. On appeal to the Supreme Court, the

[36] *ibid*
[37] (2003) 10 SCM 153 21
[38] Onuoha v Okafor (1983) 10 SC 118: where the court held that the jurisdiction of the courts does not include the running and managing of political parties and politician, because there are no judicial criteria's for determining which candidate a party should choose. hence the court cannot compel a political party to sponsor a particular candidate

court was displeased with the action of the trial court and their displeasure was presented thus;

KUTIGI, JSC (2003, p. 214) said:

> It is unfortunate that although that case was cited to the trial Judge, he deliberately and consciously refused to apply it, because he thought the Supreme Court was wrong in its decision in that case. If the Supreme Court was wrong, he was also wrong not to have followed the age long established doctrine of *Stare Decisis*, otherwise known as judicial precedent. His action has been variously described as "gross insubordination", "judicial rascality," "reckless," "judicial impertinence" amongst others (...)

NNAMANI, JSC (2003, p. 511) said:

> The doctrine of judicial precedent, otherwise known as *Stare Decisis*, is not alien to our jurisprudence. It is well settled principle of judicial policy which must be strictly adhered to by all lower courts. While such lower courts may depart from their own decisions of higher courts even if those decisions were reached per curiam. The implication is that a lower court is bound by the decision of a higher court even where that decision was given erroneously.

In buttressing his point NNAMANI, JSC made reference to the previously decided case *of N.A.B. Ltd v Berri Eng. (Nigeria) Ltd*[39] p. 280 where he said:

> The doctrine of judicial precedent (otherwise called *Stare Decisis*) requires all subordinate courts to follow decisions of superior courts even where these decisions are obviously wrong having been based upon a false premise; This is the foundation on which the consistency of our judicial decision is based

Unfortunately, till date this is the stand of the law on judicial precedents. The Supreme Court has the final say in matters, and where it has made a judgment on a particular matter, all other similar matters must be judged in the same manner. It is only the Supreme Court that can overrule itself. This stand is inimical to development in the Democratic State of Law, because it vests in the Supreme Court powers that cannot be questioned, except by it.

[39] (1995) 8 NWLR (Part 413) 257 at page 280

Additionally, it fosters the practice of bad law in situations where the Supreme Court is too proud to overrule itself, or does not see a reason to do so.

1.6 Islamic Law

The word *Sharia* in Arabic means way or path; the way of life of Islam, Islamic principles and cultural practices. *Sharia* in itself is not a legal system, it, however, forms the fulcrum on which Islamic law is based. Islamic law, therefore, is an interpretation of the *Sharia* which is the way of life of Islam. Though both words are used interchangeably, they are in fact different, the Islamic law is a legal system which *Sharia* is a moral religious system, also Islamic law contains select interpretations of some parts of the *Sharia*, finally *Sharia* being a moral compass has a persuasive effect on its adherents, as opposed to the Islamic law which is binding (AN-NA'IM, 2006).

Islamic law in Nigeria is one of the sources of Nigerian law, the Constitution recognizes and lists the *Sharia* Courts as one of the superior Courts of record in Nigeria[40], stipulates criteria for the appointment of judges in the Courts[41] and states where appeals from the *Sharia* Court should go to section[42]

The sources of *Sharia* law are classified into 4 main parts they are: the Quran, Hadith (traditions of Prophet Muhammad), *Qiyas* (reasoning by analogy), and *Ijma* (consensus) (YADUDU, 1991).

The Quran is the fundamental origin of Islamic knowledge, serves as the primary source of *Sharia* law; it is the *grundnorm* of the Islamic legal system. DOI (1981 *apud* OKON, 2012, p.106) aptly detailed its significance to *Sharia* law when he said “It presents the intellectual and moral bases of the Islamic *Sharia* and strengthens them with arguments and appeals to the heart. It clearly defines and limits the bounds of every aspect of life" It is

[40] Section 6 subsection 5 f and g)
[41] Section 261 (1999 Constitution)
[42] Section 244 (1999 Constitution)

only when the Quran is unclear about a matter or has no provision on the matter, is recourse made to other sources.

The *Hadith* which is also known as the Sunnah of the Prophet is a collection of writings on the life of the Prophet Muhammad while he was alive by persons close to him, this writings include but are not limited to the prophets opinion and judgements on legal matters, codes of conduct and principles and practices based on the Quran, it is also is a compendium of the way of life of the earliest believers of Islam. The *Sunnah* serves as a secondary source of *Sharia* law (OKON, 2012)

The *Qiyas* are therefore conclusions on legal matters arrived at by judges based on logical explanations, analogy, and conclusions. Recourse is had to this source when other sources have no provisions on the subject matter. "*Qiyas* means the application to a new problem of the principles underlying an existing decision on some other point which could be regarded with the new problem" (DOI, 1981 *apud* OKON, 2012, p.107). For a law to qualify as a *Qiyas* four requirements must be satisfied. First, there must have been an original case, second, there was a legal ruling on the original case, third, there is a new or parallel case and finally there is an effective cause. In applying these elements an example can go thus: First, there is an original case of a person that took wine. Second, a law was promulgated against taking wine. Third, the reason such law was made is because wine intoxicated. Fourth, a new or parallel case of taking drugs occurs.

Ijma is the unanimous judgment arrived at following a consensus of Muslims of the highest degree of learning on the subject matter; the *Ijma* is only employed when the sunnah and the Quran are silent on the subject matter. The *Sharia* system of law, just like the customary system of laws, witnessed significant structural changes in the historic phases of Nigeria[43].

Pre colonialism, *Sharia* law operated in the Northern part. It began with the migration of itinerant Muslim scholars who came from the Sahel and Savannah to teach

[43] During colonization, the colonizers classified sharia law as a customary law based on the fact that it generated from the customs of the Moslems. i.e the sharia law is the customary law of Muslims. As it will be discussed later in the course of this work, Islamic scholars are strongly opposed to the classification of Sharia law as a form of customary law, in their view, sharia law is a more advanced legal system and should be placed on the same pedestal as the state high courts.

Islamic theology to people who would later on become Islamic theologians, scribes and magistrates it subsequently became applicable to personal and land laws- distribution of estates of a deceased, marriages, burials, and inheritance-. Shortly before colonialism, there was established in the northern region three Courts namely; Alkali Court, Emir Court, and Appeal Court.

During colonialism, however, the *Sharia* system of law suffered a setback as it was reduced to enable the enforcement of the English law. Worthy of note however is the system of indirect rule employed by the then representative of the British government; this rule encouraged the continued operation of the *Sharia* law, even though like the customary laws, Islamic laws that were considered repugnant to the principles of natural justice, equity and good conscience were abrogated. In the words of Lord Luggard, the British representative, he said "The government will, in no way, interfere with the Mohammedan religion. Every person has the right to appeal to the Resident who will, however, endeavor to uphold the power of the native Courts to deal with native cases according to the law and custom of the country" (LUGARD, 1970 *apud* SODIQ, 1992,p.97). Given this the Alkali system of Courts was preserved and renamed as the native Courts, these native Courts existed only in the northern region of Nigeria.

Post colonialism witnessed the replacement of the *Sharia* law with the penal code in criminal matters. The penal code was enacted to have criminal jurisdiction in the northern region of the country, where the *Sharia* law used to operate (Penal Code,1968) it was a combination of different systems of law adopted as a compromise in the promotion of diversity and heterogeneity which existed in the northern region (NMEHIELLE,2004)

Emancipation for *Sharia* law began in 1999, when the then governor of Zamfara State Governor Ahmed Sani, proclaimed *Sharia* system of law as the new law in Zamfara[44]. Eleven other Northern states soon followed suit by declaring *Sharia* law as the controlling law in their states, the implication of this proclamation by the 12 states is that it extended the jurisdiction of *Sharia* law to now include criminal matters - more severe sentences than that

[44] Governor Ahmed Sani proclaimed Sharia law in Zamfara on 25 October 1999. The Zamfara State House of Assembly passed the Sharia Courts. See Administration of Justice and Certain Consequential Changes Law (1999). The House of Assembly later passed the Sharia Penal Code Law in 2000

provided for under the Penal Code could now be imposed-additionally more offences not contained in the penal code were included (NMEHIELLE, 2004). An example of how far this newfound liberty could be stretched was seen in the 2002 case of Amina Lawal, a Muslim woman who was charged and convicted of *Zina* (adultery) by an area Court[45] in Katsina State, based on the provisions of the *Sharia* penal code law. She was to be sentenced to death by stoning. The provision of this *Sharia* penal code law is a complete deviation from the provision of the Penal code which it replaced. The penal code provided in Section 388 the penalty of two years in prison or payment of a fine (IBRAHIM, 2004). This act of declaring *Sharia* law as the new state law in the 12 states posed a threat to democracy in two major ways; first it implied that any state government can decide to impose a system of law on its citizens without reverence to the provisions and superiority of the constitution. As will be examined in details later the (1999 constitution) prohibits state religion, however by however by the actions of these governors, not only was a state religion chosen it seems also extended to the legal system of the state. Secondly, the pronouncement of an Islamic legal system also said the state's legal system infringed on the rights of the few minority who were not Muslims.

The limitations to the jurisdiction of *Sharia* law are still in place till date, one of such is evident in the provisions of section 262 (1999 Constitution) which provides that the Sharia Court of Appeal[46] shall "(...) exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law".

The provisions of this section limit the appellate and supervisory jurisdiction of this Court to only civil proceedings, and not even all civil proceedings, Section 262 subsection 2 (a-e) (1999 Constitution) lists the specific Islamic personal law over which the Court has jurisdiction.

[45] By virtue of The Area Courts Edict, 1967, the Emir's court that existed prior to colonialism was abolished and the Native Courts that existed during colonialism were renamed Area Courts. These Area courts are the courts of the first instance in sharia cases. (except for Zamfara state, that abolished Area courts and replaced them with sharia courts in 1999)

[46] It is a court specialized in Islamic law, it hears appeals from Area Courts in matters of Islamic personal law, pertaining to; matters of marriage, inheritance, custody of children and wakf. Section 277 (1999, Constitution)

> (a) any question of Islamic personal law regarding a marriage concluded under that law, including a question relating to the validity or dissolution of a marriage or a question that depends on such a marriage and relating to the family relationship or the guardianship of an infant;
> (b) where all the parties to the proceeding are Muslims, any question of Islamic personal law regarding marriage, including the validity or dissolution of that marriage, or regarding the family relationship, a foundling or the guardianship of an infant;
> (c) any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
> (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm
> (e) where all the parties to the proceedings, being Muslims, have requested the Court that hears the case in the first instance to determine that case following Islamic personal law, any other question.

This implies that appeals from *Sharia* Courts in all other Islamic law matters outside of this scope go to the high Court[47] which is headed by Common Law-trained judges. (Area Courts Law, s. 54(2),

To sum this up, it is worth emphasizing that *Sharia* law applies only to Muslims, as was pointed out in *Shittu v Shittu*[48]:

The point needs to be made that a Muslim and as long as he or she professes Islam, has no option or choice regarding the application of Islamic law – personal or otherwise onto his person. Having voluntarily assumed the status of a Muslim, he or she is disentitled from accepting or rejecting according to his whims and caprices. He cannot back out therefrom and he must not allow anybody to either encourage or discourage him therefrom. There cannot be a superimposition or juxtaposition of customary law over Islamic law. It cannot be done. It is never done. (*Shittu v Shittu apud* Oba, 2008).

Basically, the Islamic law is applicable majorly in the Northern region of Nigeria because of the high population of Muslims in these states, no *Sharia* Court of Appeal exists

[47] Section 54 (2) Area Courts Law, Cap. A9, Laws of Kwara State, 2007
[48] (1998) Annual Report Sharia Court of Appeal (Kwara State) 93.

in the South Eastern States because the low Muslims population (ALKALI et al., 2014), and states in Western region which a significant Muslim population like Osun, Oyo and Lagos have unsuccessfully advocated for the establishment of *Sharia* Courts. In lieu however arbitral panels have been set up in some to handle conflicts between Muslims.

A typical example is in Lagos State, a state in the Western part of Nigeria. Following the 1999 *Sharia* implementation in Zamfara, members of the Lagos chapter of the National Council of Muslim Youth Organizations ("NACOMYO") lobbied and initiated a *Sharia* Courts bill for the establishment of a *Sharia* Court in Lagos. This attempt, however, failed as the House of Assembly was unwilling to pass the bill into law. Undeterred however in 2002, Muslim activists group in Lagos State set up a private arbitration tribunal known as the Independent *Sharia* Panel ("ISP") of Lagos. The function of this tribunal was to adjudicate on civil matters amongst Muslims by using Islamic law (MAKINDE; OSTEIN 2011). The decisions of this tribunal are however not binding on Muslims as they can decide to submit to jurisdiction or not. In the case of *Lawal v. Fatoyinbo*[49] which was tried at the Independent *Sharia* Panel of Lagos, the judge said:

> The Defendant's Attorney has made up his mind not to submit to the Panel but the State law . . . in flagrant disregard to the fact that the law that will be enforced in the Court is unislamic . . . and in flagrant disregard and slight to the Islamic option obtainable at the Panel (...) If he abandons, ruling by Allah's law due to desire or some benefit, fear or interpretation-along with his affirmation and certainty of his error and violation, he has fallen into minor disbelief, sinning greater than the sin of Riba i.e. eating interest, graver than adultery and more severe than drinking alcohol.

The Court, in this case, had no authority to enforce submission by the defendant and its attorney, so what it did instead was to emphasis their religious and moral obligation to attend the Court because they are Muslims, this in contrast to the case in *Shittu v. Shittu*[50] earlier cited where the Court had the authority to impose submission to its proceedings on the parties concerned simply because they were Muslims.

[49] Suit No ISP/IEM/0057R/1427AH, Rulings on the Defendants' Attorney Letter (Lagos ISP, Aug. 7, 2007)
[50] The court was a Sharia court in Kwara State

In conclusion, for development in a Democratic State of Law to be achieved, one of the requirements is that the right to self-determination (individually and as a group) be protected. It is the protection of this right that gives the Nigerian legal system, its current status as a legal system. This legal pluralism arises owing to the diversity of history, culture, religion, people and colonial past. Each of the above listed sources of Nigerian law plays a significant role in the administration of the legal system in Nigeria; however, the degree of superiority differs. Where there is a provision by any other source of law which contradicts the provisions of the (1999 constitution), such source will be declared null and void to the extent of its inconsistency, thereby making it the *grundnorm*.

CHAPTER 2

2. LEGAL PLURALISM IN NIGERIA

2.1 Definition of Legal Pluralism

Several authors have, over the years, offered varying definitions of legal pluralism. GRIFFITH (1986) who produced a seminal work on the topic dutifully set about the task of defining what legal pluralism is in a 55 pages article. First, he addresses legal pluralism as an ideology that is manifested in the legal systems arrangements. He attempts to point out the link between the ideology of legal centralism and legal pluralism. The ideology of legal centralism, he posits, provides that "law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions" (GRIFFITH,1986, p. 3).

This law of the state he references as the *grundnorm*. He, however, argues that this stand poses a major problem to the description of what law in fact is, because legal centralism depicts law as it ought to be - an organized and homogenous system - not as it actually is - an inconsistent and overlapping system. He counters the legal centralism ideology by saying that, even within legal centralism, elements of pluralism are evident with the validation of groups and organs which have been empowered by the *grundnorm* to make laws, thereby making legal centralism the basic ideology upon which legal pluralism is manifested.

Secondly, he analyzes the concept of legal pluralism as an empirical state of affairs, where legal orders coexist within a social group. In doing this, he first breaks the concept of legal pluralism into law and pluralism, and then attempts to define them individually. In defining pluralism he says it is "more than one of the sorts of thing concerned is present within the field described" and law he defines as "the self-regulation of a semi-autonomous social field"[51] (GRIFFITH, 1986, p. 38).

[51] He argues that all forms of social control or regulation are legal.

Put together, he defines legal pluralism[52] as "a concomitant of social pluralism (...) a normative heterogeneity attendant upon the fact that social action always takes place in a context of multiple, overlapping 'semi-autonomous social fields', which, it may be added, is in practice a dynamic condition" (GRIFFITH,1986, p. 38). In essence, if in any social field there exists more than one source of law and or more than one legal order such a social field is legally plural, considering that any form of social control would be legal.

While the discussion on legal pluralism was in its infancy, Nigerian legal scholars were also not left out of the legal discussion. One of such scholars is OKUNNIGA (1983) who at that time referred to the concept now known as legal pluralism as legal dualism. To explain this dualism he made use of analogies which he termed Mongrel and Transplant[53]. He said: "Mongrel is a law or statute or any legal principle or rule derived from more than one origin, it may also be derived from two or more local law".

The transplant he described as: "A statute, or a doctrine, or principle or rule of law taken from one legal order to another legal order" (OKUNNIGA, 1983, p. 5-6).

Hence legal dualism could exist in various forms, first in the mongrel, then in the transplant and finally in the combination of the mongrel and the transplant.

He identified three types of dualism: the first, he pointed out, occurs when each legal system is content to keep its appointed limit and does not seek to abrogate the other, hence there is a peaceful coexistence of the legal systems. The second he described as one in which the legal system does not appear to be inclined to bring about beneficial osmosis[54], this is observable in the current relationship between the independent customary legal system; none of them is trying to dominate the other through assimilation, though during the colonial era; through regionalization, several customary legal systems were assimilated into one regional legal system. And the third type of dualism, which he says, leans towards a symbiotic[55] existence, occurs when the legal systems work together towards the attainment of a specific

[52] Griffith upon further reflection concluded that the expression "legal pluralism" can and should be re conceptualized as "normative pluralism" or "pluralism in social control." (GRIFFITHS, 2005)
[53] A mongrel is a cross between different types of a thing, while transplant is the movement or transplant from one place to the other; he used these two words as an analogy to explain legal dualism.
[54] A gradual assimilation of ideas from a less dominant legal system to a dominant one until both sides are equalize
[55] Joint existence of the legal system, which may or may not be beneficial

goal. Though we do not agree with his tagging the concept of legal pluralism as dualism[56], we do however agree with his broad definition of law to include statutes, doctrines, principles, and rules. This like the conclusion arrived at by Griffith emphasis the fact that law is any medium of social control; it could be regulations, principles, statutes, norms. So long as its purpose is for social control and regulations then it qualifies as law.

TAMANAHA, a contemporary scholar, vast in the field of legal pluralism argues that a definition for legal pluralism is difficult to arrive at because of the diversity of its participants. In his words:

> (...) An international lawyer who invokes legal pluralism has something very different in mind from a legal anthropologist who talks about legal pluralism. People using the concept also have different motivations and purposes. Some are socio-legal theorists interested in developing a sophisticated analytical approach to contemporary legal forms, some are avowed social scientists dedicated to working out a social scientific approach to law, some are critical theorists who invoke the notion as a means to delegitimize or decentre state law, and some are seeking a useful way of framing complicated situations for their own political purposes. The literature invoking the notion of legal pluralism covers a broad spectrum, from postmodernism to autopoiesis, to human rights, to feminist approaches to customary law, to international trade, and much more. Under these circumstances, miscommunication and confusion over the notion is inevitable (TAMANAHA, 2008, p.391).

A key problem faced by the above-cited authors and many legal pluralists is distinguishing between legal normative orders and non-legal normative orders. It is important to know what law is and what it is not to be able to distinguish legal orders from other forms of normative orders (WOODMAN, 1998). Unfortunately, defining law has been an age-long struggle amongst legal scholars. It is in admittance of this futility that said: "Nobody, including the lawyer, has offered, nobody, including the lawyer, is offering, nobody, including the lawyer, will ever be able to offer a definition of law to end all definitions" (OKUNNIGA, 1983, p.1).

GRIFFITH likewise, after several years of reflection on the concept of law, suggested that the definition of law be abandoned in theory formation in the sociology of law.

[56] He, also passingly made mention to the Nigerian legal system being a Triad (three legal systems) in page 11 of his lecture. As far from the truth as this maybe (which will be pointed out in detail in the course of this work), it is trite that anything that is more than two is no longer dual but plural.

(GRIFFITH *apud* TAMANAHA, 2008, p.395). It is worth acknowledging, therefore, that regardless of its definition, the scope of law extends from the organized state law to the unorganized and informal social control (WOODMAN, 1998).

One will agree that a factor that seems to be recurrent in all the views on legal pluralism is that it is a multiplicity of social control - be it state law or informal social control. Building on this foundation, therefore, this work aligns with the reasoning of GRIFFITH that legal pluralism exists in a legal centralist system as it does in a plural system[57]. In legal centralism, it exists when there is a state law which validates and permits different systems of law for different groups within a population, though to the centralist it is merely a technique of governance (VANDERLINDEN *apud* GRIFFITH,1986, p.5), however in practice it is in fact pluralism.

The working definition of legal pluralism for this thesis is that offered by Griffiths who defined it as `` the heterogeneity of normative orders, stemming from the fact that social actions take place in multiple social fields; it is, therefore, a concomitant effect of social diversity``(GRIFFITH,1986). Therefore, legal pluralism is present where members of a social field acknowledge more than one source of normative order within a social field.

To say that the topic of legal pluralism in Nigeria is complex would be an understatement, this because of how the pluralism came into being. For ease of understanding this work shall analyze legal pluralism in Nigeria based on the origin of the pluralism, and based on the archetypes of the plural legal systems.

2.2 Origin of Legal Pluralism.

Some Nigerian legal scholars have been known to categorize legal pluralism in Nigeria based on their origin; legal pluralism arising from: (i) pluralism of legal culture and tradition, (ii) pluralism of the structure of the legal system, and (iii) regional legal pluralism (OBA , 2011).

This pluralism based on origin shall be discussed in the subsequent items.

[57] He tagged the pluralism in centralism as pluralism in the weak sense.

2.2.1 Pluralism of Legal Culture and Tradition

First, we talk of legal pluralism in relation to multiplicity in the type of legal culture and tradition viz a viz: customary law, Islamic law, and received English law. The history of legal pluralism in the geographic area of West Africa, now regarded as Nigeria, wouldn't be complete without recourse to the pre-colonial era when there were independent and unrelated social fields with established normative orders. These normative orders were developed over time, as the social fields became an organized group. These normative orders developed into what was regarded as the native laws of these groups. The native laws were unwritten and often carried with them sanctions which enhanced adherence (AFIGBO, 2005).

In the Northern region, there already was an established system of Islamic law which replaced the previously existing Hausa native laws in those lands[58], and in the other parts of the country, there were native laws peculiar to each of the regions. It is worth stating here that regardless of the diversity of native laws that existed in this period, there was, in fact, no form of legal pluralism, because there was just one system of native law peculiar to each group, hence that the question of pluralism still had not arose.

A brief period of legal pluralism is however observable in the northern region, which initially operated the Hausa native law. Before the Fulani conquest of 1804, Islam had penetrated the Hausa land and had begun to have a large followership which was bound by the Islamic law. Hence in that period there existed both the Hausa law and the Islamic law, a proof of such existence, was the Islamic law which Shehu Usuman, - the leader of the Jihad that took over the North from the Hausa relied on - relied on in fomenting the conquest. The Islamic law provided that revolution can be resorted to where it is evident that the ruling government has neglected its duty of providing welfare for the citizens, the Hausa law at the time had no provision to this effect.

Subsequently, by a series of war and subsequent acceptance by the people the Hausa native law was soon replaced by the Islamic law[59] (NWABARA, 1963).

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[58] The details of which was elaborated in chapter 1 of this work.

[59] Though some customs that were acceptable to Islam from the Hausa customs were imbibed, for example the Hausa custom on polygynous marriage, and the custom that the eldest male member of a family automatically becomes the head of the family; who is responsible for protecting and at times feeding the poor members of the family.

However, the second half of the 19th century marked the beginning of wars and threats of wars by the British government. These were purposeful, violent and unfortunately successful attempts to take over the regions to exploit the human and natural resources therein (FALOLA, 2009, p. 1), succinctly explained the occurrence in this period when she said: " the loss of a war and the removal or death of a king translated into one major outcome: loss of independence and incorporation, by force into an expanding British empire``.

Upon colonization and assumption of administrative power over the then Northern and Southern Protectorate, the British government introduced its English legal system into the protectorates and imposed this system over the native laws and the Islamic law, thereby making the English legal system the state law.

Post colonialism, the Nigerian constitution was created to ratify, unify, repudiate, validate and amend all existing normative orders. This Nigerian constitution may be related to legal centralism in the weak sense that GRIFFITH (1986) mentioned; though the Nigerian constitution is a central legal system, it however, through its provisions validates groups and organs to make laws.

The native laws of the pre-colonial era exist to date, alongside the current Nigerian constitution and The Received English Law[60]. The concept of legal pluralism is, therefore, an intricate part of the Nigerian Legal System (OBA, 2002).

2.2.2. Structural Legal Pluralism

Secondly we talk of legal pluralism emanating from the structural legal system: this arises from the federal system of government which the country operates.

This form of pluralism aids smooth political administration in Nigeria, where there is legal pluralism between the federal, state and local government. This structural pluralism is particularly evident in the legal pluralism amongst states[61].

[60] Structural pluralism here is considered in the weak form of centralism which GRIFFITH (1964) talked of.. In the present case these states are relatively independent.
[61] Section 390 of the Criminal Code Act, Cap. 77 LFN 1990.

There are 36 legally independent states within the Nigerian political territory; each of this state is empowered by the Constitution to administer its legal system in specific matters. Hence it is not uncommon to see that states have different provisions on a particular matter. In criminal matters in the states in the Northern Region, the Penal Code is the applicable law, while in the other regions of Nigeria the Criminal Code is applicable. This difference is not only in the name of the code, but also in the content and punishment. For example, Section 383(1) of The Criminal Code provides that: "A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing".

For the same offence section 293 (1) of the Penal Code provides:

> Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to effect such taking, and whoever dishonestly diverts, consumes or uses any electricity, electric current or tap water, commit the offence of theft…

While the punishment for the offence under the criminal code is imprisonment for 3 years under the penal code[62] it is a maximum 5 years or with a fine or with both.

2.2.3 Regional Legal Pluralism

Here we talk of legal pluralism, which came about from the British mode of administration during colonization, for ease of administration Nigeria was regionalized in 1954. Three regions were created: the Northern region, the Western region and the Eastern region. These regions were a result of the amalgamation of groups which shared similar history, culture and tradition. Each of the regions had its own unique and different legal system that was peculiar to it - hence there was similarity of laws intra region but plurality of laws inter region. The subsequent division of Nigeria into states did not affect the regionalization that had previously taken place. As can be seen in the present-day Nigeria, states that used to belong to a particular region still share similar legal systems.

[62] Section 293 of The Penal Code Act, 2008.

2.3 Archetypes of Legal Pluralism

It is an established fact that one of the characteristics of legal pluralism is the multiplicity of legal orders; this multiplicity may, however, exist in different structures and forms which have varying implications. One of such categorizations is that offered by SWENSON (2018), who identified 4 archetypes of legal pluralism. His classification provides an understanding of the relationship, functions and limitations of the parties in legal pluralism viz a viz the two major actors - the state and non-state. Using this archetype as a framework in the analysis of legal pluralism in Nigeria is therefore important because it undertakes to define and classify legal pluralism based on the relationship between the state legal system and the non-state legal system. This classification is the same as that currently operating in Nigeria[63]. There is a state legal system, and there is the non-state legal system - in this case, non-state does not imply that it is illegal or ineffective, it is just used to classify every other legal system that is not the states, in fact these non-state legal systems- as shall be seen further in this work- are recognized by the constitution.

His classifications are: (i) combative legal pluralism, (ii) competitive legal pluralism, (iii) cooperative legal pluralism and (iv)complementary legal pluralism.

For a better understanding of the relationship that exists between the legal systems in Nigeria, each of each of the each of the archetypes shall be analyzed below.

2.3.1 Combative Legal Pluralism

He defines this type of legal pluralism as one in which the state and the non-state legal systems are hostile towards each other, so they seek to undermine, supplant or destroy the other, these rejections are often non-violent. Extending this classification into the legal

[63] There are however instances where this legal pluralism is not based on the relationship between the state and the non-state legal system but is in fact between two or more non-state legal systems.

pluralist atmosphere in Nigeria, examples abound of this classification both within the non-state legal system and between the non-state legal system and the state legal system.

This form of combative legal pluralism has existed right from the colonial period. In this period the English system of law which was received into Nigeria was the state law while the customary laws of each of the regions were the non- state legal systems. The hostility with which the English law treated these customary laws is apparent from the terms for which the customary laws were permitted to exist; a lot of the pre-colonial native laws were abrogated. As stated in Chapter 1, these customary laws were subjected to validity tests - to become acceptable law it must be proven that such law does not conflict with the written colonial law- additionally, such law, had to pass the repugnancy test - which provided that such native law must not be repugnant to the principles of natural justice, equity and good conscience as prescribed by the British government.

An apparent example of the undermining power of the English legal system over the customary legal system can be seen in the Nigerian case of *Eshugbaye Eleko v. Government of Nigeria*[64]. In this case some aspects of local customary law were rejected based on their failure to meet the repugnancy test standard set by the English legal system. An important issue raised in the case centered on the rejection and replacement of an original customary law - which stipulated the procedure for the removal of a chief- with the 1917 Deposed Chiefs Removal Ordinance which was a law enacted by the British government. Also, in the case of *Ekpenyong Edet v Young Uyo Essien*[65], the customary law in question was on the custody of a child, where the dowry of its mother had been paid. In this case, dowry was paid on a lady while she was a child, by both the Appellant and the Respondent. When she became an adult, however, the Respondent married her and had a child with her. The Appellant, however, claimed custody of the child because, under the customary law, he was deemed the husband of the lady until the dowry paid by him was refunded. The court held that any customary law that gives the paternity of a child to a person other than his natural father is barbaric and repugnant to natural justice, equity and good conscience. To sum up the hostility the customary laws faced in the colonial era ALLOT (1984, p. 59) had this to say:

[64] (1931) 3 NILR 24
[65] ibid.

> (...) parts of the customary laws were due for suppression, in so far as they challenged British political overrule. Other parts were unacceptable if they did not meet British standards of humanity—some parts of the customary criminal law and procedure were therefore abrogated. As for the rest, the customary law continued to apply to legal relations between Africans, subject only to two limitations—the first, that the customary law did not expressly conflict with written law, that is, the legislation of the colonial power; the second, that it was not, in the estimation of the judges and officers who supervised its administration, "repugnant to justice, equity and good conscience.

It is worth stating here that the native laws of a people have been arrived at from years of customs and traditions, no matter how barbaric this law may seem to foreigners. It is the duty of the people who are bound by this law to ameliorate its harshness but not the duty of a foreign legal system to abrogate such laws, and in replacement impose its own customary laws.

A second situation where this combative legal pluralism exists in the Nigerian legal system is in the relationship between the current Nigerian legislation (1999 Constitution) which is the state legal system and the non- state legal system (customary or Islamic legal systems). Section 1(1) (1999 Constitution) provides: “This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria”. Furthermore, section 1(3) (1999 Constitution) provides: “If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void."

The relationship between the Constitution and other legal system falls squarely into the classification of the combative legal pluralism; this can be deducted from the foregoing provisions. The Constitution supplants and supersedes any other legal system, especially in situations of plural and contradictory provisions. Emphasizing the supremacy of the Constitution in *Alhaji Bani Gaa Budo Nuhu v Alhaji Ishola Are Ogele*[66] where the Court of Appeal declared proceedings before an Ilorin Upper Area Court null and void because it admitted affidavit evidence which did not follow the procedure prescribed by the constitution. The court held that:

[66] 18 NWLR(Pt.852) 251

> The provisions of the Constitution apply to even the area courts or the customary courts- all inclusive. There is simply no escape route for any court from the operations of the constitution. The Court of Appeal having found that the proceedings of the Upper Area Court contravened or failed to threat with reverence the majestic provision of the constitution did the correct thing (…)

From the foregoing, it is evident that the Constitution is the *grundnorm* in Nigeria, and its provisions are strictly adhered to. Whenever there is a contradiction between its provision and that of any other legal system, the provisions of that legal system is declared null and void to the extent of its inconsistency. The Constitution is however not always seeking to abrogate laws, there are in fact provisions in the constitution that empowers the non-state legal systems to make laws, so long as these laws do not contradict any of the constitution's provisions. One of such instances is in the provision of Section 282(1) of the (1999 constitution) that provides that a Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings that involve questions of customary law.

A third instance of combative legal pluralism in Nigeria exists within the non-state legal system. Here it is not the state legal system that seeks to undermine and supersede a non-state legal system but rather a non-state legal system seeking to or in fact superseding another non-state legal system (this could be the customary laws of different regions or religious law). Often times the superimposition of one non-state legal system over the other take the form of lack of jurisdiction as was in the case of Estate of *Alayo*[67], where a Muslim woman , who was of the Ijebu region, died intestate. The question of determining which law to apply to her estate - whether the Islamic law (because she was a Muslim) or the Ijebu Customary law (because she was of Ijebu origin) arose. The court refused to apply Islamic law to her estate holding that Ijebu is not a Muslim area; hence Islamic law couldn't be applied. However the courts generally are disposed positively to the administration of

[67] [1946] 18 NLR 88

customary or Islamic law as can be seen in the provisions of Section 26 of the High Court Laws of Lagos State[68] which provides:

> The High Court shall observe and enforce the observance of customary law which is applicable and is not repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of customary law.

Also this form of pluralism could take the form of the personal law of the persons involved in *M. Abba vs Mary T. Baikie*[69], the native court held that Baikie, could not inherit her father's property because she was a Christian and her father was before his death a Muslim. The judge was of the view that Islamic law does not allow a non-Muslim to inherit from a Muslim or a Muslim to inherit from a non-Muslim.

It is evident from the foregoing therefore that the combative legal pluralism is a key and present archetype in the Nigerian legal pluralism. It existed in the colonial era when the English law was received and made the state law, it still exists till date in some instances where the English law has not been totally repudiated, or where such English laws have been ratified. Secondly, it exists in the current Nigerian legal system where the constitution nullifies any provision of non-state legal systems that are contrary to its provisions. Finally it exists where a non-state legal system supersedes another non-state legal system.

2.3.2 Complementary Legal Pluralism

Here the non-state legal system is structured by the state's legal system which is of high capacity, and the state is capable of enforcing its mandates on the non-state legal system. In fact, the actions of the non-state always fall within the regulatory and enforcement

[68] High Court Laws of Lagos State, Cap. 60, 1994.
[69] Case no K/20A/1, 1943 cited in Sodiq, Y. (1992). A History of Islamic Law in Nigeria: Past and Present. Islamic Studies, 31(1), 85-108.

ambit of the state. The enshrinement of this pluralistic relationship in the Nigerian legal system is contained in the provisions of Section 19(d) of the (1999 constitution), which provides that the states foreign policy objective shall be "respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication". This constitutional provision has contained in it two major provisions for complementary legal pluralism. One is the provision for Alternative Dispute Resolution (ADR) which includes negotiation, mediation, conciliation, arbitration and adjudication. And the second complementary legal pluralism contained therein is international laws and treaty obligations.

Alternative Dispute Resolution (ADR) is a system used in lieu of the traditional court system to resolve dispute. This system, in addition, to avoiding the delays and technicalities that comes with the traditional court system, also saves cost and maintains the cordiality that exists between the parties, unlike the traditional court system that is adversarial in nature. In Nigeria the status given to ADR in the settlement of disputes is a complementary role to the judicial powers possessed by the Courts (ODDIRI, 2004). ADR is applicable both to domestic and international disputes. For domestic disputes some of the applicable laws governing ADR include but are not limited to The Arbitration and Conciliation Act 1990, and the High Court (Civil Procedure) Rules Law of the various states. The High Court rules of the states, for example, have contained in them provisions requiring that the option of ADR be explored. One of such is Order 25 rule 2 (c) of the Oyo State High Court (Civil Procedure) Rules Law, 2010 which provides that the Judge shall cause to be issued a pre-trial conference notice for the purpose of "promoting amicable settlement of the case or adoption of alternative dispute resolution".

ADR, can also be applied to international disputes, as is evident from the provisions of Section 19(d) (1999 constitution) [70] cited above, additionally, Section 55 of The Arbitration and conciliation Act (CAP 19- LFN 1990), which provides: "Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be settled by Conciliation Rules set out in the Third Schedule to this Act".

[70] ibid

Additional laws governing ADR in international disputes include: the UNCITRAL (United Nations Commission on International Trades Law) model law, the UNCITRAL Arbitration Rules and The New York Convention on International Arbitration. On the enforcement of the awards prescribed by the arbitrators, one can see that in the absence of irregularities, the courts are always eager to enforce them as was the case in *LSDPC v. Adold Stam Limited & anor*[71].

International law and treaties - have been speculated to preexist the colonial era in Nigeria, when the individual and independent regions had economic relationship with each other, though undocumented, scholars believe such grave level of economic exchange would not have been possible without laws and treaties. In the words of OKEKE (1996):

> (…) the ancient political units of Nigeria conducted their affairs and relations with other foreign nations in a manner and style similar to those of modern states. Although the scope of their activities was naturally limited considering the level of development at the time, those relationships were undoubtedly based on an international legal framework which was certainly international. The Nigerian states and kingdoms of the period clearly possessed sovereignty, and therefore enjoyed personality within a regime of international law.

Shortly before colonization and during colonization international treaties were used as tools by the British to legitimize their aim of exploitation and subjugation. Community leader- under duress - were made to sign treaties such as cession treaties, and treaties of protection which surrendered their sovereignty to the British. Post colonialism, Nigeria, through her National Assembly and subject to presidential assent, reserves the right to determine whether to ratify any international agreements - this includes those made before her independence in 1960. This is as provided for in Section 12 (1) - (3) (1999 constitution):

> 12. (1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.
>
> (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.

[71] (1994) 7 NWLR

> (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.

Hence no international laws and treaties can be enforced by Nigerian courts if such has first been ratified by the National Assembly then subsequently domesticated[72]. Undomesticated treaties, however, are mere persuasive authority for the Nigerian courts; they are used as guides in interpreting domestic laws. In the history of International Law in Nigeria, the question often arises on the hierarchy of International Law in the Nigerian legal system. The question of whether the International Law is supreme over domestic law or not, however this was answered in the case of *Abacha v. Fawehinmi* [73]. In this case the question arose on the status of a domesticated treaty in relation to the Constitution. The applicant filed an application in court against the respondents for unlawful arrest and detention which contravened the provisions of the 1979 Constitution and that of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act[74]. The respondents objected to the application, challenging the jurisdiction of the court to hear the case and relying on the combined provisions of: Section 4(1) of The State Security (Detention of Persons) Decree no 2 of 1984 as amended by decree no 11 of 1994: "(1) No suit or other legal proceedings shall lie against any person for anything done or intended to be done in pursuance of this Act."

The Federal Military Government (Supremacy and Enforcement of Powers) Decree no 12 of 1994; and the Constitution (Suspension and Modification) Decree no 107 of 1993 which provided that: decrees under the military regime were superior to any other law including the unsuspended part of the Constitution.

The Court of Appeal held that the African Charter was superior to the Nigerian Constitution. However on further appeal to the Supreme Court the Justices held otherwise. Mohammed J.S.C. held that the Court of Appeal elevating the African Charter on Human and

[72] However, recent amendment to the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, provides that ratified but undomesticated labour treaties may be justiciable in Nigeria.
[73] (2000) FWLR (Pt.4) 553 at 586.
[74] Cap. 10, Laws of the Federation of Nigeria, 1990, which was domesticated

Peoples' Rights over the Nigerian Constitution was a violation of the supremacy of the Constitution.

Another example is that of article 17(1) of the African Charter which provides that "every individual shall have the right to education". However, for similar provisions to this article contained in section 18 Chapter II (1999 constitution), the Constitution specifically states that these rights are unenforceable in Court[75].

In relation to state laws therefore, international laws and treaties plays only a complementary role and are subject to the legislature and courts for enforcement.

2.3.3 Cooperative Legal Pluralism

In this relationship the non-state legal system are independent and possess authority, they, however, acknowledge the state's legal legitimacy and are willing to work with the states' legal system towards a shared goal. Whatever, clash that exists between them are often times not based on existential issues of the states' legal powers, but rather on social issues.

This form of relationship is present in the Nigerian legal system because Nigeria operates a federal system[76] of government which consists of the federal government, the governments of each of the states and local government[77] , each of which have legal systems peculiar to them. As extensively elaborated in chapter 1(1999 constitution) devolves legislative powers amongst the various units, while also stating and limiting their functions

[75] Section 6(6)(c)1999 Constitution provides: "The judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution."

[76] Section 2(2) 1999 Constitution; Nigeria shall be a Federation consisting of States and a Federal Capital Territory

[77] Section 3(1) 1999 Constitution provides: There shall be 36 states in Nigeria, that is to say, Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara.

and jurisdictions. This was clearly pointed out in *Attorney General of Lagos v. Attorney General of Federation*[78]. Thus, in every standard federal system, the relationship between the central government and the governments of the federating units are clearly delimited and delineated in a written Constitution which specifically divides governmental powers between them, each having total control within its sphere of function and jurisdiction.

A typical example of the cooperative legal pluralism in Nigeria is exhibited in the cooperation that exists between the federal, state and local government in the collection of taxes.

At the Federal level, the National Assembly has the exclusive power to legislate on the "Taxation of incomes, profits and capital gains, except as otherwise prescribed by this Constitution"΄. This is contained in item 59 Part I of the 2 schedule (1999 constitution). However, it can delegate this power to the state government by virtue of item 7, part II of the same schedule (1999 constitution), that provides:

> 7. In the exercise of its powers to impose any tax or duty on –
> (a) capital gains, incomes or profits or persons other than companies; and
> (b) documents or transactions by way of stamp duties. The National Assembly may, subject to such conditions as it may prescribe, provided that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of a State.

At the state level, the House of Assembly is also empowered to delegate its powers to legislate on taxation to the local government as provided for in item 9, part II of the second schedule (1999 constitution): "A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council"

Another example is of the cooperative legal pluralism is in relation to marriages. Item 61, part I of the 2 schedule (1999 constitution) provides that the federal government has exclusive jurisdiction on matters relating to the formation, annulment and dissolution of marriages conducted under the Matrimonial Causes Act. This same item provides that the

[78] (2003) 12 NWLR (Pt. 883)

Federal government does not have jurisdiction over marriages conducted under Islamic law and customary law. Deciding who has jurisdiction over marriages conducted under Islamic law and customary law is not farfetched. For customary marriages, Section of 282. (1) : (2) (1999 Constitution) provides:

> (1) A Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings that involve questions of Customary law.
> (2) For the purpose of this section, a Customary Court of Appeal of a State shall exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established.

From the combined provisions of the foregoing section, it is apparent that customary marriage falls within the jurisdiction of the Customary Court of Appeal and the Customary Court of Appeal is an establishment of the state hence it is the state that possess jurisdiction over this forms of marriage. The same applies to marriage under the Islamic law, the provisions on it is more explicit. Section 277(1) and (2) provides:

> (1) The *Sharia* Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.
> (2) For the purposes of subsection (1) of this section, the *Sharia* Court of Appeal shall be competent to decide - (a) any question of Islamic personal law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant.

Hence, it is the state that has jurisdiction of Customary and Islamic marriages.

At the local government level, item 1(i) of the Fourth schedule (1999 constitution), vest exclusive jurisdiction in the local government to register all marriages. From the foregoing therefore, one can conclude that on the topic of marriage in Nigeria, there exists cooperative legal pluralism where legal responsibility is shared between the three tiers of

government. Each tier has its functions, and the Constitution strictly provides for its jurisdiction to avoid encroachment. The Federal government has exclusive jurisdiction on marriages under the Matrimonial Causes Act, the state government has jurisdiction over Customary and Islamic marriages while the local government has exclusive jurisdiction to register all forms of marriages.

The Nigerian courts ensured that the independence of each of the tier is maintained and that non encroaches on the jurisdiction of the other, hence the firm stand in the case of *Haastrup & Anor vs. Eti Osa Local Government & 2 Ors*[79], where one of the major issues raised was whether the Ministry of Internal Affairs (an establishment of the federal government) could validly register a marriage. The court held that it was within the exclusive jurisdiction of the local government based on item 1(i) of the Fourth Schedule (1999 constitution).

From the foregoing therefore, it is evident that there is cooperation between the three tiers of government - federal, state and local government- in the administration of tax and marriage to mention just a few.

Is there anything on the research topic that can be commented on to close this item?

2.3.4 Competitive Legal Pluralism

Here the state's superior authority is not challenged by the non-state system which also has some form of independence. This relationship often arises post-conflict following a legal and political settlement, where the State uses the non-state system as a structure for its rule and administration. The chance of a return to conflict is high in this form of relationship. This existed in Nigeria during colonialism when the British government through its representatives employed the system of indirect rule to administer Nigeria. (ALLOT, 1984)

Succinctly explained the indirect rule when he said the policy:

[79] FHC/L/870/2002

> (…) assumed that the best way forward for British administration was by way of conserving, recognizing officially and using the existing indigenous systems of rule and law, through the so-called "native authorities" (...) the "native courts" and the "native customary laws" (as they were each called) were recognized as an essential part of the apparatus of indirect administration. These institutions were left in place, and originally were given considerable freedom to function in a traditional way.

This system of rule, as GEORGE has explained, carried a greater chance of return to conflict because initially independent state had their independence stripped and replaced with a controlled system. Internally struggle within the groups finally led to the independence in 1960. More details on the conflict arising from this system of indirect rule shall be given in Chapter 5.

Another striking characteristic of this relationship is the tension that exists between the State and non-state legal systems in instances of diverging interests and legal norms. Though this tension is, often times, nonviolent, there are, however, instances when the tensions can turn violent. When this happen, they shift from the ambit of competitive legal pluralism into combative legal pluralism, thereby making the line between the two very slim.

In Nigeria, an example of this form of relationship is that between the state and the Islamic legal system. The Nigerian Constitution, through its drafters has over the years of constitutional amendments avoided the question of a state religion. In fact, the stand has been that to avoid any tensions that may arise from religious differences the Federal and State governments were prohibited from adopting a state religion. This stand can be seen in the provisions of Section 10 (1999 constitution) which provides: "The Government of the Federation or of a State shall not adopt any religion as State Religion"[80].

However, barely months after the promulgation of the 1999 Constitution, some Northern states with a majority Muslim population began with the help of executive and legislative reforms, to adopt Islamic law as the state's law. YADUDU *(apud* IWOBI,2004, p. 121), had this to say on the adoption of Islamic law: "the paramount aim of these reforms

[80] ´´ One would agree with the assertion that by establishing Sharia courts and aligning functions of government to the tenets of Islam, a state essentially adopts Islam as an official religion´´Nmehielle, Vincent O. "Sharia law in the northern states of Nigeria: To implement or not to implement, the constitutionality is the question." Human Rights Quarterly (2004): 730-759.

was to restore the *Sharia* in its pristine purity, shorn of all the baggage it has acquired over a century of contact with the English common law (...)"

Presently in Nigeria, 12 of the 36 states have domesticated Islamic law, thereby making it the principal state law applicable to criminal and civil matters in such states. Twenty years later, the tension the adoption of Islamic law as state created still exists. The question remains unanswered, of whether the adoption of Islamic law as a state law contravenes the provisions of Section 10 (1999 constitution) or is it a right of the Muslim citizens of that state, for which Section 38 (1) of the same Constitution provides that:

> Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

This tension, however, continues to remain an academic discuss and will continue to be so until either the Constitution is re-amended or the courts make a definite pronouncement on it. However, till date none of these two options or any other has been explored.

Another source of tension between the Islamic legal system and the state legal system is on the question of supremacy. Generally it is the belief that Islamic law is the law of God and being so, should not be subject to any form of law. It is in light of asserting this supremacy that certain adherents of the Islamic legal system metamorphosed into an insurgency group called Boko Haram.

Boko Haram is a violent Islamic group that has been in existence since the year 2002. Although the group initially started as a revolting group against unfavorable government policies, it began to involve violence in its activities in 2009, following the extrajudicial killing of its leader, Ustaz Mohammed Yusuf. It has since been involved in the killing and displacement of over a million people. Its targets are government institutions, religious houses, women and children. The purpose of the group is to wrest total control from the state and establish an Islamic state according to the tenets of Islamic law.

The leader of the group, Ustaz Mohammed Yusuf had this to say: “Our land was an Islamic state before the colonial masters turned it to a *kafir* land. The current system is contrary to true Islamic beliefs” (SALKIDA, 2009, p.3).

The ultimate aim of the group is to replace the existing state legal system with the Islamic legal system.

In conclusion, it should be emphasized that these classifications are not exclusive on their own but merely directive in understanding the relationship that arises from legal pluralism in Nigeria. Some relationships overlap and it is possible to see a legal system falling into one or more of the archetypes. The peculiarity of each case determines the archetype of legal pluralism which it falls into.

CHAPTER 3

3. INTERNAL CONFLICT OF LAWS AND THE INTERNAL MIGRANT

Legal Pluralism is intricately woven into the Nigerian legal system, with it however, comes a clash of legal systems; provisions of Received English Law conflicting with the Nigerian legislation, provisions of customary law conflicting with the received English law, provisions of customary law conflicting with each other, and so many similar scenarios. The explanation of this situation was aptly given when OBA (2004, p.859) said:

> The Nigerian State is a state steeped in pluralism. There is ethnic pluralism with over 250 tribes in the country. There is religious pluralism with Islam, Christianity and a wide range of traditional belief systems as the dominant religions. There is also a multifaceted legal pluralism in the country, consisting of English-style laws, Islamic law and a wide variety of customary laws operating against the background of a three-tier federal system. Since the colonial era, accommodating these laws within the Nigerian legal system has always been a problem, as each type of law had its own peculiar court structure and system.

The problem that arises from the coexistence of plural legal systems in Nigeria is exemplified in the case of *Amanambu v Okafor & Anor*[81], where the plaintiff who was the widow of a person who died due to injuries sustained in a motor accident in Kogi State, brought an action at the High Court in Anambra state, to recover damages. The first defendant (who was the driver involved in the accident), was a resident of Delta State, while the Second defendant (the owner of the car that caused the accident) was a resident of Anambra state. From the foregoing case, one can identify three different states: Kogi State, Anambra State, and Delta State all being states within Nigeria. Each of these states has its laws in matters relating to accidents, and these laws have conflicting provisions. The onus of deciding which of these laws to apply rests with the court. This problem is what has been termed the internal conflict of laws.

[81] (1966)1 All NLR 205

Having stated the sources of laws in Nigeria and the ensuing legal pluralism in the previous chapters, it follows naturally therefore that the resultant internal conflict of laws and its effects be analyzed.

Internal conflict of laws " (...) occurs in a plural legal system, where the courts have to decide which of two or more legal systems co-existing within the same jurisdiction is to be applied in the resolution of the case before it" (ALLOT,1984: p.61).

In Nigeria therefore, internal conflicts of laws occur where there are two or more legal systems applicable to a particular case. The provisions of these legal systems may contradict each other, they may be similar to each other with slight differences or they may even be the same.

The recorded history of conflicts of laws in Nigeria is traceable to the colonial era where there was an attempt to integrate the diverse legal systems that existed at the time. Conflicts arose on whether to apply the received English law or customary law. When the decision was to apply customary law, the question arose again on which of the customary law was to be applicable. The 1960 independence in Nigeria did nothing to ameliorate the effect of this conflict of laws. If anything it can be said to have worsened the existing conflict because with independence came the enactment of the *grundnorm* which was yet another legal system that was introduced into the Nigerian legal system.

The Nigerian Judges are daily faced with the cumbersome task of determining which of these laws to apply. Though over the years, the courts have developed rules of practice to aid the decision of matters where there exists a conflict of laws. The inefficacy of these rules is, however, embedded in the peculiarity of each case. The general rule is that for matters that fall within the ambit of the state legal system, it is the place where a person is domiciled (*Lex Loci Domicili* [82]) or where an act is done or is to be done (*Lex loci celebrationis*) that determines the law to be applicable. While for the customary legal system it is the law of the tribe/region to which a person belongs that is applicable and for religious legal system it is the religion to which a person professes membership that determines the applicable law.

[82] This is a Latin term that means "law of the domicile". A domicile is a place permanent residence

These religious and customary laws are regarded as the personal law of such individuals[83] (AGBEDE, 1973).

The subject of conflict of laws, as unending as its foreseeable future is, has also a future of greater complexity compounded by migration Conflict of laws would not have arisen if:

> (…) separate communities with their several laws had continued to live in watertight compartments and had never involved themselves, either with members of another community or with relationships and legal problems and institutions governed by a different system of law (ALLOTS, 1984, p. 61).

Man's inability to confine himself to one place is what is termed migration. Migration is a movement from one´s place of usual residence - temporarily or permanently - for one or more of several reasons. (INTERNATIONAL ORGANIZATION FOR MIGRATION, 2019).

Several factors inform a person's decision to migrate. These decisions are based on the push and pull factors. The push factors are those often negative reasons for which a person leaves his residence place for another; this includes but is not limited to droughts, wars or conflicts, poverty, economic crisis, and educational backwardness. While the pull factors are those positive reasons that inform the choice of a potential place to migrate to. Generally, therefore, an essential characteristic of migration is the interplay of the push and pull factors. A person may decide to leave a place because of unfavorable economic, educational, environmental, political and social factors for a place with more favorable factors such as ease of doing business in the new environment, better or advanced educational standard, suitable and peaceful environment, with available and standard social amenities. Migration could be classified in various forms however this study is concerned with internal migration in Nigeria.

Internal migration occurs when a person moves within a national boundary for a period (GODWIN, 2016). Internal migration in Nigeria dates as far back as the Late Stone Age; between 10,000 BCE and 2000 BCE. It has been asserted by researchers that this period

[83] Personal law is that which determines the issues affecting a person as an individual e.g. capacity, marriage, divorce, legitimacy, and succession.

witnessed unprecedented rates of migration. People moved from the savannah to the forest zones to improve their chances of survival.

Now, Nigeria is a country made up of 36 states and Federal Capital Territory[84], these states have further been divided into six geopolitical zones based on their history, geographic location and similarities in laws and cultures. These zones are the North Central, North East, North West, South East, South South, and South West. This classification is for ease of political administration (RAHEEM & ORS, 2014). Hence, internal migration in Nigeria could be a movement from one zone to another, one state to another or even within a state; movement from one local government to another is also considered as internal migration. The predominant definition and qualification of internal migration in Nigeria, however, is as a movement from one region to the other, viz a viz the Northern region (Hausa-Fulani group), Eastern region (Igbo group) and the Western region (Yoruba group).

This classification is based on the tripolar framework that existed in the colonial era which divided Nigeria into three groups based on the majority group that dominated each region (JEGA, 2000). This classification is still in use today. In addition to the similarity in history and culture that exists within each of these groups, there is also a striking similarity in the laws that are applicable within each of these major regions. Though each of the 36 states is entitled by the provisions of the Constitution to make its laws[85], it is not uncommon to see that states that fall within the same regional classification have similar or the same laws. For example: The Penal Code (Northern States) Federal Provisions Act [86]applies to states that formerly constituted the Northern region of Nigeria[87]. Section 3(1) provides that:

> The provisions contained in the Schedule to this Act shall apply in respect of the Northern States and shall be read as the law of that territory and as such form part of the Penal Code contained in the Schedule to the Penal Code Law, 1959, of the Northern States (hereinafter referred to as the Penal Code of the Northern States).

[84] First Schedule of the 1999 Constitution of the Federal Republic of Nigeria, Cap 23 LFN 2004 (as amended).
[85] Second schedule, Part II, Concurrent legislative list. 1999 Constitution of The Federal Republic of Nigeria (as amended)
[86] Penal Code (Northern States) Federal Provisions Act, Cap P3, 1960.
[87] They are Bauchi, Benue, Borno, Kano, Katsina, Plateau, Taraba, Niger, Adamawa, Kaduna, Sokoto, Gombe, Jigawa,Kebbi, Nasarawa, Yobe, Zamfara, and Ilorin.

In Nigeria in particular and in the world as a whole, there is generally an interrelationship between migration, legal pluralism, and conflict of laws; the exception being where there has been concerted efforts towards the avoidance of the conflict of laws that naturally emanates from this type of relationship. Migration in a Democratic State of Law often times gives rise to legal pluralism, which occurs in the host state where the laws of the host state conflicts with that of the internal migrant. In several fields of the plural legal system, the scale tilts, however slightly, to the detriment of the internal migrant. Some of these fields are legal systems pertaining to laws on succession, education and marriage. The inequality emanating from these systems are evident because they often involve a clash of interest in the fields of personal and land law for which uniformity of the legal system seems almost impracticable. (ALLOT, 1984, p.64).

I shall now undertake a brief analysis of these inequalities below.

3.1 Succession

Succession, often used interchangeably with inheritance, is the devolution of the interests in tangible and intangible properties of a deceased person to his heirs and successors. The rules and regulations governing this devolution of interest are regarded as the laws of succession. Owing to the pluralistic nature of the Nigerian legal system, the determination of the law applicable in a particular case is based on the nature in which the deceased died. A person that dies without having made a will is said to have died intestate, and for such a person the applicable law is the customary law of the deceased. However, if a person dies, after having written a will or had a will written on his behalf the customary law of such a person would no longer be applicable to his estate, but rather the English law.

This distinction based on testacy and intestacy was developed by the Court to avoid the conflicts that come with this form of pluralism. It is assumed by the Court that a person that goes to the extent of having a will made has expressed his desires that his property is devolved based on the English law[88]. However since the concept of wills is foreign to the customary law, the absence of a

[88] There are exceptional situations where a person did not make a will but is subject to the English wills Law/Act; this occurs where such a persons contracted his marriage under the Marriage Act. Section 3(1) of the Wills Law, 1958.

will signifies an implied acceptance to be bound by the succession customary law. Hence the general rule is that for a person that dies without a will, his estate will be administered based on the rules of customary law to which he was subject to while alive, i.e., his personal law[89]. Islamic law also can be applied as a deceased personal law, though there has been strong opposition by legal scholars, on the classification of Islamic law on the same level as customary law (OBA, 2002). However, it is evident from constitutional provisions that Islamic law is accorded the same standing as customary law. Hence in the determination of devolution of property of a Muslim who dies intestate, it is his personal law - Islamic law - that will apply[90].

In matters relating to the devolution of land, however, Section 24(a) of the Land Use Act, provides that the applicable law is the customary law of the place where the land is situate (*Lex loci rei sitae*) but if it can be proven that the deceased was governed by any other customary law which is his personal law such customary law will apply.

The categorization of succession into testacy and intestacy for the purpose of identifying which law to apply does not, however, bring an end to the conflict. In fact, it gives room to a greater problem of determining which of the several English laws should be applied to the case of a person that dies testate or which of the several customary laws should be applied to the case of a person that dies intestate.

In applying the English law one encounters a lack of uniformity of applicable wills law. In the states of the former western region, the applicable law is The Wills Law 1958 while in the Northern and the Eastern regions the applicable laws are The English Wills Act 1837 and The Wills Amendment Act 1852. These laws provide that once there is a possibility of devolution by customary[91] the Wills law become inapplicable. This is contained in Section 3(1) of The Wills law of the former Western region, it provides:

> Subject to any customary law relating thereto, it shall be lawful for every person to devise, bequeath or dispose of , by his will executed in a manner hereinafter required, all real and personal estate which he shall be entitled to, either in law or in equity, at the time of his death and which if not so devised, bequeathed or disposed

[89] Section 25(2) of the Customary Court Edict, 1997 of Delta State.
[90] Section 277(2) of the 1999 Constitution.
[91] This only happens when it can be proven that a person belongs to a tribe and such a person dies intestate

> of will devolve upon the heir at law of him or if he became entitled by descent, of his ancestor, or upon his executor and administrator.

What however possess a major problem, particularly to the internal migrant for whom this work is focused on, is answering the question of what is the personal law of the deceased? Each region has its own rules governing succession. What law will be applicable to a deceased who is from the northern region, but owns property in the western region where he has resided for years?

The general conception used to be that the personal law of a person is part and parcel of him and it moves with him wherever he goes. A person is not capable of alienating himself from this law. However, in the Nigerian case of *Olowu v Olowu*[92], the Court pointed out that the personal law of a person may change. Personal law is not only the law of the customs to which a person was born, but could also be the law a person has decided to adopt while alive. In that case, the question before the Court was whether succession to the deceased's intestate estate is governed by the Benin native law and custom or the Ijesha native law and custom.

The deceased was a Yoruba man of Ijesha origin by birth. From his childhood, he lived in Benin City, where he was domiciled until the time of his death. He owned properties in Benin, Sapele and Warri which were in the now-defunct Bendel State; he additionally had several properties in Ibadan in Oyo state. The first child of the deceased had distributed the estate based on the Benin native law and custom. The other children of the deceased argued however that the deceased was a Yoruba man and his estate should be distributed based on the Yoruba Native Law and Custom. The defendant argued that though the deceased was a Yoruba man by birth, he became an indigene of Benin before his death because he married Benin women, whom he had children with and that he had also applied to the Oba of Benin (the traditional ruler) to be "naturalized" as a Benin indigene[93]. The Oba had consented and, in the presence of Benin Chiefs, he was "naturalized".

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[92] (1985) 3NWLR (pt. 13 372)

[93] Emphasis by the court. At the supreme court it was considered that the use of the word naturalize was an importation of the concept of public international law into a private international law case ,and as such the word culturalization should be used instead

The Trial Court held, based on evidence[94] tendered by the defendant that the deceased had become a Benin man by choice; hence his estate should be distributed based on the Benin native law and custom. The Court of Appeal affirmed the decision of the trial court. On appeal to the Supreme Court, the Court, in a unanimous decision, held that the deceased had become a Benin subject by "naturalization", and that succession to his intestate estate be governed by Benin customary law.

The decision on applicable law in Nigeria is a very important one. The court deciding to apply a particular system instead of the other often favors one party and results to inequality for the other whose system was not applied. Hence parties, who are subject to two or more legal systems, try to convince the court to apply a legal system that best suits their interest. The implication of a decision on applicable law is best explained with an already decided case.

In the case of *Olowu vs Olowu*, for example, the Benin customary law on succession provides that in the devolution of the deceased's estate the *Igiogbe* (the house the deceased lived in during his lifetime) devolves automatically to his eldest surviving son. The first son may out of goodwill permit his siblings to live in the house with him. This Benin customary law of succession is so important that it serves as one of the exceptions to the testacy rule. Where a Benin man dies testate, the general rule is that the Will he wrote will govern the devolution of his property. However, if in the content of his Will he does not devolve his *Igiogbe* to his first son, the provision of the Will shall be invalidated to the extent of devising the *Igiogbe* to the first one. In the same sense, in *Agidigbi v. Agidigbi*[95], the Court held that under the Bini native law and custom, the eldest son of a deceased person or testator is entitled to inherit without question the house or houses known as "*Igiogbe*" in which the deceased/testator lived and died. Thus, a testator cannot validly dispose of the "*Igiogbe*" by his Will except to his eldest surviving male child. Any devise of the "*Igiogbe*" to any other person is void.

[94] The deceased had lived in Benin until the time of his death, He had properties in Benin City. He married Benin women and applied to the Oba of Benin to be a Benin indigene and this was granted.
[95] Agidigbi v. Agidigbi, [1996] 6 NWLR 302-303.

The Yoruba customary law, on the other hand, provides that succession should be through one of the two systems: the *Ori-Ojori* or the *Idi-Igi.* The *Ori- Ojori* (per capita) is a system of distributing the deceased's estate equally amongst all his children. The *Ori- Ojori* (per stirpes), on the other hand is a system where the deceased's estate is first divided amongst his wives, and subsequently the portion of each wife is divided equally amongst her children (OBILADE, 1979). For example, if a man had three wives, his estate will be divided equally amongst the three wives, and then the property of each wife will be divided equally amongst her children. Hence a wife with one child will get the same portion of the estate as a wife with ten children.

In applying the foregoing customary laws on succession to the case of *Olowu v. Olowu*, it becomes evident why the first defendant who happens to be the first son of the deceased, insisted that the Benin customary law be applied; because he was the first son, he became automatically entitled to the *Igiogbe* to the exception of his siblings. On the other hand, if the Yoruba customary Law was applied each of the deceased's children would have been entitled to a portion of the deceased's estate.

The Supreme Court's decision in *Olowu v Olowu* became the *locus classicus* on change of applicable customary law and has since then been used as a precedent in similar cases.

Unfortunately, what the court did in its decision was to strip the internal migrant (the deceased) of the personal law he acquired by birth because he chose to reside and naturalize in his host region. Two important points the courts failed to take into consideration before arriving at its conclusion. First, lack of an express relinquishment of indigeneship, secondly, the possibility of a dual indigeneship.

3.1.1 Lack of express renouncement

At the time of the trial of the case and till date, there are no express legal provision on the requirements for renouncement of indigeneship. However, considering the importance of indigeneship in the determination of personal law and the grave impact of renouncing

one's indigeneship, it will be unfair for the Court to rely solely on interpretations of overt acts to deduce renouncement. In the absence of the deceased's express renouncement, such act should not be implied on his behalf. Additionally, there was evidence adduced at the trial to show that the deceased did not intend to renounce his indigeneship; one of such was that he always applied the Yoruba (Ijesha) custom in his house; in fact, he gave all his children Yoruba names, even though they had Benin mothers. The importance of express renouncement can be inferred from the strict requirement the Constitution laid down for renouncing citizenship (though the issue of citizenship is an aspect of Public International Law, it can be applied, by analogy to internal conflict of law; as the Court at the trial and Court of Appeal imported the term "naturalization")

Section 29 of the (1999 constitution) provides:

> (1) Any citizen of Nigeria of full age who wishes to renounce his Nigerian citizenship shall make a declaration in the prescribed manner for the renunciation.
>
> (2) The President shall cause the declaration made under subsection (1) of this section to be registered and upon such registration, the person who made the declaration shall cease to be a citizen of Nigeria.

3.1.2 Dual indigenship

Another point the Court failed to consider was the issue of dual indigenship. Having established that a person can change his personal law, does it then mean that he can renounce tacitly-by silence or omission- his original customary law?

Nothing in the history of the Nigerian legal system prevents a person from possessing dual indigenship, prior to colonization a person could go to another region, assimilate and even take up political posts; such a person would not be deemed as having renounced his indigenship. OBASEKI J.S.C in *Olowu vs Olowu* pointed this when he said:

> The history of population movement in this country, Nigeria, bears testimony that people moved from place to place before the advent of Europeans. They settled and became assimilated into the community. The present dynasty of the Obas of Benin, the repository of Benin native laws and customs, bears eloquent testimony that a

> Yoruba man can become a Benin man subject to Benin native laws and customs. The acceptance by the Oni of Ife of the request of the Chiefs of Benin to allow his son Prince Oronmiyan to ascend the throne of Benin and the acceptance by Prince Oromiyan to become the Oba of Benin are historical facts. Similarly, the sojourn of Prince Oranmiyan to Benin City for that purpose though his stay did not last long is also a historical fact. His decision to return home and ceding the throne for his son by a Benin Queen, Eweka I, who was brought up in the tradition of the people is also a historical fact.

In analyzing the impact of legal pluralism in the field of succession on the internal migrant in a Democratic State of Law, it becomes evident that the diversity of legal system on succession raises a problem for the courts when it comes to determining the applicable law for an internal migrant that has died intestate. Every citizen of a Democratic State of Law should be entitled to the protection of his right to self-determination; it becomes a great problem to development in a Democratic State of Law when the judiciary which is one of the organs for the promotion of this democracy becomes a ready tool for the manipulation of the right to self-determination of the internal migrant, hence the court should not be involved in inferring renunciation of indegenship.

In conclusion, the culture of writing wills is foreign to Nigeria and is only beginning to gain acceptance amongst the educated elite. In addition to the fear of the unknown the internal migrant should not be burdened with the fear that if he dies intestate, succession to his property may not be based on his personal law, where he has not expressly relinquished same.

3.2 Marriage

In Nigeria, there are three major different legal system governing marriage. These systems are the customary legal system, Religious legal system and the Statute (IMAM et al, 2016). Hence there are three forms of marriages in Nigeria: customary marriages, religious marriages and marriages under the Statute Marriage Act respectively.

3.2.1 Religious marriage

Islamic marriage is a form of marriage conducted under Islamic law. The general rule is that Islamic law is the personal law that is applicable in matters relating to marriage of Muslims. Section 277 (1999 constitution) provides:

> (1) The *Sharia* Court of Appeal of a State shall, in addition to such other jurisdiction as may be conferred upon it by the law of the State, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law which the court is competent to decide in accordance with the provisions of subsection (2) of this section.
>
> (2) For the purposes of subsection (1) of this section, the *Sharia* Court of Appeal shall be competent to decide -
>
> (a) any question of Islamic personal Law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
>
> (b) Where all the parties to the proceedings are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant.

Islamic law permits a Muslim man to marry a Christian woman but does not permit a Christian man to marry a Muslim woman, hence such Christian man cannot bring a claim under Islamic law on any matter pertaining to that marriage because such marriage is unknown to Islamic law (HILL,2015).

Christian marriage, on the other hand, is treated as a marriage under the Act, first because as a marriage under the Act, Christian marriage is also monogamous. Additionally section (1999 constitution) provides that all other forms of marriage, except customary and Islamic, are within the exclusive legislative list.

Item 61, part I of the 2 schedule (1999 constitution) provides:

> The formation, annulment and dissolution of marriages other than marriages under Islamic law and customary law including matrimonial causes relating thereto

thereby making the Marriage Act which is a promulgation of the National Assembly the applicable law to a Christian marriage.

3.2.2 Customary marriages

These are marriages conducted under the customary legal system, owing to the diversity of customs in Nigeria; there are diverse systems of customary marriages. A feature however common to customary marriages is the polygamous nature of these marriages, these form of marriage permits a man to marry more than one wife. Nigerian customary laws are generally unwritten, this fact affects customary marriage as there are no written laws governing such marriages, and the laws are instead passed orally from one generation to the other. The validity of customary marriage has been emphasized by section 35 of the Marriage Act which provides: "Nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any native law or custom or in any manner apply to marriage so contracted".

Like the Islamic marriage, customary marriages have also been recognized by the constitution. Based on the provision of item 61 part 1 of the second schedule customary marriage does not fall within the jurisdiction of the Marriage act.

3.2.3. Marriage under the Act

Following colonization the British introduced a monogamous system of marriage which the Nigerian citizens can decide to conduct. Upon taking such decision however the marriage becomes subject to the British Law on Marriage (ALLOT, 61).

It is this British law on marriage that was ratified by the National Assembly and became The Marriage Act, the equivalent of it at the state level is the Marriage Laws of the State. Hence, The Marriage Act is a promulgation of the National Assembly in the exercise

of the duties imposed on it by Article (1999 constitution). It is applicable throughout Nigeria, except in marriages relating to customary or Islamic law. Marriage under this system is fondly call legal/court marriage by Nigerians who ascribe greater reverence to this system of marriage.

In Nigeria, the general rule is that the form of marriage a person undertakes determines the law to govern marriage and it's possible resultant effects - divorce, separation, legitimacy of children born in or outside of marriage, and inheritance, some aspects of succession of both intestacy and intestacy (KASUNMU,1964). Following this reasoning therefore, a system of marriage has been developed over the years to avoid the harsh effect of the pluralism of marriage legal systems.

This system of marriage is called the double decker marriage, `"this type of marriage involves the same couple who contract a marriage under one system of law and then conclude a subsequent marriage under another system by performing the respective legal essentials to each type of the marriages contracted" (ONOKA,2013). In this form of marriage the customary marriage is conducted first and subsequently the statutory marriage.

Owing to the popularity of the double decker system of marriage gained in the absence of legal provisions prohibiting it, another system of marriage was soon developed. This system has been termed the Multi-tier system of marriage (IMAM et al, 2016). In this system of marriage there may exist as much as four different marriages between a couple. For example a Yoruba Muslim man who marries an Ibo woman, may undertake the following marriages: marriage under the Yoruba customary law, Marriage under the Islamic law, Marriage under the Ibo customary law and Statutory Marriage. The Statutory marriage is contracted because it is believed to be official and it possesses statutory backing while the customary and religious marriages are conducted because people identify with them and conducting the marriage is evidence of their dedication and membership of the group.

The multi-tier system of marriage has soon found a permanent place in the Nigerian marriage system. In a survey carried out (IMAM et al, 2016) 210 of 430 interviewed persons had conducted this form of marriage. Additionally, there are statutory provisions that can be

interpreted to be in support of multi-tier marriage, so long as the marriage is between the same parties.

Section 33(1) of The Marriage Act[96] which provides: "No marriage in Nigeria shall be valid where either of the parties thereto at the time of the celebration of such marriage is married under customary law to any person other than the person with whom such marriage is had."

Owing to the plurality of marriage conducted question on which court and which customary law is applicable in the determination of matters pertaining to the marriage arises. From the practice of the courts, two theories have been identified in the determination of applicable law in matters relating to marriage. They are the *Conversion theory* and the *Coexistence theory* (OLOKOOBA, 2007)

The proponents of conversion theory assert that if a couple undergo a statutory marriage after conducting a customary marriage, the customary marriage loses its legal significance and takes on the status of the statutory marriage i.e. the customary marriage converts to a statutory marriage and any matter arising from such a marriage will be determined based on the provisions of the Marriage Act/Law and not the customary law.

This was pointed out in the case of *Teriba v. Teriba and Rickett*[97], where the court held that: 'The true position is that the customary marriage is converted by the Act marriage which in effect, supersedes it. Therefore, if the Act marriage is subsequently dissolved, the customary marriage cannot revive".

The Co-existence theory asserts that all the systems of marriage undertaken by the parties co-exist and possess independent legal validity. An action carried out in one system does not have the same effect on the other(s) system. For example, if Mr. A, an Ibo man from the Eastern region, marries Mrs. B, a Hausa woman from the Northern region, and they are both living in Osun State - a state in the Western region - where they have lived for long, and like in the case of *Olowu v. Olowu*, they have become indigenous of that state. In the course of getting married they decided to conduct a system of marriage peculiar to each of the

[96] Cap M6 Laws of The Federation, 2004.
[97] Kunso v Udo(1990) 2 S.C.N.J Suit no 1/211/67 of 2/769 (unreported) Ibadan High Court. 40

regions. Subsequently, if they decide to get divorced, they have to do that four times: based on the legal system of each of the marriages conducted. The complexity of this was pointed out in the case of *Afonne v. Afonne* [98]where the court held that:

> Where two legally recognized Marriages are involved, the party seeking dissolution and a decree of divorce should clearly specify which marriage or marriages he or she wants dissolved (...) the aim of those people is not to convert their customary marriage to a statutory one. More so since both customary and statutory laws are recognized in Nigeria, there is no basis saying that one law looks powerful or supersede.

In the foregoing, the court implied that to have a marriage dissolved; the dissolution has to be based on the system of marriage conducted. The implication of this decision is more severe for the internal migrant who often times would have been married under more than two systems.

All citizens of Nigeria may undertake the double decker marriage, it is however the internal migrant that can undertake the multiple tier marriage. The inequality faced by the internal migrant is embedded in the two schools of thought on the determination of applicable law in a marriage; the conversion theory and the Coexistence theory.

In the Conversion theory, the inequality is seen when the statutory marriage is imposed over the customary marriage of the parties in question i.e. the suppression of the personal law of the migrants with that of the statutory law.-bearing in mind that there is likely to be more than one customary marriage- .

In the Coexistence theory, the inequality is evident in the requirement to conduct the affairs of the marriage in each of the systems of marriage conducted, hence, where an internal migrant is involved in 4 systems of marriage, dissolution of marriage has to be undertaken 4 different times under 4 different customs, not only is this expensive for the internal migrant it also takes a lot of time.

An additional problem of jurisdiction arises in the determination of matters relating to customary or religious marriages. Such marriages can only be tried in specified courts, hence,

[98] (1975) E.C.S.N.L.R. 159 at pp: 168-169

for a court to have jurisdiction over a marriage; such marriage must have been conducted under a system in which the court has jurisdiction. For example matters relating to an Ibo customary marriage can only be tried by an Ibo customary court. Matters relating to Islamic marriage can only be tried by a *Sharia* court. *Sharia* courts are situated only in the Northern region of the country where the majority population is Muslim, this does not mean that there are no internal migrants who are Muslims in other regions, for such Muslims in regions where there are no *Sharia* courts, customary law is imposed on them (OBA,2009). For an internal migrant that conducts a marriage outside of the jurisdiction of his host state, he has to travel back to his state to have such matter decided. This is troublesome considering that it takes several years for a case to be concluded in Nigeria.

It is essential in a Democratic State of Law that citizens be entitled to justice; justice not only involves being heard but it also entails a lack of impediment in the access to justice. Justice for the internal migrant therefore, amounts to access to a judicial system that can try his case in his host region. The importance of this was emphasized by Justice KARIBI-WHYTE JSC in the case of *Kunso v Udo*[99] when he said:

> Our new judicial system having accommodated our indigenous system of administration of justice has recognized its informality, malleability to the particular area in which the court exercises jurisdiction, has made provision within the limits of statutory provision enabling them to administer justice as understood by the people and to do substantial justice between the parties before them. Thus what the enabling statutory provisions aim at achieving is the doing of substantial justice in accordance with the native law and custom of the parties before them (…)

3.3. Educational legal system

In considering legal pluralism and its impact on the internal migrant in the educational system, it is important first to highlight the regional attitude towards education.

[99] Kunso v Udo (1990) 2 S.C.N.J. 40

The Northern region in Nigeria stands out from the other regions for its lack of zeal towards education. The Northern region[100] has been reluctant to accept the Western form of education, because in its view the region already has its established system of education based on Islam, which it holds superior (GBADAMOSI,1986). This attitude, coupled with other factors accounts for the current backwardness the region currently faces.

As far back as 1970, the government recognized this apparent inequality and took steps to equalize the educational opportunities. One of such steps was the introduction of the federal character of education. Section 14(4) (1999 constitution) of The Federal Republic of Nigeria[101] is the key provision on this. It provides:

The composition of the Government of a State, a local government council, or any of the agencies of such Government or council, and the conduct of the affairs of the Government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation. In order to implement the provisions of the aforementioned section, The Federal Character Commission was created. The function of the commission is as stated below in the provisions of the Third schedule, Part C (1999 constitution) of the Federal Republic of Nigeria (as amended):

> 8. (1) In giving effect to the provisions of section 14(3) and (4) of this Constitution, the Commission shall have the power to:
> (a) work out an equitable formula subject to the approval of the National Assembly for the distribution of all cadres of posts in the public service of the Federation and of the States, the armed forces of the Federation, the Nigeria Police Force and other government security agencies, government owned companies and parastatals of the states;
> (b) promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government;

[100] The Northern region is predominantly Muslim, hence the constant reference to the North in relation to Islamic education

[101] Is the *grundnorm*. Section 1(1) of the constitution provides "This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria" (1999 Constitution). Section 1(3) further buttresses this point by providing "If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void."

(c) take such legal measures, including the prosecution of the head or staff of any Ministry or government body or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission; and
(d) carry out such other functions as may be conferred upon it by an Act of the National Assembly.

In carrying out its functions, the Federal Character Commission introduced the quota system of admission into Nigerian Federal Institutions of education. The goal of this system was to manipulate admissions. The quota system stipulates the number of candidates to be admitted based on certain classifications.

This system has four classifications which we shall briefly describe below:

(i) Merit system: candidates with the highest UTME and Post UTME scores are considered to the tune 45 percent, which is the limit of the available spaces for such applicants:

(ii) Catchment area - are the geographic or socio-cultural areas contiguous to the institution. 35 percent of admission slots go to this category;

(iii) Educationally less developed or disadvantaged: states considered to be educationally less developed or disadvantaged. 20 percent goes to this category;

(iv)Discretion of the institution′s administrators - there is a 10 percent unaccounted for; but is often believed to go to this category (FUOTUOKE, 2011).

It is important to note that there are around 150 private and public universities in Nigeria, with a capacity to carry 600,000 students. For a country with 180 million people 62% of them are 24 or younger (YOMI, 2017).

The area which this work centers on is the catchment area and the educationally less developed or disadvantaged states as this particularly affect the internal migrant.

3.3.1 Educationally less developed or disadvantaged states

Currently about 24 states (majority in the North) fit into this classification. The government is saddled with the responsibility of determining which states are educationally less developed, and upon such decision place a cut-off mark for them. This system grants rights of admission to different sets of people not taking into consideration their qualification.

In the implementation of this policy-however good it's intent might have been- several acts of discrimination and inequality become apparent. One of such was in the case of *Badejo v. Fed. Min. of Education*[102], where the appellant brought an action for the enforcement of her fundamental human right to freedom from discrimination as contained in Section 39(1) (1979 Constitution) which was breached by the respondents who refused to call up her for interview for admission into the Federal Government Colleges on the grounds of the applicant's state of origin[103] . The court dismissed the case based on a technicality. However from the statement of KUTIGI J.S.C it is apparent what the court's decision would have been if the substantive suit was addressed. He said: "a fundamental right is certainly a right which stands above the ordinary laws of the land, but I venture to say that no fundamental right should stand above the country…"

NDIOMU (1989) summed it up when he said:

> The quota system of admitting candidates into Federal Government institutions gives room for inequality which affects the much talked about standards in education. It seems there is no definite cut-off line for all candidates. A candidate from State Y may score 65% and may not be offered admission because there are many others from the same State with higher scores; while another candidate from State X who scored 45% is admitted because only a few candidates from that State scored above 45%. The system seems to negate some of the major national objectives such as free and democratic society; just and egalitarian society

[102] Badejo v. Fed. Min. of Education 8 NWLR, pt. 456, 1996.
[103] She scored 73.25 while persons with scores as low as 37.75 from the north, we're invited

On the effectiveness of the system, its alarming to note that almost three decades after the policy was implemented, the gap it was created to fill is yet to be filled, the Northern population is still highly uneducated (UNICEF, 2013).

3.3.2 Catchment area

This system was implemented to create equality. In this system, the states of the Federation are grouped into catchment areas based on the location of each institution. A classic example of the application of this can be seen in the 2018 publication by The Federal Character Commission on staff distribution by state of origin in The University of Abuja[104].

The states with the highest representation are Kogi: 372, Nasarawa: 210, Benue: 190 and FCT: 177, this states are in close proximity to the state in which the university is situated, while the states with the least representation are Zamfara: 4, Bayelsa: 2, Jigawa: 2, and Yobe: 2 (FCC, 2019)

In analyzing the effect of the quota system on the internal migrant this work utilized data from a recent survey[105] (BUKOLA, 2013). In the survey, interviewed migrants admitted that the standard of education in the educationally less developed states was low compared to other states in the country. 2,940 internal migrants were interviewed from 6 states, 2,664 of them agreed that internal migration increased access to education. All the respondents agreed that qualitative education abounds in Abia, Anambra, Oyo, Lagos, Bayelsa and Cross River and other states in Southern Nigeria (educationally advanced states). Key to this study is that 2,898 of the 2, 940 respondents claimed to have left their wards and family members in their states in Abia, Anambra, Oyo, Lagos, Bayelsa, Cross River and other states across Southern Nigeria for their educational development (they migrated without their family).

The catchment area system limits the migrating capacity of internal migrants. A person intending to work in a university outside of his locality will consider first if the target

[104] The choice of Abuja is intentional, because Abuja is the Federal Capital Territory
[105] it is important to state that the latest population census in Nigeria was carried out in 2006,hence this data was used because it is more recent

university has a slot for him or not. This slot is usually higher the closer you are to your state of origin.

The objective of reducing inequality for which the quota system was implemented, serves the contrary function promoting inequality. Inequality first in the discrimination based on region.

Secondly, it serves the function of widening the gap of the initially perceived inequality - by creating quotas not based on merit - additionally the standard of these institutions dropped; hence it created inequality in the quality of education. Though this reasoning has been highly contested, some authors believe the lowering of general standard of education promotes equality on all levels. I do not concur with this view however, because lowering of educational standards to promote national integration is a counterintuitive step towards the attainment of development in a Democratic State of Law, my suggestion is that the standard of education of the less developed regions be improved through concerted government efforts.

Third, tagging such states as educationally less developed lowered its ranking amongst member states hence its appeal to migrants.

Fourth, it limited access to admissions and invariably internal migration, as a person's choice of institution is somewhat predetermined by the quota system.

Fifth, it promotes inequality as there are some states who do not fill up the slots allocated to them (for want of qualified personals and or lack of interest), while other states have more candidates than the available slots.

Placing this policy (quota system) of the Federal Character Commission against some provisions of The 1999 Constitution, a sharp contrast becomes apparent.

Section 15 (1999 constitution) provides:

> The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress.

> Accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.

Based on the provisions of Section 1(3) (1999 constitution):

"If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void"

Following this reasoning, therefore, the implementation of the quota system is an outright violation of the provisions of Section 15(2) (1999 constitution), because it discriminates on the grounds of place of origin. Furthermore, it is trite that internal migration is an essential tool for economic growth and development in a Democratic State of Law. The quota system predisposes internal migrants to discrimination and inequality, which in turn affects the rate of internal migration, there is therefore an urgent need to reform the current quota system policies to exclude discriminations based on state of origin and thereby ends the apparent inequality to internal migrants.

In conclusion, the everyday goal of a Democratic State of Law is that development cut across all spheres to wit cultural, social, educational and economic, hence any perceived impediment to the achievement of this goal should be nipped in the bud. Inequality and discrimination against the internal migrant is one of such impediment, as the internal migrant cuts across all the spheres highlighted. It is therefore important that for advancement in Nigeria, strategies and reforms should be undertaken towards the amelioration of this inequality occasioned by legal pluralism.

CHAPTER 4

4. STRATEGIES FOR ALMAGAMATING NATIONAL LAW

Diversity in as much as it is the basic requirement of a Democratic State of Law has no doubt equally been a thorn in the achievement of overall development and people integration in the democracy. Thus, the divisive forces have had an overall impact on national unity and development in Nigeria. Development here includes legal, economic, social, and educational development.

As has been demonstrated in the previous chapter, an uneven development in academic education is noticeable due to the strategies of quota system and catchment area that have been employed to promote diversity. Another negative impact of diversity in the social field is obvious from the series of fights by the Boko Haram group that has affected the social and economic development in the country.

Legal pluralism which is the main focus of this dissertation has also impeded development in Nigeria. Instead of advancing to more modern legal matters, the Courts have, since independence, been stuck with the problem of deciding the applicable laws in conflict of laws situations.

Legal pluralism in Nigeria has been used as a divisive force under the cover of terms with varying significance such as customary, tribal, zonal, regional, district or ethnic affiliations. Every societal feature that differentiates based on membership of a particular section of the community is a potential threat to national integration, hence, needs to be addressed. So, in this work, having identified the negative impact of the pluralism of laws on national integration in Nigeria, it becomes necessary that strategies to address the budding problem be analyzed in view of their applicability to the current situation.

In line with the modernization and globalization program, several authors have suggested strategies to address the problem of conflicts which legal pluralism poses. These strategies include, but are not limited to, unification, integration, harmonization, incorporation, repression, bridging and subsidization. There is no clear-cut distinction amongst these strategies, as we shall see in the course of its analysis. Some strategies like

integration eventually lead to unification. Also there exists similarities in some strategies, in this sense; repression is similar to unification, while incorporation integration and harmonization have similar characteristics. Hence, we will base our focus on two of these strategies to wit: unification and integration, because of the existing similarities and in view of their applicability and suitability in the promotion of national integration.

4.1 Unification

In the field of legal pluralism, unification signifies the imposition of a uniform legal system in a previously plural legal system. To attain this, the previously independent legal systems are totally suppressed and replaced by a new legal system (ALLOT, 1984). It could take one or more of several forms: normative unification, institutional unification and partial unification (KÜNKLER, 2006). We shall be undertaking a brief analysis of these forms of unification and their possible effects in the democratic state of law.

4.1.1 Normative Unification

In normative unification it is the laws of the plural legal systems that are unified. A typical example of this in Nigeria occurs in the case of war.

Before colonialism, the regions which were amalgamated to form the present-day Nigeria each had their laws on war. In matters relating to wars amongst the then independent regions, some of the regions had well developed laws on war that were based on humanitarian considerations. For example, history has it that in the Fulani wars[106], the regional laws provided that holding a green leaf signified surrender, or that unharmed persons should not be killed (OKEKE, 1997).

With the unification of the laws on wars, however, these laws that were operative in the regions were suppressed and replaced with a law of foreign origin, The Geneva

[106] The pre- colonial region that now makes up the Northern region of Nigeria.

Conventions of 1949[107]. This convention, in its article 3, even goes on to prescribe laws for non-international conflicts i.e. internal wars that occur in the territory of its member states. Article 3 provides: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions (…)"

Nigeria domesticated the Geneva Convention and it became The Geneva Conventions Ordinance of 1960, without making any major changes to it. It was subsequently renamed the Geneva Conventions Act and is currently contained in Chapter 162 of The Laws of the Federation of Nigeria, 1990. This Nigerian Act provides for the punishment of grave breaches of the 1949 Geneva Conventions.

On its application Section 12 of the Geneva Conventions Act provides: "This Act shall apply throughout Nigeria (...)".

This normative unification strategy, however, can represent a hindrance to development in a real Democratic State of Law, because generally law evolves from the accepted practices and a people way of life, and it serves the function of streamlining the State's activities, within its scope, to the generally accepted ideology by the community which it governs, thereby making law a mirror of social behavior and a tool for social changes (ALLOT, 1968). Bearing this in mind, therefore, the problem arises on whom, how and what determines the unified law to be applicable. In the current situation of The Geneva Convention, the law was definitely not arrived from the customs and practices of the Nigerian people. In fact, Nigeria was not even present at the 1964 Geneva Conference where the treaty was first codified.

4.1.2 Institutional Unification

In this strategy, it is the judicial institutions that are unified; the normative systems however remain different. Hence the same courts try matters from different legal systems. For example, in the precolonial era, the Yoruba region had an established and hierarchical

[107] Convention (iii) relative to the Treatment of Prisoners of War, Geneva,12 August 1949.

judicial institution. At the base, equivalent to the present day court of first instance was the *Olori Ebi* Court. He handled civil matters of parties within their family.

Next in hierarchy was the *Olori Adugbo* Court, where appeals from the *Olori Ebi* Courts, civil cases beyond *Olori Ebi* Courts scope, and preliminary investigation into criminal matters were handled. The *Oba´s* Court was where Criminal cases and appeals from the *Olori Adugbo's* Courts were handled. However, the *Oba's* Court was scrapped in 1908 and the jurisdiction in criminal matters was transferred to the Chief of Justice in Lagos. Currently in Nigeria, the courts that used to exist in the precolonial era have been renamed the Customary Courts, also known as Court of First Instance, their jurisdiction are however now limited to only civil cases. A British judicial institution model now handles criminal matters.

It is observable therefore that the pre-colonial Yoruba region had an established and hierarchical judicial institution[108] which was developed from the practices of the people.

However this was suppressed and replaced with the English style judicial institutions (ONADEKO, 2008). The problem this form of unification raises is the suppression of the customary judicial institution for a judicial institution to which the subject matter to be treated is entirely unknown. Also, in questions relating to Islamic law, institutions that have not been specifically established to hear Islamic matters cannot purport to administer justice in such matters.

4.1.3 Partial Unification

This strategy of unification is based on the subject matter of the law to be unified. The subject matter in question is tried based on a unified law. In Nigeria, this is particularly evident in the partial unification of criminal matters[109] .The motivation for the successful

[108] Similar institutions existed in other regions; Emir´s and Alkali´s court in the north.
[109] Criminal matters in the whole of the North also have a unified law called the penal code law (where it is for the state) or The Penal code Act (where it is for the whole region) while in the remaining part of Nigeria the criminal code law/Act is the unified law that is applicable.

partial unification of criminal law in Nigeria stems from an agreement by former British colonies in Africa to apply a uniform and codified criminal law to all persons regardless of their region. To attain this, the customary criminal matters were suppressed and replaced with codified criminal codes from different origins. The distinction between criminal codes in Nigeria that resulted in a partial unification is traceable to the origin of each of the codes.

In the southern region[110] Sir Walter Egerton, who was the High Commissioner felt there was a need for a code to govern criminal matters in the region and to that effect he wrote a letter to the secretary of state, the letter read thus:

> I have the honour to enquire whether you would approve the enactment of a Proclamation introducing the Straits Settlements Penal Code, with such modifications as local conditions may render desirable. As you are aware, the Straits Settlements Code is an adaptation of the Indian Penal Code. It is in my opinion more suitable for the Protectorate than the Indian Code and would require less alteration than the Indian Code before being enacted here. It is unnecessary for me to point out the very great advantage that results from a codification of the Penal Law. (EGERTON *apud* MORRIS, 1970, p.144)

In the northern region H. C. GOLLAN who was the chief justice had gone ahead to draft a code using the Queensland code as his model, one of the reasons he offered for adopting this model was that the model was detailed and simple to understand, hence will not amount to much difficulty for the criminal law administrators in the protectorate who had not received legal training

In view of these varying reports, the legal advisers to the secretary of state suggested that since the code of the northern region had already been drafted the southern region should adopt it, in other to promote a unification of the criminal legal systems. The High Commissioner of the Southern region however objected to this, stating that the best model for the southern region was the adaptation of the Indian penal code. Following this disagreement and other underlying circumstances, the enactment of a criminal code in southern region was put on hold and the region was without a codified criminal code until 1914, when the southern and northern region was amalgamated. The Attorney- General was

[110] The region now governed by the Criminal Code

then charged with the responsibility of enacting a criminal code that will govern both the northern and the southern region. In his report he can be quoted as saying:

> The purpose of this Ordinance is to establish a Code of Criminal Law for the whole of Nigeria whereas at present a Code has been established for the Northern Provinces only. As the majority of the courts administering the criminal law are presided over by officers who have no legal training it is of the first importance that the criminal law should be easily ascertainable and for that purpose should be codified. As the Code of Northern Nigeria has been established for some years and has been found satisfactory, this Ordinance extends that Code to the whole of Nigeria. The opportunity has been taken to incorporate into the Code some of the more recent Imperial Statutes and to delete from the Code some of the provisions of the Code which are considered to be no longer required (MORRIS, 1970, p.151)

Hence, a uniform criminal code was enacted, to govern all criminal matters in Nigeria. This was however short lived, in 1960, following a series of agitation by the northerners, that the criminal code was not a representation of their ideals and customs; a new penal code was enacted to replace the criminal code in the northern region of Nigeria. This new code was based on the penal code of Sudan, which was in turn based on the Indian penal code that Sir Walter Egerton had earlier suggested for the southern region of Nigeria.

The problem arising from this partial unification is in the application of English codes to govern Nigerian people. There were offences contained in the codes that were normal practices of the people.

The problem arising from unification is in the application of foreign codes to govern Nigerian people. In a Democratic state, laws should be an expression of the social inclination of the people for which it was made, imposing laws, especially criminal ones not only amounts to absurdity but in some cases it has been proven to be futile. There are offences contained in the codes that are the normal customary practices of Nigerians. For example in Nigeria, the criminal code prohibits the burying of dead persons in residential areas without obtaining consent; Section 246 of the Criminal Code Act provides:

> Any person who without the consent of the President or the Governor buries or attempts to bury any corpse in any house, building, premises, yard, garden, compound, or within a hundred yards of any dwelling-house, or in

> any open space situated within a township, is guilty of a misdemeanor, and is liable to imprisonment for six months.

Unfortunately, this happens to be the customary practice of some regions, take some Yoruba's for example, it is their belief that death is not an absolute extinction, but a transition to another spiritual realm, hence, this belief informs their decision of burying the dead in their homes where they can make regular sacrifices and prayers to the deceased, even their disputes are resolved at the grave of the deceased. (ADEBOYE2016).

Another example is in the criminalization of bigamy, which is an imposition of the monogamy practice totally foreign to the Nigerian customary laws, which are polygamous in nature. Section 370 of the Criminal Code Act provides: "Any person who, having a husband or wife living, marries in any case in which such marriage is void by reason of it taking place during the life of such husband or wife, is guilty of a felony, and is liable to imprisonment for seven years."

The criminalization of bigamy happens to be one of the futile laws in Nigeria, this was rightly pointed out by AGUDA (*apud* BOPARAI, 1982, p.556) when he said:

> As regards polygamy, the view has been expressed that, "The vast majority of Nigerian men, may be the percentage is over 95, practice polygamy in one form or the other. A number of these ostensibly practice monogamy but have one or two other 'wives'. Some of them who are cautious do not perform 'marriage ceremonies' with the other 'wives'. But some do in fact perform these ceremonies to which they in fact invite people who have to do with the administration of justice including Police Officers, (…) Lawyers, Ministers of State and Religion (…) who attend such ceremonies with full knowledge of the correct situation (…) some of these people themselves have perhaps indulged in a similar breach of law. Yet in my experience for over 13 years at the bar (…) I have come across only a few cases of prosecution for any of the offences under the Marriage Act, since 1863 there have been only about two or so reported cases of bigamy in this country.

It should also be noted that this partial unification failed in the Northern part of Nigeria, where a new Penal Code was enacted in 1960 to replace the Criminal Code that was initially applicable to the whole of Nigeria. The enactment of the Penal Code stemmed from a rejection of the Criminal Code by the Northerners on grounds that it did not conform to

Islam or Islamic law. Therefore, it is observable that the success or not of a law depends on the acceptance such law receives from the people.

Another serious problem regarding unification is likely to arise when we talk of unifying personal law in a country with multiple legal systems governing personal laws. Sometimes, it becomes inevitable that individual personal rights will be infringed when a foreign legal system is applied to the determination of matters pertaining to the members of that country. This was the general view in the London Conference on the Future of Law in Africa, convened from December 1959 to January 1960, where Lord Denning said:

> The general conclusion of the Conference, however, was that uniformity of law would undoubtedly make a valuable contribution to the administration of the law and is therefore desirable in principle. While, on a territorial basis, complete uniformity of law, and in particular of personal law and land law, may be impracticable and indeed undesirable for some time to come, it is generally true to say that between communities and areas there are many variations - especially in native law and custom - which could and should be eliminated, thereby creating a greater degree of uniformity than at present exists (LORD DENNING *apud* ALLOT,1984, p. 64).

In conclusion, the use of unification as a strategy for promoting national integration can amount to greater injustice, because in a Democratic State of Law, the legal system should be by the people, of the people and for the people. Unification however serves the contrary function, because it suppresses the legal system of the people and imposes a foreign legal system[111] which is not the expression of people´s majority will .This is also view of ONADEKO (2008, p. 19) expressed when he said:

> Societies have their legal standards that cannot and should not be transferred for an appraisal of another society. What is legitimate depends on the culture and cultural standards of the people. Every rule a people or its majority accepts as binding is legal.

[111] Foreign legal system here does not only imply legal systems outside of Nigeria. The imposition of the legal system of one of the regions over other regions within Nigeria, equally amounts to an imposition of a foreign legal system

4.2 Integration

Integration as a strategy for promoting unity in a legally plural environment connotes the creation of a legal system that brings together and at the same time maintains the independence of the previous existing independent legal systems. Hence the preexisting legal systems are not suppressed, but rather brought together, and through standardization a common effort is made to avoid conflict between the plural legal systems. For Nigeria the journey of integration began during colonialism with the policy of indirect rules. This strategy permitted that the pre-colonial legal systems of the regions to be maintained and used in the colony administration.

To achieve this, the native legal systems were given relative independence in the application of its laws. However, through a series of reforms which shall be analyzed shortly, these native courts soon became westernized. This act of gradual native legal system westernization signified its integration into the English legal system. The reforms that were undertaken to achieve the westernization include significant changes to the institutional, normative, and procedural systems of the native legal systems.

Institutionally, the native courts were renamed Customary Courts and appeals from them started to be referred to the English modeled Courts. Additionally, to become a member of the court the judge needs to be specially trained. Hitherto, being a judge in the Yoruba legal system was tied to a customary position, holding such position automatically made a person a judge. For example, A person only needed to hold the customary position of the oldest member of the family to be an *Olori Ebi* Court judge, or to be an Oba Court judge all that was required was that he hold the customary position of *Oba*[112] and the *Oba* was not required to undergo a specific training to become the judge.

Procedurally, the native laws which were hitherto passed orally and were unwritten, now they are required to be recorded and reports of the decisions of the court are to be taken and kept by a clerk.

[112] An Oba is the king and paramount ruler of a Yoruba community, his appointment is believed to be by the selection of the deity or God.

Normatively, the criminal jurisdiction of the now renamed Customary Courts was ousted and placed under the English model courts. Also, judicial advisers were appointed to supervise the customary courts to ensure the standardization of its practices and guarantee it was on par with the English court system. The aim of this reform was to change the customary legal system so much that it could be easily assimilated into the English court system, hence after the reforms the customary courts bore little resemblance to the native courts which they purportedly replaced (ALLOT,1984).

On the success of integration during the Colonial Era in Nigeria, it is observable that at the time much conflict was avoided because of the regionalization that was undertaken. This regionalization integrated several small and similar customary legal systems to form a single regional customary legal system, because of the similarity in history, practices, and culture. So, between the laws and the customs that made up each region there was little conflict. These regions, as expatiated in Chapter One, were known as the Western, Northern and Eastern regions, and the applicable customary systems in these regions were the Yoruba, Hausa-Fulani and Ibo customary legal systems respectively.

Also, the people of the regions had just been introduced to a new legal system and to western education. They became interested in knowing more about it and as such they willingly involved western practices in their own traditional practices (ALLOT, 1968).

Finally, integration was also possible at the time because of the fear of war. These regions had just been colonized through violence and undue influence; hence fear also played a role in the success of integration during colonialism. Therefore, the integration policy as a strategy for national unit is not totally without problems. We shall be analyzing a few of such problems below.

4.2.1 Nature of Customary Law

One of the major characteristics of customary laws in Nigeria is that they are unwritten[113]. This was pointed out in the case of *Alfa and Ors v Arepo*[114], where the court

[113] If we decide to consider Islamic law as a customary law, it will be one of the exception to this characteristics
[114] (1963) W.N.L.R. 95 at p. 97

held that "customary law may be defined as unwritten law or rules which are recognized and applied by the community as governing its transactions and code of behavior in any particular matter". This unwritten characteristic of customary law poses a problem to a successful integration of law in Nigeria.

For an effective integration in a Democratic State of Law, elements of all the laws to be integrated must be selected. In this case, it implies that elements of customary law must be selected from each of the native legal systems that are to be integrated. Failure to do so will amount to an imposition of foreign laws to persons not subject to that particular customary law. However, it is practically impossible to make a selection of laws where such laws are unwritten (ALLOT, 1984).

Till date, the majority of customary laws in Nigeria are still unwritten; hence, the major way of proving customary law is through expert opinion[115]. Therefore, where an action of integration is to be undertaken, there is no single code containing all the customary laws of each region. In this way, some customary laws may be left out of the integration process.

Though some efforts have been made to address the unwritten nature of the customary law, and one of such is the restatement which it is a collection of opinions of experts in a customary law for the purpose of recording the existing native law. A practical example was the restatement of customary law undertaken by Anambra state in 1977, where there was a Customary Law Manual containing expert statements on these laws, which was drafted to guide the courts. This restatement did not gain popular support as parties preferred to stick to the traditional method of calling in an expert to testify about them. (*OBA*, 2006).

Another effort is the codification of the customary law; however this has been strongly opposed. Proponents of this opposition are of the view that a codification of customary law tampers with their dynamism which is one of their major attributes. Customary laws are based on the customs of the people, and these customs are not static, additionally, one runs the risk of codifying an outdated law, therefore codification will need to be done on a regular basis, and this defeat the essence of codification.

[115] Where a person generally considered and proven to be vast in the knowledge of that custom is called upon to attest to the existence of such customary law.

It is worth stating here that though the general behavior has been to stick to customary law in its unwritten state, there exist a number of customary legal systems that have under the influence of the English system gone ahead to enact statutory provisions for their customary laws for example: the Native Authority (Declaration of Tiv Native Marriage Law and Custom) Order, Northern Nigeria Legal Notice No. 149 of 1955, and the Kabba Native Authority (Modification of Native Law and Custom relating to the Selection of the Chief of Kabba) Order, Native Authority Legal Notice No. 186 of 1961.

It is obvious from this however that even those customary legal systems that decide to codify their laws do so based on a specific subject matter. Actually, the codified law usually covers a single subject, e.g. marriage, and selection of chief. This leads to a lack of uniform code even within a customary legal system.

Through the practice of record taking and keeping which the customary courts imbibed from the English system, a practice of judicial notice was developed. This occurs where a law had been proven and accepted by the court to be a customary law, so such law becomes the acceptable for subsequent similar matters. The rule on judicial notice was laid down in the case of *Angu v Atta*[116] , Where the court said:

As is the case with all customary law, it has to be proved in the first instance by calling witnesses acquainted with the native law and customs until the particular native customs have, by frequent proof in the courts, become so notorious that the courts will take judicial notice of them.

The problem inherent in this is that the customary law as practiced by the courts may be different from the actual customary law. The law might have changed or the court might have arrived at its decision erroneously.

4.2.2. Nature of Integration

Like unification, integration could also be institutional, normative or partial. We will briefly discuss these aspects below.

[116] (1936) 2 W.A.C.A. 30.

4.2.2.1 Normative Integration

To be integrated into the Nigerian legal system, the law in question has to go through some validation or ratification before it can be integrated. For example, English laws had to be ratified by the National Assembly to become applicable in Nigeria, and customary laws have to pass the validity tests[117]. However, there are problems inherent in this strategy.

First, there is the problem of who determines the validity for a customary law. During colonialism, it was the English judges who had no knowledge of the customary laws, that were vested with the power of determining whether a customary law was valid or not. Post colonialism, it is the Nigerian judges who, have undergone compulsory training under English law, that are vested with the power of determining the validity of a customary law. These judges' idea about natural justice and their repugnancy in relation to some native rules have been completely shaped by the English legal system that they have little or no knowledge of the Nigerian customary laws - which unfortunately is unwritten. Hence the decision on the customary laws to be integrated into the Nigerian legal system is made by judges who are experts in English laws than they are in Nigerian customary laws.

Similarly, for English laws that have been ratified, the first question is why the English law should even be incorporated into the Nigerian legal system that governs Nigerians and not English people. The integration of any English law into the Nigerian legal system amounts to an imposition of a foreign legal system on the Nigerian citizens. Additionally, the decision to ratify an English law is made by the National Assembly which comprises of elites, most of whom are unaware of the customary laws, because like the judges they have also been westernized. Hence they go about ratifying English provisions because they are unaware of the existence of customary laws with the same provisions.

[117] The validity tests provides that such a law must not be repugnant to natural justice, equity and good conscience; must not be incompatible either directly or by implication with any law for the time being in force; must not be contrary to public policy; and such law must not contradict the provisions of the constitution.

4.2.2.2 Institutional Integration

In analyzing the role of the judiciary as a legal institution capable of effecting the desired legal integration, the first point of call is the constitutional provision empowering it to do so. In this sense, Section 6 (1), and 6(3) (1999 constitution) provides:

> (1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation, (…)
> (3) The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (1) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record.

Section 6 (5) (a) to (i) goes on to list the courts of superior record. A striking fact is that the customary courts as courts of first instance have been excluded from the list. The implication of this therefore is that they are tagged inferior courts of record, hence appeals lies from the customary courts to the superior courts which are modeled after the English law. These judges have with time imported the practice of Stare Decisis obtainable under the English system into the determination of matters of customary laws that come before them. The implication of this is that based on the doctrine of Stare Decisis the decisions of the court soon becomes the law applicable to all such similar situations, and is thus integrated into the Nigerian legal system as a customary law. However such decision might have been reached erroneously or may even be a deviation from the actual customary law. ALLOT (1984, 60) put it thus:

> These superior courts inevitably applied their own principles, both for ascertaining what the rules of customary law were, and for formulating those principles in legal English. The working of the English doctrine of precedent (a concept unfamiliar to those who do not follow the common-law approach) meant that previous decisions of these courts on customary-law matters gradually acquired an independent authority of their own. There thus developed in (...) Nigeria especially what I have termed "judicial customary law", the law recognized by the superior courts, and which might differ substantially from the customary law actually followed by the

> people whose law it was, and who in theory in a customary law system can alone give legal recognition to a customary rule.

Another problem is observable from the provision of the Constitution that permits legal practitioners to enter appearances in customary court, and that also requires customary court judges to be educated, this poses a problem to the development of customary law because this educated judges and practitioners run the courts in the English fashion. It is important to note here that in the training of practitioners who play a significant role in the customary legal systems i.e. lawyers, judges, court clerks, and interpreters, Customary laws are not offered as compulsory courses hence most of them have little or no formal training in customary laws (*OBA*,2006).

4.2.2.3 Partial Integration

Integration here is partial in nature because there are instances where it is impractical to integrate the whole legal systems. Partial integration in Nigeria is observable in civil law cases where the independent legal systems are maintained, but there is however an integrating factor. A typical example is the issuance of marriage certificates. The Marriage Act provides that the principal registrar shall print and deliver to licensed places of worship books of marriage certificates, which is to be issued to married couples[118]. There is no law requiring an certificate of marriage be issued in a customary marriage, however, the need to own this document became important with the advent of modernization. Now marriage certificates are required for official purposes like visa application, school documentation, bank transactions, and for judicial purposes. In this case, for judicial purpose, it is necessary to prove the existence of a marriage by the presentation of this special document; this is in tandem with the provisions of Section 32 of the Marriage Act that provides:

> Every certificate of marriage which shall have been filed in the office of the registrar of any district, or a copy thereof, purporting to be signed and certified as a

[118] Section 24 of the Marriage Act, Section 24 of the Marriage Ace, 2004

> true copy by the registrar of such district for the time being, and every entry in a marriage register book, or copy thereof certified as aforesaid, shall be admissible as evidence of the marriage to which it relates, in any court of justice or before any person having by law of consent of parties authority to hear, receive, and examine evidence.

However, proving customary marriage is more difficult because of the absence of a marriage certificate, to establish the existence of this marriage. In this situation, first the parties must prove that a customary law marriage was conducted[119]. Additionally, the couple must give evidence as to the existence of such marriage. When either of the party contests the existence of the marriage, external proof from people present at the wedding must be had. This was pointed out in the case of *Lawal v. Younan* [120],where it was held that to prove Native Customary Marriage, mere evidence by the alleged husband or wife does not suffice, so additional proof is required from the person who gave away the woman in marriage, persons who witnessed the ceremony or the person who was sent to ask for her hand in marriage. These people should be called as witnesses. The difficulty of this requirement poses is that the persons required to give additional evidence may be unavailable at the trial or may even be dead.

These reasons and some others triggered the need of customary marriages to issue marriage certificate. Actually, the Marriage Act envisaged this need and, in a bid to integrate the customary marriages, made provisions that, if such customary legal system obtains a license to celebrate marriage from an official registrar, it will be issued a blank certificate of marriage which can then be filled by the couples that get married under such customary legal system. Hence integrating and extending the practice of issuing marriage certificate to the customary legal systems. This act is supported by the provision of Section 29 of the Marriage Act which provides:

> Whenever the license issued under section 13 of this Act authorizes the celebration of marriage at a place other than a licensed place of worship, or the office of a registrar of marriages, the registrar of the district in which such marriage is intended to take place, upon the production of such licence, shall deliver to the

[119] To do this evidence must be led as to what amounts to marriage under that custom
[120] Lawal v. Younan [1961] 1 All NLR 254

> person producing the same a blank certificate of marriage in duplicate, and the minister or registrar celebrating such marriage shall fill up such certificate, and observe strictly all the formalities hereinbefore prescribed as to marriages in a licensed place of worship, or registrar's office, as the case may be.

Additionally, for couples who failed to obtain a certificate of marriage by the practice of the courts, there are others alternative means of obtaining documents that carry almost equal weight as the marriage certificate. These documents include the “marriage declaration” and the “affidavit of marriage”. They equally serve as proof of its existence (DOMA-KUTIGI, 2019).

The problem encountered by this act of integration stems from the differences in laws of the system. Customary marriages in Nigeria are polygamous in nature, because a man can validly marry more than one wife. However, under the received English law from which the Marriage Act was ratified, the only form of marriage recognized there is a monogamous marriage. In fact, based on the provisions of Section 47 of the Marriage Act, a person that marries more than one woman is liable of bigamy which is punishable with imprisonment for 5 years. This poses a problem to integration, for example: a man who marries three women under the customary legal system cannot successfully obtain marriage certificates for each of the marriages.

Having elaborated the two strategies for the amalgamation of legal systems in Nigeria, it becomes obvious that each of the strategies is not without its problem, while the application of unification will amount to a greater form of infringement of the rights of the citizens, because it purports to suppress the independent legal systems and impose a uniform legal system in its stead; in so doing, destroy the diversity which is a characteristic key feature of the Nigerian legal system. The application of integration of the legal system seems to us a better option because it maintains the diversity of the legal systems by creating a legal system that is gotten from each of the diverse legal systems. The implication of this is that unlike during the colonial era where the customary legal systems were integrated into an English legal system, this purported integration will integrate the customary legal systems into an entirely Nigerian legal system. Hence the individual customary legal system can still

function in their capacity, they will be subject however to an integrated legal system which is a result of the amalgamation of the customary legal systems.

4.2.3 Implementation

The success of every strategy is hinged not on its formulation but rather on the implementation of such. Nigeria has made several efforts towards the implementation of integration of legal systems, as we demonstrated from some of the examples cited above. What is observable however is a repetition of an infringement of the rights of the citizens or a failure in the implementation of these strategies.

One of the factors that accounts for the partial success in the integration of legal systems during the Colonial Era was that the independent regions were first integrated before attempts were made to unify their legal systems. Hence in the present case, for the successful implementation of legal integration as a strategy for the promotion of national unity, it is important first that national integration be attained. The key legal provision on the promotion of national integration in Nigeria is that contained in Section 15 (1999 Constitution) which provides that:

> (1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress;
> (2) Accordingly, national integration shall be actively encouraged whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited,
> (3) For the purpose of promoting national integration, it shall be the duty of the State to –
> (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation;
> (b) secure full residence rights for every citizen in all parts of the Federation;
> (c) encourage inter-marriage among persons from different places of origin or of different religious, ethnic or linguistic association or ties or
> (d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious or sectional barriers;

> (4) The State shall foster a feeling of belonging and of involvement among the various people of the Federation to the end that loyalty to the nation shall override sectional loyalties.

We shall now undertake a detailed analysis of this section.

Generally, based on the provisions of this section, several rights of the internal migrant, thatare also rights which promote national integration, are observable to wit: freedom from discrimination based on place of origin, access to facilities that encourage free mobility, full residency rights in all parts of the country and the promotion of national unity over sectional loyalties. However in practice there are no remedies for the breach of these rights i.e. they are non-justiciable.

Section 6 (6)(c) (1999 constitution) provides that:

> The judicial powers vested in accordance with the foregoing provisions of this section (…) (c) shall not except as otherwise provided by this Constitution, extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

The provision of Section 15[121] cited above falls within the scope of the Fundamental Objectives and Directive Principles of State Policy. he implication of this is that the rights available therein based on the provisions of Section 6 (6) (c) are non-justiciable. Hence to the internal migrant, the rights contained under that section has been given with one hand and taken back with the other.

Two elements are germane for the promotion of the rule of law in a democratic state: first, the rights of citizens should be expressly stated and contained in a code so as to serve as a guide for the official actions of the government and as a reference for the conduct of the citizens; secondly, these rights should be justiciable by an impartial judiciary responsible for the interpretation of such rights (ANTHONY *apud* MUSTAPHA, 1988: 219).

[121] ibid

It is therefore in the interest of promoting the rule of law that the separation of powers between the three arms of government[122] be maintained. No arm of government should possess arbitral power in the determination of laws, or should infringe or limit the scope of the other arm. However what the provision of the Constitution has done in relation to section 15 is that the legislature has granted arbitral power to the Executive in the determination of matters contained therein. This was pointed out by the Court in the case of *Okogie v The AG of Lagos State*[123], where the Court of Appeal denied to review the case at hand on the ground that the judicial powers of the Court did not extend to the provisions of the Chapter II (1979, Constitution) which is now Chapter II of the CFRN 1999, the court held as follows:

> The Fundamental Objectives identify the ultimate objectives of the nation and the Directive Principles lay down the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. While section 13 of the constitution make it a duty and responsibility of the judiciary among other organs of government, to conform to and apply the provisions of chapter II, Section 6 (6) (c) of the same constitution ensures no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and Directive principles of State Policy. It is clear therefore, that section 13 has not made chapter II of the constitution justiciable (OKOGIE V. AG LAGOS STATE *APUD* IKPEZE, 2015, 52).

This raises the issue of ouster clauses and their impact in the Democratic State of Law. Ouster clauses are constitutional provisions that takes away the jurisdiction of the court in the determination of the matter to which they refer to .i.e. the court cannot perform its function of interpretation and implementation with respect to the particular matter over which an ouster clause has been placed. The effect of this on the citizens is that they are denied access to judicial assistance in such matters.

Unfortunately, some ouster clauses have found their place in the Nigerian Constitution which is the *grundnorm*. Generally, ouster clauses should have no place in the Constitution of a democratic state, because it goes against the requirement of the rule of law,

[122] The Legislative makes the laws, the executive administer and execute the while the judiciary interpret and implement it
[123] (1981) 2 NCLR 337

thereby making them a characteristic of a military government where the independence of the judiciary and human rights are not guaranteed. Supreme Court of Nigeria in the case of *AG. Fed v Sode* elaborated this when it held that:

> The purport of ouster provisions in Decrees is clear, that is, no Court or Tribunal should look into the matter the Courts are prevented from looking into. This is the peculiarity of the Military regime, which makes the Constitution subjected to their Decrees (...) The original source of jurisdiction is the Constitution itself, but when a military regime by a Decree promulgated ousts jurisdiction of Courts or Tribunals in any subject-matter as provided by the Constitution or any other law, the Decree must be followed.

The implication of the ouster clause on section 15 is that it bars the judiciary from interpreting its provision and additionally leaves the decision, interpretation, implementation and enforcement of matters relating to national integration to the discretion of the government (federal, state and local). This often times leads to chaos, because Section 15 only serves as a guideline for national integration, the federal government may interpret and implement the provisions differently from the state government and the state government from the local government.

A typical example of this chaos occurred in Nigeria when the Federal government embarked on a development project called the National Economic Employment Development Strategy (NEEDS), the main goal of which was wealth creation, employment generation, poverty reduction and value reorientation (all non-justiciable rights contained in Chapter II of the 1999 Constitution). To achieve this there were plans of deregulation, privatization, and liberalization to be overtaken over a specified period of time. The state version of this was the State Economic Employment Development Strategy (SEEDS), while the local government version was the Local Government Economic Employment Development Strategy (LEEDS). The strategy intended for its implementation was to integrate the three tiers of government towards the attainment of the goal. This was contained in its preamble where it stated thus:

> NEEDS provides a framework for a nationally coordinated programme of action by the federal, state, and local governments. Most of what is articulated here refers to actions by the federal government. However, with state and local governments

> controlling half of consolidated public sector spending, effective coordination among the tiers of government in the federation is key for success (NEEDS, 2004, p.vii)

The Federal Government which was responsible for its creation set out guidelines to wit:

> • Enacting the relevant laws needed to implement NEEDS and ensuring that budgetary appropriations are consistent with the thrusts of NEEDS;
> • Overseeing the relevant agencies to ensure that NEEDS is implemented;
> • Educating the people about NEEDS and mobilizing their support (NEEDS, 2004; 110).

It did not however set guidelines for the state and local government, even if the federal government had set out guidelines for the state and local government, they still had discretionary powers to determine whether to abide by the guidelines or not. Hence, the rate of development of the program unequal nationwide. While some state government decided to be undisturbed by the project, some other embarked on the project but on varying pace. A survey was carried out on five states (Adamawa, Borno, Bauchi, Gombe, and Yobe) in the north on the implementation of gender mainstreaming which was one of the goals of NEEDS project. It was established that of these 5 states only Adamawa state had mainstreamed gender in the socio-economic life of the state (DFID, 2000).This lack of uniformity in the integration of the various states in this project is attributable to discretionary powers granted to them on the subject matter.

In conclusion, the provisions of Section 15 of the CFRN 1999which is supposed to be the key provision on national integration, can at based be regarded as law in futility or a Phantom Legislation, which ALLOT (1968, 54) described when he said:

> A law is enacted, but the regional facilities for its application are as weak as are the administrative cadres generally, and nothing of significance happens. This is what I have termed "phantom legislation," the passing of laws which do not have, and most pr*oba*bly cannot have the desired effect. The illusion of progress, of doing something, is given, but the reality is far different. Such legislation is an expression not of power but of the impotence of power.

Also of importance is the attitude of the people and the government towards integration. It is one thing to make a law on integration and it is another thing for such law to be followed. Since a law does not operate in vacuum, the disposition of the people which is projected through their representatives in government is important. Bearing in mind that based on the provisions of Section 15 (1999 Constitution) which by virtue of the ouster clause is merely a discretionary guideline, it is observable that the states have taken steps contrary to the guidelines on national integration in the guise of zoning and indigeneship.

Indigeneship in Nigeria, has been given backing by the Local governments in a State, which issue certificates of indigeneship which entitles its bearer to certain benefits which are not available to other non- indigenes, hence discriminating based on origin (FOURCHARD, 2015). The following report better explains the current situation:

> The population of every state and local government in Nigeria is officially divided into two categories of citizens: those who are indigenes and those who are not. The indigenes of a place are those who can trace their ethnic and genealogical roots back to the community of people who originally settled there. Everyone else, no matter how long they or their families have lived in the place they call home, is and always will be a non-indigene. (HUMAN RIGHTS WATCH, 2006).

In conclusion, several strategies exist that can be applied to solve the problem of conflict arising from legal pluralism. However, picking a strategy to employ should be determined based on the peculiarity of each case.

Based on the purpose of this chapter, which is to suggest a strategy that will lead to the alleviation of the inequality currently faced by the internal migrant in Nigeria, we stand with the strategy of integrating the plural legal system in Nigeria. Though like we have pointed out in the chapter integration is not devoid of problems, but it is a better option because it promotes the independence of the individual legal systems which is very good for a democratic state of law.

It is therefore our suggestion that certain reforms and amendments be made to address the current problems faced by integration of legal system in Nigeria.

CONCLUSION

In Nigeria, a triad relationship exists between migration, legal pluralism and conflict of laws. This relationship can be summarized thus: in the beginning, there exist independent legal systems, then migration occurs (international migration and internal migration), these migrants carry along with them their personal laws, which by ratification or validation became applicable alongside the laws of the host regions (legal pluralism). The application of this foreign law alongside the laws of the host region raises the problem of which law should apply to a particular case (conflict of laws). These conflicts of laws subsequently have a negative effect on the internal migrant and on migration which was the origin of the triad relationship.

The internal migrant oftentimes falls victim to the discrimination and inequality arising from this conflict of laws. The purpose of the law in a Democratic State of Law is to amongst other things eliminate all forms of inequality and discrimination and not to worsen it, the effect which legal pluralism in Nigeria has on the internal migrant is a negative one, because of the level of inequality and discrimination the internal migrant is faced with, these are particularly obvious in matters relating to the determination of which law to apply; as in succession and marriage, also in the educational system there is exist discrimination and inequality based on region.

We shall now attempt to make recommendations on how this discrimination and inequality can be avoided in the three fields.

In the field of Inheritance and Succession, having pointed out that a person's personal law can change, to avoid situations of inequality and discrimination occasioned by legal pluralism, the courts should not infer this change of personal law in the absence of an express relinquishment. It is our recommendation, therefore, that where such a person has not expressly relinquished his personal law before his death, his personal law should be applicable to his estate, however where he has expressly relinquished his personal law, the new law, which replaced his personal law, should be applicable instead. This will avoid situations of conflict of laws, as the existence of one law makes the other one void and

inapplicable. Equally, in situations of dual indigenship, having, stated that a person's personal law migrates with him and remains with him unless he expressly relinquishes. It follows, therefore, that the personal law of the migrant's region of origin should apply to his estate, even if such estate is in the host region, where he is also an indigene. The exception to this being where he has expressly relinquished the indigeneship of his region.. Thus, in this case, a formal act is required, an express will to renounce the inheritance and succession system of his region of origin

In the field of Marriage, it was noted that the reason why some Nigerians find the need to keep engaging in several forms of marriages is the necessity for validation and official recognition. It is our recommendation that an integrated system that recognizes and grants equal status to all forms of marriages conducted within the religious, customary, or statutory systems, be created to eliminate all forms of discrimination and inequality to accessible rights based on the type of marriage. This may involve amongst other things, the amendment of rules and regulations that requires an official marriage certificate as a proof of marriage. Therefore, marriages conducted under each legal system should be considered as official once they satisfy the conditions of that particular legal system.

In the field of Education, it was noted that the inequality and discrimination against the internal migrant was occasioned by an attempt of the government to create equal academic opportunity for Nigerians through the introduction of the catchment areas and quota system, which instead promoted discrimination amongst among Nigerians based on regions. It is our recommendation that the catchment areas and quota system be replaced by a system that integrates diverse regions while taking into cognizance the individual weak points of each one, hence maintaining their diversity while encouraging them to improve. Like it has been pointed out in this work, the Northern region is educationally backward; steps towards integrating it should involve standardization of the educational system in the north to bring it in par with the other regions. This standardization could take the form of incentives to study, conducive environment and sensitization of the Northern populace on the importance of education to mention a few. Therefore, while in Succession and Marriage requires less state intervention, in relation to Education, state action is needed, i.e. it is

important that public policies are put in place to improve and equalize the educational systems.

Developing on the foregoing, my final consideration therefore is that the growing diversity of legal systems in Nigeria, triggered by internal migration, should not be perceived as a hindrance in the running of a Democratic State of Law; it is, in fact, an essential requirement for democracy, and social development that diversity is respected . Considering this, the role of the government should be to create an environment for the protection of human rights and the elimination of all forms of inequality and discrimination by establishing an inclusive environment that respects the diversity of personal legal systems and at the same time promotes a harmonious integration of the diverse legal systems to avoid discrimination and inequality that can lead to low social development in a democratic state.

The strategy of legal integrations is more likely to attain this goal, because it promotes and creates a conducive environment for the individual legal systems to operate, thereby encouraging diversity, while doing this it also provides a system for better coexistence of the legal systems, targeted at the avoidance of conflict.

To achieve an integration of the legal systems in Nigeria, the first step is to promote the integration of the citizens. Hence, there is a need for strategies and reforms that promote social diversity and at the same time social inclusion. This could be achieved in Nigeria through the strengthening of the existing constitutional social objectives for the promotion of national integration which is contained in Section 15 of the 1999 Constitution.

The major problem National integration faces in Nigeria, as expatiated in this work is a lack of implementation of the constitutional objectives on national integration, due to the ouster clause placed on these objectives. This lack of implementation has promoted discrimination and inequality against the internal migrant and denied them access to judicial remedies. The importance of these objectives to a Democratic State of Law is that they promote integration in diversity, for the promotion of social objectives thereby eliminating inequality and discrimination.

This work, therefore, also suggests that a reform of the constitutional provision inhibiting the successful implementation of national integration objectives is undertaken.

This reform involves reviewing the Ouster clause contained in Section 6 (6) (c) (1999 Constitution) that prevents the judiciary from performing its function in relation to national integration. The Judiciary, in a Democratic State of Law, is one of the national bodies established to amongst other things promote national equality and prevent discrimination hence it should not be prevented from performing its constitutional responsibility.

Finally, acknowledging that this study raises two limitations, which unfortunately could not be addressed here because doing so will be to go beyond our scope. It is important to note however that these two could be addressed in future researches. The limitation we identified is two of the three problems to the successful integration of legal systems in Nigeria raised in the course of this study: the unwritten nature of customary laws and the nature of national integration. Further studies will be required on this to ascertain what reforms need to be undertaken to make the customary laws fit for integration and the effect of such integration on the rights of citizens. Also, further studies on how to ensure the needed integration is done as equitably as possible to promote a fair representation of each customary legal system in a pluralistic integrated legal order.

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