

## AN OVERVIEW OF WOMEN RIGHTS OVER LAND IN SELECTED JURISDICTIONS IN NIGERIA

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### Abstract

*For ages, women have been discriminated against from inheriting property or properties either from their father's or husband's side. This discriminatory practice and attitude on women centers majorly on inheritance and succession. This is because each society has a mode or modes of disposing property of its citizens upon death or any circumstance whatsoever. Nigeria operates a multi legal system which presents varied property inheritance rules governing the lives of their respective citizens; an example is the customary law system which generally accords inferior status to women over land than the male gender contrary to constitutional provisions, Regional Convention, International Treaties on equal gender treatment. In fact there are some parts of the country, where women are totally denied the right to inherit or administer such and when they do have these rights. This paper adopts the doctrinal research methodology through statutes, case laws and opinions of authors to examine the practicability of women's unhindered right to hold and freely access land for their use in some parts of Nigeria, alongside the legal provisions on same, unfolds series of discriminatory practices, marginalization and discriminatory customary dictates and practices in Nigeria that is obstructing the manifestation of the true and honest intentions and benefits of constitutional provisions on rights of a woman to have equal access to land as the male gender. This paper therefore examines, the limits of the rights to inheritance of females over land under customary law with specific reference to some parts of Nigeria and found out there is still discrimination of women's property rights*

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*despite several enactments and judicial pronouncements by the courts.*

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## 1.0 Introduction

There is no resource or property as valuable as land as virtually all human activities, exertions and relations are carried out on Land<sup>3</sup> The availability of land is of incalculable value to human existence and its distribution and use are of fundamental importance land is the anchor of all that is valuable.<sup>4</sup> Despite the relevance of Land to man, it is unfortunate that Land Acquisition has consistently generated controversy and one issue which has been a subject of raging controversy in Nigeria has been the right of women to acquire land in view of the various derogatory and discriminatory customary Law practices in Nigeria. The issue of women's Rights to Land under customary law especially in Africa has, over the years, generated a lot of controversies as evidenced in vast literature available.<sup>5</sup> The issue of discrimination against women in relation to the rights to own Land under customary law is centered on inheritance and the fact that it is patrilineal. It is against this background that this paper sets out to critically examine the practical implication of discriminatory customary law practices against women in Nigeria with a view to project the negative impact it has on land acquisition and consequently make a case for a better regime for the protection of women.

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<sup>3</sup> D C Nwuzor (The Land Use Act and the Protection of Rights and Interests in Land vis-a vis International Best Practices(Faculty of Law, Nnamdi Azikiwe University,2018)

<sup>4</sup> S R Simpson,(1976) *Land Law and Registration* (London: Cambridge University Press) p.33,

<sup>5</sup> Vanessa Emery, (2006)'Women's Inheritance Rights in Nigeria: <<http://www.nigerianlawguru.com/articles/customary%20law%20and%20procedure/WOMEN%20INHERITANCE%20RIGHTS%20IN%20NIGERIA,TRANSFORMATIVE%20practices.pdf> last accessed> on the 12 March 2023

## **2.0 The Problem of Customary Land Inheritance in Eastern Nigeria**

A critical look at the prevailing Customary Practices in the Context of Contemporary realities in Nigeria, reveal that women get little or nothing in comparison with their male counterparts when it comes to interstate devolution of property. This is as a result of the primogeniture or patriarchal system which clearly manifest in our society today and has dire consequences resulting to disproportional, discriminatory, unjust and unfair treatment of females in Nigeria. The continued practices of these laws have constituted a major hurdle to gender equality, economic empowerment of the female gender and actualization of social justice in terms of development, peace and security.<sup>6</sup>

The rationale behind this is to subjugate the women to fulfill their traditional roles thereby leaving them poorer in the society as against the male gender. This is the Hallmark as most societies are patriarchal in Nigeria and this is a major concern in these contemporary times and has a direct impact on the livelihood and security of women in the rural area.<sup>7</sup>

According to certain cultural norms particularly in the Eastern part of Nigeria, women are only given occupational rights to land subject to certain conditions, a breach of which such rights would be revoked. The problem is not inadequate laws to safeguard women's property rights but centers on enforcement and implementation<sup>8</sup>. Several factors such as illiteracy, lack of exposure, reorientation have hindered women's ability to understand and demand for better safeguards of their rights to land. The complex nature of land tenure system in Nigeria deprives women to take full benefit of land ownership. This area has been a central focus for local and international organizations

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<sup>6</sup> O V C IKPEZE *Gender Dynamics of Inheritance Rights in Nigeria: Need for Women Empowerment* (Folmech Printing & Pub. Co. Ltd; 2009)54

<sup>7</sup> W M Adolwine & A Dudima, (2004) 'Women's Access to Emerging urban Land in the Sissala East district in Northern Ghana' (2010) *Journal of Science and Technology*, Vol.30, No 2 94 - 104

<sup>8</sup>E EObioha, 'Inheritance Rights, Access to Property and Deepening Poverty Situation among Women in Igboland, South East Nigeria

and been a subject of discourse at all levels which has birthed several Treaties, Conventions and Communiqués over the years.<sup>9</sup> Even though the international community has taken keen interest on this issue as it affects women,, Nigeria and indeed other African countries are signatories to treaties and have even ratified various international and regional conventions and instruments relating to the protection of the rights of women and generally to seek the elimination of all discrimination against the marginalized.

### **3.0 Legal and Institutional Frameworks for the Protection of Women Rights to Land in Nigeria**

In this part, we would examine both the national legal Framework and the International Legal Framework for the Protection of female land rights in Eastern Nigeria.

#### **3.1 The Constitution**

The Constitution of the Federal Republic of Nigeria,<sup>10</sup> just like modern constitutions, made adequate provision for the protection of land rights. Sections 42, provides and guarantees against discrimination of any form either by age, color, sex gender etc., Sections 43 and 44 of the Constitution provides for every Nigerian citizen to acquire and own immovable property or properties in any part of the country. With these provisions, women can and should lawfully challenge any undue deprivation of their rights to own land in Nigeria because the constitution is superior to any custom, state or local laws.

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<sup>9</sup> O Alhassan, '*Land Access and Security of Tenure in Ghana: some Considerations for Improvement*' the outcome report of the thematic dialogue held in Accra, Ghana and presented at the International Conference on Agrarian Reform and Rural Development (ICARRD) Porto Alegre, Brazil on 7-10 March 2006; G A Sarpong, (2006). Improving tenure security for the rural poor Ghana - Country case study. LEP Working Paper No.2 Workshop for Sub Saharan Africa. <<http://www.fao.org/3/a-k0783e.pdf>> accessed on 13 February 2023

<sup>10</sup> Constitution of the Federal Republic of Nigeria 1999 as amended.

### 3.2 The Land Use Act<sup>11</sup>

The Land Use Act was promulgated for the purpose of unifying, defining and regulating enjoyment of Land Rights in Nigeria,<sup>12</sup> thus all other laws affecting title to land or the transfer of interest in land including those existing before the promulgation of the Act, except for the Constitution, are subject to the provisions of the Act.<sup>13</sup> The Act regulates ownership, alienation, acquisition, administration and management of land in Nigeria. There is no provision in the Act which restricts the rights of Nigerian citizens to own land because of gender or other discriminatory tendencies.

### 3.3 Other Statutory Provisions for Property Rights in Nigeria

Laws guiding testate inheritance/succession includes: The Wills (Amendment) Act, 1937 and the Wills (Amendment) Act, 1852, regarded as statutes of general application, which were in force in England on January 1, 1900. In some states of the Federation, the Wills Law applies.<sup>14</sup> This 1958 law is essentially a re-enactment of the above mentioned laws on Wills. Furthermore testate inheritance in some states in Eastern Nigeria is governed by the Succession Law Edict, 1987. The provisions of part 4 of the 1987 Edict are similar to those in the Wills Act, 1832 and Wills Law, 1958. There is also Registration of Titles Laws of the various states of the Federation.

## 4.0 International and Regional Legal Framework for the Protection of Female Land Rights

Under this heading, we are going to examine some of the International Instruments that seek to enhance the right of women to which Nigeria

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<sup>11</sup> Cap L5 LFN, 2004.

<sup>12</sup> A Nnamani, 'The Land Use Act, 11 Years after' GRBL, 31 S Butter, 'The Nigerian Land Market and the Land Use Act of 1978 (1989)' <<http://www.focusonland.com/download/525525442d643>> accessed on the 10 April 2023.

<sup>13</sup> Land Use Act S. 48. N B Udoekanem et al, 'Land Ownership in Nigeria: Historical Development, Current Issues and Future Expectations' *Journal of Environment and Earth Science* (2014) Vol.4 No.21, 185 <[https://www.google.com/url?q=http://www.unoosa.org/pdf/reports/unispace/viennadecle.pdf&sa=U&ved=0ahUKEwj3\\_fCd3ePLAhXLQBQKHb2NB1EQFggNMAA&sig2=eC\\_FiMHlc7BAX5YYWS8Yg&usq=AFQjCNEMfvkBK7sZ71Yy-nvw-Up17f\\_Kog](https://www.google.com/url?q=http://www.unoosa.org/pdf/reports/unispace/viennadecle.pdf&sa=U&ved=0ahUKEwj3_fCd3ePLAhXLQBQKHb2NB1EQFggNMAA&sig2=eC_FiMHlc7BAX5YYWS8Yg&usq=AFQjCNEMfvkBK7sZ71Yy-nvw-Up17f_Kog)> last accessed on the 10 April 2023.

<sup>14</sup> CAP133, Laws of Western Nigeria

is a party to such agreements/treaties and highlight some of their salient provisions. Some of the international instruments are as follows;

#### **4.1 International Legal Instruments for the Protection of Rights of Women to Own Land**

Some international instruments are enacted to protect human rights generally and they include Universal Declaration of Human Rights, International Covenant on Economic, Social and cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women. Beijing Declaration

#### **4.2 Regional Legal Framework for Protection of the Rights of Women to own Land**

Some of the regional African Charter on Human and Peoples Rights, Protocol to the African Charter on Human and Peoples' Rights of Women in Africa 2003 among others.

#### **4.3 Overview of International Legal Framework for Protection of the Rights of Women to own Land**

##### **1. Universal Declaration of Human Rights**

The Universal Declaration of Human Rights is the first international instrument in history to formulate the rights and freedoms of people. This declaration was adopted in 1948 by all United Nations Members. The declaration was not created to impose a binding obligation on member states but to create an acceptable standard in which people would act towards others. The universal acceptance of this declaration has not only given it a maximum moral weight but has also made it the most translated document in the world, cited as authority in different national and international forums on human rights.

## **II. International Covenant on Economic, Social and cultural Rights**

This Treaty is a multi-lateral treaty adopted in December 16, 1966 and was in force from January 3, 1976 by the United Nations General Assembly. This covenant commits its members to work towards the

granting of economic, social and cultural rights to individuals. This covenant is worthy of note and important as it is monitored by the United Nations Committee on social, economic and cultural rights.

### **III. Convention on the Elimination of All Forms of Discrimination against Women.**

The United Nations General Assembly on the 18<sup>th</sup> December, 1979 adopted the Convention on the Elimination of all forms of Discrimination against Women. This treaty is the first ever recognized treaty which aims to fully protect women and encourage women to equally participate in politics, civil, economic, social and cultural activities at the national level and international levels. This convention can be referred to as the International Bill of rights for women as it recognizes the existence of human rights of women and female children.

### **IV. Beijing Declaration**

The Beijing conference of 1995 was the fourth world conference on women which marked a turning point for women. One hundred and eighty nine (189) countries adopted the Beijing declaration. This conference aimed in the advancement of women and to help seek the achievement of equality among men and women. This conference was a way to build a sustainable and developed society.<sup>15</sup>

#### **4.4 Overview of Regional Legal Framework for Protection of the Rights of Women to own Land**

##### **i. African Charter on Human and Peoples Rights**

The Charter<sup>16</sup> also referred to as the African Charter or Banjul Charter was developed by the African Union formally known as the Organization of African Unity. The Charter came into force on the 21<sup>st</sup> of October, 1986. The charter does not specifically mention the promotion of human rights but the eighteen (18) African Union Assembly of Heads of State and Government. The African Charter is a regional human rights instrument centered on history, values and traditions in African countries. The major influence the African

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<sup>15</sup> Article 35 of the Beijing Declaration 1995

<sup>16</sup> African Charter on Human and Peoples' Rights (ACHPR) adopted 27 June 1981 and came into force 21st October, 1986.

Charter has brought is not to adopt just international laws but also apply the African values that respect human beings and their existence.

ii. **Protocol to the African Charter on Human and Peoples' Rights of Women in Africa 2003**<sup>17</sup>

Even though Article 18 of the ACHPR characterizes women as one of the groups deserving of protection, the special measures to be directed in protecting women and ensuring the elimination of discrimination against them are not delineated. Thus, even though Convention on the Elimination of all forms of Discrimination against Women was passed two years prior to adoption of the African Charter, the Later was minimally influenced by Convention on the Elimination of all forms of Discrimination against Women provisions by incorporating only a single provision that deals on women's rights

**5.0 Implementation of International Instruments Promoting Women Land Rights and the Nigerian Constitution**

Section 12 of the 1999 Constitution of Nigeria concerns treaties and their implementation. Since international human rights instruments which seek to protect the right of women are, essentially, multi-lateral treaties, a careful examination of the provisions of section 12 becomes not only relative but imperative. The implication therefore of the foregoing in the light of the well-known principle of international law of treaties that a state cannot be bound by any agreement to which it has not given its consent/authority – either by signing, ratification, accession or any other means of declaration of intent to be bound.<sup>18</sup> Besides, most treaties are not self-executing and as such, parties to them are usually enjoined to institute local/municipal measures to guarantee the application of such treaties within their domestic systems.<sup>19</sup> it is cheery to note that Nigeria is a signatory to all the Conventions, Protocols, Declarations and Covenants examined in this paper.

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<sup>17</sup> The Maputo Protocol

<sup>18</sup> Except where such agreements are mere declarations of existing norms of customary international law.

<sup>19</sup> J S Henry et al (*International Human Rights in Context: Law, Politics and Morals* 1st edn, UK: oxford university Press 1996) pp.725-129



## **6.0 Institutional Frameworks for the Protection of Female Land Rights in Nigeria**

In Nigeria, there are some Institutions that have the responsibility of enhancing the rights of women to acquisition of properties. They include the following;

### **6.1 Federal Ministry of Women Affairs and Social Development**

The Nigerian Ministry of Women affairs <sup>20</sup> is a ministry of the Nigerian Government that promotes the development of women with equal rights and other corresponding responsibilities. The ministry is headed by a Minister who is appointed by the President, assisted by a Permanent Secretary, who is a career civil servant. The objectives of the Ministry include stimulating action to promote civic, political, social and economic participation of women; coordinating and monitoring women's program; providing technical and financial support to women, non- governmental organizations, especially the National Council of Women's Societies.

### **6.2 Civil Society and Indigenous People's Organization**

In Nigeria, there are a lot of not for profit organizations advocating for equality of land rights between male and female gender and they include the following:

- i. International Federation for Women Lawyers' (FIDA)
- ii. BAOBAB for Women's Human Rights (BAOBAB)
- iii. Women's Rights Advancement and Protection Alternative (WRAPA)

### **6.3 The Judiciary/Regular Courts**

This is the third arm of government that is vested with the power of adjudication on all matters between persons or between government or authority and any other person in Nigeria, and to all actions and proceeding relating thereto for the determination of any matter relating to the civil rights and obligations of the person.<sup>21</sup> Although, it is quite

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<sup>20</sup> This includes the Ministries of Women Affairs of the various states of the federation.

<sup>21</sup> S.6 (6) (b) of 1999 Constitution

difficult and nearly impossible to administer justice and effectively enforce human right under the condition in which the Nigerian Judiciary has found herself due to Corruption, political interference and disregard to rule of law, it is noteworthy to state that they have made tremendous progress in their effort to use the Law in furtherance of enhancing the right of women to acquisition of property.

### **7.0 Factors affecting Women Access to and Ownership of Land in Nigeria**

The social perception of women is very low mainly due to illiteracy, poverty and cultural practices, which treat women as lesser persons, weaker vessels, and objects of inheritance rather than making them subjects to inheritance. Some of the factors include:

#### **I. Patriarchal Stereotype**

This is the concept or mentality whereby the male gender believe that they are superior gender to the female gender who they believe are inferior gender. Attached to this philosophy is absolute control, over all spheres of life by men including but not limited to direction on political, social, cultural and economic rights. It allows discrimination of women; this is one of the major factors that hinder women's access to land. In *Lopez v Lopez*,<sup>22</sup> the defendants argued that females or descendants of female children of the founder have no succession rights in Land. Surprisingly, the court per Combe, CJ held that both sons and daughters were entitled to inherit from their fathers land. However, in *Sogunro- Davies v Sungunro Davies*<sup>23</sup> the court per Beckley J held that; 'Yoruba native law and custom deprived the widow of inheritance rights in her deceased husband's estate because devolution of property follows the blood, Consequently, unless, property given to a wife is proved to be an outright gift, during the life time of the husband, it will devolve on the husband's death as family property to be inherited by the deceased husband's children, or relatives where there are no children.

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<sup>22</sup> {1924} 5 NLR p.50

<sup>23</sup> [1929] 2 NLR p.79

iii. **Religion:**

In Nigeria, there are three major religions, Christianity, Islam, and African Traditional Religion. All religions limit the Rights to Inheritance for the basic fact that women are subordinate and inferior to men... Under Christianity, it is often said that God created man (Adam) and woman (Eve). If one is to go by this perception, it should be noted that God created male and female and never made anyone more inferior than the other and even the Bible says everything God created was Good and perfect, How then can a human being created by God be addressed as inferior.

Another popular verse in the Bible often quoted is Ephesians chapter 5: 22-24 for the husband is the head of the wife as Christ is the head of the church, it must be noted that there is a condition that needs to be fulfilled. In a way, this fosters patriarchal Stereotype, Even the Islam religion fosters patriarchal stereotype through their way of marriage, their mode of inheritance etc.

iv. **Poverty**

This is another factor that impedes access to land by women, most women are wired to grooming, performing house chores and ending up in a man's house, in other words all the woman's needs and necessities are being shouldered by the man, thus making her answerable to the man and as such cannot work to earn a living and buy what she needs to buy without her husband's approval, although, the narrative is changing in this modern times as women are taking charge of both the home front and the workspace globally, the fact still remains poverty has made so many women not to have access to land in Nigeria especially the rural areas.

v. **Lack of awareness of Certain Legal Provisions**

Most women particularly in the rural area are not aware of their legal rights and those who are aware most times do not have the will and resources to ensuring that their legal rights are guaranteed and safeguarded especially by the courts, enforcement of such court decisions are usually difficult.

vi. **Illiteracy**

It is a notorious fact that majority of the rural women are illiterates they cannot read and they cannot write and as such this stands as one of the major reasons why most women cannot gain access to lands.

vii. **Fear of mockery from Relatives**

Most women face backlash from their loved ones, friends as well as the society as the society has been wired that way, so this makes women not to speak up or even condemn the act meted out to them, just very few women jettison what people would say about them or how they would be mocked.

viii. **Lack of exposure**

Exposure is really a major factor or one of the major factors why women do not have access to land. Most women lack exposure, exposure here refers to charisma, and social acceptance of how the western world handles issues that is worthy of emulation.

ix. **Lack of self-empowerment**

As a result of the poverty ravaging the society especially the female gender it is important that every female gender empowers herself physically by adding value to herself, building herself intellectually, socially and most importantly financially, by this the female gender is well equipped to acquire whatever she desires without having to go through subjugation of the male gender, she can likewise acquire assets to herself and name without necessarily depending on any man or been treated as an inferior gender.

x. **Negative Customary Practices**

Already there are negative custom practices being practiced in virtually all the societies in Nigeria. For example under the Igbo customary law, it is believed that it is the first son who is referred to as the *Diokpala* that is in charge of the family and the fathers estate where he is deceased under intestate succession, under the Yoruba custom, devolution of estate, is usually discriminatory to the female gender. Islamic religion actually permits women to be managed by men they are also regarded as chattel to be inherited.

xi. **Ignorance**

Another factor that hinders women's full access to land is ignorance, most women do not know their legal rights, they do not know that their rights are enshrined and protected by the Constitution of the Land, they also are not aware of successful cases other women have had under discriminatory practices to women over land under customary law.

### **8.0 Judicial Attitude to Cases of Women Rights to Land Ownership in Nigeria**

In the celebrated case of *Mojekwu v Mojekwu*<sup>24</sup> decided by the Court, the appellant sought a declaration from the Court of Appeal, that as the only surviving male relative to his Uncle, who died in 1944 and his father who died in 1963, he was entitled to inherit property bought by his Uncle from the Mgbelekeke family of Onitsha under a Kola tenancy land tenure system. The appellant claimed the property, pursuant to the native law and custom of Nnewi, in particular the custom of Oli-ekpe. The custom prohibits the inheritance rights of females and provides that the eldest male in the family will inherit. The custom further provides that where the male issue of the direct line is deceased, the first son of the late brother of the deceased, the nephew or 'Oli-ekpe' will inherit. The appellant paid the necessary Kola to the Mgbelekeke family and the two daughters of the first wife of the deceased Uncle signed, as witnessed, the docket of consent from the Mgbelekeke family. The first wife stayed at the property and the respondent joined her later with the appellant's permission in around 1970 having gained judgment in an earlier case started in 1959 when the appellant's uncle sought to take over the property. The respondent, the second wife of the Uncle, argued that the appellant was not head of the Mojekwu family and had not inherited the property. The appellant appealed against the trial judge's decision for the respondent. The Court of Appeal held that the Nnewi custom of Oli-ekpe is discriminatory and any form of societal discrimination on grounds of sex is unconstitutional and against the principles of an egalitarian society. A court of law cannot invoke a customary law which is repugnant to natural justice, equity and good conscience. Therefore, the personal law of the appellant is not applicable and instead the law

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<sup>24</sup>[1997] 7 NWLR 283 1)

of the place where the property is situated applies, which in the present case is the Mgbелеkeke family kola customary tenancy as applied by the Kola Tenancy Law, 1935. The Land held under Kola tenancy is inheritable by children of either sex of the deceased kola tenant upon production of further kola by the succeeding child. The signature of the respondent and others on the docket stating the appellant's claim to the Kola Tenancy merely acted to authenticate the appellant's signature and did not act to estop her claim. Furthermore, the docket was merely an articulation of the Oli-ekpe custom. Subsequently, the appellants claim to the disputed property is dismissed and costs were awarded in favour of the respondent.

In the same vein, the case of *Mojekwu & Ors v Ejikeme & Ors*<sup>25</sup> Reuben Mojekwu died intestate in 1996 without any surviving children. The appellants were Reuben's two great grandsons, and his granddaughter. The granddaughter was born to Reuben's daughter Virginia and the great grandsons were born to Virginia's two daughters. The appellants claimed that the Nnewi custom of Nrachi had been performed for Virginia and accordingly the appellants were entitled to inherit Reuben's property. The Nrachi custom enabled a man to keep one of his daughters perpetually unmarried under his roof in order to raise children, especially males, to succeed him. Any of such daughters who took the position of a man in the father's house and was entitled to inherit her father's property and any children born to the woman would automatically be part of the father's household and accordingly entitled to inherit. A different custom, Ili-Ekpe, provided that where a man has no surviving male heir, (including the daughter in respect of whom Nrachi was performed, and her children) the man's brother or his male issue are entitled to inherit. The respondents, five male members of Reuben's brother's family, claimed that Nrachi was performed for Virginia's sister Comfort, who had died childless, and not Virginia. They contended that when Comfort died Reuben's family lineage became extinct, and they, rather than the appellants, should inherit Reuben's property. The legal action began when the respondents, without the appellants' permission, entered the compound once belonging to Reuben. The appellants laid claim to a

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<sup>25</sup> [2000] 5 NWLR 402

statutory right of occupancy over Reuben's estate and requested an injunction restraining the respondents from trespassing.

The Majority Opinion the Court held that the Nrachi custom, which is designed to oppress and cheat women and compromises the basic tenets of family life, was inequitable and judicially unenforceable. Accordingly, a female child does not need the performance of Nrachi in order to inherit her deceased father's estate. It held that the custom was also repugnant to natural justice because the children born to a daughter in respect of whom the ceremony is performed are denied the paternity of their natural father.<sup>26</sup> The custom was also inconsistent with public policy as it encourages promiscuity and prostitution. A female child is generally entitled to inherit her deceased father's estate and does not need to perform any customary ceremony such as Nrachi to exercise that right. The Court held that the custom of Ili-Ekpe also discriminated against women.<sup>27</sup> The fact that the appellants were born out of wedlock was immaterial since section 39 (2) of the 1979 Constitution prohibits discrimination on the grounds of circumstance of birth. In this case the acceptance into Ruben's family of the third appellant and her sister was sufficient acknowledgement of the two daughters by their grandparents to entitle them to full rights of succession to the estate of their grandfather. The Court concluded that the appellants had been in possession of Reuben's estate for many years and it would be inequitable to throw them out. The Court of Appeal held that the trial judge therefore applied two customs which are repugnant to the principles of natural justice, equity and good sense. With the Nrachi custom rendered unenforceable, the appellants, as blood relations, should have inherited Rubens's estate. Article 3 and 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls on States Parties to modify social and cultural patterns of conduct in order to eliminate prejudices, customs and practices based on the inferiority or superiority of either sex.

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<sup>26</sup> *Edet v Essien* (1932) 11 NLR 47 (Nig DC)

<sup>27</sup>(N 48)

In *Nzekwu v. Nzekwu*,<sup>28</sup> the plaintiff in this case had approached the Onitsha Division of the Anambra high Court to sue the defendant for recovery of possession of a certain property. The plaintiff also sought an injunction from the court restraining the defendant from trespassing on the property. The plaintiff in this case was the widow of a certain Daniel Nzekwu who had died in the northern city of Jos. The plaintiff husband happened to be an uncle to the 1st defendant and also the younger brother of a certain Nathaniel Nzekwu. The Plaintiff husband, the 1st defendant father and Nathaniel Nzekwu were all sons of Nzekwuojudu who had died in 1906. Nathaniel Nzekwu own son has been missing for a number of year. The Patriarch of the family Nzekwuojudu had many landed properties spread all around Onitsha, including the one in question at 8 Cole Street, Onitsha..When the plaintiff husband died in Jos, she returned to Onitsha and continued to reside in the same 8 Cole Street. She rented parts of the land out to tenants and also paid the required dues and rates on the land. She left the property during the outbreak of the Nigerian Civil War. Upon her return, the house on the property was left in ruins. She had cleared the debris. She also found the 2nd defendant on the land who claimed that it had been sold to him by the 1st defendant. The 2nd defendant sold the house again to the 3rd defendant, prompting the plaintiff to institute an action in court to recover the premises.

When the case came before the trial court at Onitsha, the court after hearing both arguments by both parties in the matter ruled in favor of the plaintiff. The defendant who was dissatisfied with the decision of the trial court Judge approached the court of appeal to have the judgment of the court quashed. The court of appeal however equally sided with the plaintiff upheld the decision of the trial court. The case then came before the Supreme Court, at this time the plaintiff in question was already deceased. The court here was quick to point out that the right action for the plaintiff should have been for recovery of possession not trespass given that she was not in possession of the property at the said time. The Supreme Court equally highlighted the Onitsha custom which provides that a widow has a right to live in her deceased husband property for the remainder of her life, so long as she

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<sup>28</sup> (1989) 2 NWLR (Pt. 104) 373



remains of good behavior that is she does not try to alienate without the permission of the husband family. The court equally pointed out that any custom which seeks to take away a widow's right to occupy the house or property of her deceased husband was repugnant to equity and good conscience. The court held that the plaintiff had only the right to occupy the property for life not full possession. The court equally stated that its decision would not in any way affect the rights of the 2nd and 3rd defendants and equally awarded N500 to both parties. The same decision was held in *Udensi v Mogbo*.<sup>29</sup>

### **9.0 Summary of Findings**

This paper examined the customary law practices obtainable in Nigeria, its implications on women's land rights in Nigeria and a few selected jurisdictions on a comparative basis with a view to highlighting how such customary practices and rules have impacted on women's access to land in Nigeria and making appropriate recommendations that will foster a better land right regime for women in Nigeria. It is very clear from the findings of this paper that there are a lot of customary practices in Nigeria that negatively affects the rights of women to acquire and own property; especially as it relates to the right of women to inherit their deceased father's or husband's estate where such a father or husband dies intestate.

This paper found that the social perception of women in most of the customs of the societies studied in this work is considerably low due to poverty, illiteracy and cultural practices which treat women as second citizens and as objects of inheritance rather than subjects of inheritance. It is on the foregoing premise that most customary law practices give men preference over women as it concerns land rights. It was observed that though Nigeria has tried to make a lot of laws for the protection of women's right, the laws may be sufficient predominantly in view of the express provisions of the Nigerian Constitution relating to right to acquire and own immovable properties and protection from compulsory acquisition as enshrined in the Constitution of both countries. However, it also found that the laws are not satisfactory because they have not been able to effectively protect the rights of women to land rights. In view of the studies conducted so

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<sup>29</sup> (1976) 10 NSCC p. 373

far, it is obvious that legal and cultural barriers to ensuring women's inheritance rights are obtainable, not only in Nigeria, but in Africa as a whole<sup>30</sup>. In fact, the concern about gender issues and disadvantaged status of women and their special needs is indeed a global one which gave rise to series of workshops, seminars, conferences and forums at the local, national and international levels. Legislators have passed laws that have little hope of implementation within the cultural context in which they are applied, legally. The above position manifests especially when the legal regime for the protection of Women's right in Nigeria is compared to that of the countries studied in this work; especially South Africa. As seen from the discourse so far,<sup>31</sup> some of the provisions contained in the Constitution of South Africa and other statutory enactments in South Africa is lacking in Nigeria's Constitutional and statutory regimes. One of the reasons for the persistent occurrence of these obnoxious customary practices is the fact that there are no laws criminalizing these practices.

## 10. Conclusion

The law being an instrument of social engineering should be applied to deal with problems arising from these practices by criminalizing them and punishing offenders. This will lead to a functional approach in the application of the law. This is because for a law to be effective and ensure its implementation, it has to provide a framework for the punishment of persons who breach the provisions of the law<sup>32</sup>. The criminalization of certain customary practices contrary to the right of women to inherit as contained in the provisions of Sections 16 and 17 of the Intestate Succession Law of Ghana<sup>33</sup> will help ensure compliance thereto. Keeping the above considerations in mind, the paper has shown the importance of creating efficient and effective

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<sup>30</sup>A M Richardson, 'Women's Inheritance Rights in Africa: The need to integrate Cultural Understanding and Legal Reform' (2004) *Human Rights Brief* 11, no 2, 19-22.

<sup>31</sup> Particularly chapters 4 and 5

<sup>32</sup> Intestate Succession Act of 1985 and also Austin, *Lectures on Jurisprudence or the Philosophy of Positive Law* (The Students edn, London: Spottiswoode & Co, 1980) [https://archive.org/details/lectureson\\_juris00campooglast](https://archive.org/details/lectureson_juris00campooglast) accessed on 13/10/2023

<sup>33</sup> Intestate Succession Act of 1985

implementation machinery supported by progressive and functional laws. The paper posits that there is adequacy of the laws but inadequacy of the political and communal will to enforce these laws.

## **11. Recommendations**

For a proper empowerment strategy that will take into account the questions of what are the problems to be tackled, why are the problems in existence and how the problems can be solved, it is therefore recommended as follows;

- i. Domestication of International Ratified Treaties: There are certain International Ratified Treaties on the Discrimination of Women that need to be domesticated, such Domestication enables it to be applicable in The Different Courts of the Federation when trying to address a wrong as it relates to Women's Right to Property in Nigeria. If domesticated it is a step in the Right direction in actualizing Women's Property Right in Nigeria.
- ii. Educational Empowerment of Females: If a female is granted access to education, it helps to refine her mind and arm her with the requisite knowledge and information about her Rights as a Human Being as well as her Rights as a citizen of Nigeria. This way, no female is intimidated because she knows all that is needed to enforce her right by way of education and this would help actualize the full reality of Women's Property Right in Nigeria.
- iii. Increased Capacity Building and Awareness; Because there is poverty and inflation is on the increase globally, there is need to increase Capacity Building and awareness to our females, this would help reduce the over dependency on the male gender and would help give every female a sense of worth and belonging as a human being and in the legal aspect, she can afford the legal fees for seeking redress in Court if need be.
- iv. Increased participation of women in Decision making: Women should be given access to the Decision making bodies like the National Assembly and State Houses of Assembly. This would increase the chances of having Gender sensitive and Friendly Bills to be passed into Law

by the various Decision making bodies which will help in the Enactment of Gender Laws which is very important in actualizing the full realty and sustainability of Women's Property Right in Nigeria.

- v. Review and amendment of all Gender Discriminatory Laws in Nigeria; The legislators in the federal and state Houses of Assembly should review and amend all gender discriminatory laws in Nigeria as this would further strengthen Women's Property Right in Nigeria.
- vi. Enactment of Gender Specific laws: The enactment of Gender Specific Laws by the Legislature would really help in the actualization and sustainability of Women's Property in Nigeria because there are lots of laws that are discriminatory to women.
- vii. Conducting conferences, symposium, seminars for a reorientation on gender discrimination and its implications. This can be done by the Federal Government through its ministries, the State Governments through its Ministries, non-governmental organizations and even private individuals. This is a very potent tool to help women protect their Rights to Property in Nigeria.
- viii. A collective effort of both traditional and religious Institutions to abrogate all discriminatory Practices. This can be done through seminars, workshops, conferences as Nigeria is a pluralistic society and respects both religious and cultural institutions. This would help as the women who suffer a lot fall under this category and thus strengthen and protect the Rights of Property of Women in Nigeria.
- ix. Criminalizing of all gender specific Laws: If there is a provision in the law enacted by the legislature to criminalize all Gender Specific Laws in Nigeria this would go a long way in further protecting Women's Property Rights in Nigeria and this would help restrain violators of the law and all others who intend to violate the Gender Specific law to restrain them from doing so.