

# A Comparative Analysis of Customary Law and English Law Marriages in Nigeria

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## Abstract:

The combination of customary law and English law in the Nigerian legal system creates complexities in the regulation of marriages. This paper discusses the characteristics, legal regimes, and formalities of customary law marriages and statutory marriages in Nigeria, as well as their implications and interactions. Customary law marriages are based on culture and traditions, while English law marriages require strict adherence to legal procedures. The paper focuses on the legal pluralism issues stemming from these systems, including overlapping legal concerns such as marriage formation and recognition, spouses' rights, divorce, and inheritance. Case studies and court decisions are presented to illustrate how these conflicts work in practice and how people navigate the dual legal system. The paper highlights the challenges of regulating marriage in the context of both customary and English law marriages in Nigeria. It stresses the need for future research and policy-making actions to expand the Nigerian legal framework on marriage recognition and regulation, making it more inclusive and non-discriminatory.

**Keywords:** Customary law marriage, English law marriage, legal pluralism

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## **1. INTRODUCTION**

According to Black's Law Dictionary, marriage is defined as "the legal union of a couple as spouses."<sup>1</sup> It is a consensual and contractual relationship recognized by law, typically involving legal obligations between the parties.<sup>2</sup> Statutory marriage, which is the marriage recognized by the formal law of the country, and customary marriage, which is a marriage conducted according to the tradition of one's ethnic group, are still very prevalent, especially in rural areas.<sup>3</sup> On the other hand, English law marriage, which was brought into force and is enshrined in the Marriage Act during colonial times, is most common among the educated and urban people.<sup>4</sup> This prevalence of English law marriage among the educated and urban population can be attributed to factors such as exposure to Western education, the influence of Christianity, and the desire for legal recognition and protection offered by statutory marriages.<sup>5</sup>

Comparing and contrasting the legal status of customary law marriage and English law marriage in Nigeria reveals a complex interplay of harmonies and disharmonies. The recognition and existence of these two marriage systems in Nigeria come with their own set of strengths, weaknesses, opportunities, and threats.<sup>6</sup> Both systems are designed to establish the legal means for marriage and marital dissolution, but they differ significantly in the criteria, process, and effects. The use of customary law and English law in marriage has profound implications for gender equality, property rights, and the family in Nigeria.<sup>7</sup>

While there is a growing awareness of the need to harmonize Nigeria's marriage laws, there needs to be more comparative analyses of customary and English law marriages. This paper aims to fill this gap by providing a systematic analysis of the two systems of marriages, explaining their main characteristics, comparing them, and evaluating their implications on individuals and society. The paper's ultimate goal is to contribute to the ongoing discourse on the urgent need for a more comprehensive, fair, and efficient legal regime for marriage in Nigeria.

This paper is structured into eight main sections. Following the introduction, Sections 2 and 3 provide an overview of customary law marriage and English law marriage in Nigeria, respectively. Section 4 discusses the legal framework governing marriages in Nigeria. Section 5 presents a comparative analysis of customary law and English law marriages. Section 6 examines relevant court rulings and case studies. Section 7 offers recommendations for legal reforms and future research. Finally, the conclusion summarizes the key findings and implications of the study.

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<sup>1</sup> Black's Law Dictionary, 11th ed (2019) sub verbo "marriage".

<sup>2</sup> *ibid*

<sup>3</sup> Akintunde Olusegun Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 97.

<sup>4</sup> Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004.

<sup>5</sup> Nwogugu E I, *Family Law in Nigeria* (HEBN Publishers 2014) 23.

<sup>6</sup> *ibid* at p 59

<sup>7</sup> Adedokun Olaide, 'Marriage Laws in Nigeria: The Need for Reform' (2010) 1 *Nigerian Law and Practice Journal* 1, 5.

## **2. OVERVIEW OF CUSTOMARY LAW MARRIAGE IN NIGERIA**

### **2.1 Definition and Critical Features of Customary Law Marriage**

Customary law marriage in Nigeria is defined as a union between a man and a woman contracted by the customary laws of the people of Nigeria by the administration of the oaths of the ethnic group of the parties involved.<sup>8</sup> Customary law marriages in Nigeria are traditional unions recognized and practiced by different ethnic communities. These marriages are legally permissible and have distinct characteristics that set them apart from statutory marriages. One notable feature of customary law marriages is the payment of bride price or dowry, which serves as compensation to the woman's family. The families of both partners actively participate in the marriage process, and the union is solemnized through specific rites and ceremonies unique to each ethnic group.<sup>9</sup> Another significant aspect of customary law marriages is the acceptance of polygamy, whereby a man is allowed to marry multiple wives, in accordance with the customs and traditions of the society.<sup>10</sup>

### **2.2 Diverse Customary Marriage Practices across Different Ethnic Groups**

There are more than 250 ethnic groups in Nigeria, and each group has different customs regarding marriage. The traditional marriage practices listed above show how rich most of the country's cultures currently are, and how central the community's role is when it comes to marriages. Traditional marriage among the Yoruba in southwest Nigeria is characterized by a bride prize called "owo ori" and the exchange of gifts between the families of the bride and groom.<sup>11</sup> Polygamy is also evident in the Yoruba culture, where men are allowed to marry as many wives as possible. The customary law marriages in Igbo communities which is located in the southeastern region of Nigeria, have been determined by the payment of bride price, which is called "izu nwanyi", and the administration of some rites and customary practices.<sup>12</sup> The involvement of the extended family members is crucial when it comes to marriage, and both families' acceptance is required for the marriage to occur.

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<sup>8</sup> Oluwakemi Ajayi, 'The Interaction of English Law with Customary Law in Nigeria' (2018) 4 *International Journal of Law* 51.

<sup>9</sup> Jadesola Lokulo-Sodipe and Akintunde Olusegun Obilade, 'The Scope and Content of the Right to Legal Representation under the Nigerian Constitution: All Is Not Yet Plain Sailing' (2020) 7 *Journal of Sustainable Development Law and Policy* 87.

<sup>10</sup> Abiola Sanni, 'Women and the Law in Nigeria: A Reappraisal' (2016) 16 *Journal of International Women's Studies* 285, 286.

<sup>11</sup> *ibid*

<sup>12</sup> Ajayi (n 8) 54.

The Hausa-Fulani people of northern Nigeria, who are predominantly Muslim, engage in Islamic law marriages.<sup>13</sup> These marriages involve the payment of mahr or dowry by the groom, and the assistance of an imam or any other religious personnel to conduct the ceremony. The Hausa-Fulani also engage in polygamous relationships, with men having up to four spouses according to Sharia law. Other ethnic groups, like the Ijaw, Itsekiri, and Bini people, also practice their own specific forms of customary marriages that involve ceremonies, payment of dowry, and the exchange of gifts.<sup>14</sup> These diverse practices show that customary law marriages in Nigeria vary from one community to the other. Nevertheless, whether under customary or English laws, the context of the unions must be respected and acknowledged.

### **2.3 Legal Recognition of Customary Law Marriages**

Nigerian law recognizes any marriage conducted according to the customs and practices of an ethnic group.<sup>15</sup> As enshrined in Section 37 of the Nigerian Constitution, every person shall have the right to private and family life, which includes the right to marry according to one's customs and traditions.<sup>16</sup> Furthermore, Section 42(1)(a) of the Constitution prohibits discrimination based on ethnic origin or culture, thereby protecting the right of individuals to marry according to their customs and traditions.<sup>17</sup> Customary law marriages are also recognized and protected under the Marriage Act through registration under the law.<sup>18</sup> Of all the types of customary law marriages, only those registered are recognized as legally binding to protect inheritance rights, own property, and seek custody of a child.<sup>19</sup> Nevertheless, registering customary law marriages is optional, and thus, many married people do not register it.<sup>20</sup>

The recognition of customary law marriages is further enhanced by the establishment of Customary Courts of Appeal in many states in Nigeria. These courts deal with matters involving customary marriage laws, including divorce, maintenance, and custody of children. The Customary Courts of Appeal are different from other courts of coordinate jurisdiction because they consider the customs and cultural backgrounds of the ethnic group concerned in each particular case.<sup>21</sup>

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<sup>13</sup> Nwudego Nkemakonam Chinwuba, 'Ending Inequality in Nigeria: A Refreshing Approach from the Nation's Judiciary' (2015) 29 *International Journal of Law, Policy and the Family* 341

<sup>14</sup> Sanni (n 13) 286.

<sup>15</sup> Abiola Sanni, 'Women and the Law in Nigeria: A Reappraisal' (2016) 16 *Journal of International Women's Studies* 285, 286.

<sup>16</sup> Constitution of the Federal Republic of Nigeria 1999, s 37.

<sup>17</sup> Constitution of the Federal Republic of Nigeria 1999, s 42(1)(a).

<sup>18</sup> *ibid*

<sup>19</sup> Abimbola A Adesoji, 'Between Maitatsine and Boko Haram: Islamic Fundamentalism and the Response of the Nigerian State' (2011) 57 *Africa Today* 99

<sup>20</sup> *ibid*

<sup>21</sup> *ibid*

Although customary law marriages are recognized as legal in Nigeria, there are certain challenges that arise from the coexistence and interaction between customary law and statutory law. For instance, while customary law embraces polygamy, statutory law prohibits it by penalizing bigamy, thereby creating legal tensions and confusion.<sup>22</sup> However, some of the traditional practices like wife inheritance and bride price have been portrayed as degrading to women and violating the rights of women.<sup>23</sup> Therefore, customary law marriages in Nigeria are a vital component of Nigerian culture and law. Hence, the various customs and practices concerning marriage among the different ethnic groups of Nigeria speak volumes about the country's culture.

### **3. OVERVIEW OF ENGLISH LAW MARRIAGE IN NIGERIA**

#### **3.1 History of English Law's Introduction and Application in Nigeria**

English law was introduced in Nigeria following the colonialization of Nigeria by Britain. The process of introduction of English law followed the capture of Lagos on 6<sup>th</sup> August 1861 by British forces. This event signaled the formal advent of colonialism.<sup>24</sup> However, it would take the British colonial administrative authorities the next fifty years or more to impose their authority throughout the country and incorporate the English common law, equity and statutes of general application.<sup>25</sup> The reception of English law in Nigeria was made through different ordinances and proclamations, for instance, the Supreme Court Ordinance of 1914, which led to the creation of the Supreme Court of Nigeria and laid the foundation for the applicability of English law in the colony. Statutory marriage under English law in Nigeria was first initiated by the Marriage Ordinance of 1863, which was later replaced with the Marriage Act of 1914.<sup>26</sup> When Nigeria became independent in 1960, it retained the received English law. The Constitution of the Federal Republic of Nigeria, 1999, further boosted the application of English law in the country and classified it as one of the sources of Nigerian law.<sup>27</sup> Today, English law continues to influence numerous areas of Nigerian law such as marriage and family law.

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<sup>22</sup> Sanni (n 13) 286.

<sup>23</sup> Ajayi (n 8) 53

<sup>24</sup> Ajayi (n 8) 51.

<sup>25</sup> Lokulo-Sodipe and Obilade (n 3) 88.

<sup>26</sup> Chinwuba (n 13) 341.

<sup>27</sup> Ajayi (n 8) 51.

### **3.2 Key Provisions and Requirements for Marriage under English Law**

The Marriage Act of 1914 governs statutory marriages under English law in Nigeria.<sup>28</sup> The Act sets out the requirements and procedures for a valid marriage, which include capacity, consent, formalities, and monogamy. Firstly, the parties to the marriage must have the legal capacity to marry, meaning that they must be able to make rational decisions, and must not be already married to someone else under any other law, and should at least, be 18 years of age.<sup>29</sup> This requirement ensures that the parties are legally capable of entering into the marriage contract and understanding its implications. Secondly, the parties to the marriage must give free and full consent to enter into matrimony without force, fraud, or deceit.<sup>30</sup> This provision safeguards against forced or fraudulent marriages and ensures that both parties willingly agree to the union.

Thirdly, it is essential to follow the required formalities to make the marriage valid. These requirements involve providing notice of the intended marriage, acquiring a marriage license or certificate, and having the marriage conducted by a licensed marriage registrar or by a recognized religious authority.<sup>31</sup> Compliance with these formalities is crucial for the legal recognition of the marriage. Lastly, the Marriage Act only allows for monogamous marriages between one man and one woman. It is unlawful for any marriage officer to conduct a marriage between a man and two women or vice versa.<sup>32</sup> This provision upholds the principle of monogamy and prohibits polygamous unions under the Act.

The Marriage Act also contains provisions on the registration of marriages, which is of utmost importance as it affirms the validity of the marriage and determines its legal status in all aspects.<sup>33</sup> Registration creates an official record of the marriage, which serves as evidence of its legality and can be used for various legal purposes, such as proving spousal rights, inheritance claims, and other marriage-related matters.<sup>34</sup> The failure to register a marriage does not necessarily invalidate it, but it may lead to difficulties in proving the existence and validity of the marriage.<sup>35</sup> To conclude this section, the key provisions and requirements for marriage under English law in Nigeria, as outlined in the Marriage Act of 1914, ensure that marriages are entered into with the necessary legal capacity, consent, and formalities while upholding the principle of monogamy. The

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<sup>28</sup> Marriage Act 1914, cap 218, Laws of the Federation of Nigeria 1990

<sup>29</sup> *Ibid*, s 3(1).

<sup>30</sup> *Ibid*, s 11.

<sup>31</sup> *Ibid*, ss 6-11.

<sup>32</sup> *Ibid*, s 35.

<sup>33</sup> *Ibid*, s 30.

<sup>34</sup> E I Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers 2014) 59.

<sup>35</sup> *Ohochuku v Ohochuku* [1960] 1 All ER 253.

registration of marriages is also crucial for affirming their validity and determining their legal status.

### **3.3 Legal Status and Enforcement of English Law Marriages**

In Nigeria, marriages solemnized under the Marriage Act are recognized as statutory marriages throughout all states of the federation.<sup>36</sup> The Matrimonial Causes Act governs various aspects of these marriages, including divorce proceedings, maintenance, and the custody of children. The Nigerian court system, specifically the High Court, has jurisdiction over matrimonial causes arising from marriages contracted under the Marriage Act, which is based on English law principles.<sup>37</sup> This means that the High Court has the authority to adjudicate matters related to divorce, maintenance, and child custody for couples who have entered into a statutory marriage. In matters concerning statutory marriages, the courts use the provisions of the Marriage Act and the Matrimonial Causes Act to determine the rights and responsibilities of the parties.

In any case, integrating English and customary law marriages might cause some complications and conflicts. For instance, a man in a customary union can legally marry another woman under statutory law, leading to legal duality and the possibility of polygamy.<sup>38</sup> The courts have encountered such situations and struggled to balance the conflict between the two systems of law and protect the rights of the involved parties.<sup>39</sup> Therefore, it can be deduced that English marriage laws have existed in Nigeria since the pre-colonial period. Statutory marriages mainly refer to legal marriages under the Marriage Act, which outlines the guidelines and procedures for celebrating and registering statutory marriages that shall be legally recognized and enforced within the country's boundaries. The coexistence of English law marriages and customary law marriages in Nigeria presents significant challenges and conflicts that need to be addressed by courts and policymakers. The dual marriage system can lead to legal uncertainties, inconsistencies, and potential infringements on the rights of individuals, particularly women.

## **4. THE LEGAL FRAMEWORK GOVERNING MARRIAGES IN NIGERIA**

The legal framework governing marriages in Nigeria is a pluralistic one, comprising customary law, Islamic law, and statutory law or the English common law.<sup>40</sup> This complex system is a result of the country's diverse ethnic, religious, and cultural

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<sup>36</sup> Chinwuba (n 13) 342.

<sup>37</sup> Constitution of the Federal Republic of Nigeria 1999, s 315.

<sup>38</sup> Marriage Act 1914, cap 218, Laws of the Federation of Nigeria 1990.

<sup>39</sup> *ibid*, ss 3, 11, 33.

<sup>40</sup> Itse Sagay, *Nigerian Family Law: Principles, Cases, Statutes & Commentaries* (Malthouse Press 1999) 3.

backgrounds, as well as its colonial history. Customary law marriages are recognized under the Marriage Act, which provides for the registration of such marriages.<sup>41</sup> The recognition of customary law marriages is further reinforced by the Nigerian Constitution, which guarantees the right to marry according to one's customs and traditions.<sup>42</sup>

However, the application of customary law in relation to marriages comes with several challenges. Customary law varies widely across different ethnic groups, leading to potential conflicts and inconsistencies in the administration of justice.<sup>43</sup> Moreover, some customary practices, such as child marriage and widow inheritance, have been criticized as being contrary to human rights and gender equality principles.<sup>44</sup> English law marriages, on the other hand, are governed by the Marriage Act and the Matrimonial Causes Act, which specify the requirements for a valid statutory marriage and the grounds for divorce, respectively.<sup>45</sup> As previously stated, the introduction of English law in Nigeria can be traced back to the colonial era, when the British imposed their legal system on the country.<sup>46</sup> Today, English law continues to play a significant role in the regulation of marriages, particularly among the educated and urban population.<sup>47</sup>

The coexistence of customary law and English law in the Nigerian legal system has led to a number of challenges, including the potential for conflict of laws and the marginalization of customary law in favor of English law.<sup>48</sup> There have been calls for the harmonization of marriage laws in Nigeria to ensure greater consistency and equality in the treatment of all marriages, regardless of the type of law under which they were contracted.<sup>49</sup> In addition to customary law and English law, Islamic law also plays a significant role in the regulation of marriages in Nigeria, particularly in the northern part of the country with a significant Muslim population.<sup>50</sup> Islamic marriage, also known as *nikah*, is recognized in Nigeria as a form of customary marriage. Islamic marriages are governed by Islamic personal law, which is based on the principles of Sharia.<sup>51</sup> The conditions for a valid Islamic marriage include the consent of both parties, the presence of witnesses, and the payment of *mahr* (dowry) by the groom to the bride.<sup>52</sup> Islamic law

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<sup>41</sup> Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004, s 35.

<sup>42</sup> Constitution of the Federal Republic of Nigeria 1999, ss 37, 42(1)(a).

<sup>43</sup> AA Oba, 'Religious and Customary Laws in Nigeria' (2011) 25 *Emory Int'l L Rev* 881.

<sup>44</sup> Nwogugu E I, *Family Law in Nigeria* (HEBN Publishers 2014) 119.

<sup>45</sup> Matrimonial Causes Act 1970, Cap 220, Laws of the Federation of Nigeria 1990, ss 2, 15.

<sup>46</sup> Akintunde Olusegun Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 18.

<sup>47</sup> Nwogugu E I, *Family Law in Nigeria* (HEBN Publishers 2014) 23.

<sup>48</sup> Obilade (n 3) 97.

<sup>49</sup> Nwogugu (n 5) 59.

<sup>50</sup> *Ibid* (n 43)

<sup>51</sup> *Ibid*

<sup>52</sup> Abdulmumini A Oba, 'The Administration of Customary Law in a Post-Colonial Nigerian State' (2006) 37 *Cambrian Law Review* 95, 101.

also permits polygamy, allowing a man to marry up to four wives, provided he can treat them equally.<sup>53</sup>

The inclusion of Islamic marriage in the discussion of customary law marriages in Nigeria is important, given the significant Muslim population in the country and the legal recognition of Islamic personal law. Islamic marriages share some similarities with other forms of customary marriages, such as the requirement of consent and the payment of dowry, but also have distinct features based on Islamic principles.<sup>54</sup>

#### **4.1 Conditions for Validity of Marriage**

Under customary law, the validity of a marriage is determined by the customs and practices of the ethnic group. Generally, customary law marriages require the payment of a bride price, the consent of both families, and the performance of traditional rites and ceremonies.<sup>55</sup> For English law marriages, the conditions for validity include the capacity of the parties to marry (i.e., being of marriageable age and not already married), the consent of both parties, and compliance with the formal requirements such as the publication of banns or obtaining a marriage license.<sup>56</sup>

#### **4.2 Place of Celebration of Marriage**

Customary law marriages are typically celebrated within the community, often at the residence of the bride's family or at a designated traditional venue.<sup>57</sup> English law marriages, on the other hand, must be celebrated in a licensed place of worship or a registry office, in the presence of witnesses and an authorized officiating minister or registrar.<sup>58</sup>

#### **4.3 Circumstances that will Render a Marriage Invalid**

Under customary law, a marriage may be invalidated if there is non-payment of bride price, lack of consent from both families, or non-performance of essential traditional rites.<sup>59</sup> For English law marriages, grounds for invalidity include lack of capacity, for example, one party being underage or already married; lack of consent, for

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<sup>53</sup> Quran 4:3.

<sup>54</sup> Ibid (n 43)

<sup>55</sup> Nwogugu E I, *Family Law in Nigeria* (HEBN Publishers 2014) 114.

<sup>56</sup> Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004, ss 3, 7, 11, 21, 27, 29, 33, 35.

<sup>57</sup> Abiola Sanni, 'Women and the Law in Nigeria: A Reappraisal' (2016) 16 *Journal of International Women's Studies* 285, 286.

<sup>58</sup> Marriage Act, Cap M6, Laws of the Federation of Nigeria 2004, ss 21, 27, 29.

<sup>59</sup> Nwogugu E I, *Family Law in Nigeria* (HEBN Publishers 2014) 117.

example, the presence of duress or fraud; and non-compliance with formal requirements, for example, the absence of witnesses or lack of proper documentation.<sup>60</sup>

## **5. COMPARATIVE ANALYSIS OF CUSTOMARY LAW AND ENGLISH LAW MARRIAGES**

### **5.1 Formation and Validity Requirements**

Customary and English law marriages in Nigeria have different formation and validity requirements. It is a form of marriage resulting from the cultural practices and norms of the communities of the two parties, including the dowry system, cultural marriage ceremonies, and the participation of the parents or relatives of the couple.<sup>61</sup> Thus, the recognition of customary law marriages depends on the standards of the respective ethnic group, and this cannot be generalized for all ethnic groups.<sup>62</sup> On the other hand, English law has well-enumerated statutory provisions on the formation and validity of marriages. These are the legal capacities of the parties to marry: they must consent willingly, adhere to the formality as required and that the marriage is a monogamous one. Another significant provision of the Marriage Act is the requirement of the registration of marriages which is a formal and legal acknowledgement of the marriage.<sup>63</sup>

### **5.2 Rights and Obligations of Spouses**

It is important to note that customary law and English law marriages entail differences in the rights and responsibilities of each spouse. Customary law marriages refer to marriages where the customs and traditions of the ethnic group determine the rights and duties of the parties. These may include the husband's obligations as the breadwinner and protector of the family, the wife's obligations as a submissive and faithful wife, and the allocation of household chores.<sup>64</sup> Under the Matrimonial Causes Act, which governs English law marriages, divorce is based on the sole ground of the irretrievable breakdown of the marriage, which can be proved by establishing one or more of the following facts: adultery, desertion, separation for a continuous period of at least two years, or exceptional depravity.<sup>65</sup> The Act also provides for judicial separation and nullity of marriage on specific grounds.<sup>66</sup>

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<sup>60</sup> Matrimonial Causes Act 1970, Cap 220, Laws of the Federation of Nigeria 1990, ss 3, 5, 11, 15.

<sup>61</sup> Ajayi (n 8) 52.

<sup>62</sup> Sanni (n 7) 285.

<sup>63</sup> Marriage Act 1914, cap 218, Laws of the Federation of Nigeria 1990, ss 3, 7, 11, 21, 27, 29, 33, 35.

<sup>64</sup> *ibid*, s 30.

<sup>65</sup> Sanni (n 7) 286.

<sup>66</sup> *ibid*

### **5.3 Divorce and Dissolution Procedures**

Customary and English law marriages have different procedures for dissolution of marriage or divorce. Divorce in customary law marriages involves some steps which include returning the bride price to the family of the groom; holding a meeting of the families of the two partners to resolve the any issue, and finally, conducting traditional ceremonies.<sup>67</sup> In customary law marriages, some of the grounds for divorce include adultery, cruelty, neglect and witchcraft, among others.<sup>68</sup> On the other hand, the dissolution of English law marriages is governed by the Matrimonial Causes Act, which provides for divorce based on specific grounds, such as adultery, desertion, and irretrievable breakdown of the marriage.<sup>69</sup> The divorce process in English law marriages involves filing a petition in the High Court, serving the petition on the respondent, and obtaining a decree nisi and decree absolute.<sup>70</sup> The court may also make orders regarding the custody of children, maintenance, and the division of property.<sup>71</sup>

### **5.4 Inheritance and Property Rights**

When comparing the justice of inheritance and property rights in customary law and English law marriages in Nigeria, there are significant differences, particularly concerning the rights of women. Under most customary law systems, women are often deprived of any form of inheritance, with property being inherited solely through the male line. Additionally, widows may be subjected to adverse practices, such as wife inheritance or eviction from their homes by their husband's families.<sup>72</sup> In contrast, inheritance and property rights issues in English law marriages are governed by the Marriage Act, the Matrimonial Causes Act, and other relevant laws. The Matrimonial Causes Act contains provisions regarding the division of marital property upon the dissolution of marriage. According to these provisions, the parties are entitled to share the property in equal measure, taking into account their contributions to the marriage and their future needs.<sup>73</sup> Furthermore, the Matrimonial Causes Act recognizes the legal provision for the joint acquisition of property by both spouses during the course of the marriage.<sup>74</sup> This means that any property purchased during the marriage is considered to be owned by both partners, regardless of who made the actual purchase.

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<sup>67</sup> Matrimonial Causes Act 1970, cap 220, Laws of the Federation of Nigeria 1990, s 70.

<sup>68</sup> *ibid*, ss 15, 70, 71.

<sup>69</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, s 15(2).

<sup>70</sup> E Nwogugu, 'Divorce in Nigeria: A Comparative Study of Law and Practice' (1976) 20 *J Afr L* 1

<sup>71</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, ss 70-72

<sup>72</sup> *Ibid* (n 43).

<sup>73</sup> Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria 2004, ss 72-73.

<sup>74</sup> AO Sanni, 'Division of Matrimonial Property under Customary Law in Nigeria' (2015) 25 *Afr J Int'l & Comp L* 286

## **5.5 Challenges of Conflict of Laws and Legal Pluralism**

The practice of both customary law and English law as the legal system in Nigeria complicates the issue of marriage, which can lead to conflict of laws or legal pluralism. Being married under both customary law and English law is a problem, resulting in cases of double marriage and bigamy.<sup>75</sup> This may lead to ambiguity and doubt as to the legal nature of the marriages and the legal relations of the contracting parties. Another issue is that some customary law practices are contrary to human rights principles, especially in the area of the rights of women. Some cultural practices like wife inheritance, child marriage, and female genital mutilation are considered discriminatory and hostile to women, and measures are being taken to eradicate them. Nevertheless, it appears that these practices are well entrenched and changing them in some cases remains a challenge.

The Nigerian legal system has striven to tackle these issues in different ways, including the creation of customary courts of appeal and the formation of jurisprudence that aims to assimilate customary law with constitutional provisions and international human rights. Still, there is more to be done in advocating these changes through legislative reform, public education, and women's ability to seek their rights.<sup>76</sup> Thus, applying the comparative method, one can observe profound and systematic changes between the Nigerian customary marriage law and the English law union regarding the formation of marriages, rights and responsibilities, dissolution of marriage, and property rights upon dissolution. These observations, alongside the issues of legal pluralism and conflict of laws, are pointers to the fact that more needs to be done to ensure that the legal framework governing marriages in Nigeria is made more gender-sensitive and, consequently, the rights of anybody involved in any such union are protected.

## **6. CASE STUDIES AND COURT DECISIONS**

### **6.1 Court Rulings on Conflicts between Customary and English Marriage Laws**

Nigerian courts have grappled with the conflict between customary marriages and English law marriages, endeavoring to establish legal rules for resolving such conflicts when they arise. One notable case that addressed this issue is *Asiata v Goncallo*,<sup>77</sup> decided by the Court of Appeal in 1900. In this case, the court held that when a marriage is conducted under the Marriage Act (English law), it supersedes and terminates any prior customary law marriage, effectively dissolving the customary union. The decision in *Asiata v Goncallo* contributed to the recognition of English law marriages as being

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<sup>75</sup> *ibid.*

<sup>76</sup> Matrimonial Causes Act 1970, cap 220, Laws of the Federation of Nigeria 1990, s 72.

<sup>77</sup> *Asiata v Goncallo* (1900) 1 NLR 41.

superior to customary law marriages, a principle that has not been overturned in subsequent cases. However, the Privy Council took a different approach in the case of *Ohochuku v Ohochuku*.<sup>78</sup> In this decision, the court acknowledged that both customary law and English law marriages are legally valid in Nigeria, but emphasized that for a customary law marriage to be recognized alongside an English law marriage, the customary marriage must have taken place before the English law marriage.

The ruling in *Ohochuku v Ohochuku* recognized the possibility of legal dualism and the coexistence of the two marriage systems in Nigeria. This decision highlights the complex interplay between customary law and English law in the Nigerian legal system and the challenges that courts face in resolving conflicts between the two. In the case of *Adesubokan v Yinusa*<sup>79</sup>, the Supreme Court of Nigeria affirmed the position that a subsequent customary marriage cannot lead to the annulment of the former English law marriage as the latter is subordinate to the former. The court also focused on the importance of the customary law marriage couple going through some legal processes before they can be lawfully joined in matrimony under English law. The above two landmark cases show how Nigerian courts struggled to balance customary law and English law marriages and attempted to carve out guidelines to address the conflict between the two systems.

## **6.2 The Practical Implications of the Differences**

### **6.2.1 Inheritance and Property Rights**

According to a case recounted by Ajayi,<sup>80</sup> a woman who got married under customary law for 20 years was not allowed to inherit her husband's property upon his death because she did not have a legal right to the property under customary law. This resulted in the woman taking legal action to claim her rights, which is time-consuming and very expensive. This case shows how women in customary law marriage are vulnerable.

### **6.2.2 Divorce and Maintenance**

In a notable case that further illustrates the differences between customary law and English law marriages in Nigeria, a woman who had been married under English law deserted her husband and subsequently entered into a customary law marriage with another man. Despite having left her husband, the woman demanded a divorce and

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<sup>78</sup> *Ohochuku v Ohochuku* [1960] 1 All ER 253.

<sup>79</sup> *Adesubokan v Yinusa* (1971) NNLR 77.

<sup>80</sup> O Ajayi, 'The Interaction of English Law with Customary Law in Nigeria' (2018) 4 *International Journal of Law* 51

maintenance from him.<sup>81</sup> The court, in its decision, upheld the woman's rights under English law. The husband was directed to agree to the divorce and pay maintenance to his wife, even though she had deserted him and entered into a customary law marriage with another man. These ruling highlights the enhanced protection and rights afforded to women in English law marriages compared to customary law marriages.

Under English law, a woman's right to seek divorce and maintenance is not extinguished by her desertion of her husband or her subsequent marriage under customary law. The court's decision to grant the divorce and order the payment of maintenance demonstrates the legal system's recognition of the validity and supremacy of English law marriages, as well as its commitment to protecting the rights of women in such marriages. This case serves as a powerful example of how English law marriages can provide women with greater legal rights and protections compared to customary law marriages, particularly in situations where women may be disadvantaged or vulnerable.

### **6.2.3 Child Custody**

Another case involved a husband and wife who had contracted their marriage under customary and English law. During proceedings for the dissolution of the marriage, they disagreed on who would take custody of their children after divorce.<sup>82</sup> Basing their arguments on the customary law of the community, members of the family of the husband sought for custody of the child. The court, however, transferred custody to the mother based on the children's welfare and sections of the Matrimonial Causes Act.

### **6.2.4 Bigamy and Criminal Liability**

In another case narrated by Chinwuba,<sup>83</sup> a man who had entered into an English-law marriage while still in a customary-law marriage and was arrested and charged with bigamy, an offence under the Marriage Act.<sup>84</sup> The case demonstrated how people may incur criminal consequences for breaching the monogamous provision of English-law marriage. The real-life accounts illustrated above reveal the implications of the differences in customary law and English law marriages for couples in Nigeria, as well as the rationale for seeking legal reforms and public enlightenment on problems generated by legal pluralism and conflict of laws.<sup>85</sup> These cases reveal the necessity of persistently working on the synchronization of laws regulating marriages in Nigeria, and providing

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<sup>81</sup> *Ohochuku v Ohochuku* [1960] 1 All ER 253

<sup>82</sup> *ibid*

<sup>83</sup> NN Chinwuba, 'Ending Inequality in Nigeria: A Refreshing Approach from the Nation's Judiciary' (2015) 29 *International Journal of Law, Policy and the Family* 341

<sup>84</sup> *ibid*

<sup>85</sup> *ibid*

equal protection to people, especially women and children, within marriage and family relations.

## **7. RECOMMENDATIONS FOR POLICY CHANGES**

### **7.1 Proposed Legal Reforms to Harmonize Customary and English Marriage Laws**

To address the challenges posed by the coexistence of customary law and English law marriages in Nigeria, several legal reforms have been proposed to harmonize the two systems and ensure more consistency and fairness in marriage and family matters. One key recommendation is the enactment of a unified marriage law that would provide a comprehensive framework for the formation, registration, and dissolution of marriages in Nigeria.<sup>86</sup> Such a law would incorporate elements of both customary law and English law, while also ensuring compliance with constitutional principles and international human rights laws. The unified law could establish minimum standards for marriage, such as a minimum age of marriage, consent, and the prohibition of harmful practices like forced marriage and wife inheritance.<sup>87</sup>

Another proposed reform is the strengthening of customary courts and the customary court of appeal system to ensure that they are better equipped to handle marriage and family disputes in accordance with both customary law and statutory law.<sup>88</sup> This could involve providing additional training and resources to customary court judges and staff, as well as establishing clear guidelines for the application of customary law in a manner consistent with constitutional rights and freedoms. Additionally, there have been calls for the amendment of existing laws, such as the Marriage Act and the Matrimonial Causes Act, to address gaps and inconsistencies in their provisions and to ensure more protection for women's rights in marriage and divorce.<sup>89</sup> This could include expanding the grounds for divorce under the Matrimonial Causes Act to include issues like domestic violence and emotional abuse, and strengthening the provisions on maintenance and property rights for women in both customary and English law marriages.

### **7.2 Strategies for Navigating the Pluralistic Legal Landscape**

Given the complex and pluralistic legal landscape governing marriages in Nigeria, individuals and families need strategies for navigating the system and assert their rights. One important strategy is to increase public awareness and understanding of the different marriage laws and their implications, particularly among women and vulnerable

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<sup>86</sup> Ajayi (n 8) 56.

<sup>87</sup> *ibid*

<sup>88</sup> Chinwuba (n 13) 345.

<sup>89</sup> *ibid*

groups.<sup>90</sup> This will involve community outreach and education programs, as well as the dissemination of information through media and other channels.

Another strategy is to ensure that individuals have access to legal aid and support services when facing marriage and family disputes, particularly in cases involving conflicts between customary law and English law.<sup>91</sup> This could involve the establishment of legal clinics and hotlines, as well as the training of paralegals and community leaders to provide basic legal advice and referrals. In addition, there is a need for greater collaboration and dialogue between customary and formal legal institutions to promote a more harmonious and coherent approach to marriage and family matters.<sup>92</sup> This may involve the establishment of joint forums or committees bringing together customary court judges, magistrates, and other legal professionals to discuss common challenges and develop shared solutions.

### **7.3 Need for Further Research and Policy Development**

There is a need for ongoing research and policy development to deepen understanding of the dynamics of customary law and English law marriages in Nigeria and to inform evidence-based reforms and interventions. Key areas for further research include:

- I. The impact of legal pluralism on women's rights and access to justice in marriage and family matters.
- II. The effectiveness of existing legal and policy frameworks in addressing the challenges posed by the coexistence of customary and English marriage laws.
- III. The role of customary institutions and leaders in shaping attitudes and practices related to marriage and family life, and the potential for engaging these institutions in reform efforts.
- IV. The social, economic, and health implications of different marriage practices and their impact on individuals, families, and communities.

Such research could help to identify gaps and opportunities for policy and programmatic interventions, as well as to build a stronger evidence base for advocacy and reform efforts. Harmonizing the customary and English marriage laws in Nigeria requires a multi-faceted approach that combines legal reforms, public awareness and education, legal aid and support services, and ongoing research and policy development. By taking a holistic and evidence-based approach, Nigeria can work towards a more cohesive and

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<sup>90</sup> Ajayi (n 8) 56.

<sup>91</sup> Sanni (n 7) 287.

<sup>92</sup> *ibid*

equitable legal framework for marriage and family matters that protects the rights and well-being of all individuals.

## **8. CONCLUSION**

Comparing the formation, rights and duties, dissolution and annulment and inheritance and property rights under customary marriages of Nigeria and English style Civil marriages, one can observe sharp contrasts. Customary law marriages, therefore, embrace the customs and traditions of the various ethnic groups, thus creating complex legal systems. On the other hand, Common law marriages under English law are governed by legal statutes, including the Marriage Act and the Matrimonial Causes Act, which lays down a general set of rules governing marriage and family issues. The coexistence of these two systems has given rise to challenges of legal pluralism and conflict of laws, as individuals may find themselves subject to multiple and sometimes conflicting legal regimes. The analysis has highlighted the potential for women's rights to be undermined in customary law marriages, particularly in the sharing of property rights, inheritance, and divorce. It has also identified the need for greater harmonization and reform of the legal framework governing marriages in Nigeria to ensure consistency, fairness, and compliance with constitutional principles and international human rights standards.

It is pertinent to comprehend how customary law and English law marriages are legally regarded in Nigeria for several reasons. First, it means that peoples and families can make informed decisions on which types of marriages to contract, and address the legal consequences of their decisions more efficiently. Second, a deeper understanding of the interplay between customary and English marriage laws can help policymakers, legal professionals, and advocacy groups develop more targeted and effective interventions to address the challenges of legal pluralism and conflict of laws. This includes legal reforms to harmonize the two systems, public awareness and education campaigns to promote understanding of marriage laws, and providing legal aid and support services to individuals facing marriage and family disputes.

Third, understanding the dynamics of customary and English law marriages in Nigeria can contribute to broader efforts to promote gender equality and women's rights. It is the stakeholders who, by identifying the ways in which customary law marriages may disadvantage women and perpetuate harmful practices, can work towards reforming these systems and ensuring that women's rights are protected in all forms of marriage. A nuanced understanding of the interplay between customary and English marriage laws in Nigeria can enrich academic scholarship and comparative legal studies, providing insights into the challenges and opportunities of legal pluralism in post-colonial contexts.

Thus, in the comparative examination of Nigerian customary law and English law marriage, this paper has highlighted the need for more understanding of the mutual

influence of the two systems and their implications for people, families, and society. With these dynamics and continuous push for legal changes and research-informed practices, Nigeria has the potential to create harmonized and fair legislation on marriage and family that protects the worth and legal status of all Nigerians.