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# The Right to Female Succession-Inheritance Under Native Laws and Customs in Nigeria: An Affront to Justice

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**Abstract:** *The article highlights the right of women to inheritance and succession among the ethnic groups particularly the four sampled groups; Igbo, Yoruba, Benin and Hausa/ Fulani which is somewhat worrisome to any discerning mind. This is because of the inherent discrimination associated with the intestate succession/inheritance under the various native laws and customs practiced by our ethnic groups in Nigeria. However, what is most worrisome is that in spite of these concerns, the impact of advocacy and public engagements on this subject at different fora is yet to be felt and translated into gender equality in favour of the females who are the primary victims of gender violence and discrimination. The aim of this article is to examine female succession/ inheritance under the Native Laws and Customs of different ethnic groups in Nigeria. In order to achieve this aim, the researcher adopted doctrinal research method. The method makes use of both primary and secondary source materials dealing with the subject under review. In the course of the article, the researcher discovered that the said oppressive, and obnoxious customary law practices from most of the ethnic groups studied were contrary to the expressed constitutional provisions on fundamental rights as well as other international human rights instruments. Based on our findings, it is recommended that national legislations to deter or prohibit discriminatory inheritance/succession right under the native laws and customs against female inheritance rights be put in place with strong advocacy and enlightenment programme against the practice.*

**Keywords:** right, female succession, inheritance, native laws, customs, Nigeria, justice

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## INTRODUCTION

Right from creation, the female gender has suffered from one form of discrimination or the other. Women in Nigeria have been subjected to various oppressive, degrading and discriminatory practices on account of cultural inclinations of their place of origin or place of marriage which grossly violate their fundamental and constitutional rights.

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Quite admittedly, most cultural practices are embedded in the custom and tradition of the people who practice them under the various customary laws prevalent in those places and expectedly, these customary laws do not confer property rights on daughters in their husbands' homes nor does it guarantee property rights on daughters who eventually did not get married to inherit from their fathers' estates to such an extent that the deceased father does not have a male child to succeed him, his properties will devolve on his closest male relation rather than his daughters. Similarly, widows are not allowed to inherit in their husbands' homes, even if they play important roles in joint property ownership while living with their spouses. To put it succinctly, the discriminatory nature of customary laws on female inheritance exposes the perpetuation of male dominance over females' inheritance rights of their fathers' estates.

In order to identify the discrimination and gender inequality that are present in the customs of many prominent ethnic groups in Nigeria, this article will examine how these customs relate to the rights of females (widows and daughters) to inherit under local law and custom. Efforts have been made to equally examine the legality or otherwise of these customary practices and make recommendations on the ways to address headlong the abnormality so discovered.

The article aims at addressing the following:

- i. to analyze some customary law practices on inheritance with a view to unearthing such norms that are responsible for the perpetuation of gender discrimination.
- ii. to examine the existing laws, both local and international, that deal with inheritance/succession issues and the impact of each of these laws in addressing these ugly trends of deprivation and inequality prevalent in our various communities against the female gender.
- iii. to examine the reasons why these discriminatory practices against female gender persist, notwithstanding, the existence of various laws, decided cases and international instruments put in place to halt its growth.
- iv. to objectively point out the human rights implications of this scourge against women as regards succession and inheritance rights.

### ***Succession***

This is the acquisition of right and property by inheritance under the law of descent and distribution. It is where one comes to the property previously held by another.<sup>1</sup>

There are two types of succession as follows:

- i. Succession under the English law and local statutes
  - ii. Succession under the customary Law
- Under the two (2) heads as above, we have Testate and Intestate Succession.
- a. **Testate Succession:** This is the passing of right or property by will<sup>2</sup>. It is the process by which the estate of a deceased person is distributed by valid will left by the deceased.<sup>3</sup>

- b. **Intestate Succession:** When a person passes away without leaving a valid will, his/her property is distributed using this manner.

### *Primogeniture*

This is the right that an oldest son has to inherit his father's assets, usually at the expense of his siblings. There is a system known as male primogeniture in which a native's inheritance passes to either his oldest son or his eldest male descendant upon his death. Igbos and Binis-speaking communities like the Bini (Benin), Owan, Igarra, Uromi, Ekpoma, and others, as well as Ika-speaking communities like Agbor, Owa-Oyibu, Akumazi, Umunede, Igbodo, Ute-Okpu, and Abavo, are some of the main groups in Nigeria that engage in this activity. When neither gender is given precedence for the order of choice, this is known as equal or linear primogeniture. Estate passes to the oldest born under absolute primogeniture, regardless of gender<sup>4</sup>.

### *Patriarchy*

Men are in charge, assertive, and take full responsibility under this system, while women are in charge of nurturing, leadership, obedience, passivity, and dependency. One may argue that the presence of a kinship structure where males dominate women is referred to as patriarchy<sup>5</sup>

### **The Concept of Customary Law**

The diverse customary law practices of the several ethnic groups dispersed across Nigeria give birth to the idea of customary law. However, as many as these multi-ethnic groups exist in Nigeria, their customary law practices are somewhat not largely differentiated depending on the ethnic groups such customary law is practiced.

Customary Law therefore can be defined as the law relating to the custom and the tradition of the people and that is why it is regarded as the mirror of an accepted usage as it was rightly stated in the case of *Ogolo & Ors v Chief Ogolo & Ors*.<sup>6</sup> Customary law is the living law of the indigenous people of Nigeria which regulates lives and transactions of the people.

According to Elias, Customary Law is:

A community's laws, the set of regulations that are accepted as mandatory, etc. Since social conduct, or the recognized standard of behavior, is a dynamic that operates in every society and is seen vitally important for the common good by the great majority of its members, this recognition must be in line with the principles of their social imperative. The social imperative is this factor of the community's ethos.<sup>7</sup>

***The Supreme Court in the case of Oyewunmi v Ogunesari<sup>8</sup> defined Customary Law thus:***

Nigeria's indigenous people's organic law governs their laws and business dealings. Because it is dynamic, it is organic. Because it governs the lives and activities of the people it affects, it is regulatory. It is stated that people's customs reflect who they are. Customary law, in my opinion, goes beyond this and brings justice to the lives of everyone who is governed by it.<sup>9</sup>

Customary law consists of customs accepted by members of a community as binding amongst them. While some authors have maintained that customary law does not include Moslem law, it has been evidently proved particularly by the Old Native Ordinance that “Native Law and Custom also includes Moslem Law”<sup>10</sup> hence customary law in Nigeria is divided into two main classes as viz:

- a. Ethnic or Non-Moslem Customary law
- b. Moslem Law

***a. Ethnic or Non- Moslem Customary Law:***

This is indigenous, and each system of ethnic customary law is unwritten and pertains to members of a certain ethnic community. There are several systems of customary law in Nigeria due to the existence of various ethnic groups and variances in the relevant customary laws, even if the norms of customary law are consistent throughout localities.

***b. Moslem Law:***

This is a religious rule that applies to followers of the Moslem religion. Nonetheless, it is written customary law that was brought into the nation as a component of Islam. It is essentially written down.

Assessing the present state of customary law in Nigeria, one will be safe to say that it is of confusion and doubt. Some of these doubts stem from the unwritten nature of customary law and the activities of the courts themselves. The Supreme Court has equally lamented the state of customary law in Nigeria. In the case of *Ugo v Obiekwe*,<sup>11</sup> the court regretted that ‘whereas the authority concerned are taking the commendable step of ridding our statute and received English Law of anachronism, nothing appears to be happening in the area of customary law which form the essential backbone of our corpus juris Nigerianae’.

***Native Law and Custom***

Native Law and Custom refers to the basic laws and customs of a certain tribe or in reference to any native society outside of a tribal jurisdiction. Custom has been defined in several ways by

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different persons and bodies particularly from the judicial point of view in some select decided cases. In the case of *Dakar v Dapol*<sup>12</sup>, the Court of Appeal defined custom thus:

As defined in section 2(1) of the Evidence Act, custom is ‘ a rule which in particular district has for long usage obtained the force of law.’

*Similarly, in Falowo v Banigbe & Ors.*<sup>13</sup> *Adekeye JCA defined custom thus:*

So what are Native customs and laws? Custom is defined as a regulation that has gained legal effect in a specific territory via long-standing use in Section 2 (1) of the Evidence Act Cap112 Laws of the Federation of 1990.

Generally speaking, custom in law refers to the accepted behavioral pattern that may be independently confirmed in a certain social context. "An assertion of what has consistently been done and recognized by the law." It is made up of traditions that people in a society agree are obligatory. Since ancient times, every tribe or ethnic group has had its own unique set of local laws and customs that distinguish them apart from one another. His Royal Majesty, Henry Ezeaguikpo Jegbefume, the Obi of Akumazi-Umuocha kingdom, maintains that the Akumazi people of Ika North-East Local Government Area of Delta State celebrate their annual New Yam Festival with a caning exercise, without which the festival is incomplete and attracts maximum doom to the kingdom. For example, the most indigenous Aniocha and Oshimili people of Delta State customarily begin and end every funeral ceremony with the firing of cannon gunpowder.

### *Characteristics of Customary Law*

Customary Law is the law which has from long and consistent usage obtained the force of law. It has the following features or characteristics:

- a. **Acceptability:** Customary law must be accepted by members of the community who practice it as binding. In fact, if a custom is not widely accepted by those who practice it, then it is not a customary law. Plethora of cases exist where the court ruled that where a custom is not accepted by people, it cannot be regarded as a customary law. For instance, in the case of *Owonyin v Omotosho*,<sup>14</sup> customary law was defined as ‘a mirror of accepted usage’. By this definition, for a custom to be regarded as a customary law, it must be accepted.
- b. **Flexibility:** Customary law is also adaptable since it is unwritten. This indicates that customary law is not static but rather evolving. It seems that the fact that customary law is not codified in any text is what makes it dynamic
- c. **No Uniform Body:** Customary law has no uniform body because the custom of a particular society can be different from another even though these societies are very close

- d. **Unwritten nature:** This indicates that there is no one text that contains all of the customary law. For example, a village's customary law may provide that only male offspring are entitled to inherit their fathers' inheritance. Members of the society will nonetheless acknowledge this legislation even if it is not expressly stated in any document.
- e. Good conscience, fairness, and natural justice must not be incompatible with it.
- f. It must not be in conflict with any law for the time being
- g. It must be provable by evidence

### ***Proof of Customary Law***

A custom is a rule in a particular district which has from long usage obtained the force of law in that district. For example, in Akumazi kingdom, it is only the first son of the Obi (king) that can be crowned a king thus, this rule that marks the requirement for being a king in Akumazi kingdom from its usage qualifies as the custom of Akumazi kingdom.

The proof of customary law is into two folds as viz;

- a. Proof before customary courts
- b. Proof before non- customary courts

#### ***a. Proof of Customary Law before Customary Courts***

Where a custom is to be proved before a Customary Court within the area of the jurisdiction of that community, the President of the Customary Court is deemed to know the law and as such evidence is not required to prove the Custom. For example, in Akumazi community, if there is a dispute arising and such dispute is taken to the customary court situated in Akumazi for settlement, the President of that customary court in Akumazi community is deemed to know the customary law in Akumazi and such does not demand for evidence in prove thereof. The President may, however, demand the summoning of evidence to support a custom in cases where there is no customary court in the Akumazi community and a dispute is brought before a customary court in another community (outside of Akumazi's jurisdiction). In the case of *Ababio v. Nsemfo*, the court determined that where the presiding judge is a member of the community and well-versed in local traditions, proof of customary law is not required in a customary court. Therefore, proof of evidence may be needed in cases when the presiding judge is not a member of the community or familiar with its customs.

#### ***b. Proof of Customary Law before Non- Customary Courts***

In this sense, "non-customary court" refers to courts like the Supreme Court, High Court, Court of Appeal, and Magistrate Court that are not part of the Area or Customary Courts. Two methods of proving a customary law before a non-customary court are established by Section 16 (1) of the

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Evidence Act of 2011: a custom may be adopted as part of the law governing a specific set of circumstances if it can be judicially noticed or proven to exist by evidence. These include the use of evidence and judicial notice.

### **Judicial Notice to the Court**

A custom may be judicially noted "when it has been adjudicated upon by superior court of record," according to Section 17 of the Evidence Act. As a result, a custom is considered judicially observed when the court rules on it and doesn't need to be proven further. A court will take judicial notice of the decision in the adjudicated case, such as *Ukeje v. Ukeje*, where the Supreme Court held that a female child is entitled to the property of her deceased father and that a custom that states otherwise is invalid. For example, if there is a dispute regarding a female child's entitlement to her deceased father's property and the custom states otherwise, that only the male child can inherit their deceased father's estate, the custom does not need to be proven in court.

### **Proof by Evidence**

"Where a custom cannot be established as one judicially noticed, it shall be proved as a fact," according to Section 18 (1) of the Evidence Act of 2011. This implies that a custom must be established as fact before a non-customary court if it has not been decided by a higher court of record. This practice may be shown by witnesses, expert opinions, books, or manuscripts. Observers: According to Section 16(2) of the Evidence Act of 2011, the person making the claim that a custom exists has the duty of proving it. For example, if I am claiming that the Akumazi community's tradition forbids a female kid from inheriting her dead father's property, I must demonstrate that this custom exists. One method I may accomplish this is by calling witnesses who are familiar with the Akumazi community's customs.

### **Opinion of Experts**

When a court has to make a decision on a matter pertaining to customary law, Section 68 of the Evidence Act of 2011 allows for the opinion of those who are particularly informed and talented in the field to be admitted. Native chiefs, historians, book writers, traditional rulers, and anybody else with specialized understanding of customary law and custom may all provide evidence or their opinions as examples of such expert opinions.

### **Books and Manuscripts**

According to Section 70 of the Evidence Act of 2011, "any book or manuscript recognized as a legal authority by the indigenous people of the locality in which such law or custom applies, as well as the opinions of traditional rulers, chiefs, or other persons having special knowledge of the customary law and custom, are admissible in deciding questions of customary law and custom." In *Ibrahim v. Barde*, for instance, the court ruled that a book that some witnesses said was an accurate chronicle of the region's history was admitted. The Nigerian Land Law book by Professor

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Ben Nwabueze (SAN) was also cited by the court in *Oyelowo v. Oyelowo*. In summary, a customary law is first and foremost a fact that must be established in a regular court. However, in an Area or Customary court, whether or not it is a fact or if it can be judicially observed depends on whether or not it is a custom within the court's jurisdiction.

## VALIDITY TEST OF CUSTOMARY LAW

Before any customary law may be used by our courts to decide customary matters, the following three tests have been established to determine its legitimacy. They are the following tests: public policy, incompatibility, and repugnancy

### *Repugnancy test*

"In any judicial proceedings where a custom is relied upon, it shall not be enforced as law if it is contrary to public policy or is not in accordance with natural justice, equity, and good conscience," according to Section 18(3) of the Evidence Act of 2011. The court has often ruled that traditions that don't pass this repugnancy test are invalid. The Supreme Court ruled in *Ukeje v. Ukeje* that a tradition that forbids women from inheriting their dead father's property is unconstitutional. It was decided in *Okonkwo v. Okagbue* that a tradition permitting a woman to marry a deceased man was unconstitutional. The Customary Court of Appeal, Asaba Div., under Hon. Justice Ogene, held and declared it invalid in the case of *Mrs. Glory Anieze v. Mrs. Josephine Anieze*, which went unreported and involved a woman who married another woman in order to have children for her by arranging for men to have sex with her. The court ruled that the marriage was against natural justice, equity, and good conscience.

A custom that prohibited women from testifying about property subject to customary occupation was ruled unconstitutional in the case of *Uke v. Iro*. A tradition permitting women to marry was ruled to be unconstitutional in *Meribe v. Egbu*. A tradition that denies the accused of armed robbery the right to defend themselves is deemed to be against natural justice, equity, and good conscience in the case of *Guri v. Hadejia N.A.*

### *Incompatibility Test*

A rule of customary law that is incompatible with any already enacted legislation, either directly or indirectly or by necessary implication, cannot be respected or enforced by the courts, according to a number of High Court Rules that permit the application of customary law. This suggests—and essentially means—that a custom that is in conflict with an existing statutory law is illegitimate. In the decided case of *Agbai v. Okogbue* where the plaintiff did not pay the development tax for the construction of a health center in the hamlet as his religion prohibited him from joining the age grade organization and his sewing machine was taken, the court heard that the plaintiff had the right to follow his religious belief. The complainant said that his religion prohibited him from joining the age grade organization, hence he was not a member. According to



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the court, the plaintiff has the right to follow his religious beliefs, and the custom that automatically makes him a member of the Umunkalu age grade association without his consent is directly in conflict with section 38 of the 1999 constitution, which guarantees the right to freedom of thought, conscience, and religion.

### ***Public Policy Test***

According to Section 18(3) of the Evidence Act of 2011, a custom cannot be upheld if it is against public policy. When a tradition harms the public interest or welfare of the populace, it is against public policy. Nigerian customs that encourage homosexual marriage, lesbianism, discrimination based on birth circumstances, and promiscuity are against public policy. Therefore, a tradition that violates public policy will not be upheld by the court or used as evidence. A custom, however, becomes a customary law and may be used as proof or evidence in court if it passes the public policy, incompatibility, and repugnancy tests.

### ***The Nature of Succession Right under Native Law and Custom***

Both under the statutory laws and, more specifically, under native law and custom, the nature of inheritance and succession is an essential component of Nigerian culture.<sup>15</sup> According to Kolajo<sup>16</sup>, ‘‘succession is the devolution of the title to property under the law of decent and distribution. It is the transmission of property vested in a person at his death to some other person or persons. In common parlance, succession means inheritance’’. However, the word inheritance and succession are two words in English dictionary but they are in no way ‘Siamese’ twins. The act or right of legally or formally assuming a predecessor's position, rank, or responsibilities is known as succession. In accordance with the law of decent and distribution, it also refers to the inheritance of a right or property. Conversely, inheritance refers to a man's estate or property that he inherited by decent and that may be passed on to his successor in the same manner upon his death on intestacy. To put it another way, succession is more expansive than inheritance. It refers to acquiring rights when someone else passes away. Therefore, the term “sequence” refers to things that are controlled by three distinct legal principles in English law: the law of wills, the law of intestacy, and the law pertaining to the accession of title and dignity. Each of these has analogs in customary law as well.<sup>17</sup> In its most basic form, succession refers to the transfer of all of the deceased's rights and obligations to a living individual. This implies that the rules that control the transfer of a dead person's property, whether it be physical or immaterial, to other individuals are inheritance and succession. One common inheritance premise is that succession is not by appointment but rather an innate and unalienable right. There are two recognized legal systems in Nigeria that govern how property is distributed after a person passes away. Testate and intestate succession are the names given to these arrangements. In testate succession, property is distributed in line with the Wills Act and the Will Law of each of the federation's states. One thing is readily apparent in Nigeria. In other words, the rules that apply to Will are not consistent. For instance, the Wills Law of Western Nigeria applies in the former Western Region of Nigeria, which gave rise to the ancient Bendel State and subsequently Edo and Delta States. The majority of states

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formed from the old western region followed Western Region Wills Law with certain adjustments, which is a frequent observation. For instance, the relevant Laws Edict of 1972 allowed Lagos State to adopt the Western Nigeria Law. The circumstances are quite different in the other parts of the nation, namely the Northern and Eastern states. Whereas the rest of the country lacks local legislation governing wills, it is not surprising that the applicable law in these states is the received English Wills Act of 1837, which qualified as a Statute of General Application in Nigeria, and the WILLS Amendment Act 1852. This is because some states formed from the Western region have passed their own state laws on succession, which in some cases are essentially a reproduction of the Western Nigeria Wills Laws.

Two important sections of Western Nigerian law are not drawn from the English Act, despite the fact that the Wills Laws of the former western area essentially re-enact the Wills Acts of 1873 and 1852 as well as the Wills (soldiers and sailors) Act of 1918. They are as follows:

- i. Real and personal property that cannot be disposed of by testamentary disposition by native law and custom (customary law) cannot be disposed of by will, according to section 3(1) of the legislation. When it comes to unpartitioned family property, this is very important and crucial.
- ii. Although it is still generally true that a testator's subsequent marriage revokes their will, customary weddings are not affected by this law.<sup>18</sup>

Under this method, the deceased's intentions are carried out as stated in the will, provided that the legal requirements are met. Conversely, intestate succession essentially entails the application of three legal systems. These include customary law, estate law administration in the several states, and common law.<sup>19</sup> Given the diversity of Nigeria's ethnic groupings, the country's customary law intestate succession patterns vary widely. Marriage establishes a contractual connection between the partners, but the law determines its legality and ensuing rights. Put another way, the kind of marriage that a couple enters into dictates the rights that come with it, including succession.<sup>20</sup>

Like all other aspects of Nigerian customary law, the laws governing inheritance and succession vary from one location to another, as was previously mentioned. In other words, just as every facet of Nigerian customary law varies from one location to another, so do the laws governing the concepts of inheritance and succession. In other words, depending on the society, various laws regulate the concepts of succession and inheritance. Therefore, regardless of the location of the deceased's death, the appropriate customary law that ought to be followed in any given situation should be his customary law. Even if the dead passed away while living outside of his native state or town and left behind landed properties in those locations, this idea still holds true. In this case, the deceased's personal customary law will govern how his landed property is divided up outside of his community.

As a result, Nigerian land law replaces the *lex situs* norm. The customary law that applied to the dead while he was living should thus be the relevant customary law if the problem touches on

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causes and concerns resulting from inheritance. Notwithstanding the apparent disparities in the succession-related practices of the majority of Nigeria's ethnic groups, it is crucial to note that these groupings all share certain traits. For example, when a dead person leaves a legal will, the customary law norms controlling inheritance are sometimes superseded. Additionally, certain ethnic communities consider some customary law standards to be inviolable, meaning that a testator cannot ignore them while drafting his will. These common law tenets have benefited from both judicial and legislative acknowledgment. For instance, as stated in Section 3 (1) of the Will Law of Bendel,<sup>21</sup> provides as follows:

Any real and personal property to which a person may be entitled at the time of his death, either in law or in equity, is illegal to devise, bequeath, or dispose of by his will executed in the manner described below, subject to any applicable customary law. If not, the property would pass to his heir at law, or to his executor or administrator if he becomes entitled by descent from his ancestor. This section governs Benin native law and custom, often known as customary law.<sup>22</sup> that entitled the eldest surviving son of the deceased to inherit his father's Igiogbe<sup>23</sup> was preserved.

Any bequest in the testator's will that this clause affects is deemed void if the testator fails to take cognizance of this section in his will.<sup>24</sup> Two opposing viewpoints or opinions on the genuine aim of the law's drafters have surfaced in an effort to ascertain the impact and ramifications of these provisions in any legal jurisprudence pertaining to testamentary disposition, i.e., the WILLS Law in Edo State. What goals did the law's drafters want to accomplish by including this clause?

In an attempt to determine the effect and implications of these provisions in any legal jurisprudence dealing to testamentary disposition, i.e., the WILLS Law in Edo State, two different views or perspectives about the true intent of the law's drafters have emerged. What objectives did the authors of the legislation want to achieve by including this provision?<sup>25</sup>

Therefore, a testator in the state has been strategically deprived of their freedom of testamentary powers by the provisions of Section 3 (1) of the Will Law of Bendel State, which is now applicable in Edo State. The opposing school, however, maintains and vehemently argues that the law did not eliminate testator's freedom of testamentary power, but rather that its goal was to limit it to a testator's freedom of testamentary power in Edo State. They went on to say that the other school of thought's opinions were absurd as the WILLS Law was designed to provide testamentary authority in a society where everyone was governed by some kind of customary law.

Sagay, however, has maintained that it would be incorrect to draw the conclusion that a testator in Edo State lacks the freedom of testamentary powers necessary to create a will. "It is evident that section 3 (1) does not in any way limit testamentary capacity; it only specifies the kind of property that may or may not be disposed of by Will, the latter being property that does not belong exclusively to the testator under customary law," he said. Thus, from the above, the right of the deceased to leave a bequest is restricted only to a part of his inheritance since the deceased must

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give the Igiogbe to his oldest surviving son. He must not deviate from the law, or else that part of his will would be deemed invalid and unenforceable. According to customary law, the impacted property will be given back to the beneficiary owner.<sup>26</sup>

Over time, it seems that the law has been unsure about how to apply the dead's customary law when the deceased had lived with a different ethnic group for a long enough period of time to be regarded as having embraced their way of life. In certain cases, such circumstances may give rise to unsolvable problems about the proper application of customary law. For example, how can one ascertain the customary law of an individual who has spent a considerable amount of time living outside of his ethnic group and has assimilated into his new community? Some authors and legal analysts have tried to answer this question by arguing that, in accordance with the long-held belief that a person's customary law is carried with them to their new residence prior to their death, it is impossible for a person to alter their customary law of origin. That the deceased's personal customary law, which was acquired at birth, was the proper customary law to regulate their affairs. As a result, they contend that the deceased's customary law could not be changed at will under the law. Stated differently, an individual passes away with the basic customary law that they were born with as a member of their ethnic group. Since the well-known case of *Adeniyi Olowu & ORS v. Olabowale Olowu & Ors*, the legal perspective that people carry the original customary law they were born with them wherever they go has been abandoned. In this decision, the Supreme Court ruled that an individual who was born into one ethnic group might lawfully become a member of another via a process that included time, affiliation, marriage, personal preferences, and lifestyle.

Also, in *Ayisatu Tapa & Ors v. Yanrata Kuka*.<sup>27</sup> When a Nupe Moslem from Bida in modern-day Niger State passed away intestate in Lagos, leaving behind property in Lagos, the court determined that, despite the fact that he passed away in Lagos, his personal law—the Moslem law that prevailed among the Bida—applied to the distribution of his property, not the Lagos law. Therefore, it is evident from the above that in certain situations, a dead person's personal law—which was presumed to follow him wherever he went before to his death—may be the most suitable law for him. Naturally, this was the situation prior to the well-known case of *Adeniyi Olowu & Ors v. Olabowale Olowu & Ors*

## **FEMALE SUCCESSION/ INHERITANCE RIGHTS IN IGBO LAND**

The Igbo people are concentrated in five (5) eastern states of Nigeria. These states are Abia, Anambra, Ebonyi, Enugu and Imo<sup>28</sup>. Generally, the Igbo people of these state speak a common language though with local dialectical variations but to a large extent they (Igbos) have a similar social system.<sup>29</sup> Authors,<sup>30</sup> have written extensively on the customary Law of inheritance and some variations of the general rules. This study, in examining the Igbo customary Law of inheritance, places reliance mainly on the Customary Law Manual<sup>31</sup> of the laws of Anambra and Imo states. In addition to including the general rule of Igbo customary law of inheritance as discussed by these authors, the manual includes comprehensive information on the many variations of Igbo customary law rules that were not covered in the study published more than ten years prior to the release of

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manual. It is noteworthy to state that the manual has not yet obtained the status of a primary source of Igbo customary Law of inheritance because as required by the evidence act<sup>32</sup>, many of the customary rule of inheritance as stated in the manual are yet to be proved and established before a high court and other superior courts<sup>33</sup>. Given that the code of customary law was created after extensive consultation with traditional leaders, community elders, presidents and the members of the customary court and other persons who are knowledgeable about local customary Laws of various Igbo communities, it is submitted that the manual should be regarded as a legal authority of Igbo customary Law of inheritance to be accepted by the court in line with section 59 of the Evidence Act<sup>34</sup> with formal proof. Under the Igbo Native law and Custom, two modes of distribution of estate of a deceased who died intestate are recognized and they are; *per stripes and per capita*.<sup>35</sup> Distribution per stripes usually takes place in polygamous families where estate is distributed into as many wives as have sons otherwise known as ‘usoekwu’ while per capita on the other hand means distribution of estate among the individual sons. The summary of the above distribution of estate is that only those wives with male children are entitled to the estate through their male children while those with female children are not entitled to the estate but ‘slaves and strangers’ to the family.

It is clear from the above that most Igbo communities' traditional laws of succession and inheritance give preference to male offspring and male relatives, such as fathers and brothers, over daughters and other female relatives, such as spouses, mothers, and sisters. Additionally, the oldest male child receives preferential treatment and unfair advantages over other male offspring. According to Onitsha Native law and custom, the oldest son inherits the deceased's landed property before his siblings do. He keeps this property in trust till the other male offspring share it. There are a few exceptions in certain societies where women, regardless of their position in the family hierarchy, are permitted to inherit property jointly with males as widows, spouses, daughters, and sisters. When allocating properties for inheritance or succession, the Igbo's male offspring is taken into consideration. It is believed that because the woman would marry and move in with her husband, she cannot be entrusted with her father's or family's property. This was the problem in the *Mogekwu v. Mogekwu* case, where the deceased had two female children and several possessions, but his male nephew claimed the right to inherit them. In the event that the dead does not have a male child, brother, or father left behind, the nephew said that he is entitled to inherit the deceased's inheritance in accordance with Iri-Ekpe traditions and tradition as the closest male relative. The Court of Appeal dismissed the argument that Nnewi customary law applied to the case, but it also said that even if it did, the discriminatory customs against women would not be upheld since they would be incompatible with fairness, natural justice, and morality. When rejecting the appeal in *Onyibor Anekwe v. Maria Nweke*, the Supreme Court argued as follows:

The Awka people's customs and traditions, which the appellants used to support their counterclaim, are thus strongly and rightfully denounced. Any custom that denies a daughter her father's estate or a wife

her husband's property due to a gender difference established by God should be dealt with harshly and decisively. It is punitive, uncivilized, and only meant to protect their self-centered male dominance, which is intended to suppress the rights of women in the given society. It is very savage, disturbing, and flesh-skipping for a widow to be expelled from her married house, where she had spent her whole life with her late husband and children, by her late husband's siblings on the grounds that she had no male offspring.

In *Ukeje v. Ukeje*, the Supreme Court declared the Igbo discriminatory customary law that forbade a female child from inheriting her late father's property to be invalid by citing sections 42 (1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which guarantees every Nigerian a fundamental right. As a result, the Igbo tradition/custom that denied a female child the right to inherit her father's wealth is no longer enforceable. In the event that a father dies, every female child now has the right to a portion of his estate.

It is evident that the male child's right is unaffected by the many court rulings that have attempted to invalidate the majority of Igbo customary law practices that forbid female inheritance or succession under native law and custom, especially the more recent ones mentioned above. In Igbo nation, he seems to be the sole kid. The family tree will wither without him, who is considered the pillar that supports the home.

### **FEMALE SUCCESSION/INHERITANCE UNDER NATIVE LAW AND CUSTOM IN YORUBA LAND**

There is no conclusive tradition on the origin of the Yoruba people of Nigeria because there are different versions on the mythological traditions on the historical origin of the people. However, according to Biobaku.<sup>36</sup>

The term "Yoruba" refers to a linguistic group of several million people that live in a vast region that includes the western states of the Nigerian Federation, the Republics of Dahomey and Togo, and Kwara and Lagos. In addition to speaking the same language, the Yoruba people of the western Nigerian state of Ile-Ife are largely bound together by a shared culture, customs, and traditions. The Yoruba people, who mostly live in southwest Nigeria, are the subject of this book. Lagos, Osun, Oyo, Ondo, Ekiti, Ogun, and portions of Kwara state are among the states where they may be found. Local dialectical variances exist in the Yoruba language, despite the fact that they share a same language and are mostly unified by a common culture. Additionally, there are minor regional differences in their traditions. But when it comes to women's rights, the Yoruba customary law of inheritance is consistent.

It is pertinent to state that there are more Muslims in Yoruba land than in any other southern states in Nigeria. Although, the Sharia courts and the Islamic legal system are yet to be established in the

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Yoruba land in order to facilitate the application of Islamic personal Law on the matrimonial and succession matters as provided by the constitution<sup>37</sup>,

### ***Those who are eligible to inherit property***

Numerous court rulings have upheld the Yoruba tradition of inheritance, which states that a deceased person's property is passed down to his surviving offspring. In the case of ***Adeseye v. Taiwo***, the appellants asked the high court for an order allowing them to participate in the distribution plan for equal shares with the defendants (respondents) in the profits of a real estate transaction. Through one Ajayi, the sister of the dead mother, the appellants assert that they are blood relatives of the late chief Taiwo, who owned the land in dispute. The responders were the deceased's daughters and grandkids. Because only the deceased's children may inherit his inheritance, the appellant's claim was rejected. The question for the federal Supreme Court, which heard the appellants' appeal, was whether the dead Yoruba person's blood relatives who had children might inherit a portion of his real estate in accordance with Yoruba tradition and local law. According to a ruling by the federal Supreme Court, a dead person's children might receive his real estate before other blood relatives could. "Under the Yoruba custom and native law, the real properties of a deceased person who has children surviving go to his children and not the uncles, aunts, and cousins," the court said.

### ***How property is divided in accordance with Yoruba native law and custom***

According to Yoruba customary law of inheritance, there are two ways to divide a dead person's self-acquired property (apart from that set aside as family property). Ori Ojori (per capita) and Idi-Igie (per stripe) are the names of the two approaches. In cases when a dead man had several wives, the Idi-Igi (per stripe) approach is often used. Depending on how many of the deceased's wives had children, the property is split up into equal halves. For inheritance purposes, every woman who has children creates a branch or a stripe within the family. Regardless of the number of offspring, each wife's children get a portion. Each wife's children then divide their respective parts among themselves as they see fit. However, in cases when the dead had just one wife, his children get an equal share of his property. Ori-Ojori, or distribution per capita, is the second technique. The children's property is divided equally using this procedure. The two approaches vary in that each kid receives an equal part, with each child's share being determined by the number of children in each stripe. Since the number of children born to each woman is not taken into account, the Idi-Igi (per stripe) technique often seems unjust. Accordingly, an only child of his mother shares an equal portion with many children of another mother under that system. This approach is unfair. However, it is fair and reasonable to treat every sibling equally under the Ori-Ojori (per capita) system. This might help keep the youngsters together and avoid conflict and jealousy in the household. In the ***Dawodu v. Danmole*** case, an effort was unsuccessful to persuade the court to rule that the Idi-Igi (per stripe) approach is incompatible with the principles of fairness, natural justice, and good conscience. In that instance, the plaintiff/respondent argued that the Idi-Igi (per

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stripe) system should be used to distribute the rents from their deceased father's property, who had four wives. Consequently, the property need to be split into four halves based on how many of the deceased's wives had children. The defendants/appellants argued that the rents should be distributed using the Ori-Ojori (per capita) system, which divides them into nine parts based on the deceased's kid count. Additionally, the defendants/appellants asserted that the Ori-Ojori (per capita) method of distribution had replaced the Idi-Igi (per stripe) method of distribution. The trial court determined that although the Idi-Igi (per stripe) method of property distribution had not been abandoned, the custom was against natural justice, equity, and good conscience because it went against the contemporary notion of distribution, which is based on the number of an intestate's children. As a result, he directed that the rentals be divided into nine halves. The federal Supreme Court ruled on appeal that Idi-Igi (per strip) was the applicable customary law and that it did not conflict with fairness, natural justice, or good conscience.

In *Akinnubi v. Akinnubi*, the Supreme Court ruled, It is a well-established Yoruba tradition and local law that a woman cannot inherit her husband's property. In fact, a widow under intestacy is considered to be a part of her dead husband's inheritance, which the deceased family would administrate or inherit under Yoruba customary law. In addition to being illogical, the general rule under Igbo, Benin, and Yoruba customary laws of inheritance that denies wives the right to inherit their deceased husbands' property is unfair, particularly in cases where the wives helped their husbands acquire the property. Furthermore, given the shifting social and economic landscape of the contemporary world, it is archaic to deny women the ability to inherit their husbands' possessions. One of Nigeria's ethnic groupings is the Benin people. In Nigeria's Edo State, they are mostly found in five local government districts. Oredo, Orihionmwon, Ovia South West, Ovia North East, and Uhunmwonde are the names of these municipal governments. Other Edo-speaking communities, including as the Esan, Esako, Owan, and Akoko Edo to the northeast, were part of the Benin kingdom during its height of strength, which was centered on the Benin people. Since their languages sprang from the same source, they are known as Edo speaking people.

It is thought that they spoke the same language. The differences resulted from language intrusion, migration, and battle. Under the direction of the Oba of Benin, who is in charge of maintaining Benin customary law, the Benin traditional council has compiled and documented the country's inheritance law to a certain degree in a handbook. As a result, the handbook and decided cases serve as the primary foundation for the majority of debates about Benin's customary inheritance law. One of the primary tenets of Benin customary law is the primogeniture rule, which states that a dead person's oldest son would inherit all of his belongings before any other offspring. The Supreme Court has upheld this regulation as it is expressed in the handbook. In compliance with section 14 of the Evidence Act, our courts have taken judicial notice of the rule. Others of the Benin Customary Law inheritance rules listed in the handbook have not yet been proven and established before our higher courts as required by the Evidence Act<sup>213</sup> because people have not yet challenged them in court.



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However, it is possible to argue that the handbook, like the Igbo Customary Law Manual, should be recognized by our courts in accordance with section 59 of the Evidence Act, given that it was created by the Benin Traditional Council under the direction of the Oba of Benin, to whom the Benin people owe a great deal of loyalty. When making decisions on matters pertaining to a community's customary law, the court may consult any book or manuscript that the community has approved, according to Section 59 of the Evident Act.

Depending on whether the dead was an ordinary person, a non-hereditary traditional title holder, or a hereditary traditional title holder, Benin customary law essentially has two main principles of succession. The manual states that the oldest son inherits the Igiogbe, or the home where the dead resided and passed away (and sometimes where he was buried), as the customary law of inheritance applies to the estate of non-hereditary traditional title holders and regular people. But according to tradition, the oldest son must live with his siblings as long as they behave well until they can construct their own homes and move away, or until a woman marries.

#### ***Characteristics of Igiogbe in accordance under Benin native law and custom***

There have been several court rulings because of the contentious character of Igiogbe under Benin Native Law and Custom, which has resulted in significant litigation pertaining to inheritance rights. The deceased Benin man resided and passed away in Igiogbe, as was previously said. The Igiogbe is more than simply a home to the Benin people. The Igiogbe dwellings are traditionally the staff of the specific family ancestors and the ancestral shrine. According to Osamuade and Okeaya Inneh, the Benin people believe that the Igiogbe is the location of the family's ancestors, and family members worship their ancestral god or divinity there.

The following questions are at the heart of the Igiogbe concept litigation: may more than one dwelling be considered an Igiogbe? Does Igiogbe mean naked land? When the oldest son is still living, may a testator devise his Igiogbe under a will to another person or kid, or can Igiogbe be alienated? In *Idehen v. Idehen*, the question of whether two homes made up Igiogbe came up. In that instance, a father donated his two Igiogbe by Will to his first son. He was preceded by his son. Prior to his passing, the father failed to amend the will. Using the Will from before his death, the children of the dead son asserted their ownership of the Igiogbes. In order to prevent the children of the dead son from claiming the Igiogbes, the children of the surviving son filed a lawsuit after the father passed away. The court determined that, in accordance with Benin customary law, the oldest surviving son inherits the Igiogbe, the home where the dead Benin man resided throughout his lifetime, after the completion of his father's burial ceremonies. The oldest surviving son of the testator at the time of his death was given the Igiogbes, which were six kilometers apart, by the court.

It was Osamuade who opposed the court's ruling. He asserts that the family ancestral shrine may only be located in one location and that a man can only have one major or residential home where he lived and passed away. She claimed that Benin Customary Law was violated by the concept of

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double Igiogbe as determined in *Idehen v. Idehen*. Even while the case's facts demonstrate that there was proof the dead resided in the two homes throughout his lifetime, the oldest son's Igiogbe inheritance of the two homes at the expense of other children would exacerbate tensions and animosity amongst the siblings. Therefore, it is pleasing that the Supreme Court said in *Agidigbi v. Agidigbi* that only one home should be considered Igiogbe. This viewpoint runs counter to the court's ruling in *Idehen v. Idehen*, when it was determined that their two homes made up Igiogbe. The Supreme Court's decision in *Agidigbi's* case is better, and it is hoped that it would serve as a caution to oldest sons who may want to build several houses like Igiogbe for self-serving reasons.

In *Imade v. Otabor*, the Supreme Court ruled that Igiogbe is a primary residence rather than a piece of land, addressing the question of whether a piece of land may be considered Igiogbe. Furthermore, the Igiogbe may only be bequeathed by a will to the oldest living son. The oldest son of a Benin man cannot also inherit Igiogbe during his lifetime. According to Benin customary law, Igiogbe's inheritance requires that the owner pass away before the issue of who will inherit is resolved. The testator, a traditional Benin chief, resided and passed away at his home in *Osula v. Osula*. He made arrangements for his wife and children (of a marriage under the Act) in his will prior to his passing. The oldest surviving male child, who was denied paternity, filed a lawsuit against the validity of the Will, and the second group of respondents, who claimed to be the testator's children, were not provided for. The Supreme Court ruled unanimously that the oldest son who succeeded his father could not be deprived of the Igiogbe. Thus, it was incorrect for the testator to bequeath his Igiogbe by Will to someone other than his oldest son. In the case of *Ugbo v. Asemota*, the question of whether Igiogbe may be alienated came up. In that instance, two more boys survived the death. The defendant was the second son, and the second plaintiff was the oldest. A home and a rubber plantation were bequeathed by their late father. The oldest son sold the home to the first plaintiff, and the second son resided there. The second son and other family members said that their father had instructed the head of the household that his sons should divide the home prior to his death. It was decided that their father could not completely deny his oldest son the inheritance of his home under Benin customary law. The oldest son also had the freedom to sell the residence. According to reports, Oba Akensua<sup>11</sup>, the guardian of Benin custom, provided testimony in the case. According to the Oba's testimony, the home is fully his and he is free to do with it as he pleases when the oldest male child inherits the Igiogbe. It is important to note that a High Court rendered the ruling in *Ugbo v. Asemota*. It seems that the ruling in that case will continue to be the law on the matter for the time being since the question of whether Igiogbe may be alienated has not been brought before higher courts.

However, women are discriminated against under both the Urho and primogeniture principles of inheritance. This is because male offspring of the stripes are given precedence even though Urho laws let female children to share in their dead father's property with the male children. Section 42 (1) of the Federal Republic of Nigeria's 1999 Constitution (as amended) prohibits this kind of sex-based discrimination. The purpose of this clause is to safeguard all Nigerian citizens, male and female, from discrimination based on factors such as sex, religion, ethnicity, etc., which may be

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enforced by any Nigerian legislation or by executive or administrative actions of the government. Consequently, it is unlawful for Benin's customary law of inheritance to discriminate against women based only on their gender at birth. Given the aforementioned, the Benin people who instituted the Urho rule of inheritance in order to change the unfair and discriminatory primogeniture rule ought to do the same with the entire Benin Customary Law of inheritance in order to grant female children of a deceased Benin man the same inheritance rights as his male children. Conversely, because the majority of women helped acquire the property for which they are discriminated against due to cultural norms, they need to be permitted to inherit a portion of their husbands' estates. This would be in line with the Federal Republic of Nigeria's 1999 Constitution (as modified), which is the ultimate law of the land and the source of legitimacy for all other laws, including the Benin Customary Law of Inheritance.

#### **FEMALE SUCCESSION/INHERITANCE RIGHTS UNDER NATIVE LAW AND CUSTOM IN HAUSA/FULANI**

When Islam arrived in Saudi Arabia, Allah ended the unfair custom of widows being inherited as wives by their dead husbands' heirs and preventing women in general from inheriting their fathers' and husbands' property. According to Allah in the Holy Quran, women are entitled to inherit their husbands', parents', brothers', and other relatives' property. In actuality, the Holy Quran gave women the right to inherit in a variety of roles, including those of a daughter, wife, mother, sister, and grandmother.

Islam accorded women, as wives and daughters right to inherit the property of their deceased husbands and fathers. Their right to inherit is recognized and fixed by the holy/Quran; the holy book specifies the share that is due to women as daughters when it says;

Allah (thus) directs you as regards your children's (inheritance); to the male, a portion equal to that of two females; if only daughters, two or more, their share is two-third of the inheritance; if only one, her shares is a half...The distribution in all cases is) after the payment of legacies and debts.<sup>38</sup>

Verse 12 of the same chapter four of the Holy Quran provides wives the right to inherit the property of their deceased husbands and specifies the share that is due to them.

The verse says:

If your wives do not leave any children, you will get half of everything they leave. However, once debts and legacies are paid, you earn a fourth if they leave a kid. After debts and legacies are paid, they get an eighth of what you leave behind if you have a

kid, but a fourth if you don't. Because Allah is all-knowing, it is therefore predetermined by Allah.<sup>39</sup>

### ***Inequality of Shares of Women and Men***

The facts reviewed by this article clearly shows that, in certain situations, a male takes twice as much as a woman's portion of inheritance under Islamic law. For instance, a husband receives twice a wife's part, a brother receives twice a sister's share, and a son receives twice a daughter's portion. This inequality of shares of inheritance has been misconstrued and criticized as a discrimination against women by non-Muslims and some Muslim scholars/writers on Islamic law.<sup>40</sup>

These Muslim scholars/writers who have been advocating for equal right and shares for women and men under Islamic law to conform to the United Nations Convention on Elimination of All Forms of Discrimination against Women (CEDAW)<sup>41</sup> which is an international human rights document aimed at establishing equality among women and men. Some scholar suggests that the reason why men take double the share of women is not because Islam considers women as inferior to men. It is therefore not a discrimination based on sex. Rather, the rationale for the double share of inheritance given to men under Islamic law is based on the financial/economic responsibilities which Islam imposes on men. Women are exempted from such responsibilities. When a woman is unmarried, she lives with her parents. Her father has the responsibility to provide for her financial needs. On the death of her father, her brother is charged with the responsibility to cater for her until she gets married. Upon marriage, the responsibility for her maintenance is shifted to her husband notwithstanding her financial and economic standing. At her old age particularly when she has lost her husband, she is entitled to be maintained by her male child.

Islamic law views women in their roles as wives and daughters who were not granted inheritance during the pre-Islamic era as Quranic or principal heirs who always have the right to inherit, as is clear from our examination of the Quranic passage on inheritance. In the framework of Islamic law, a dead man's wife and daughter are among the suitable relatives onto whom the deceased's property should initially descend by operation of law, since they are considered Quranic or principal heirs. The Quran also outlines the portions of a dead person's inheritance that are given to them.

Islamic law has thus protected their absolute rights of inheritance as their rights as Quranic or principal heirs are untenable, given that the Quran designates spouses and daughters as primary heirs and explicitly outlines their portions. Furthermore, many Muslims, including women, feel that the rule is Allah's word and may be obeyed, especially in spite of the complaints made by certain liberal Muslim authors and academics about the uneven inheritance portions given to men and women under Islamic law.

## **LAWS REGULATING FEMALE DISCRIMINATORY CUSTOMARY SUCCESSION RIGHTS**

According to Oxford Dictionary, a right is a moral or legal entitlement to have or do something. Rights are essential part of human life that is critical to promoting accountability or consciousness, justice and a progressive society

These rights include the freedom from violence, the right to the best possible physical and mental human, the right to an education, the right to own property, the right to vote; and the right to an equal wage regardless of gender.

Locally and globally, women's rights are guaranteed. As a member of the international community, Nigeria has ratified and signed a number of international instruments pertaining to women's rights, although it has been noted that the majority of them have not been domesticated in Nigeria. The 1999 Nigerian Constitution (as modified) states that no foreign treaty that Nigeria has joined may be implemented until it is domesticated, which raises questions about domesticating certain rights. "No treaty between the Federation and any other country shall have the force of law except to the extent that any such treaty has been enacted into law by the National Assembly," states Section 12 of the Federal Republic of Nigeria's 1999 Constitution.

These rights include, but are not limited to, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social, and Cultural Rights, the 1966 International Covenant on Civil and Political Rights, the 1981 African Charter on Human and People's Rights, the 2003 Protocol to the African Charter on Human and People's Rights, and the Solemn Declaration on Gender Equality in Africa.

The Federal Republic of Nigeria's 1999 Constitution (as modified) is the first statute to be identified. The Constitution states that the state social order is based on the principles of freedom, equality, and justice and acknowledges the importance of treating women with respect and without discrimination. It also stipulates that all citizens will have equal rights, obligations, and opportunities under the law.

The Violence Against Persons Prohibition Act is another statute that will be discussed as safeguarding Nigerian women. The Act forbids all types of violence against people in both public and private spheres, offers victims the best protection possible, and punishes perpetrators. To further protect widows, the Act stipulates that widows should not be subjected to harmful traditional practices

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The National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP) is in charge of enforcing this Act, working with religious institutions and other relevant parties

It should be noted that almost every state in Nigeria has passed legislations protecting women domiciled in that state. Some examples of these state laws are: Abolition of Female Circumcision Law in Rivers State,<sup>42</sup> Ogun State Female Circumcision and Genital Mutilation (Prohibition) Law,<sup>43</sup> Ekiti State Violence Against Persons Law 2015,<sup>44</sup> Delta State Violence Against Persons Law<sup>45</sup>, Oyo state Widows Employment Law,<sup>46</sup> Gender and Equal Opportunities Law (Kogi State),<sup>47</sup>. Widows (protection) Law of Imo State No.12 2003 among others.

## **THEORY OF WOMEN SUCCESSION RIGHTS**

Ola asserts that a theory is comparable to a map that directs study from an unknown location to a recognized one. In order to provide a deeper understanding of this work, pertinent theories that support others that change socio-cultural practices like inheritance and succession are examined here. For this reason, the Afrocentric Theory, Natural Law Theory, and Feminist Theory are unavoidably significant at this point

### ***Afrocentric Theory***

The majority of Afrocentric academics, practitioners, and community organizers share the goal of dismantling Eurocentric understandings of Black American experiences, especially with regards to the identity of Africans in diaspora, their needs, and strategies for resolving problems in their local communities<sup>48</sup>. Although, Prof. Asante was credited with developing the concept of Afrocentricity, its origin can be found in many different schools of African social and political philosophy.<sup>49</sup>

However, Midas Chawane magnified the contribution of Asante to the effect that it speaks to the direct plight of the Africans particularly in light of the predicament of Nigerian women, especially those in the southeast. He notes that the theory of Afrocentricity is essentially required in Nigeria, especially in the Igbo region, to initiate authentic discourse on the predicament of women, who are continuously marginalized due to rigorous adherence to their native laws and customs, which emphasizes the inequality of sex (male and female) and discrimination generally

### ***Natural Law Theory***

The law of nature One of the jurisprudential ideas that views the law as it should be is theory. "Natural law should be viewed as an unerring law, which means that it is faultless, it is right reasoning, Human rights are based on legal naturalism, which starts with the idea that people have rights from birth, therefore natural rights. Naturalists believe that natural law principles are innate

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and that the government must acknowledge and integrate them into the current legal system in order to establish justice and order in society

Given the aforementioned, it is reasonable to say that natural law serves as a foundation for social order and a safeguard for women's property rights, which are protected by the 1999 constitution as modified. The 1999 constitution provides for the principles of Natural Law, which include fairness, truth, and the welfare of all people. Women's constitutional rights to property, including inheritance and succession rights, are recognized since these rights are unalienable, inherent, unchangeable, and apply to all people equally.

### ***Feminist Theory***

The Feminist theory is tilted towards the protection of the rights of women and children particularly female children. The word 'feminism' was coined by Charles Fourier a utopian socialist and French philosopher in 1837.<sup>50</sup> 'Feminism' and 'feminist' was first used in France and the Netherlands in 1872.<sup>51</sup> In Nigeria, feminism was first initiated during the post-colonial era<sup>52</sup> but became more pronounced with clear objectives and ideology in 1983 with the inauguration of Women In Nigeria (WIN).<sup>53</sup> According to feminism, women are discriminated against when it comes to inheritance because of their dependence on cultural values. In other words, most African nations, including Nigeria, have cultural ideas that prioritize women and children

The elimination of cultural beliefs that support discrimination against women and children is the foundation of feminist thought. A common perception of feminism is that it is an anti-male movement that aims women achieve equality of rights. It is the conviction that political, social, economic, and marital equality is a fight worth fighting emphasizing that both sexes are equal in society, economy and politics.

### ***Liberal Feminism Theory***

Equal rights for all members of society and the need of providing everyone with equal opportunity without discrimination are the main tenets of liberal political thought. Liberal feminist ideology advocates for equal rights for women and places a high value on basic human rights.

Liberal theorist approach to property right is to reform discriminatory Laws that deny women of their right to property and the need of the state to play a major part in this reform.

### ***Socialist Feminism Theory***

The socialist feminist believes that eradicating the cultural and economic causes of women's oppression is the only way to attain freedom and equality. Socialist feminists, contend that women's financial reliance on men in society prevents them from escaping. Because of the unequal distribution of money, women are now subservient to males. According to socialist theories,

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women's subordination to males is primarily caused by their economic reliance. They view patriarchy as not being the only reason for women's subjugation but social class inclusive.

## **THE CONSTITUTIONAL PERSPECTIVE OF THE DISCRIMINATORY SUCCESSION (INHERITANCE) RIGHT AGAINST THE FEMALE GENDER IN NIGERIA**

The 1999 Constitution (as modified) recognizes and guarantees women's basic rights, which are undoubtedly violated by discriminatory customary law practices that restrict women's inheritance rights. The Universal Declaration of Human Rights is the source of these rights.

As the fundamental law of Nigeria, the 1999 Constitution (as amended) supersedes all other laws, written or unwritten, that are in effect across the nation. This constitution is paramount, and all authorities and individuals within the Federal Republic of Nigeria are bound by its provisions, according to Section 1(1). According to subsection (3), "this Constitution shall prevail and that other law shall to the extent of the inconsistency be void if any other law is inconsistent with the provisions of this Constitution." Therefore, any legislation may include indigenous practices or rules, which are basically unwritten, some of which have been ruled to violate certain provisions of the Nigerian constitution. Therefore, any indigenous rule or custom that violates a Nigerian's rights based on their sex would be considered to be in violation of the constitution.

The question of the constitutionality of any discriminatory customary law is a matter for the court to determine.<sup>54</sup> The attitude of the Nigeria court in the 20<sup>th</sup> century appears to have favoured the application of such discriminatory customary law practices against the inheritance rights of Nigerian women under intestacy.<sup>55</sup> However, toward the close of the 20<sup>th</sup> century, the Court of Appeal in *Mojekwu v. Mojekwu*<sup>56</sup> condemned such customary law practices that discriminate against the inheritance rights of women. In that case, the plaintiff/appellant, a nephew to the defendant/respondent's deceased husband who relied on the Nnewi Native Law and Custom (Oli-ekpe) to claim/assert title over the property of the deceased to the exclusion of the defendant/respondent, had this case dismissed by the Court. In dismissing the appeal, Tobi, J.C A., stated:

In our equal society, where women are not discriminated against by civilized sociology, is such a habit compatible with justice and fair play? Every day, every month, and every year, we read and hear about practices that discriminate against women in our nation. They are seen to be less valuable than males. Why should it be the case? Every human being, male or female, is born into a free world where they are supposed to engage in activities without any restrictions based on their sex. This is guaranteed by the constitution. In addition to being unlawful, any kind of sex-based discrimination is incompatible with a society founded on the principles of democracy, which we as a people have freely chosen. We don't have to go all



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the way to Beijing to see that certain of our traditions, such as the Nnewi "Oli-ekpe" custom that the appellant relied on, are incompatible with the modern, civilized society we live in. Therefore, discrimination against a certain sex in a custom or customary rule is, to put it mildly, an insult to the Almighty God Himself. Don't let anybody do that. I find it easy to maintain that the Nnewi "Oil-ekpe" tradition is incompatible with fairness, natural justice, and morality.<sup>57</sup>

The Supreme Court on a final appeal<sup>58</sup> found in favour of the female children; but was silent on the constitutionality of the Nnewi native law and custom of "oli-ekpe. Painfully, Uwaifo J.S.C. who delivered the lead judgment demurred the repugnancy test introduced by the lower Court and stated that:

I don't see any basis for the court below to rule that the Nnewi local custom of "oli-ekpe" was against natural justice, fairness, and good conscience in this particular instance given the circumstances surrounding its execution. As a result, I disapprove of that statement as being unjustified since I cannot allow it to stand in the current situation. It is important to remember that in two judgments it resolved in 2014, the Supreme Court severely criticized discriminatory customary law practices. The legality of such gender-discriminatory customs was questioned by the Court. Because she had no male children to survive her late husband, the first appellant, who was her late husband's cousin, ordered the respondent, a widow with six daughters, to leave the marital residence she shared with him in *Anekwe v. Nweke*. The Awka tradition that disqualifies widows and daughters from inheriting under intestacy served as the foundation for the appellant's argument. The impropriety of a tradition that discriminates against women, especially widows who are denied their inheritance, should be denounced as being incompatible with natural justice, equity, and good conscience, according to Ogunbiyi, J.S.C., who read the lead opinion. The issue at hand, in which the widow of the dead is attempting to be denied access to the identical structure where her late husband was buried, further emphasizes the disgusting character of the contested ritual. Without hesitation or apologies, the appellants' actions are condemned in the given situation.<sup>59</sup>

***In further condemnation of the native law and custom, the Court stated that:***

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I would like to quickly add that the appellants' counterclaim is based on the customs and traditions of the Awka people, which are thus strongly and correctly denounced. Stated differently, a practice like this in the 21st century will only serve to illustrate the lack of human civilization's reality. It is harsh, barbaric, and designed only to shield the self-centered practice of male supremacy, which aims to stifle women's rights in the particular culture. One would think that such blatant bigotry is a thing of the past. Punishment and immediate action should be taken against any society that denies a daughter her father's inheritance or a woman her husband's property due to a gender difference established by God. The penalty should be applied to those who violate the culture and tradition in order to act as a deterrence. It is very savage, disturbing, and flesh-skinning for a widow to be evicted from her married house, where she had spent her whole life with her late husband and children, by her late husband's siblings on the grounds that she had no male offspring.<sup>60</sup>

The court per Ngwuta J.S.C. stated that “the custom of Awka people of Anambra state pleaded and relied on by the appellant is barbaric and takes the Awka community to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished.”<sup>61</sup>

In *Ukeje v Ukeje*<sup>62</sup> the appellant relied on the Igbo native law and custom that discriminate against a female child from inheriting from her deceased father. In dismissing the appeal, the court per **Rhodes-Vivour J.S.C.** stated that:

A female kid has the right to inherit from her late father's wealth regardless of the circumstances surrounding her birth. Therefore, section 42(1) and (2) of the Constitution, which guarantees every Nigerian the right to basic rights, are violated by the Igbo customary law that prevents a female child from participating in her dead father's fortune. Because it violates the Constitution's sections 42 (1) and (2), the aforementioned discriminatory customary law is null and invalid.<sup>63</sup>

## **DISCRIMINATORY SUCCESSION LAWS AND INTERNATIONAL HUMAN RIGHTS LAWS**

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW), the African Charter on Human and People's Rights (the African Charter) of 1981, which was domesticated into the country's legal system in accordance with section 12 of the 1999 Constitution (as amended), and the Protocol to the African Charter on Human and People's Rights on the Rights

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of Women in Africa are just a few of the international human rights instruments that are examined in this paper. Nigeria has ratified all of the aforementioned documents as a state party, which is informative. It is anticipated that Nigeria would be required to abide by and enforce the terms of these treaties after ratifying them. And only by domesticating the aforementioned tools into the country's national legislation would this be feasible. The 1948 Universal Declaration of Human Rights (UDHR) is another significant international document.<sup>64</sup>

It is important to remember that the African Charter has been incorporated into Nigerian law via the African Charter on Human and People's Rights (Ratification and Enforcement) Act, which forbids discriminatory cultural law practices in all of its manifestations worldwide. "The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions," according to Article 18(3) of the Act.

In addition to the African Charter, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa explicitly guaranteed widows' and male and female children's equal inheritance rights.

Nigeria, having ratified the Maputo Protocol and CEDAW should take bold steps to domesticate these legal instruments and make a far-reaching law that will not only abolish all form of discriminatory customary law practices but also criminalize such barbaric practices in accord with modern civilization.

It is noteworthy that Nigerian women in positions of power have not gone far enough in defending the women who are the targets of these customs. Women who are subjected to these discriminatory behaviors yet support and encourage these cultural customs as obligatory in their communities and impose them on other women.

## **CONCLUSION**

The problem of female disinheritance under Native law and custom, especially among the four main ethnic groups included in this article study, has undoubtedly taken on an intriguing dimension. This is especially true now that the detailed explanations and underlying causes of these offensive cultural behaviors in the majority of our indigenous environments that follow these adaptations have been clarified. In fact, Native law and customs that deny women the right to inherit are an insult to justice. This is because the main reason why female children and women in general, especially widows, are not allowed to inherit is because they are seen as strangers in their fathers' homes and will eventually get married and move out, so letting them inherit entails moving these properties to their husbands' homes. The traditional customary belief that under native law and custom, devolution of properties follows full blood line, meaning that a wife or widow who is

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not of the same blood as her husband cannot inherit him, would also be violated if widows were permitted to inherit their deceased husbands' estate. Furthermore, widows are seen as property in the majority of Nigerian traditional communities. According to Igbo customary law, a dead man's whole inheritance shall automatically pass to his nearest relative via the OLI-EKPE custom if he is not survived by a male child. There have been several instances when these heirs auctioned off all the dead had gained before they were buried, leaving the widow and children destitute.

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