The Nigerian customary law practices and repugnancy test: a reading in colonial legacy

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Abstract
This study is an attempt to explore the impact of Indirect Rule's repugnancy test on Nigerian people's customary law. In 1900, when the British Government took over the administration of the state of Nigeria from the Royal Niger Company, Sir Fredrick Lugard adopting Indirect Rule continued with the company's policy of applying the laws and customs of the indigenous peoples of Nigeria in administration of justice. But all the native laws and customs of the people to be so applied must pass the repugnancy test. The test was therefore used to weed out elements of Nigeria's customary law that were seen as incompatible with the British legal principles. The implication of the above is that under the system, so many Nigeria people's native laws and customary law rules were modified, abolished, amended, or revoked. This work using qualitative and quantitative methodologies tends to explore the extent the system upturned, pruned, or modified the people's customary law. The findings are that the test eroded many customary law practices of the people and imposed Western legal norms on the nation.

Keywords: indirect rule, customary law, repugnancy, transformation

1. Introduction

Historically, in 1900, Sir Fredrick Lugard set up and pursued the British colonial policy of Indirect Rule in Nigeria. Recognizing the courts as an important apparatus of and an arm of Indirect Rule, he promulgated in 1900 the Supreme Court Proclamation, and the *Native / Provincial Courts Ordinances (T.O. Elias, 1975)* [1]. While the Supreme Court proclamation of 1900 established the Supreme Court of the protectorate of Southern Nigeria, the Native Courts Ordinance of 1900 established the Native Courts for the Southern States of the country. In the same vein, the Northern States Proclamation of the same year (1900) established Native Courts of Northern Nigeria. The said Supreme Court Proclamation of 1900 in its Section 13 enjoined the Supreme Court to observe and enforce the observance of customary laws of the people such laws or customs not being repugnant to natural justice, equity and good conscience. Indeed, the enactment went thus: *'Nothing in this Proclamation shall deprive the Supreme Court of the right to observe and enforce observance or shall deprive any person the benefit of any law or custom existing in the protectorate, such law or custom not being repugnant to natural justice, equity and good conscience……',(T.O. Elias, 1975)* [1].

Section 20 of the same Proclamation clearly enshrines and cautions as follows: '*The court shall always apply them (Customary law) in all matters relating to marriage and family, land tenure, inheritance and succession to land, and by necessary implication, chieftaincy disputes' (M.O. Balonwu, 1975)* [2].

The Native Courts Ordinance in its Section 10 (1) (a) also made it compulsory that Native Courts administer customary laws of the area of jurisdiction. It stipulated in its Section 10(1) (a) thus: '*Subject to the provision of this Ordinance, a native court shall administer—The native law and custom prevailing in the area of jurisdiction of the court as far as it is not repugnant to natural justice, equity and good conscience or inconsistence with the provisions of any other ordinance'', (J.N. Onyechi, 1975)* [3].

Prior to the colonization of the country, customary law was administered by village authorities in indigenous courts of the land in both civil and criminal matters and were not subjected to any test or requirements. But on colonization the position changed. However, on gaining independence, the nation's post-independence courts continued with this colonial policy of repugnancy test as a legacy. Indeed, all the Nigeria post-independence statute books enshrine this doctrine of repugnancy test. The nation's Evidence Act captures it in Section 18 (3), the High Court laws of the various states of the Federation also enshrine it. The High Court laws of Lagos State captures the test in these words: '*The High Court shall observe and enforce the observance of customary law which is not repugnant to natural justice, equity and good conscience* [4]. Other statutes containing the identical test include Court of Appeal Act. Customary Court Laws of the various states and Area Court Laws of the states. So even with independence, the test has remained the most authoritative legislative provision in Nigeria.

This relevance of the study lies in the fact that it would help scholars to gain insights into legal pluralisms and the tensions inherent in fashioning a common legal framework or modern legal standards for the society. For instance, with the repugnancy doctrine polygamy which was widely practiced in Nigeria was found objectionable and banned. Also, certain customs of the people relating to marriage, divorce, and inheritance were declared repugnant and prohibited. The

research would also contribute to an in-depth understanding of the intersection of legal systems and the challenges apparent in achieving a balance between local customs and human rights. Further, it is hoped that the study will contribute to the ongoing debates about accommodating cultural rights while ensuring the protection and promotion of universal human rights.

2. Literature review

Customary law in the words of Nwokedi JSC means: *'…….a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law with respect to the place it relaes''(Ogbu, 2002)* [4].

Obaseki, JSC puts it succinctly. According to him, customary law is- '*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''(Ogbu,, 2002)* [4].

Niki Tobi (JCA) in distinguishing customary law from custom had this to say, '*The word' custom' may only reflect the common usage and practice of the people in a particular matter without necessarily carrying with it the force of law'' (Niki Tobi, 1996)* [5].

Therefore, to Niki Tobi, customary law is that piece of custom which its observance has acquired the character of law with necessary sanctions in the event of a breach. It is those customs which people consider their observance obligatory.

Apparent from the definitions is the fact that in origin, customary law is evolutionary rather than a product of conscious human efforts. Its source is essentially the recollection of elders and those whose traditional roles enable them to have special knowledge of customs and traditions of their people. Therefore, customary law varies from place to place or from community to community. In essence, there is no uniform body of customary law for all communities in Nigeria. The diversity of the people of Nigeria also implies the diversity of their customs. It is important to note that custom of communities within the same ethnic group or region may differ.

Niki Tobi, one time Justice of Nigeria's Court of Appeal, writing on the repugnancy test policy had this to say: "The phrase repugnant means offensive, distasteful, inconsistent or contrary to. But to the Native Authority Ordinance (1948) laws of Nigeria (Cap 140), the phrase repugnant means 'not repugnant to morality or natural justice'' (Niki Tobi, 1996) [5]. In the same vein, to understand the meaning of the phrase equity as used in the repugnancy doctrine, we listen to Story, J. According to him, '*Equity here answers precisely to the definition of natural justice, and which properly arises ex equoet bono as given by Justinian in the fandects'' (Niki Tobi, 1996)* [5].

Lord Mansfield, C.J. had this to say on the meaning of natural justice and equity as applied in the doctrine: *'The word 'natural justice' were here clearly not used in their restricted modern sense, but were synonymous with natural law, in the same way, the word equity did not refer to technical equity, that is, the equity of the Chancery Court, but to natural justice'' (T.O.Elias, 1975)* [1]. In the words of Prof. G. Ezejiofor, the phrase natural justice, equity and good conscience is synonymous with and mean fair, just or conscionable (Ezejiofor, 1980) [6]. In other words, a rule of customary law that is unjust, unfair or unconscionable is repugnant to natural justice equity and good conscience.

It is the consensus of most writers that the Repugnancy Test Act, a colonial legislation and a legacy of British colonial policy in the administration of justice fragmented the legal process in the country with far reaching consequences. To Mikano E. Kiye (2015) [7], Ogbu Osita (2002) [4], Ezejiofor G. (1980) [6], the test challenged without looking back the ancestral foundations of customary laws in Nigeria by transferring to the courts the responsibility of determining what the customary law rules should be as opposed to what the rules are. By the test, many customary laws were almost created at the level of the courts and imposed on the communities. In its fragmentation of the legal process in the land, it created in the words of Igwe and Ogolo (2017) [8], '*two different versions of customary law''*. These were the lawyer's customary law and the sociologist's customary law (the law sanctioned by usage). But as the two latter authors opined, in spite of all this, the Test was not without some benefits.

3. Theoretical framework

Two theories guide this study These are the post colonialism and Cultural anthropology theories. The post colonialism theory examines the historical circumstances and ongoing power dynamics between the colonizers and the colonized. This theory is important to the study as it captures indirect rule as a form of colonial control. This theory would help one in understanding how the system impacted and transformed Nigeria's customary law. The cultural anthropology theory on its path is concerned with understanding the beliefs, values and practices of a people. The theory guides this study as it provides insights on how indirect rule impacted the socio-cultural and religious aspects of the Nigerian people's customary law. The said theory also sheds light on the changes, and adaptations that occurred in the nation's customary law due to colonial influences.

4. Research questions

- How did the implementation of the British indirect rule in Nigeria affect the people's customary law?
- What were the specific changes made to the Nigeria's customary law system under indirect rule?
- How did the changes made to Nigeria's customary law affect the traditional customary law system of the people?
- In what ways did the abolition of certain customary law practices of the people affect the rights of individuals?

5. Research hypotheses

- Indirect rule with its repugnancy test weakened the relevance and application of Nigeria's Customary law.
- Indirect rule with its repugnancy test led to the erosion of the norms and traditional values systems of the Nigerian

peoples.

- Indirect rule with its repugnancy test resulted in the imposition of the British colonial legal systems, norms and values leading to tensions between the traditional and the modern.
- Indirect rule promoted inconsistencies and legal uncertainties in Nigeria's customary law practices.

6. Methods

Research design and study setting

Given that the study is qualitative in nature, the work adopted quantitative and qualitative research methods. Quantitative techniques involve the use of questionnaires to understand the respondents' extent of awareness of the impact of repugnancy test on Nigerian people's native laws and customary law rules during and after colonialism. Qualitative method involved in-depth oral interviews used to both enhance and authenticate quantitative results generated in the survey.

The study took place in four of the six geo-political zones of the Federation of Nigeria. These were North-Central, South-South, South-East, and South-West geo-political zones. Three states were selected in each of the zones as follows: Benue, Kogi, and Nasarawa States (North-Central), Cross River, Delta and Edo States (South-South), Enugu, Anambra and Ebony States (South-East), Ekiti, Oyo and Ogun (South-West. These states were selected because of the plethora of customary law issues arising in them evidenced in court records and decided cases.

The study began with contact setting and visits to relevant authorities especially the traditional rulers and chairmen of the Nigerian Bar Association of the zones involved requesting from them the permission to be allowed to carry out the study

7. Questionnaires and meeting with respondents

On account of the qualitative nature of the study, primary data was collected by the use of mixed (closed and open-ended) questionnaires as well as semi-structured interviews. In view of the subject matter under study, the questions administered to the respondents were limited. Nevertheless, they were sufficient enough to meet the objectives of the study. The open-ended questions allowed the respondents to explain in more detail the reasons behind their responses given in the close-ended section of the questionnaires. Such was to give one a better picture of the issues under study. Questionnaires for this work sought answers to such pertinent questions as sex, age, residence, status/position/rank, marital status, awareness of the impact of the repugnancy test on the Nigerian people's native laws and customary law rules in the days of colonialism and after etc. The questionnaires were used in the study because they are convenient and could yield both qualitative and quantitative data. In each of the zones, a total of 50 questionnaires were distributed. Secondary data was gathered through review of existing literature on the subject matter as well as court records and law reports. The study took place from July 2018 to December, 2019.

8. Interviews

A total of 200 persons took part in the in-depth interviews 170 men and 30 women. The very elderly ones in the legal profession and traditional rulers were the preferred in the interview. Judicial testimonies enjoyed by this study came from this class of respondents. These included retired and serving Judges/Justices, Senior Advocates of Nigeria (SAN), Magistrates and private legal practitioners (senior lawyers) etc. the other classes of respondents interviewed were traditional rulers and some leaders of thought in the four zones. Semi-structured interviews were administered on these men of the law and custodians of the people's culture. The reason for administering semi-structured interviews on them was that they are the ones who are presumed to possess wealth of information on the subject which can only come out more clearly through interviews. Semi-structured interviews were preferred because they help in focusing the discussion on relevant matters. 200 questionnaires were distributed to respondents, but only 198 were diligently completed and returned.

9. Data analysis

The researcher began by first transcribing the data from the interviews. The process of transcribing the data helped the researcher to connect with the thinking of the respondents. Perceived gaps and missing links in a respondent's information were filled through phone calls and e-mail communications with the concerned respondent. In analyzing the interviews, the thematic analysis technique was used to uncover themes and trends. Excerpts from quantitative results were used to compliment the qualitative depositions. A total of 200 questionnaires were distributed in the four geo-political zones, that is 50 in each zone. The distribution went to a total of 167 males and 33 females between the ages of 40-70.

10. Discussion and presentation of findings

Indirect Rule System and the customary laws of the people of Nigeria.

Historically, under the 1901 Native Courts Proclamation which came into force in January 10, 1902, many customary laws of the people were to be upturned, pruned, reconstructed, transformed or modified (T.O. Elias, 1975) [1]. The said Proclamation empowered local authorities to modify customary laws of the people by declaration or resolution. Nevertheless, such declarations or resolutions were subject to the approval of the High Commissioner (M.O. Balonwu, 1975) [2]. The Native Authority of Old Calabar, by virtue of the power vested in it by Section 36 of the Proclamation, invalidated on the 2nd of December, 1902 the customary law rules regulating the selection of the King (Obong) of Old Calabar and of the Creek Town (Ogbu, 2002) [4]. They also made new customary rules for the election of certain chiefs among the Efik people (D.C. Ekpo, personal Interview, September, 2018) [10]. According to the Native Council, the customary rules of the people regulating the selection of King (Obong) and chiefs of these communities offended natural justice principles and were also repugnant to equity and good conscience procedurally.

Further, Indirect Rule with its hammer of repugnancy dealt in

1932 a dismissal blow to the sociological father customary law practice of the Cross River (Calabar) people of Nigeria (Ogbu, 2002) [4]. According to this custom, if a man paid dowry on a woman and the woman left him and entered into a union with another man, the children produced by the latter union or the marriage belongs to the first husband. This was the case between Edet and Essien in which case the man paid dowry on the woman as a result of which they were married. But the woman left the man and entered into union with another man by whom she had two children. The plaintiff (the first husband) at the court alleged that under the rule of customary law of the people, he was entitled to the ownership of the two children for his dowry on the woman was not yet repaid. In other words, until his dowry is repaid, all the children of the latter union belonged to him. The court under the repugnancy test policy held that such rule of customary law was repugnant to natural justice, equity and good conscience. In the view of the court, to allow such a custom would be depriving a biological father ownership of his children and handing them over to a sociological father (Igwe Ikpazu, Personal interview, December, 2019). As the court thundered, a custom that denies the natural or biological father of his child is certainly repugnant to natural justice, equity and good conscience and must be declared invalid. This pronouncement of the court became the law all over the country where such sociological father customary rule applied (Matunji Ojo, personal interview, May, 2019) [12].

More so, the repugnancy doctrine also found objectionable and repugnant the Igbo customary law practice of Nrachi (A.C. Alagbe, May, 2019) [14]. By this custom, a father plants his unmarried daughter in his house for purposes of raising children for hm. The justice of the Court of Appeal in declaring this custom repugnant to natural justice, equity and good conscience had this to say:

> *I must express the point here by which I will continue to stand that human nature in its most exuberant prime and infinite telepathy cannot support the idea that a woman can take the place of a man and be procreating for her fathe via a mundane custom. She stays in her father's house and cannot marry for the rest of her life even if she sees an honest man who loves her. I cannot and do not believe that the society, as it is presently constituted will for long acquiesce in a conclusion so ludicrous, ridiculous, unrealistic and merciless more especially as we match on into the new millennium. The polity, as presently constituted, cannot in my view contain what Nrachi custom stands for. It is not neat. It is an antithesis to that which is wholesome, and forward looking……The custom is perfidious and the petrifying odour smells to high heavens…… I have no hesitation in declaring that Nrachi custom is against the dictates of equity. It is no doubt repugnant and contrary to natural justice, equity and good conscience (Ogbu, 2002)* [4].

In the view of the court, Nrachi also offends public policy as it encourages promiscuity and gives license to immorality (G.O. Nnamani, personal interview, May, 2019) [15]. In the same manner, repugnancy test knocked off the women to women *mar*riage customary practice among the Igbo. In the words of the court, such offend public policy and promotes promiscuity (Niki Tobi, 1996) [5].

In the same vein, the test of repugnancy also struck down the 'Oli Ekpe' customary practice of the Igbo people of Nigeria (George Aboseke, personal interview, November, 2019) [16]. By this custom, the surviving brother of a deceased inherits the property of his late brother because the surviving wife has no male child. Niki Tobi JCA in declaring this piece of customary law repugnant had this to say:

> *We need not travel all the way to Beijing to know that some of our customs including the Nnewi−Igbo 'Oli Ekpe custom ……are not consistent with our civilized world in which we live today…… I have no difficulty in holding that the 'Oli Ekoe' custom of Nnewi is repugnant to natural justice, equity and good conscience''(Niki Tobi, 1996)* [5].

Further, repugnancy test of Indirect Rule also introduced and in some cases strengthened the customary procedure rules applied by the indigenous courts in their administration of justice (Nonso Robert, 2015) [17]. The test tried to ensure that the customary law procedure rules of the people applied by the courts conformed with the two natural justice principles of *nemo judex in causa sua* (a man should not be a judge in his own case) and *audi alteram partem* (a person ought to be given adequate notice and opportunity to be heard), (J.C. Adeiyongo, personal interview, December, 2018) [18]. These are two principles of natural justice rules of procedure which their observances were made mandatory by the colonial masters in all systems of law in the country. They, therefore, made their observances obligatory in the customary courts of the nation.

In areas where their observances existed in the people's local judicial system, the test strengthened it, and in customs where they did not exist, their observance was introduced and strictly applied (D.O. Olumati, personal interview, May, 2019) [19]. In Yoruba land (especially south west Nigeria) where the custom existed, (among the Ogboni Cult for instance), their observances were strengthened. In Northern Nigeria where the practice was lacking, the principle was introduced and strictly enforced (Olumati, personal interview, May, 2019) [19]. The Adamawa Native Authority Council with Lamido as President was forced to observe these principles in their handling of cases. The Council's judgment in Maddibo's case was upturned on grounds of being repugnant to natural justice procedurally because the Council sat in judgment in its own case (Ogbu, 2002) [4].

In the same vein, the Yoruba customary law practice of rejecting by drumming out an Iwarefa Chief from Iwarefa body by his fellow chiefs without informing him of his offense and the charges against him was also rejected and upturned as offending the natural justice principles of *audi alteram partem* (Nonso Robert, 2015) [17].

The test also knocked down the people's family property system of indivisible land holding (Doki Adams, personal interview, March, 2019) [21]. There is no gainsaying the fact that one of the institutions of our indigenous jurisprudence preserved and enforced by Indirect Rule was the family

property system of land holding. Nigerian communities have a common pattern of land holding. Generally, the pattern of land holding in all Nigerian societies is the family. So one has to belong to a family, village, clan or territorial community before one could own land. And such family or community land so jointly owned was held and treated as indivisible among members. The declaration of the court in 1920 in Abel's case altered this general land holding customary law position of the people. As the court declared:

> *Each party so interested, has the right to live on the property and the right to come to the court to ask for partition, and that is the whole extent of his or her individual interest*……..'' (Nonso Robert, 2015) [17].

The community principle of Nigerian indigenous land tenure supported, strengthened, and modified by Indirect Rule could be capsulated thus:

> *The land belongs to a vast family, of which many are dead, few are living and countless members are still unborn. Land belongs to the past, the present and the generations to come. When the head of a family allots to any member of the family, a portion of the family land, for him to live on, that member becomes entitled to own and enjoy that portion during good behavior, but he does not become the owner of the land as against the family and he cannot alienate it without the consent of the family. Further, that family land cannot be attached in settlement of personal debt for the reason that the individual debtor has no separate and alienable interest in the family property held under local customary tenure (T.O. Elias, 1975) [1].*

Indirect Rule on its own also created applicable customary laws under the Residual Power Clause granted the courts by the then colonial administration (Afah Raymond, interview, January, 2019) [22]. So, while Repugnancy Clause operated to exclude hash, barbarous, and unsuitable customs, Residual Clause operated to fill the existing gaps or lacuna in the customary law of the people (T.O. ELIAS, 1975) [1]. As the name indicates, the courts were to invoke the Clause only where no express rule of customary law is available or applicable to any matter in controversy between the parties. The courts exercised this power clause in the country mainly in administration suits (B.N. Onovo, December, 2019) [24]. So, customary laws in Nigeria dealing with especially issues of next of kin and letters of administration as we have them today were created by the colonial courts under its Residual Power Clause guided by principles of justice, equity and good conscience. Therefore, under the power conferred on the courts by this Clause, new customary laws were created by the statutory courts that were enshrined in the legal system of the land (T.O. Elias, 1975) [1].

The relevance of repugnancy test to post- colonial Nigeria society

Locating the relevance of the Test in the colonial and the contemporary post colonial Nigeria society is not hard to come by. First, the Test impacted and has continued to impact positively on local or municipal legislations in the country by initiating changes and provoking reforms in customary laws of the various peoples of Nigeria. In effect, the Test has a lot of impact on the development of customary law in Nigeria and has also had immense influence on the nation's legislature (B.N. Onovo, personal interview December, 2018) [24]. This is on account of the fact that once a piece of customary law rule has been declared or adjudged repugnant by a court of competent jurisdiction, the appropriate legislature or legislative body in the country would always move in quickly to enact a specific legislation outlawing the custom (Robert Nyitse, Interview, May, 2019) [25]. A good example is the Osu caste system in the then Eastern Region of Nigeria. When this caste system was declared repugnant to natural justice by the court, the custom was promptly abolished for being repugnant by a statute namely, ''The Abolition of Osu System law.'' Section 2 of the said law states: 'Osu includes an Oru, or an Ohu or an Ume or an Omoni…….and any person subject to a legal or social disability or social stigma which is similar to or nearly similar to that borne by an Osu, an Ohu, an Oru an Ome or an Omoni (O.N. Igwe & Ogolo, 2017) [8].

An Osu for purposes of emphasis is a person originally free born, but bought by a family or an individual to be offered to a deity when sacrifice of a fowl or goat to the deity was inadequate. The practice imposed terrible legal disabilities and unthinkable social stigma on its victims (R.B. Osiwaju, personal interview, May, 2019) [26].

Further, the Test has not only helped in fine tuning the people's customary law but has also helped in ensuring that they meet up with and answer to civilized and changed conditions in our contemporary society (S.O. Igwe & Ogolo, 2017) [8]. Put another way, the test has made it possible for the customary law of the people to be applicable when confronted with novel situations in our current social environment that stands far removed from its pristine social ecology. Let us remember that customary laws of the people were developed and formulated time immemorial. Most importantly, unlike other laws or enactments, customary law is not subject to amendment or repeal. Therefore, put aptly, without the test, our customary law would not have been able to meet civilized and changed conditions apparent in its environment (Nonso Robert, 2015) [17].

The rejection and elimination of the people's customary practices deemed obnoxious, harmful and offensive to human dignity is central to the Test's relevance in our contemporary society (Ogbu, 2002) [4]. Lord Atkin lending a voice to the above reality said, *'….barbarous custom must be rejected on grounds of repugnancy to natural justice, equity, good conscience, public policy or morality. There is no doubt, however, that some of the customs of yesteryears are obnoxious and inhuman and cannot be sustained in modern civilization* (Nonso Robert, 2015) [17].

In the same vein, the Test has played a leading role in fostering an equitably gendered society through the rejection and elimination of discriminatory customary values and observances against women (Mary Eghonghon, personal interview, January, 2019) [20]. To this effect, it may be important to highlight that repugnancy test as applied in the communities were not measured against the standards of the

foreign countries, (British, France, America or Beijing etc), but against standard conducts internal to the various jurisdictions and universal morality. Its application in the country was not adjusted to suit the British morality or the British sense of justice as some writers would have us believe (Mikano Kiye, 2015) [7]. It was also not used to enforce western based or western centered morality especially during colonial rule. This perhaps explains why the test has remained highly patronized by all the judicial systems of independent states of sub-Saharan Africa ((Mikano Kiye, 2015) [7].

Conclusion

Prior to colonization, Nigeria's customary laws were applicable in indigenous courts throughout the territory of Nigeria under the guidance and supervision of traditional leaders of the people. But with Indirect Rule, and its Repugnancy Test Act, the template changed. The Test Act, although a colonial legislation, its impact within the administration of justice is still being greatly felt in contemporary judicial system in Nigeria. Since the nation's independence, the Act has remained a very authentic and authoritative provision expressly providing for the recognition of customary law in the adjudication of justice in the country. This is because at the end of colonialism, the Tests were maintained by all independent sub- Sahara African States. Under the Act, most of the customary law rules of the people that were deemed obnoxious and inhuman, and those that failed to meet the demands of modern day civilization were denied application. This paper has tried to locate the true relevance of the Test to both colonial and contemporary post colonial Nigeria. The relevance lies in the fact that it initiated changes and provoked reform of the customary law rules and practices of the people. The Test helped in guaranteeing the survival of customary law in Nigeria by invalidating harmful customary values and eliminating offensive customary observances. The Test has helped customary law in Nigeria in meeting civilized and changed conditions in the state. Although, the standard employed by the courts in declaring a rule of customary law repugnant is not clearly defined, important to note is the fact that the Test was not measured against the standard of foreign countries or the British conduct or the colonizers sense of justice but against standards internal to the various local jurisdictions and universal morality.

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