

African Multidisciplinary Journal of Development (AMJD)

Page: 614 – 622

<https://amjd.kiu.ac.ug>

CUSTOMARY LAW AS NIGERIAN VOLKSGEIST AND JUSTIFICATION TO RESTATE THE LAW

Adekunle Ademola Aminu

(Ph. D), A lecturer at the Faculty of Law, Federal University, Lokoja, Nigeria.

Email: adekunle.aminu@fulokoja.edu.ng, +2347035236789

Abstract

Customary law has continued to be relevant to the lives of the people of Nigeria, particularly in matters of marriage, land holding, chieftaincy, inheritance and succession. Because of the diverse and unwritten nature of customary law, precision and clarity which are associated with various codes in Western jurisprudence are lacking in African customary law. There is a dire need for a systematic compilation of the applicable rules of customary law to know the exact content of the law. The paper examines the feasibility of restatement, as a means of documenting the law and the justification for restating the law. The objectives of the study were to examine the jurisprudential correlation between the idea of volksgeist and the Nigerian customary law; and identify and those customary laws that will deserve to be restated. The study adopted both doctrinal and non-doctrinal methodologies. The study placed reliance on primary sources of several statutes, official documents and decided cases. Similarly, secondary sources like textbooks and online materials were put to adequate use. The findings of the study were that there is a significant content correlation existing between the doctrine of volksgeist and Nigerian customary law as both emanate from the common consciousness of the subjects of the laws. The study concluded that restatement is the most preferred alternative for the documentation of customary law. The study recommended that customary law rules which cut across different ethnic groups will deserve to be restated to allow certainty in the law and help in preserving the traditional laws for the future generations of Nigerians.

Keywords: Codification, Customary Law, Documentation, Integration, Restatement

Introduction

Friedrich Karl von Savigny, a jurist and one of the founders of the Historical School of Jurisprudence and legal science, created a new dimension within the legal field through his use of the term Volksgeist, which refers to the shared perspective of a culture or its people (Savigny, 1867). He believes this is where our laws come from, thus name positive laws (Savigny, 1867). Nigeria, like many African nations, consists of a diverse and multi-ethnic, multi-religious, and multi-ethnic population. Much of Nigerian custom law is currently in informal or undocumented forms (Nwocha, 2016). Thus, we must pay closer attention to documenting these laws to further advance Niki Tobi's proposition of our customary law being the Nigerian Common Law (Tobi, 1996), as well as to preserve our customs for future generations. Documenting the law will help preserve it and provide us with some certainty in law, as opposed to leaving it solely to an oral practice. Documenting customary law will also improve Nigeria's legal system and provide for a more just society through greater Respect for the law.

Definition of Customary Law

Customary law does not have one accepted definition that applies in all cultures (Abdo and Abegaz, 2024). It has been observed Tarkaa notes that customary law is nothing other than the values of a specific community that have evolved into patterns of behaviour for those people who inhabit that

region (Tarkaa, 2024). Similarly, the customary law of a culture has been defined to be an accumulation of various traditions and customs which govern different types of relationships between members of the given society (Badaiki, 1997). Another scholar defines customary law as the system of law indigenous to the various African States distinguished from the received or European laws (Ajomo, 1990).

Characteristics of Customary Law

Customary law has its characteristics that make it distinct from other types of legal systems. One characteristic of customary law is that it is often different from culture to culture and from community to community (Unger, 1976). Furthermore, there are often differences in customary law within an ethnic group from one subgroup to the other due to differences in language or dialect. This characteristic of customary law that allows it to respond so quickly to the evolving needs and circumstances of a community is known as flexibility; and, as noted by CJ Osborne in his ruling on the case of *Lewis v Bankole* (1908) 1 NLR 81,100-101, this feature of customary law is also important. Therefore, whether a custom is barbaric or not is immaterial, and it is the community that will be responsible for determining whether the custom is valid (*Eshugbayi Eleko v Government of Nigeria* (1928) AC 459; *Yaktor v Governor of Plateau State* (1997) 4 NWLR (Pt.498) 216).

It has further been observed that the rule to be enforced must be a current native law and custom and not customary practices that of by gone days (*Lewis v Bankole* (1909) NLR 100; *Agu v Ikewibe* (1991) 3 NWLR (Pt 180), 385).

Describing this characteristic of the law, Bairamian FJ., in the case of *Owoniye v Omotosho* (1961) 1 All NLR 304 at 309, said native law and custom is 'a mirror of accepted usage'. This has also been accepted by the Supreme Court of Nigeria in the cases of *Kimdey & Ors. v Military Governor of Gongola State* (1988) NSCC 827 and *Zaidan v Mohssen*.(1973) 11 SC 1 at 21.

To sum up, customary laws consist of customs, rules, and traditions that determine how a community's members interact with one another. Recently in Nigeria, the Supreme Court has cited this characteristic when describing the character of customary law. Another defining characteristic of customary law is that it exists without being documented. Most of the customary law is undocumented; instead, it derives from the memories of old men and women or from other individuals who hold certain powers by virtue of their status within their communities and who have special knowledge about the customs and traditions of those communities (Badaiki, 1997). Changes over time both constructive and destructive and developments in the processes related to the recording of transactions have led to many customary transactions being documented; thus, documentation of any given customary transaction can now occur (*Bakare v Arepo* (1963) WNLR 95; *Cole v Folami* 1 FSC 6, 66).

Challenges in Ascertaining Customary Law in Nigeria

There are various challenges faced by customary law in Nigeria, making it difficult to identify customary law. One of the primary challenges to identifying customary law is that customary law is mostly unwritten and therefore it is not possible to know precisely what laws apply to whom. Written law will be clear, and so will the law be to all of those to whom it applies. In addition, there is a widespread lack of interest in studying African thought, with an overwhelming preference for applying foreign laws, this is a continuation of the neo-colonial project. With this attitude, very little will be achieved towards the identification of Nigerian customary law. Similarly, legal policies in many African nations are usually in line with the adoption and application of western legal concepts, systems, and practices to the detriment of African values and systems. Ascertaining African customary laws and other laudable projects are therefore not considered important by this class of policy makers.

A serious difficulty in establishing customary law is that there are no statistics on how many custom laws exist throughout Nigeria. No two authors or authorities of the Nigeria legal system agree on how many ethnic groups or dialects the Nigerian peoples share. At this point in the growth of the country, authorities of Nigeria law should be able to state positively with specificity how many

ethnic groups exist and the custom law that is relevant to those groups in Nigeria. The multitude of languages in Nigeria also makes it impossible to ascertain the precise meaning of the law associated with some legal customs.

This problem is not only unique to Nigeria but also to many other countries in Africa as well. Consequently, having adequate information about the meaning of legal customs will pose a major challenge for the project of establishing the custom law in Nigeria. A further and fundamental impediment to establishing Nigeria's customary law is the under-investment in research of Nigeria's customary law and values. If the current lack of focus on the expansion of customary law continues, Nigeria's customary law will be overshadowed by the common law traditions of England and the United States, as well as by the civil law traditions of France and Belgium. In other words, unless Africans begin to translate their customs into a viable, solid, and powerful custom law by establishing what their customs constitute, the entire world will remain dominated by Anglo-American and Franco-Belgian laws.

The continued lackadaisical stance regarding customary law development means that traditional/common law jurisdictions, such as the USA and UK will continue to dominate the world's legal framework at the expense of Africa, unless they translate their legal traditions into a strong and credible legal system based on ascertainment of customary law (Onyango, 2013). There are many values included within African law, such as; peace, reconciliation, unity, solidarity, human rights, equality, fraternity and liberty which would benefit the world by being included in decisions made about issues of international concern by organisations such as the UN.

History of Documentation of Laws

Writing down laws is an ancient practice that has been around as long as people have been living together in societies and forming laws to manage their relationships (Narebo, 1991). Codifying (writing down) the law has occurred through various points of history and development of have advanced at the same pace as our understanding of how we relate and develop as societies (Dias, 2009). The oldest known codified exhibited laws date back to 2000 BC (before that, we have no record of law other than to infer those earlier civilisations probably had customary law but no recordings for reference). Two of the best-known exhibits of codified law from antiquity are the Code of Hammurabi, 1758 BC and the Code established by the Sixth King of the Amorites in Babylon. The Code of Hammurabi was established by King Hammurabi, King of Babylon, who wrote a detailed code of laws at that time. The Code provided very specific and detailed guidelines for individuals committing certain types of crimes and the type of punishment that would occur for the commission of each crime. One of the more famous legal concepts that the Code developed is the concept of "an eye for an eye", which reflects an equal punishment for a crime as a form of repayment. The codified religious laws that we have also is very similar to codifying those ancient laws. For example, the Torah can be considered the codification of the laws of Judaism, whereas the Sharia law of Islam is an example of codification of a religion's laws.

When speaking of the earliest development of law, in England, we can find laws developing well before the first period of codification began around 590 after Christ, lasting through 501, and in Europe the second period of codification lasted from approximately 500 AD to the 800 AD after Christ, and finished with King Alfred of England at the time of Alfred (901 AD). After that time, there were some codified law during the régime of the Norman Kings and some English codes between the years of 1100 and 1250 along with other forms of legal structures.

The Glenville Codes followed the Hebrew Code, (Narebo, 1991) and were also a consolidation of the remaining parts of Draco's legislative legacy which goes back over 620 BC as well as the Roman Table of 12 Laws. Other codes have also emerged including the Napoleonic Code, which was first established in 1804, being referred to as the Civil Code of France until Napoleon declared himself Emperor of France and named it the Napoleonic Code at the same time, where the Napoleonic Code takes precedence over any previous judicial ruling and therefore no English judge can create new law using old precedent if he does not have the French judge's permission by way of reinterpretation of the law (Narebo, 1991).

The uncertainty of law in the early Roman Republic, coupled with the continuing tension between patricians (aristocracy) and plebeians (commoners), made it a necessity to create a codified set of written laws. To achieve this, the Twelve Tables of Law were established that were positive and concise in nature. They became the religious instruction for Roman Youths, with adults being expected to memorize the Twelve Tables. The Twelve Tables were described by the famous orator, Cicero, as a summation of the finest thoughts in the works of ancient philosophers (Buckland and McNair, 1931) Functions of modern legislation have also derived from various peoples (e.g., English) general customs in the conduct of business.

Similarly, codes like the Uniform Commercial Code (UCC) have also been evolved in mature legal systems to unify diverse jurisdictions (UCC, 2024, February, 10, Articles of the UCC-Uniform Commercial Code, <https://uniformcommercialcode.uslegal.com>). The Uniform Commercial Code (UCC) was first published in 1952 and it consists of a number of uniform acts that have been put into law with the goal of harmonizing the law of sale and other commercial transactions across the United States of America and same is adopted in all the fifty (50) states in America (ibid). In the United States of America, a set of treatises on legal subjects have been published in the Restatements of the Laws, also known as Restatements, that articulate the guiding rules or principles for specific area of law (Restatement of the Law, 2014, February, 10, Restatement of the Law <https://www.law.cornell.edu/wex/restatement-of-law>). The Restatements are written and published by the American Law Institute (ALI) which was founded in 1923 to clarify the concerned areas of law and Restatements currently exist for twenty areas of law which include Torts, Contracts and Laws Governing Lawyers (ibid). Restatements are to guide judges and legal practitioners about the principles of common law and as secondary sources of law, they are merely persuasive authority that do not take replace precedents and binding statutes (ibid). When the School of Oriental and African Studies initiated its Restatement of African Law Project, it culminated in the launch of two volumes of Restatement work on Kenyan customary law in Kenya (Contran, 1969).

Meaning and Methods of Documentation

The term 'documentation' has to do with the making of materials that make provision for official information or records (Hornby, 2020), while the word 'document' is defined to mean, to support with records, instruments, or other evidentiary authorities, to record or to create a written record of an event (Garner, 2009). Nigerian customary law is widely seen as being in an unwritten form and which has led to the opinion of many European authors that the people of Nigeria did not have laws in the classical sense. Because of this, there are justifiable jurisprudential reasons for the desirability of having written law in the sense that once a law has been written down, there is evidence that it exists, i.e. it can be referenced, read and relied upon. Therefore, a person can directly reference or read the law or have the law read to him or her. Historically, prior to the time that laws were written, laws were based on the oral recollection of those who were the elders of the community and, therefore, were capable of being thought to have been misplaced or having been inaccurate. Having a written record of laws will provide a means of preserving the longevity and the utility of a specific law. The interest of many has been to preserve the value of the laws for the purpose of providing a nation with genuine institutions. The law which is unwritten in a community poses a fundamental obstacle to the effective and efficient administration of justice. The desire to provide certainty and certainty to the law continues to result in the renewed requests for documentation of the laws (Esho, 1991). There have been a number of different historical methods created for the documentation of customary law over the course of the years, including codification, restatement and use of case law systems (Ubink, 2011). Each of these mechanisms aim to enhance clarity and certainty of customary law and to reduce the scope of discretion for judges, dispute settlers and administrators.

The term 'codification' has no precise meaning, (Dikko, 1991) and like many other legal terms, the term 'codification' has various definitions and this has made scholars of law to say that 'codification' or 'code' has penumbra of meanings (Narebo, 1991). The term codification is derived from the word 'codify' and to codify has been defined as, 'to arrange laws, rules, etc. into a system' (Hornby, 2010).

On the other hand, restatement is a systematic, analytical and comprehensive account of specific branches of customary law which is unwritten or, if written, is traceable to a variety of sources (Bennion, 1990). Restatement could however take the form of purporting to unify the applicable customary laws into one or more national bodies of customary law (Bennion, 1990)). The idea of a restatement exercise is to identify common trends or principles in a certain area of law with the objective of further unifying the law (Bennion, 1990). On the other hand, integration of customary law will entail the fusion of rules of customary law with the other exist laws in the country into a single national system (Nwabueze, 1963). The process would entail fusing both applicable rules of customary law and the received English laws (common law, equity and legislations) into a single system (Agu, 1974).

The Alternative of Codification

In its technical and legal meaning, codification is defined as the process of compiling, arranging and systematizing the laws of a given jurisdiction. It also means the code that results from the process of codification (Garner, 2014). Codification has been defined to mean the reduction of the whole corpus juris so far as it is practicable to the form of enacted law (Salmond, 1966). It has also been defined as the reduction of the whole law of a country or at least the great bulk of it, to a coherent body of enacted law (Jolowicz, 1963). Essentially, the codification of customary law will involve the collection, collation and reduction of customary law principles into writing to the form of statute or code which will have the stamp of law (Jolowicz, 1963). In the present democratic setting in Nigeria, codification will mean setting down customary law rules in the form of an Act of the National Assembly or Law of a State House of Assembly or Bye Law of a Local Government Council (CFRN, s.4(1), s.4(6) and s.7(5), 1999, as amended), and the end result of a codified customary law may be called a Code. Generally speaking, the consequence of codification of laws is that the provisions so contained in the code will represent the current principles, rules and other provisions of the law in context, regardless of its source (Bennion, 1990).

The codification of rules of customary law will entail the reduction of the rules in a code, using the legislative instrument of the state, and once that is done, all other rules on that particular area of customary law will cease to be law (Eso, 1991). When customary law rules are codified, the applicable laws would be in writing and there will be no need to prove customary law like a matter of fact and the requirement of repeated judicial approval of a rule of customary law before it is judicially taken notice of will become inconsequential (Osinbajo & Osipitan, 1991). The implication of a codified law is that the law would begin and end on its own and it will supersede all other laws on the subject matter of legislation (Azinge, 1991).

Without doubt, certain problems will be encountered in accomplishing the project and this has made many scholars to raise arguments against any effort at codification. Nigeria with a population of over Two Hundred Million people (Worldometer, 2026, June, 06, Nigeria Population, <https://www.worldometer.info>), with diverse cultural laws and principles will be faced with hurdles and difficulties to aggregate the customary law rules of the people in a Code. Some scholars opine that once customary laws are codified, they will metamorphose to formal statutes and they can no longer be called customary law in the true sense of the term, because codification will make the law lose its important characteristics of flexibility and adaptability when it is forced onto the strait jacket of a code (Nwabueze, 1963). This fact is a major challenge and it has been judicially observed in the case of *Adefulu v Oyesile* (1989) 1 All NLR 698, 700-701. Another argument that has been raised against the codification of ethnic law is the fear of perceived meddlesome by those that will be bestowed with the responsibility of identifying the laws that would be codified. In essence, what would eventually be codified as the law will not be the true reflection of the laws of the peoples (Narebo, 1991). Also, there is the feeling that since codification of customary law will make the law lose its flexible nature and thereby make it inadaptable to societal changes and needs, which is likely to make the judges to rigidly interpret the provisions of the laws as had in the codes and this will likely breed injustice on a large scale (Narebo, 1991).

Another major challenge to the codification exercise will be the lack of data on the precise number of applicable customary laws in Nigeria. This is because different writers and scholars on Nigerian legal system give different and conflicting figures of the number of ethnic groups and dialects of the Nigerian people. The plurality and diversity of Nigerian languages to which customary laws and practices are subjected will make it difficult to determine the semantic meaning of legal notions in certain norms and this will be a major setback to the codification exercise of customary law in many African countries (Onyango, 2013). A consideration of all these factors and challenges has made some scholars to argue that the idea of codifying the law may not be achievable (Salman, 2006).

The Alternative of Integration

Integration, as an alternative to document customary law, has to do with the fusion of customary law rules with the other existing operational laws in the country. In this method of documentation of law, all laws, foreign and local operative in the country, including customary law, would have to be integrated into one whole part or fused together and made to be applicable as single law (Nwabueze, 1963). Some scholars believe that law could be used as an instrument to influence social life and integrate the mutual expectation of varying interests in the state, which will assist in no small measure to bring about societal integration (Podgorecki, 1974). It has been opined that the integration of customary law with the other applicable law will foster the eventual harmonisation of the principles of English common law and statutes with those of locally enacted laws and of customary law into a general law for the whole country (Elias, 1969).

Restatement exercise will require great care and thoroughness of research on the applicable customary laws, sifting and recording the laws, which may take as much time as in codification of the law (Eso, 1991). If integration is carried out, all integrated laws would be considered equal and put on the same pedestal of application and no single law, customary law inclusive, will be made secondary to other(s). The process of integration will entail the identification of native laws and customs that deserve or worthy to be integrated with the other laws. Integration will involve the use of legislative organ of the state to apply its legislative instrument to integrate or bring the laws together. By so doing, technically speaking, integration will imply the acceptance of the principle of codification. The principle of integration of laws has some shortcomings and among these is that, there is the problem of identifying all customary law rules that are proper to be integrated with the other laws. Another problem that is associated with an integration policy is that the process can make customary law to lose its dynamism, amenability to changes and eventual growth with societal needs.

Why the Preference for Restatement?

Restatement technically involves that the new statement of the law are brought together, clarified, connected, re-arranged in a more logical and comprehensive way (Allot & Cotran, 1977). Restatement of customary law will involve systematic recording of applicable rules of customary law and it is viewed more like a 'book' and less than a 'code' (Eso, 1991). In the process of restatement, the old statement of law has to be had in contemplation, otherwise, what we would have will not be a restatement, but something novel or new. In the process of restatement, practicality is had in view and the people who the laws are applicable to will be given the benefit of a more definite and detailed statement of applicable law (Azingi, 1991). The restatement can be in the form of a Manual (Hornby, 2006) or Digest (Hornby, 2006), but it must not be codified.

Judges are to make reference to the restatement as a guide to the applicable law and they should at the same time, be ready to accept supplementary expert evidence which may displace the restatement account or to rule that social circumstances have changed since the restatement were originally completed, or an overreaching policy which necessitates why the restatement rule should not be applied in any particular case. The main features of restatement are that it must be authoritative, but usually has no binding force; it must be made by experts who are knowledgeable in native customs; it should not be treated as Code; it must be a prima facie rebuttable statements of the applicable customary law; it must be a guide to the applicable customary law; and that it can be supplemented by expert opinion.

Restatement is very useful where the laws restated have been a subject of opinions or complex in form. It has been said that no other area of law in Nigeria is in dire need of restatement as much as Nigerian customary law (Nigerian Institute of Advanced Legal Studies, 2013); and the reasons for this were stated in the work of the Nigerian Institute of Advanced Legal Studies, to include the cultural diversity of the component parts, the oral nature of the law which makes it look endangered and dearth of authoritative materials on the law which makes scholarships difficult (ibid). The Restatement project of the Nigerian Institute of Advanced Legal Studies is a commendable effort of four chapters with index, of restating applicable customary laws in four, out of the six, geo-political zones of Nigeria; to wit: South-East, South-West, South-South and North-Central Zones.

The arguments usually adduced in favour of restatement are similar to those put forward in support of codification. These include that it guarantees uniformity, certainty of the law and will assist in the identification of the applicable customary laws of the various Nigerian societies. Importantly too, the restatement of customary law rules will erase the perceived inferior status of customary law as against the other applicable laws, particularly, the received English laws and legislations.

At the end of London Conference in 1950, restatement was recommended as desirable for African countries and it was stated that there was the need for a record or digests of the applicable native law and custom in relation of family relations, marriage, divorce, succession and land tenure (London Conference, 1959-1960). It will be desirable that the record of the applicable law should be prepared in consultation with the elders of each community so as to ensure that it reflects their common opinion of the people. The record should not as a rule be given statutory form, otherwise, it becomes too rigid in its application. The record will be receivable in judicial proceedings of the court, as a public document and admissible without formal proof. It should be subjected to revision as frequently as necessary so as to ensure that it keeps pace with changing conditions. Scholars came to the conclusion that the restatement of customary law is by far a much more viable option than codification (Allot & Contran, 1977; Azinge, 1991; Oba, 2006)..

However, some arguments have been raised against the restatement of customary law and these include that restatement will make customary law to lose its fluidity and adaptability to changes and development. It is argued that this will freeze the law and prevent its future development (Azinge, 1991). Secondly, that there are varied principles of customary within any given community and that would make the task of knowing which rules of customary law that deserve to be restated very difficult. Notwithstanding these challenges, restatement seems a better alternative and worthwhile option in documenting rules of customary law. It has however been suggested that there should be periodic review of the restated law to accommodate the current yearnings and aspirations of the people so as to make the law reflective of what the people want to be applicable to their lives (Ayinla, 2006).

Methodology of Restatement

In view of the plural nature of customary laws in Nigeria, a pertinent question that comes to mind as far as restatement of Nigerian customary law is concerned is, how will the exercise be carried out? The restatement exercise will involve extensive legal research to ensure that the cultural wishes and rules of the minority ethnic groups are also taken into consideration while restating the laws. Similarly, the collectors of the applicable laws must ensure that it is the actual customs of the people that are penciled down for restatement (Ayinla, 2006). It is only the rules of customary law that are accepted by the people it governs and cut across the various communities where it would be applicable or has been pronounced on by the superior courts that would be worthy and deserving to be restated. Comprehensive research would need to be made to identify those customary rules that pass these tests for restatement. The restatement exercise would deserve to be given adequate publicity and all local governments in Nigeria and traditional rulers would have major roles to play in collating the applicable customary laws of the people within their domains. Similarly, the federal and state governments should be well disposed and committed to the success

of the restatement project. They governments would need to made adequate infrastructural provision and make the environment conducive for the success of the project.

Conclusion and Recommendation

There is therefore the need to improve the position of the law from its present loose status by restating its provisions. Like laws under European jurisprudence, customary law would become certain and be a reference point for judges and practitioners of law in judicial administration. This would make the customary law to occupy a place of pride among legislations and principles of received English laws in judicial administration in Nigeria. Customary law would then be called law in the true sense of the term and there will be no further need to prove customary law as a matter of fact, as presently had under the Nigerian law. The relevance of customary law cannot be overlooked when the so called principal laws have not really fixed our societal problems; there is the need to have recourse to enduring traditional values of customary laws which will play its desired role as the true law of the people (Smith & David, 1983). The rich national values of Nigerians are contained in the customs of the people and they can be relied on as catalyst for national pride and identity (Azinge, 1991). African customary laws should not be allowed to die away, they deserve to be preserved through a project of restatement which will assist in no small measure in judicial administration. To restate the applicable customary laws, it is recommended that all governments in Nigeria, scholars of law, judges, lawyers, sociologists, anthropologists, etc. should be involved and given assigned roles in collating the applicable customary laws in Manual or Digest which will serve as handy companions to legal practitioners and judges who are involved in the application of the law.

References

- 1) Abdo M and Abegaz G, Defining Customary Law and Legal System www.abbyssinialaw.com accessed 09 May 2026.
- 2) Agu N, 'The Dualism of English and Customary Law in Nigeria' in African Indigenous Laws (Institute of African Studies, University of Nigeria Workshop, 7-9 August, 1974), 264
- 3) Agu v Ikewibe (1991) 3 NWLR (Pt.180), 385.
- 4) Ajomo MA, 'Comparative Analysis of Customary Laws in Africa' in Osinbajo (ed) *Integration of the African Continent Through Law* (Published for the Federal Ministry of Justice, Nigeria, by E. Foakes Publishers, Lagos, 1990), 19.
- 5) Allot AN and Cotran E, 'A Background Paper on Restatement of Laws in Africa: The Need, Values and Methods of such Restatement' (1977) 25 (1) *Integration of Customary and Modern Legal System in Africa, The American Journal of Comparative Law*, 18.
- 6) Articles of the UCC-Uniform Commercial Code <http://uniformcommercialcode.uslegal.com>. accessed 09 May 2026.
- 7) Ayinla LA, 'The Nigerian Living Law and its Relegation' (2006) 1 *University of Ilorin Law Journal*, 210.
- 8) Azinge E, 'Codification of Customary Law- A Mission Impossible?' in *Towards a Restatement of Customary Laws in Nigeria* (Federal Ministry of Justice, Lagos, 1991), 284.
- 9) Badaiki AD, *Development of Customary Law* (Tiken Publishers, Lagos, 1997), 10.
- 10) Bakare v Arepo (1963) WNLR 95.
- 11) Bennion F, *State Law* (Longman Publishers, London, 1990), 83.
- 12) Cole v Folami 1 FSC 6, 68.
- 13) Constitution of the Federal Republic of Nigeria, 1999, as amended.
- 14) Contran E, *Restatement of Africa Law*, vols. 1 and 2. Kenya 1, *The Law of Marriage and Divorce* (1968).
- 15) Dikko AB, 'Possibilities of Codifying the Major systems of Customary Laws in Nigeria' In *Towards a Restatement of Nigerian Customary Laws* (Federal Ministry of Justice, Lagos, 1991), 322.
- 16) Edokguolor v Idehon (1966) WNLR 11.
- 17) Eshugbayi Eleko v Government of Nigeria (1928) AC 459.

- 18) Eso K, 'Towards Certainty in Our Laws' in *Towards a Restatement of Nigerian Customary Laws* (Federal Ministry of Justice, Lagos, 1991), 59.
- 19) Expatrio, German Culture <https://www.expatrio.com/living-germany/german-culture> accessed 09 May 2026.
- 20) Garner BA, *Black's Law Dictionary* 10th ed., (Thomas Reuters, United States of America, 2009), 588.
- 21) Hornby AS, *Oxford English Dictionary* (Oxford University Press, United Kingdom, 2020).
- 22) *Husseini v Mohammed* (2015) 3 NWLR (Pt. 1445) 100, 133-134.
- 23) Jolowicz HF, *Textures on Jurisprudence* (The Athlone Press, London, 1963), 223.
- 24) *Lewis v Bankole* (1909) NLR 100 at 83.
- 25) Narebo D, "Codification of Customary Law" in *Towards a Restatement of Nigerian Customary Laws* (Federal Ministry of Justice, Lagos, 1991), 29.
- 26) Nigerian Institute of Advanced Legal Studies, *Restatement of Customary Law of Nigeria* (Nigerian Institute of Advanced Legal Studies, Lagos, 2013), xi.
- 27) Nwabueze BO, *The Machinery of Justice in Nigeria* (Butterworth, London, 1963), 22.
- 28) Nwocha ME, "Customary Law, Social Development and Administration of Justice in Nigeria" (2016) *Beijing Law Review*, 430-442.
- 29) Oba AA, "Customary Law, Social Development and Administration of Justice in Nigeria" (2016) *Beijing Law Review*, 430-442.
- 30) 'The Administration of Customary Law in a Post-Colonial Nigerian State' in the Possibility of African The System of Modern Roman Law (Higginbotham J., Madras, 1867), 28.
- 31) Onyango P, *African Customary Law: An Introduction* (Law Africa Publishing (U) Limited, Kampala, Uganda, 2013), 111-112.
- 32) Osinbajo Y and Osipitan T, 'Proof of Customary Law in Non-Customary Law Courts' in *Restatement of Nigerian Customary Laws* (Federal Ministry of Justice, Lagos, 1991), 264.
- 33) Podgorecki A, 'Law and Society', (1974) 2 (2) *British Journal of Law and Society*, (1974), 246-250.
- 34) *Restatement of Customary Law of Nigeria* (Nigerian Institute of Advanced Legal Studies, Lagos, 2013), xi.
- 35) Restatement of the Law https://www.law.cornell.edu/wex/restatement_of_law accessed 10 May 2026.
- 36) Salman RK, 'Codification and Restatement of Customary Law in Africa; The Journey so far' in *Kogi Reading in Law* ed. (Stebak Books and Publishers, Akure, 2006), 15.
- 37) Salmond J, *Jurisprudence* (12th ed.), (Sweet and Maxwell, United Kingdom, 1966), 5.
- 38) Tarkaa MK, Codification: A Treatise for the Creation of a Nigerian Common Customary Law <https://itarka.wordpress.com> accessed 09 May 2026.
- 39) Tobi N, *Sources of Nigerian Law* (MIJ Publishers Ltd., Lagos, 1996).
- 40) Unger RM, *Law in Modern Society* (The Free Press, New York, United States of America, 1976), 49.
- 41) *Yaktor v Governor of Plateau State* (1997)4 NWLR (Pt. 498), 216.