

Challenges of Women Inheritance Rights Under the Act and the Various Customs in Nigeria

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doi: <https://doi.org/10.37745/gjplr.2013/vol13n14056>

Published January 18, 2025

Citation: Asakpa E.V. (2025) Challenges of Women Inheritance Rights Under the Act and the Various Customs in Nigeria, *Global Journal of Politics and Law Research*, Vol.13, No.1, pp.40-56

Abstract: *This paper examines the challenges of women's inheritance rights under the laws in Nigeria. It states that in Nigeria, patriarchal customs and cultural norms have long made the issue of women's inheritance rights contentious and that with enormous differences between men and women in terms of property ownership, financial security, and social standing, women have historically had a difficult time obtaining and protecting their due inheritance. It is the objective of this paper, to explain that, Nigeria is a country with a wide variety of cultural traditions, each with its unique inheritance laws. By limiting the capacity of women to inherit property from their fathers, husbands, or other family members, these customs have historically disadvantaged women. The researcher adopted the doctrinal research method. Prejudice and gender inequality are fueled by these customs, which usually place women in a subordinate role. To address these inequalities, Nigeria enacted laws to regulate inheritance rights, including the Wills Act and the Matrimonial Causes Act. While the Wills Act governs the division of property through wills, allowing people to distribute their assets as they see appropriate, the Matrimonial Causes Act addresses the rights of spouses in the case of a divorce. However, many cultural practices and laws still exist in spite of the legal safeguards offered by the Wills Act and the Matrimonial Causes Act. These traditions and practices, in addition to legal inconsistencies and gaps, provide barriers and discrimination against women, restricting their inheritance rights and sustaining inequality. The paper recommends that all hands must be on deck if any progress is to be achieved in freeing women from the constraints of our culture. The paper concludes that, government should educate citizens in an effort to alter harmful practices and societal norms.*

Keywords: challenges, women inheritance rights, customs, Nigeria

INTRODUCTION

When a man is living, everything is fine, but when he dies and leaves no will or estate plan, inheritance becomes a problem. His wife and kids must cope with the psychological effects of his passing in addition to losing their source of income. In terms of inheritance, the impact of dying intestate and the application of customary law have not improved the circumstances for

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women and their offspring. It seems that customary law encourages family members to denying women and female offspring the inheritance rights of their spouse and father. Nigerian courts have been found to have deviated from the professed compassion. Prior to the well-known case of *Ukeje v. Ukeje* and *Anekwe v. Anekwe*, the Supreme Court condemned these practices that infringe against the rights of women and female children in the case of *Nezianya v. Okagbue*. Some tribes, especially those in southeast Nigeria, have a tendency to take advantage of the gaps created by outdated succession laws to unintentionally support those who abuse women and children in the name of culture, which they consider to be more important than the needs of women and girls. The primary participants in this situation are the father and husband's surviving siblings, including their brothers, sisters, and cousins. Although they appear to be startled by his death, they actually take action to steal his possessions either before or after his funeral. In Nigeria, widows and children are frequently mistreated by extended family members soon after the death of their father and husband. This practice varies from one culture to another.¹

This research aims to critically assess Nigerian women's inheritance rights in the context of the Wills Act and the Matrimonial Causes Act. This study attempts to determine the degree to which women's inheritance rights are safeguarded and maintained by looking at the legislative framework, judicial rulings, and interpretations of these laws. It looks at the obstacles and limitations that women have when trying to exercise these rights, as well as the broader socioeconomic effects of inheritance inequality. The findings of this study might contribute to the ongoing discussions on legal changes in Nigeria, women's empowerment, and gender equality. By exposing the inconsistencies and loopholes in the current legal system, this study aims to offer insights and suggestions to expand women's inheritance rights, advance gender equality, and contribute to a more inclusive and just society.

CONCEPTUAL FRAMEWORK OF WOMEN'S INHERITANCE RIGHTS

Nigerian widows and daughters often get almost less from the intestate devolution of property than their male counterparts. This is due to the overwhelming preference for men under customary laws, which unjustly and poorly treat Nigerian women. Women's economic empowerment, gender equality, and the achievement of social justice in terms of peace, security, and development are all seriously hampered by the continuous execution of these laws. According to Nigerian customary law, these unfair elements of property inheritance can encompass a broad variety of subjects, such as spousal rights and primogeniture laws. They violate the Constitution of the Federal Republic of Nigeria in addition to a number of international accords.²

It has been observed that the law primarily serves to facilitate rather than to rule in the area of inheritance³. Glover claims that the main way the law accomplishes this goal is by implementing an inheritance differential, which essentially recognizes the donor's wishes for the distribution of assets upon death. The fact that choice maximizes social benefit seems to justify the law's indifference in this area.⁴ Therefore, in general, lawmakers should educate people on how to make dispositions through laws rather than requiring them to draft an estate

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plan. This is based on the notion that since they are not in the mind of the person seeking an estate plan, they should be able to assess their own desires in light of their own life circumstances.⁵

Customary Disposition of Property.

Nigeria has an intestacy-based pluralist legal system that incorporates laws from the State and National Houses of Assembly, local government legislation, and English law (equity principles, common law, and statutes with broad applicability). Nigeria is a diverse country, and the various indigenous laws and practices that discriminate against women's and children's rights—many of which are identical across tribes—indicate that adultery is a major problem there.

In Nigeria, women are prohibited from owning land by a number of customary rules. In terms of their rights to equal opportunity and succession under numerous customary rules, the women are disregarded and subjected to discrimination. According to Nigerian customary law, men are the only ones in charge of the patriarchal system. This natural predilection for masculine values and interests over feminine ones results in gender disparity. As a result, Nigerian women's property rights have been severely limited by conventions and traditions. This has put women in disadvantaged social and economic circumstances. Customs and traditions have denied women the ability to own property and have kept women out of the decision-making processes within the community. For both daughters and widows, this is a highly popular practice among the Igbo communities in Nigeria.

In Yoruba tradition, children of a deceased parent (regardless of age or gender) are entitled to inherit or succeed to their parents' property⁶. On the other hand, “a widow under Yoruba customary law cannot inherit her intestate deceased husband’s properties or estate. The reason for this principle of Yoruba customary law has been stated to be because the widow herself is like a chattel or property which can be inherited by a relation of her late husband. This means she cannot inherit but she can be inherited as she forms part of her late husband’s estate”.⁷

Customary law states that married women are possessed by their husbands in the marital home and lack personality. Because she worked hard and purchased residences throughout her husband's lifetime, After his death, this circumstance places a childless widow in a highly vulnerable position. According to their distinct customs, the Igbo and Yoruba have comparable widowhood rituals. In the case of *Sogunro v. Sogunro*, Berkley claims “In an intestacy under native law and custom, the devolution of property follows the blood. Therefore, a wife or widow not being of the blood has no claim to any share”.

The majority of customs and regulations forbid widows or spouses from inheriting their late husband's assets. Customary laws pertaining to daughters and wives/widows vary slightly around the country. Islamic law offers a very tiny portion of inheritance and is applicable in areas where the majority of the population is Muslim. Since Islamic and customary law marriages do not safeguard women's rights to inheritance and property, it has been suggested that women have very little legal standing in society outside of these types of marriages.⁸

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Women's social advancement has been impeded by the aforementioned cultural practices, which are maintained by patriarchal laws, conventions, and traditions within Nigerian communities. To combat, regulate, and restrain these ills inside their respective communities, the various state governments have put in place a multitude of laws and regulations. Among other things, these include: Enugu State of Nigeria 2001 No. 3, which prohibits violating a law dealing to the fundamental rights of widows and widowers. The Zamfara State Sharia Penal Code of 2000, Vol. 1; No. 4, Sections 207-239, protects women and girls against forced labour, economic exploitation, sexual exploitation and trafficking, and all forms of cruelty and humiliating treatment. Some customs, such making a distressed widow drink the water used to wash her husband's body to prove she is not responsible for his death, have been banned in Enugu State.

The following laws are similar to this one: the Ebonyi State Law 2000 on the Abolition of Harmful Traditional Practices against Women and Children; the Cross River State Girl Child Marriages and Female Circumcision (Prohibition Law) 2000; the Edo State Female Genital Mutilation Prohibition Law 2000; and the Bauchi State Hawking by Children (Prohibition) Act 1985, Cap 58. The rights of women and widows are protected by laws in a number of other states. These include the Anambra State Malpractice against Widows and Widowers Prohibition Law of 2004, the Edo State Inhuman Treatment of Widows (Prohibition) Law of 2004, and the Oyo State Widows Empowerment Law of 2002. Other states include Bayelsa State's Female Genital Mutilation Prohibition Law (2002), Delta State's Female Circumcision and Genital Mutilation (Prohibition) Law 2001, and Ogun, Rivers, and Osun. In addition to harming widowhood customs, these regulations prohibit the long-standing practice of female genital mutilation, which is a grave violation of women's reproductive and sexual rights.

More work needs to be done to enhance women's well-being so they can realize their full potential in society, even though certain laws have been put in place to remove obstacles to women's growth. According to Mojekwu-Chikezie,⁹ "The advancement of quality development and peace depends on women's empowerment, full participation based on equality in all areas of society, and the implementation of women's rights." To end these abuses, the government and other non-governmental organizations must proactively carry out certain initiatives. It is necessary to take the following actions.

When a lawful final will and testament fails to disperse property or a will is deemed void or unconstitutional by a court of competent jurisdiction for breaking certain legal laws, such as the perpetuity rule, the legal term for inheriting such property,¹⁰ is known as "intestate succession." Intestacy standards of today tend to ignore the long-standing concern that property be kept within the lineage that brought it to the deceased. Furthermore, contemporary practice loosens the limitations on the inheritance of illegitimate children and safeguards the rights of the surviving spouse, regardless of whether she is regarded as related. Women's succession rights are invariably most affected by the emasculating influence of custom in Nigerian succession matters since customary law succession is founded on the primogeniture norm.¹¹ In traditional Nigerian society, decisions are made mostly within families and houses, and women are not given the same consideration in community meetings. Even on issues that are extremely important to them, their perspectives are not sought. One of the primary tenets of

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African political, economic, and social systems is still the belief that women should submit to men. As a result, many traditional Nigerian socio-political institutions have been patriarchal, and this continues to have a big influence on society.

Despite the explicit bans on gender-based discrimination included in section 42 of the Nigerian Constitution and other international agreements, primogeniture has been in place in Nigeria for many years. This breach impacted a number of communities in Nigeria; some of these are discussed here.

THE IGBO CUSTOMARY TRADITION

In the diluted version of this idea, the eldest son of the South-East's Igbo-speaking communities would take over as the family's head when his father passed away and would keep his property in trust as a guardian of the family's assets on behalf of the other members. Women are not permitted to own land on their own in several areas in Eastern Nigeria. She only owns the property that her husband permits her to cultivate; all other land is held in trust for her sons. She is not permitted to dispose of any other property she acquired after marriage without her husband's consent. This includes, in the present day, her salary from a paid job. Her spouse's payment of the bridal price and dowry is the reason behind this. According to the conventions and traditions of the people, a woman's duty is to bear as many children as she can in order to provide for her husband.

Primogeniture, or succession by the first male offspring, known as the Okpala, is the dominating notion for Igbo ethnic countries or Diokpala, notwithstanding some minor differences in inheritance and succession laws. Primogeniture is solely predicated on the patrilineal system. Consequently, the first male kid becomes the head of the family after the death of the founder or head. He receives his late father's immediate compound, "obi," or living house, as well as a special piece of land known as "aniisi obi." But as a family, other boys inherit various homes and properties.

Customary law, however, states that in some parts of the Idemili Local Government Area in the Nigerian state of Anambra, daughters who have performed the Nrachi Ceremony and are therefore qualified to inherit their late fathers' land may do so. Only when a deceased father had no sons and only daughters does this exemption apply. In order to preserve the deceased man's family, one of the daughters would be persuaded not to marry in the hopes of bearing a male heir. Daughters are not permitted to inherit their deceased father's property, according to general Igbo customary law, but they are entitled to land to sustain their agricultural requirements until they get married or leave the family, as well as maintenance from the farm's revenues.

In areas where primogeniture is practiced, a deceased man's oldest son effectively receives land and landed possessions. Such first sons have the right to inherit everything, disregarding subsequent offspring. The oldest son may, however, gift land to his other male brothers at their request, subject to certain modifications, as determined in the case *Ejiamike v. Ejiamike*.¹² Because he is the eldest surviving son, he has the natural right to take over his father's position

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as head of the family. This privilege may only be denied to the eldest son because the father is the one who established and owns the family property. The purpose of this suggestion is to make sure that the right individual, qualified by their intelligence and educational background, is in charge of the family's business. Without the eldest son's consent, his rights cannot be taken away if the father has not given him any such instructions.

It is extremely rare for widows to inherit in the traditional sense because of the extremely limited succession rights established by Igbo customary law. None of her late husband's belongings are hers. As long as she behaves well, the widow's land rights are really limited to the simple possession of a portion of the family's property; it makes no difference if she has surviving sons or not. While he is still living, the husband may give his wife exclusive possession of a home or other item of property. Additionally, following the husband's death, the assets handed to the wife shall remain family property unless a clear gift is demonstrated. This notion has been strongly confirmed by several sources. For instance, in the case of *Nezianya v. Okagbue*,¹³ the Supreme Court of Nigeria, held that:

“Under the native law and custom of Onitsha, a widow’s possession of her deceased husband’s property is not that of a stranger and however long it is, it is not adverse to her husband’s family and does not make her owner; she cannot deal with the property without the consent of his family. She cannot by the effluxion of time claim the property as her own, She has, however, the right to occupy the building or part of it, but this is subject to good behaviour”.

As long as their relationships with the boys are positive, mothers feel pressured to have sons in order to secure property and a roof over their heads because widows face discrimination in inheritance. Since a widow is considered a part of the property, the eldest son and heir must obtain permission for her to remain there. She is not qualified to inherit anything from the property. In the case of *Chinweze v. Masi*, the Supreme Court ruled that, according to customary law, a wife only has a life interest in her deceased husband's property; once he passes away, her interest ends.

In certain communities like the Nguzu community,¹⁴ Under a very specific semi-matrilineal structure, the land and houses are bequeathed to the deceased's siblings and maternal relatives as a body. In the Ohafia Division, or community, a man's estate—which consists of his house and land—is bequeathed to his sons and daughters collectively.¹⁵ Even if a widow used any movable property while her husband was alive, she is not entitled to keep it. She is permitted to harvest fruit from the matrimonial estate's trees, but only "if she behaves well."

Daughters are often not given the same inheritance rights as brides under customary law. Only if a daughter chooses to stay single and raise her children at her father's house would she be eligible to inherit. This Idegbe or Nrachi ritual is practiced in several Nigerian groups and areas. This typically occurs when a man dies and no male heirs remain to inherit his estate. Maintaining the bloodline "from extinction" is the goal of this tactic. The daughter is eligible

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to inherit both immovable and movable property from her father's estate as she is now regarded as an Idegbe or Nrachi. She will retain the legal interest until she has children of her own. However, if she has both boys and girls, the law of primogeniture states that her sons, not her daughters, will succeed her. Daughters frequently do not have the right to inherit their father's compound, remaining land, or homes under the customary law that governs the states of Anambra and Imo. Even if certain regional variations allow ladies to inherit, the oldest son still has control over the inherited land.¹⁶

It is undeniable that the Igbo tradition denies inheritance rights to women, illegitimate and adoptive offspring, strangers, and former slaves. Nonetheless, it has been decided by the courts that a widow has certain restricted rights to her late husband's property¹⁷ and that natural justice, equity, and good conscience are all at odds with the Igbo country's oli-ekpe custom, which discriminates against women in regard to land succession. The Supreme Court resolved the widow's lawsuit¹⁸ and postulated the following doctrines of law:

- a. A widow who has no male offspring may manage her late husband's property in accordance with Onitsha Native law and tradition, provided that her late husband's family gives their consent beforehand.
- b. Despite having the right to live in a structure or a portion of it, the widow cannot eventually claim the property as her own, even if she has behaved appropriately.
- c. A widow who decides to remain in her late husband's house is entitled to the marital dwelling as well as a piece of his land for maintenance and cultivation by her husband's family.
- d. The widow may rent out a section of the building to help her make ends meet if her late husband's family is unable to provide for her. It should be noted that because the widow's stake in her deceased husband's home and property is only possessory rather than proprietary, she lacks the power to dispose of them whenever she pleases.
- e. The Onitsha tradition, which grants the Okpala the power to divide his late father's assets while the widow is still alive, is barbaric and inimical to equity, natural justice, and morality. According to the Supreme Court, customs that deprive a daughter of her father's or her husband's property are immoral, unfair, and should be outlawed.

THE YORUBA CUSTOMARY TRADITION

Only the surviving parent's male and female children are eligible to inherit under Yoruba customary law regarding succession and inheritance. Children, both male and female, who are legitimate, share equally. On the other hand, Dawodu, the oldest male child, is in charge of managing and overseeing their late father's estate by default. This general Yoruba Native Law and Custom on inheritance and succession was given judicial validation in *Lewis v. Bankole*¹⁹ which laid down Yoruba rules of succession thus:

- i. When the family's founder passes away, the oldest surviving son, referred to as the Dawodu, assumes responsibility for running the household and managing family affairs.

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- ii. The founder's eldest surviving child, either a boy or a girl, takes over as the family's leader after the death of the eldest son.
- iii. All family branches or representatives in the family council (children of the deceased's numerous spouses) must be consulted and their consent obtained before the family's property may be alienated.
- iv. Regardless of the family's branches, the children receive equal parts of the property.
- v. Only after their parents' deaths can the departed founder's grandchildren inherit.
- vi. The home or compound of the founder is conserved for future generations.

There are two basic ways to divide a deceased person's wealth, according to Yoruba Native Law and Custom: *per stirpes* (also called *Idi Igi*) and *per capita* (also called *Ori Ojori*). In the matter of *Danmole v. Dawodu*²⁰ succinctly explained these methods of sharing property of the deceased man under Yoruba Customary Law as follows:

- i. *Idi-Igi* is an essential component of Yoruba indigenous law and custom pertaining to the division of an intestate's property;
- ii. *Idi-igi* is the standard method of sharing, except in cases where the intestate's descendants disagree about how much of the estate should be divided;
- iii. In certain situations, the family head who has the authority to make choices should choose if *ori-ojori* should be used instead of *idi-igi*;
- iv. *Idi-Igi* is still in full force and adherence today and has not been abolished;
- v. The head of the family's decision regarding the method to be used in times of dispute prevails;
- vi. *ori-ojori* is a relatively modern manner of allocation used in times of expediency to avoid litigation.

Importantly, under traditional Yoruba Native law and custom, collaterals were allowed to inherit a deceased man's property. In the case of *Adedoyin v. Simeon*, the court established the following guidelines for allocating a deceased man's assets,²¹ as follows:

- a. The right of succession to the segregation of the other relations belongs to siblings left by the deceased by the same mother.
- b. The parents have rights when there are no siblings born to the same mother, although often the father leaves everything to the mother.
- c. If only one parent survives the deceased, that parent inherits everything.

Even though the property was inherited from their father, siblings who are half-blood to the same father are not entitled to inheritance or succession. Only if the deceased guy passed away without leaving any children can collaterals inherit his estate.

It is crucial to remember that Nigerian customary law prohibits a husband from inheriting his deceased wife's belongings. The offspring are the ones who inherit. Her parents or siblings would inherit if she passed away without having children. Wills are another tool utilized by Nigerian Native Law and Custom to transfer property from parents to children, even though

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they are oral or nuncupative. Such wills must be witnessed by one or more family members in order to be enforceable.

The eldest brother of the deceased was initially given full inheritance among the Yorubas, to the exclusion of his offspring and wife or wives.²² For practical reasons, the practice has long been abandoned since that law was found to be incompatible with fairness, natural justice, and good conscience²³. Women can now inherit in the same way as men. Thanks to the current customary law regulations. In the case of *Sule v. Ajisegiri*,²⁴ It was decided that individuals who are entitled, regardless of gender, must share the divide equally. As a result, the defendant's argument that he should have received a bigger portion since he was a man was dismissed. In the case of *Ricardo V. Abal*,²⁵ The court went a step further and decided that a female kid who is older than others has the right of first choice in sharing her deceased father's riches, even though the male child is the head and oversees the estate. According to the *Lewis v. Bankole* ruling, the daughter is ranked second, following the eldest surviving son. Therefore, regardless of age or gender, all Yoruba children equally own property, as demonstrated by the aforementioned examples. On the other hand, the eldest male child often assumes the role of Dawodu, or head of the family, and is in charge of overseeing the family's resources. However, if there isn't a male child or if the person is too young, the eldest daughter may also assume the position of Dawodu.²⁶

A deceased intestate who had many spouses is subject to the first system. Every woman should be treated equally, and in terms of succession, she is regarded as a member of the man's family, according to this view. This is referred to as *Idi-Igi*. This method gives each woman an equal amount, which is then distributed equally among the spouses' offspring. The second is *Ori-Ojori*, which divides devolution among children per capita in an equitable manner.²⁷

The wife has no power to manage or inherit the estate because she is considered to be a part of its chattel.²⁸ To defend her minor children's property rights, she may, nevertheless, file a lawsuit on their behalf.²⁹ Since it was determined in the case of *Rabiu v. Absi* that a family property's original character is not lost when it is modified by a different family member, the wife's contributions to the property are not recognized. Given that widows may no longer be entitled to jointly owned assets or property in which they have contributed, it is argued that this undervaluation of contributions is important for the cause of women's inheritance rights.

THE BINI CUSTOMARY TRADITION

Benin traditional law governs succession in Nigeria through the primogeniture principles. Benin local law and tradition clearly grant the eldest son of a deceased Benin man the right to inherit the home known as *Igiogbe*, regardless of any instruction, bequest, or family arrangement to the contrary. The Supreme Court designated *Igiogbe* as the family seat and the primary residence in the case of *Idehen v. Idehen*. *Igiogbe* is identified by the Benin Traditional Council as the place where the dead lived, died, and is usually buried. The *Iyase* people of Benin consider *Igiogbe* to be the place where a Bini *Odafen* lived and died. According to custom, the first son is awarded the *Igiogbe* because he is in charge of caring for the deceased's

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house, grave, shrine, or alter, inherited bride or spouses, and other responsibilities that the deceased had when he was living, he continues. Ancestral shrines are often found in the *Igiogbe*.

A dwelling must be situated in the deceased's traditional hometown—the Bini Kingdom in Mid-Western Nigeria—in order to be considered *Igiogbe*. Thus in the case of *Eghareba v Oruonghe*,³⁰ In a case where the eldest son challenged a will his father had written that left him his home in Benin and his home in Sapele, where he lived and passed away, to his wife for life, the court ruled that the deceased's Sapele home was not the testator's *Igiogbe*; rather, the *Igiogbe* was the house in Benin City.

For a variety of reasons⁴³, the male kid is favored over the female. First, the firstborn son in Benin receives special care and attention since his life and status are significant to both the father and the community. Eghobamien gave description of the role, existence, and attention given to the eldest son in the Benin kingdom³¹. As follows:

At all relevant times in the history of the Benin people, the eldest son was always very close to his father. When the time came for initiation into various age groups, his father ensured that this was done. He took him usually with him to visit elder members of the family. He told him the history of the family; the dos and don'ts of the family and what his rights and responsibilities are in the family – his own immediate family and the extended family. He ensured he got a wife early at maturity and was very interested in the first son having his son to perpetuate the family and traditions. These male heirs, when they take long to come in procreation, are given names like Ogbeide, Ogbemudia, Ogbomoide Ogbemwengbide.³²

The eldest son undergoes these treatments in order to get ready for his future duty as the leader of the household once his father passes away.

The upbringing of a girl child differs greatly from that of a boy child, who, if he is the oldest son, is always very close to his father. A female kid is commonly thought to remain in the family for a short time because, back then, there was no plan for her in the family; as a result, she was frequently given away in marriage at a young age. But in order to get him ready for the duty of overseeing his father-wives' and other children's estates, including young boys and daughters, until they are old enough to care for themselves. His parents and other family members trained the family's eldest son in leadership skills to prepare him for the responsibility of managing the estate of his father-wives and other children, including young sons and daughters, until they were old enough to take care of themselves for the men or marry if they were women. The custom of Edo State prevents a widow from receiving any inheritance from the intestate estate of her late husband. This is due to the fact that the widow is essentially seen as a part of the estate that the son or other family member would receive, as was previously noted. One of the reasons the eldest son inherits his father's *Igiogbe* following his death is because of ancestral veneration, according to study. Traditional Benin culture forbids a woman from taking on the position of head of the home in ancestral worship. The *Igiogbe* tradition, which is so fundamental to Bini customary inheritance, prohibits a testator from selling or

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giving away the primary house in where he resided and eventually died. According to Chief Sam Igbe, Benin's *Iyase*:

"No sane Bini man would sell or make a gift of his Igiogbe during his lifetime. If he does and still remains in the house until he dies then the house remains his Igiogbe and devolves on his eldest son at his death but if he moves out of the house and lives in another house until his death, automatically the former house ceases to be his Igiogbe".³³

Furthermore, according to Section 3(1) of the Wills Law of Bendel State, a Bini man is only permitted to leave his Igiogbe to his eldest son in his will. The above-mentioned law provides that:

"Subject to any customary law relating there to, it shall be lawful for every person to devise, bequeath or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either in law or in equity, at the time of his death and which if not so devised, bequeathed and disposed of would devolve upon the heir at law of him, or if he became entitled by descent, of his ancestor or upon his executor or administrator"

This implies that a testator must keep in mind that the *Igiogbe* cannot, under Benin Customary Law, be distributed to anybody other than the eldest surviving son in any situation when drafting a will. The *Igiogbe* bequest serves as a safeguard to prevent the testator's property from evaporating and to prevent the long-standing customs and traditions of the Bini people from disappearing.

THE HAUSA CUSTOMARY TRADITION

The majority of the North is covered by the custom. primarily the Fulanis, Hausas, and others. The Hausa Customary law is greatly influenced by the Shariah system of Islamic law, which is both a religion and a way of life. But there is also the influence of regional simplicita. Therefore, a Northerner who is not a Muslim is bound by the national customs. According to the ruling in the case of *Mohammadu v. Mohammed*, young men and women were not allowed to inherit from their fathers' lands before the arrival of Islam. It was argued that as little boys and girls are incapable of going to fight and capturing treasure or plunder, they shouldn't be allowed to inherit as heirs (*Gamima*). The girls were inherited themselves, in accordance with the long-standing Hausa local tradition. Only brothers and adult sons were eligible to inherit. Daughters may inherit their mothers' moveable property. Interestingly, whether a piece of property belongs to a woman or a man, only males in the family are eligible to inherit it. However, the concept of *qawama* is interpreted in the Shari'ah system as signifying that males are superior to women and act as their guardians. Regardless of whether they are daughters or spouses, Shari'ah allows women to inherit. It is therefore the only customary law that guarantees these rights. The clauses have improved Shari'ah customary standards in the domain of inheritance rights by highlighting the equality of all persons. The quantum is different

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because daughters only receive half of the shares due to boys, and wives only receive half of what would normally be entitled to husbands on intestacy.

DISCRIMINATORY FACTORS TO FEMALE INHERITANCE PRACTICES IN NIGERIA.

Any traditional customary community's mindset or fundamental ideas, which can manifest in a number of ways with regard to women's disinheritance, reveal this idea. Women are viewed badly in society because of high proportions of poverty, illiteracy, and cultural traditions that treat them more like objects than as subjects of inheritance. Numerous actions that are seriously harmful to women's overall wellbeing are based on this notion.

However, in a statutory law marriage, this perspective usually results in hardship for the surviving spouse because it directly imposes local law and inheritance customs on the execution of a testator's wills created in line with the Wills Act. For instance, if a testator leaves his wife his matrimonial home for all time, there may be challenges to the bequest's execution on the grounds that, in accordance with native law and Igbo custom, a man's matrimonial home belongs to his eldest son or, if he is not survived by any male offspring, to his male next-of-kin.

In order to validate the union, the groom or his family also pays the bride price to the prospective bride's family. Without the bride or her mother's involvement, the senior men of both families negotiate this amount in a way that is similar to haggling for food in any open market. After the bride price is paid, the woman is no longer considered a spouse but rather a portion of the man's property. This writer respectfully argues that this particular practice is a reflection of the husband and his family's understanding of the "permissibility" of discrimination against women in society. This is shown in a variety of ways over the course of the marriage, particularly when her husband passes away. Oluyemisi Bamgbose,³⁴ rightly states the negative effects of bride price on women to include:

- a. **Transfer of rights:** The nature of the practice demonstrates and validates that a woman is viewed as a commodity with a price tag that a consumer buys. Like a buyer of goods under the law, the "purchaser" is free to handle the "purchased chattel" anyway they see fit. According to customary law, husbands treat their wives in this way.
- b. **Revocation of rights:** Once the bride price has been paid, the woman remains wedded to the guy who paid it. If the marriage doesn't work out, the woman can't have her freedom back until she gives the man back the bride money. The woman is seen as having stayed married to the man if the bride price is not paid, and any child she has outside of the marriage is regarded as her estranged husband's child. The issue gets worse when the lady's financial situation prevents her from paying the bride back.

According to the aforementioned, wives are objects of inheritance themselves if they are thought of as their husbands' property. It has been asserted in certain cultures that the man is responsible for providing the wedding price, or dowry, to a woman. It is believed that a man's wife is a piece of property because he paid for her. Because of this idea, according to our

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conventional wisdom, a lady of such type cannot inherit her late husband's belongings; rather, one of her late husband's brothers is supposed to inherit her. How, after all, can one piece of property inherit another? Given that she was purchased and paid for, it is reasonable to assume that the bride price paid by a man to obtain his wife's hand in marriage is what gives her inheritable property. It was based on this belief that the Court of Appeal in Lagos had held in the case of *Ogunkoya V. Ogunkoya*,³⁵ that 'wives are also regarded as chattel that are inheritable by other members of the family of the deceased husband under certain conditions.'

THE PRINCIPLE OF PRIMOGENITURE

The characteristic, situation, or state of being the oldest sibling is known as primogeniture. It is the oldest son's common-law inheritance of an ancestor's fortune, typically at the disadvantage of younger siblings. A deceased person's landed property can only be inherited by his sons, not his daughters, in accordance with Igbo custom.³⁶ In certain regions, the property is split based on capital or the number of male offspring. These are the two ways that the intestate might be dispersed. In other places, when allotment is based on per striping, the land is split among as many portions as there are women with male offspring.

Because the Bini and Esan peoples of Edo State practice this system slightly differently, the idea of primogeniture is only partially in place there. When a man passes away, his children will often inherit all of his belongings, according to Esan custom and practice. If no children are left, the maternal brothers will be entitled to inherit the deceased's possessions. The eldest paternal brother would be the next in line to inherit in the absence of such a sibling; if this was not feasible, his uncle or a cousin would take over. In other Esan societies, the deceased person's property would be divided based on how many *Ukuede* (gate) they possessed.

According to the Bini, the surviving children are entitled to a portion of their father's remaining assets, and the eldest son inherits the *Igiogbe*, the main residence or homestead where the deceased resided during his lifetime. This discrepancy is emphasized in cases when the rule primarily addresses the kind of property that the oldest son has the sole right to inherit, to the exclusion of his siblings.

In the diluted version of this idea, the eldest son of the South-East's Igbo-speaking communities would take over as the family's head when his father passed away and would keep his property in trust as a guardian of the family's assets on behalf of the other members. A woman cannot inherit her husband's wealth on her own, regardless of whether she is fortunate enough to have children. At most, she is limited to using the belongings her male children inherit. According to customary law, a widow who is not of the blood has no claim to any portion of the property as property devolutions in an intestacy follow the blood. According to Onitsha customary law, a widow's claim to her late husband's home and farm is just possessory, not proprietary, as was decided by the court in the case of *Nezianya v. Okagbue*. Therefore, she cannot sell it or in any other manner alienate it. The Federal Republic of Nigeria's Constitution, as modified, and other pertinent international laws are now violated by this practice. In the case of *Lois Chituru Ukeje & Anor v Gladys Ada Ukeje*, the Supreme Court has currently upheld the female child's right to inherit the father's property. As a result, any customs and practices that are in conflict with

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the Supreme Court's ruling and are attempted to be used as support in any Area/Customary courts will be considered offensive.

*Nzekwu v. Nzekwu*³⁷ was formerly the most famous case in Nigeria over a woman's inheritance rights from her husband's wealth. The country's top court decided that a widow may live in her late husband's home as long as she behaved properly. In 2014, the Supreme Court rendered two landmark decisions upholding Nigerian women's inheritance rights, turning the tide in their favor. Lower courts must follow the Supreme Court's ruling, which formally recognizes a widow's right to inherit from her late husband's estate. Nigeria is not committed enough to fully execute regional and international human rights treaties that guarantee everyone's equality. Some of these instruments are the ones she has failed to domesticate. The Nigerian Constitution, however, expressly prohibits discriminatory behaviour. Therefore, to the degree that it is inconsistent, any discriminatory customary practice that contravenes the Constitution is unlawful. Regretfully, neither the Nigerian Supreme Court's decisions nor the language of the law can prevent widows from being disinherited. Not all widows are wealthy enough to litigate for their inheritance rights. Therefore, the societal and cultural viewpoints that currently allow for the oppression, abuse, and discrimination of women need to change. Because the socialization process is inherently biased against women, women themselves sometimes support, enforce, and even celebrate these discriminatory practices. For instance, other women in the family might avoid a widow if she asserts her constitutional right to be free from sex-based discrimination. Rejecting traditions that hinder women's progress and empowerment is the wisest course of action. Both effective legal actions and a change in societal norms are necessary to safeguard widows' inheritance rights. Courts at all levels must continue to rule that these cultural practices are incompatible with equity, natural justice, and morality. In order to maintain her independence and freedom to follow her own path in life, Philip and Morris contend that a widow should be entitled to at least a sizable portion of her husband's money in the event that he dies intestate.³⁸

In summary, It is impossible to argue that the legal protections designed to shield widows from prejudice are insufficient. Still, the laws are essentially useless because they cannot force people to change their attitudes on their own. Some of these laws, which aim to change harmful societal norms and cultural behaviors, require governments to educate their citizens in recognition of this truth. Therefore, it is imperative that the Nigerian government adds to and modifies the curricula at all educational levels in the nation in order to teach people about the importance of respecting human rights, especially widows' rights. The government will also work with religious organizations to educate their adherents about this matter. In order to ensure that widows are treated equally in society, all socialization agents must be actively involved. In order to protect widows' inheritance rights, the Nigerian government is responsible for starting the engagement process, which aims to convince society's members to acknowledge women as human beings with the same rights as men. Once this is done, Nigeria would have joined the developed world in adopting the best international human rights principles, which put equality of all people first.

Recommendations

Under a patriarchal society, Nigeria is a nation of diverse communities with a wide range of customs and cultures. Patriarchy—the male-dominated governance of society—determines all customary laws throughout cultures. Women have been discriminated against by most of these regulations. Therefore, despite the many progressive steps taken by many governments and international organizations to better the status of women, the male-dominated institutional environment is in opposition to gender politics. The numerous traditional practices that are still followed in various parts of the nation have hindered, discriminated against, and impeded the social advancement of women. In a variety of situations, the women have remained alone, destitute, and illiterate. Their inferior and unequal status, which is largely the result of gender discriminatory cultural attitudes that permeate institutions at all levels of society, has hindered the government's increased efforts to move women from the periphery to the center of national development processes.

Women will not have the same rights as males without cultural barriers unless these negative preconceptions about them are verified and eliminated. Therefore, it is necessary to consciously eradicate discriminatory practices from society by domesticating international protocols, reviewing antiquated customary laws that harm women's social development and education, and consciously raising awareness of discriminatory practices among all pertinent agencies and organizations. To discourage others from committing the same crimes, police, courts, and other state institutions should be prepared to support victims of this kind of prejudice and, if required, prosecute or harshly punish the offenders. Women's human rights must be actively upheld. All hands must be on deck if any progress is to be achieved in freeing women from the constraints of our culture. In this respect, the traditional rulers are thought to have a significant role. Given their proximity to the grassroots, where these customs are more common, they have significant influence on their subjects and can readily raise awareness of the need to end all of these harmful cultural practices.

One aspect that has contributed to the persistence of these offensive cultural practices in Nigeria is a lack of education, particularly at the grassroots level. Without a question, education enlightens, empowers, and makes women aware of their rights. Due to the preference for boys over females, there has been discrimination against girls in education for many years. Therefore, the government should work to increase the number of scholarships awarded to women attending higher education institutions. Without a question, a woman with more education will be better able to establish and protect her rights, both financially and otherwise. Additionally, a girl's education would eventually enable her to influence gender-friendly laws that would help eradicate these damaging cultural practices, which are frequently directed at women, by allowing her to participate in important government decision-making bodies. Undoubtedly, one of the most important tools available to legislators to implement these urgently required changes to Igbo customary rules is law, as a weapon for social transformation. It is clear that a number of legal considerations have combined to keep these harmful cultural practices from being abolished.

CONCLUSION

It is impossible to argue that the legal protections designed to shield widows from prejudice are insufficient. However, because laws by themselves are unable to force a change in attitude, the laws are essentially ineffectual. Because of this, some of these laws mandate that government should educate citizens in an effort to alter harmful cultural practices and societal norms. Therefore, it is imperative that the Nigerian government adds to and changes the curriculum at all levels of education in order to teach the populace the importance of respecting human rights, particularly widows' rights. To raise awareness of this issue among its members, the government must also work with religious organizations.

To ensure that widows are not discriminated against in society, it is actually necessary to actively engage all socialization agents. The Nigerian government has the responsibility of initiating the process of engagement aimed at persuading all members of society to treat women as human beings with the same rights as men in order to safeguard widows' inheritance rights. When this is accomplished, Nigeria would have joined the developed world in achieving the highest standards of international human rights, which prioritize equality for all.

ENDNOTES

- ¹ L Okafor, O Olugasa, O Olanrewaju; Conceptual and Theoretical Framework of Inheritance Rights of Women and Children in South-Eastern Nigeria. Redeemer's University Nigeria, Journal of Jurisprudence & International
- ² The highest law of the people of Nigeria, against which, any law (or practice) in contradiction, is invalid.
- ³ Restatement (Third) of Property: Wills and Other Donative Transfers 10.1 cmt.c (AM.LAW INST.2003); Glover Mark, (2018) 'A Social Welfare Theory of Inheritance Regulation', (2018) 2 ULR 4; accessed 27 October 2023
- ⁴ Glover Mark, 'A Social Welfare Theory of Inheritance Regulation', (2018) 2 ULR 4; accessed 27 October 2023
- ⁵ Adam J. Hirsch & William K. Wang, 'A Qualitative Theory of the Dead Hand', (1992) 68 ILJ 1, Daniel B. Kelly, 'Restricting Testamentary Freedom: Ex Ante Versus Ex Post Justifications' (2013) 82 FLR 1136, Glover Mark 'A Social Welfare Theory of Inheritance Regulation' (2018) 2 ULR 4; accessed 27 October 2023
- ⁶ Mojekwu–Chikezie N. M. (2012). African Women: Sentenced by Tradition. Lagos: A. A. Nuokebi & Company.
- ⁷ Mojekwu–Chikezie N. M. (2012). African Women: Sentenced by Tradition at p.123.
- ⁸ Mojekwu–Chikezie N. M. (2012). African Women: Sentenced by Tradition at p.161.
- ⁹ Mojekwu–Chikezie N. M. (2012). African Women: Sentenced by Tradition at p.205
- ¹⁰ Coker v. Coker (1944) 17 NLR 55
- ¹¹ Amos O. Enabulele & Anthony O. Ewere, 'Liberating Widows from Prejudiced Rules of Succession upon Intestacy - Wither the Supreme Court of Nigeria?' (2019) 2 GLR 92
- ¹² (1972) 2 E.N.L.R. p. 11.
- ¹³ [1963] All NLR 358 SC
- ¹⁴ Afikpo South LGA, Ebonyi State
- ¹⁵ Id, h. 10, para. 152(b).
- ¹⁶ Succession among Ibos
- ¹⁷ NZEKWU vs. NZEKWU (1989) 2 NWLR (PT. 104) 373
- ¹⁸ Anekwe v Nweke (2014) 9 NWLR (PT 1412) 393; Mojekwu v. Mojekwu [1997] 7 NWLR 283
- ¹⁹ [1909] 1 NLR p. 81
- ²⁰ [1962] 1 W.L.R. 1053
- ²¹ 9 N.L.R. 76
- ²² Yakubu, M "Property Inheritance and Distribution of Estates under Customary Law (Towards a restatement of Nigerian Customary Law) Published by the Federal Ministry of Justice, Lagos, Nigeria, 1991 p. 137

²³ As held in the case of *Adeseye v Taiwo* [1957] 1 FSC p.84

²⁴ 13 NLR 146.

²⁵ (1926) 7 NLR 58.

²⁶ *Lewis v Bankole* (1908), 2 N.W.L.R. 66 (Nigeria). recognized the eldest son could himself be replaced by the eldest daughter, and *Abibatu v Flora Cole*, [1986] 2 NWLR 369 (Nigeria). held that when all of the children are female, the eldest female should be the head; *Ashipa v. Ashipa* (2002)LHCR 60-84 (Nigeria).

²⁷ *Taiwo v Lawani* (1961) ANLR 733 (Nigeria).

²⁸ *Iwelo Awero v Raimi Sadipe* (1983) 11 O.Y.S. H.C. 790 (Nigeria), states that a widow without issue is part of the property, and liable to be inherited with the other property of the husband; *Akinnubi v. Akinnubi* (1997), 2 N.W.L.R. 144 (Nigeria).

²⁹ *Aileru v. Anibi* (1952) 20 N.L.R. 46 (Nigeria), *Bolaji v. Akapo* 2 F.N.R 24, 245 (Nigeria)., *Suberu v Summonu* (1957) S.C.N.L.R. 45 (Nigeria). As summarized in P.O. Aderemi, *Modern Digest of Case Law* (Ibadan: Spectrum Books Limited, 2000) at 68. This topic will be discussed further below.

³⁰ [2001] 11 NWLR pt. 724 pg. 318

³¹ *Eghobamien S1* (2008:53) *Igiogbe and Miscellany in Benin Jurisprudence*, Seven Prints, Benin City Edo State

³² The meanings of these names are all similar; they mean "My heritage and lineage have come to stay"

³³ Interview conducted by Donatus Sunday Oluya with Chief Sam Igbe, the Iyase (traditional prime minister) of the Benin Kingdom - June 2012

³⁴ *Bangbose Oluyemisi*, Customary Law Practices on Violence against Women, the Position under Nigerian Legal System. www.ranatu-usp.ac.ig/50/adobe

³⁵ *Suit CA/L/46/48* Pg. 56, Unreported.

³⁶ *Uboma & Ors. v. Ibeneme & Anor* (1967) F.N.L.R. 251.

³⁷ (1989) 2 NWLR (pt. 104) 373 (SC).

³⁸ Philip and Morris, *Marriage Laws in Africa* (Oxford University Press, England, 1971)52