

The Intersectionality of Gender, Class, and Ethnicity in Inheritance Rights: A Case Study of Women in Nigeria

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ABSTRACT

The intersectionality of gender, class, and ethnicity creates complex challenges for women in Nigeria regarding inheritance right. Women are largely discriminated upon from inheriting their husband's or father's estate merely on the chauvinistic basis that they are women and this unfair treatment is further based on the cultural and ethnic orientations in most part of the country where inheritance rights are first patrilineal chiefly amongst which include the Igbo and Benin custom which allows only the male children to inherit houses and landed properties of the family to the exclusion of their female counterparts. These ethnocentric practices engender unhealthy classification of women as second-class citizens. A system of ordering society whereby people are divided into sets based on perceived social or economic status. These social stratification of women despite their integral role in the society undermine their inalienable right and equality before the law more so, as women are the backbone of families and are crucial to the growth and development of communities. A comparative analysis of women inheritance right in Ghana, Zimbabwe and England would be brought to the fore to see how far they have fared when compared to Nigeria. Despite the landmark Supreme Court case of Ukeje vs Ukeje (2014) LPELR-22724(SC) which reinforced the constitutional provision guaranteeing rights of women in Nigeria to inherit from their deceased parents and indeed other plethora of cases and Statutes guarantying women's right to inheritance in Nigeria, discrimination based on gender, class and ethnicity persist. This work adopted doctrinal research methodology to unravel the intersectionality of gender, class and ethnicity and how it affects women's inheritance rights in Nigeria. This understanding is crucial as it underpins how different forms of discrimination against women interact and exacerbate inequality. It advocates in the strongest terms, the need to breakdown all ethnocentric barriers, chauvinistic tendencies and discriminatory practices in Nigeria which undermine women's right to inheritance as guaranteed by relevant laws across the country as evidently shown in the literature review in this work. The Court, the Legislature, communities, NGO's, International bodies and all and sundry most continue to advocate and campaign vigorously for women's inheritance right beyond the rigid identities such extreme tendencies and factors promote for we are all equal before God. Women must only be identified by their differing, complimentary and separates roles in society and not on the mere basis of their gender as women as this is unhealthy and undermine international standards, human rights, and best practices.

Keywords: Intersectionality, Gender, Class, Ethnicity, inheritance, discrimination, Women, Right

INTRODUCTION

Nigerian women¹ have been marginalized in different spheres of existence.²This marginalization is loudest in inheritance³ and distribution of real estate of intestate property of a spouse or parent. It

¹ The word 'women' as used in this work covers all classes of the female gender, that is, mothers, wives, daughters or sisters.

² B. N Okpalaobi, PhD & A. Iguh, PhD Nigerian Women and Right to Freedom from Discrimination: Family in the Laws – A Reader. Nnewi Diocesan Archival Series, Great M Print and Publishers, Onitsha 2013.

does also appear that this discrimination against women inheritance⁴ is largely practiced in Benin and in the Igbo speaking areas of the country. The Igbo speaking areas of the country comprises mainly of entire Anambra, Imo, Enugu, Ebonyi and Abia State where female children do not enjoy the right to inherit land.⁵ However, among the Yorubas, inheritance and distribution of estate is on equal basis irrespective of gender.⁶ Gender, class and ethnicity or cultural inclinations are major factors used by handlers of this discrimination and male chauvinistic tendencies against women inheritance rights. For instance, where native law does not recognize daughters' right to inherit, the prohibition is absolute. That is, for instance, where there are nine daughters and a son, the son inherits everything. It is of no moment that he is the youngest or a minor. Even where all the children are daughters, they are barred from inheriting immovable property. The property goes to their father's agnate relations.⁷ Using doctrinal approach, it is revealed in this work that a dispassionate appraisal of the intersectionality of gender, class and ethnicity in Nigeria reveals series of inhuman treatment, marginalization, unfair stratification, and ethnocentric practices against women which limits their rights to inheritance contrary to clear Constitutional provisions, international treaties and Conventions guarantying it. A comparative analysis of women inheritance right in Ghana, Zimbabwe and England would be brought to the fore to see how far they have fared when compared to Nigeria. Despite the landmark Supreme Court case of *Ukeje vs Ukeje* (2014) LPELR-22724(SC) which reinforced the constitutional provision guarantying rights of women in Nigeria to inherit from their deceased parents and indeed other plethora of cases and Statutes guarantying women's right to inheritance in Nigeria, this discrimination based on gender, class and ethnicity persist. This work advocates in the strongest terms, the need to breakdown all ethnocentric barriers, chauvinistic tendencies and discriminatory practices in Nigeria which undermine women's right to inheritance as guaranteed by relevant laws across the country. The Court, the Legislature, communities, NGO's, International bodies and all and sundry most continue to advocate and campaign vigorously for women's inheritance right beyond the rigid identities such extreme tendencies and factors promote for we are all equal before God. Women must only be identified by their differing, complimentary and separates roles which they play in society and not on the mere basis of their gender as women as this is unhealthy and undermines international standards, human rights, and best practices. These campaigns must also bring to bear the proper perspectives in which gender, class and ethnicity should be understood or applied in a society for enhanced development and mutual co-existence of men and women.

³ Inheritance as used in this work refers to land which is "an estate or interest in real property" and this covers both the physical structure and interest therein. See I. O Smith, *Practical Approach to Law of Real Property in Nigeria* (1st Ed, Ecovatch Publications Ltd., 1999, Lagos) p. 5

⁴ Inheritance rights in this work are largely concerned with intestate inheritance as against testate inheritance. Testate succession or inheritance refers to devaluation of real estate of a man in accordance with the dictates of his Will. Where a valid Will is made by a man declaring how his properties including real estate would be shared upon his death, such Will would be given full effect by the Court even if the man gave out his landed properties to his female children or to his wife. See: *Okafor v. Okafor* (2014) LPELR-23561 (CA) but note section 3(1) of the Wills Law, 1958 which provides for real or personal estate which cannot be disposed by the applicable customary law Same cannot be disposed by Will like the house wherein a man lived and died under Igbo native law and custom which cannot be disposed by a Will: See: *Idehen v. Idehen* (1991) 6 NWLR (Pt. 198); E. I Nwogugu, *Family law in Nigeria* (3rd Edition, HEBN Publishers PLC, 2014) p. 399

⁵ Nwufu and Okoli, "Rights of Women," 208

⁶ R.A Onuoha *Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue*. *The International Journal of Not-For Profit Law*. Vol. 10, Issue 2, 2008.

⁷ *Ibid* p. 18

NIGERIA'S HISTORICAL PERSPECTIVES OF GENDER, CLASS AND ETHNICITY IN WOMEN INHERITANCE RIGHT

Many cultural practices have been put in place since time immemorial, to subjugate women in male dominated societies. One of such practices is denying a widow any right to succeed to her husband's property. It is usually declared and assumed that the woman herself is a chattel, bought and paid for, to be inherited by close male members of her husband's family.⁸ In any case, succession is always assumed to follow the blood.⁹

Native succession rules vary from community to community. This is largely accounted for by the unique historical development of each political or social grouping and consequent variation of legal and institutional structures in different polities¹⁰. However, the land tenure system prevalent in Nigeria does not encourage the effective participation of women. Land is one of the vital factors of production which traditionally is concentrated in the hands of the family as a unit. The family head, usually a male,¹¹ allocates, and on the basis of need to the family members for agricultural or other purposes.¹² Such family property or land was not expected to be alienated without the consent of the family-head and principal members.¹³ In the scheme of things, women had no voice and were usually not allocated such land for farming or other purposes. In addition, cultural restrictions limit the economic activities of women such that the prospect of self-acquired property is usually beyond their reach. Statistics reveal that in Africa, rural women account for more than 60% of the agricultural labour force, yet they receive less than 10% of the credit allocated to small farmers and are denied access to land through discriminatory inheritance and succession laws¹⁴.

The condition of women in Nigeria in the pre-colonial era which has largely affected the present ethnocentric practices was that of subjugation and subordination. Women were seen as being subordinate when compared to their male counterparts.¹⁵ Nigeria's pre-colonial era considered the world as belonging to men and that a women's place is at the kitchen. Male children were sent to school while their female counterparts remained at home doing house chores and waiting when they would be married off. At their husband's house, their most revered duty was that of bearing and catering for their children and farming their husband's land to assist in feeding them and

⁸ B. N Okpalaobi, PhD & A. Iguh, PhD Nigerian Women and Right to Freedom from Discrimination: opt cit. p. 146 - 147

⁹ Generally, The Customary Law Manual: A Manual of Customary Law, applicable in Anambra and Imo State of Nigeria. Ministry of Justice, Anambra 1997; *Nezianya v. Okagbue* 1963 1 all N.L.R 352

¹⁰ R.A Onuoha Discriminatory Property Inheritance Under Customary Law in Nigeria.

¹¹ In Yoruba land, female can hold the position of the headship of her family See: *Lewis v. Bankole* (1909) 1 NLR 82

¹² B. N Okpalaobi, PhD & A. Iguh, PhD Nigerian Women and Right to Freedom from Discrimination: *ibid.* p. 147

¹³ E. Onyekpere, Enforcement of Fundamental Rights of Women Shelter Rights Initiatives, Lagos Mbeyi & Associates (Nig) Lagos 1998, p. 27.

¹⁴ B. N Okpalaobi, PhD & A. Iguh, PhD Nigerian Women and Right to Freedom from Discrimination: *ibid.* p. 148

¹⁵ S. F Folarin, & O.D Udoh 'Beijing Declaration and Women's Property Rights in Nigeria' (2014) European Scientific Journal Vol. 10, No. 34, 239-249 at 240.

nothing more¹⁶. Even though women in pre-colonial societies held a complimentary position to men but, patrilineal, patriarchal kingship structures and land ownership and succession customs predominated Nigerian Society. Women were not even given a chance to state their views, participate, give evidence or have a say on land transactions not to talk of owning one. Women in pre-colonial Nigeria were not the owners of the land which they farm but could only farm on their husband's land as they were not entitled to own land¹⁷ neither were they eligible to inherit family property¹⁸ and this is more so where the woman did not give birth to a male son for her husband.

In the colonial era, despite the introduction of education, political and economic rights, the colonial administration did not improve the economic condition of women but reinforced patriarchal conceptions and male oriented policies which perpetuated gender inequality. Women education was still viewed as ending in the 'kitchen'. Much of the legislation concerning women in colonial and pre-colonial Nigeria attempted to control them, their sexuality and fertility, further defining their subordination. The beginning of colonial rule brought to Africa the European notion that women belonged in the home, nurturing their family. At the same time the societies expected women to work but this work was considered by the society as being complimentary to that done by men but focusing colonial economics on men.¹⁹

POST-COLONIAL NIGERIA

It is worthy of note that the right of women in the post-colonial era witnessed positive changes largely due to independence from colonial rule, education/enlightenment and constitutional development in the country. For instance, Chapter 3 of the 1960 Constitutional Order in Council, which paved way for independence in Nigeria, had provisions for fundamental human rights.²⁰ Chapter 4 of the 1999 Constitution sections 33-43 also provided for and guaranteed fundamental rights to life, dignity of human person, personal liberty, freedom of movement, freedom from discrimination and right against compulsory acquisition of property without compensation. Additionally, Nigeria participated in International Conferences that advocated for recognition and protection of women's right including Women's Conference in Mexico (1975), World Conference in Copenhagen (1980), Nairobi Conference (1985), the World Conference on Human Rights (1993) and the all-important Beijing Conference in 1995.²¹ Nigeria also ratified several international conventions and treaties that protected the rights of women including the 1979 Convention on the

¹⁶ According to J. Njoku the world belongs to men, J. Njoku, *The World of Africa* (London: Scarecrows Press Inc., 1980); B. Williams, *Women in Modern life: The psychology Series* (No. 5; New York: Fordham University Press, 1968) p. 4

¹⁷ J. Akande, '31 Years of Womanhood' in J Sakande, *Miscellany at law and Gender Relations* (Lagos: MIJ Professions Publishers Ltd 1999) p.114

¹⁸ N. M Abdulraheem however noted that despite these pre-colonial subjugation, women still had some rights termed as "personal rights" which entitles them to have access to personal property such as farm lands. N. M Abdulraheem, 'Rights of Women in Pre & Post Colonial Era in Nigeria: Challenges for Today' (2010) *Journal of Public law*, 3(2) pp. 83-93 published by Department of Public law, Kogi State University, Anyigba, Nigeria.

¹⁹ Maria Rojas '94 (English 32, 1990), "Women in Pre-Colonial Nigeria "African Postcolonial Literature in English in the Postcolonial Web; <https://www.postcolonialweb.org/Nigeria/precolwon.html> accessed on 10:06pm On 1/02/2018

²⁰ P. Oluyede, *Constitutional Law in Nigeria* (Lagos: Evans Brothers Nigeria, 1992) p. 29

²¹ S. F Folarin, & O.D Udoh 'Beijing Declaration and Women's Property Rights in Nigeria' (2014) op. cit p. 242

Elimination of all forms of Discrimination against Women²² and the 1995 Beijing Plan of Action.²³ In 1982, a Committee on Women and Development, was inaugurated by the Federal Ministry of Social Development, Youths and Sports. The Committee was charged with the responsibility on advising the said Ministry on education, employment, health and agriculture and to conduct research into challenges facing women and evolve measures to address them so as to enhance the advancement and development of women in all spheres of life.²⁴ Interestingly, Nigeria's adoption of the Beijing Platform for Action led to the creation of the Federal Ministry of Women Affairs and Youth Development and later on 21st April, 2004, it became the Federal Ministry of Women Affairs as we know it today. The Ministry is charged to ensure the promotion of equal rights between men and women and 'corresponding obligation through advocacy and service delivery programs.'²⁵ The Ministry is also responsible for formulating policies that focus on the needs and aspirations of Nigerian women and children²⁶.

INTERSECTIONALITY OF GENDER, CLASS, AND ETHNICITY IN WOMEN'S INHERITANCE RIGHT IN NIGERIA

The existing gender inequalities in access to and control over land and natural resources in Nigeria caused by obnoxious customary practices constitutes huge obstacles to sustainable management of natural resources and socio-economic development.²⁷ For Anyogu and Okpalaobi²⁸, poverty, illiteracy, fear of negative reaction from relatives, lack of political will and stifling government policies constitutes constraints and challenges facing women in the enjoyment of their rights. According to Ahansi,²⁹ "the majority of Nigerian women do not possess control over the resources like finance and education that would make them less vulnerable to maltreatment and impoverishment should their husband die. The socio-cultural conditions that make widowhood such an unpleasant experience for many women in Nigeria do so because women are not able to mediate or modify the cultural influences as a result of the structural disadvantage that women suffer, for not having access to productive resources. This fact makes them dependent on men who are the main beneficiaries of the cultural conditions conducive for widow maltreatment."

²² The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) is an International Treaty adopted on 16 December, 1979 by the United Nations General Assembly is described as an international bill of rights for Women Wikipedia Foundation Inc, 'Convention on the Elimination on the elimination of all Forms of Discrimination Against <Women, : https://en.wikipedia.org/wiki/Convention_on_the_elimination_of_all_Forms_of_Discrimination_against_Women> access 05/02/2018.

²³ S. F Folarin & O. D Udoh *ibid*.

²⁴ H. Sani, *Women and National Development: The Way Forward*, Spectrum Books Limited, 2001, Lagos, p. 78.

²⁵ H. Sani, *ibid*. p. 80

²⁶ Federal Ministry of Women Affairs, 'Nigeria's Report on the Implementation of the Beijing Platform for Action and Commonwealth Plan of Action' 2018

²⁷ M. Odeny, 'Improving Access to land and strengthening Women's Land Rights in Africa', being a paper presented at the Annual World Bank Conference on land and poverty' held in Washington DC, April 8/11/2013.

²⁸ F. Anyogu and B. N Okpalaobi, 'Human Right Issues and Women's Experiences on demanding their Rights in their Communities: The Way Forward Nigeria' (2016) *Global Journal of Politics and law Research* Vol. 4, No. 1, pp. 9-17.

²⁹ B. Ahansi "Society , Culture and the Status of Widows in Contemporary Nigeria" in Owansonoye and Ahansi (eds.) *Widowhood in Nigeria: Issues, Problems and Prospects*, FEF and Human Development Initiatives, 1997

As a general rule, customary rules of succession in Nigeria are predominantly patrilineal even though the Yoruba system in particular is non-discriminatory and favours a certain degree of equality between sexes. There are communities like the Binis of Edo State where the practice of primogeniture (inheritance by first born son) is predominant, and a few communities in the North, where the practice of ultimo geniture (inheritance by youngest son) is common³⁰.

A brief highlight of inheritance rights in some ethnic groups in Nigeria including Yoruba, Igbo, Benin³¹, and Hausa/Sharia law would further bring to bear these discriminatory and chauvinistic practices against women which greatly undermine their said inheritance right.

WOMEN INHERITANCE RIGHT UNDER YORUBA CUSTOM

In Yoruba land, female can hold the position of the headship of her family³². Also, in the distribution of family property sons and daughters are put on the same footing of equality without discrimination on the grounds of gender. Where there is partition of family property priority of choice is based on the eldest born, regardless of gender³³. It is the same where family property is sold, the proceeds of such sale are shared equally among siblings without preference to sons³⁴. Women also have equal inheritance rights as sons among the Epes of Lagos State. In the Yoruba culture, in the absence of a son, all of a person's estate goes to heiresses; collateral relations have no foothold in the estate. In the case of *Folami v Cole*,³⁵ the man's children were all daughters, the eldest daughter acted as head of the family; her sale of family property on behalf of others was held voidable, not void. Also, in the case of *Amusan v. Olawuni*,³⁶ a daughter inherited her father's land as the only child.³⁷

WOMEN INHERITANCE RIGHT UNDER IGBO CUSTOM

Succession under Igbo culture is primogeniture and patrilineal in nature. The property of an Igbo man who dies intestate is inherited by his son or sons to the exclusion of his female children or daughters. Where there is no son, the property devolves to his brothers or agnate relations. Unlike the Yorubas in the West, females cannot head families in Igbo land no matter their position in the line of birth. The eldest male child of an Igbo family known as the Okpala is the major channel of succession³⁸. A widow has no ownership rights over property of her deceased husband and she is only entitled to possessory rights of her husband's house which is subject to good behavior. A

³⁰ Itse Sagay, *Nigerian Law of Succession*, Malthouse Press limited Lagos, 2006. P.40

³¹ Succession under Binin customary law in Nigeria is governed by the principles of primogeniture similar to the IgbIo culture. The eldest son under Binin native law and custom is entitled to inherit the house known as Igiogbe of a man notwithstanding any instruction, disposition in a will or family arrangement to the contrary. See: *Idehen v. Idehen* (1991) 6 NWLR pt. 198 p. 382 (SC).

³² *Lewis v. Bankole* (1909) 1 NLR 82

³³ *Ricardo v. Abal* (1926) 7 NLR 58

³⁴ *Sule v. Ajisegiri* (1937) 13 NLR 146; *Barretto v. Oniga* (1961) WNLR 112

³⁵ (1990) 2NWLR (pt. 133) 445

³⁶ (2002) 12 NWLR (pt. 780) 30, CA

³⁷ R.A Onuoha *Discriminatory Property Inheritance Under Customary Law in Nigeria*. Opt. cit. page 10

³⁸ Itse Sagay *Ibid* p.142

widow has no right to keep any movable property, even if she used the same property during her husband's life. She is however given the right to reap fruit from trees on the matrimonial estate³⁹.

INTESTATE SUCCESSION IN NORTHERN NIGERIA AND OR ISLAMIC LAW

Succession in Northern Nigeria is predominantly based on Moslem religious law set out in the Quran. The estate of a deceased Muslim intestate is usually shared among those entitled to succeed him under the law. According to the decision of the court in the case of **Yinusa v. Adesubokan**⁴⁰, in the distribution of the estate of a deceased Muslim, the sons must get equal share while the females have half a share each. Under Moslem law, distribution of the estate of a deceased intestate is based exclusively on per capita system of distribution.⁴¹ A wife has the right to only one-quarter of the estate if her deceased husband has no descendants and one-eighth if there are heirs. Under the Sharia law, a sole surviving female daughter would inherit half of the estate whereas a sole surviving son inherits the entire estate. This is clearly discriminatory against women.

TOWARDS PROPER PERSPECTIVE OF GENDER, CLASS AND ETHNICITY IN WOMEN INHERITANCE RIGHTS IN NIGERIA, THE CONSTITUTION, THE COURT, CONVENTIONS AND THE REST OF US

In almost all social systems, there are those whose prime occupation and preoccupation is seeking to reap where they neither planted nor watered⁴². To prevent this, some foresightful persons make a Will with the hope that it would eliminate the discrimination daughters (women) face⁴³. It is however commendable and worthy to note that amongst the Yorubas, inheritance and distribution of estate is equal irrespective of gender. Osborn CJ's decision to the effect that a female can hold the position of headship of her family may have emboldened subsequent judges to hold that in the distribution of family property, sons and daughters should be put on a footing of equality without discrimination on the ground of gender⁴⁴. Where there is partition of family property, priority of choice is based on the eldest born, regardless of gender⁴⁵.

THE CONSTITUTION

Section 42 of the Nigerian Constitution⁴⁶ provides as follows:

“ (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion, or political opinion shall not, by reason only that he is such a person:

³⁹ R. Mordi, 'An Appraisal of Inheritance Rights of Women in Nigeria'

https://www.academia.edu/7187814/AN_APPRAISAL_OF_INHERITANCE_RIGHTS_OF_WOMEN_IN_NIGERIA?auto=download accessed 05/02/2018.

⁴⁰ Suit No. SC/1970

⁴¹ Itse Sagay Ibid p.144

⁴² For instance the oli-ekpe custom in Igbo land where the agnate relation of a man inherit the estate of a deceased relation who did not have a son even if such a man had daughters who survived him. See: *Mojekwu v. Iwuchukwu* (2004) 4. S. C (Pt. II)1 where the Supreme Court of Nigeria held that such custom is repugnant to natural justice, equity and good conscience.

⁴³ R.A. Onuoha P.19

⁴⁴ Ibid

⁴⁵ *Ricardo v. Abal* (1926) 7 NLR 58

⁴⁶ 1999 Constitution of the Federal Republic of Nigeria Cap. C23 LFN, 2004

- (a) Be subjected either expressly by, or in practical application of, any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinion are not made subject to;...”

The Constitution did not define the term ‘discrimination’, but the New Lexicon Webster’s Dictionary of English Language defined it as the making of distinctions often unfair in meting out treatment, service, et cetera⁴⁷. General Comment No. 18 on Non-Discrimination⁴⁸ defined it broadly to include:

“Any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

The Constitution of Nigerian is the Grund norm of all laws in Nigeria. It is reassuring to know as seen from the above section 42 that it provides and protects women from discrimination of all forms including inheritance right. It is therefore an affront to the Constitution to deny any woman in Nigeria the right to inheritance merely on the basis of gender, class or ethnicity or merely on the basis that the person is a woman.

Other Laws and or Statutes which protects and or provides for Women Inheritance Rights in Nigeria includes Anambra State Malpractices Women and Widowers (Prohibition) Law 2005, Anambra State Gender and Equal Opportunities Commission Law, 2007, Enugu State Prohibition of Infringement of a Widow’s and Widower’s Fundamental Right Law No. 3, 2001 and the Imo State Gender and Equal Opportunities Law No. 7 of 2007 amongst others.

THE COURT

The Courts have in recent times leveraged greatly on Constitutional provisions in judicially advocating for the rights of women to a share of their father’s or husband’s property away from the old ethnocentric, patrilineal and chauvinistic practices. In the case of **Asika v. Atuanya**⁴⁹, Demton-West JCA stated at the close of a comprehensive judgment thus:

“It is the duty of the court to stand firm and assert the rights of ownership of land by women in any part of the country as enshrined by the Constitution. Whatever the Constitution stipulated must be adhered to. The Constitution may be stiff or hard, it takes supremacy over and above any form of social engineering, equitable engineering, native law and custom and indeed other enactments.”⁵⁰

The Widow in **Nzekwu v. Nzekwu**⁵¹ sued because her possession of her husband’s house was challenged by the head of the extended family as she had only daughters. Same was the case of the

⁴⁷ Delux Encyclopedic Edition, Lexicon Publications Inc. Danbury CT, 1996

⁴⁸ Adopted at its 37th Session in 1989 by the Committee which monitors the implementation of the International Covenant on Civil and political Rights.

⁴⁹ (2008) 17NWLR (Pt. 1117) 484

⁵⁰ Ibid at 514

⁵¹ (1989) 1NSCC 581, (1989)2 NWLR (PT. 104) 373

widow in **Anekwe v. Nweke**⁵² who had six daughters, with no son. She prevailed in her wrestling with her deceased husband's agnate family ultimately for the benefits of the daughters who did not sue as they apparently feared that their claim would be fruitless.⁵³ In the case of **Ukeje vs Ukeje**⁵⁴ the Supreme Court, per Rhodes-Vivour JSC stated thus:

“No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father’s estate. Consequently, the Igbo customary law which disentitles a female child from partaking in the sharing of her deceased father’s estate is in breach of section 42 of the 1999 Constitution.”⁵⁵

The facts of **Ukeje vs Ukeje**⁵⁶ was that on December 1981, Lazarus Ogbonnaya Ukeje, a native of Umuahia in Imo State (presently Abia State) died intestate. He had real property in Lagos State and for most of his life was resident in Lagos State. The 1st Appellant got married to the deceased on 13th December, 1956. There are four children of the marriage. The Respondent is one of the four. After Lazarus Ukeje died, the 1st and 2nd Appellants (mother and son) obtained letters of administration for and over the deceased's estate. On being aware of this development, the Plaintiff/Respondent filed an action in court wherein she claimed to be a daughter of the deceased and by virtue of that fact had a right to partake in the sharing of her late father's estate. The trial court agreed with her and set aside the letters of Administration and ordered the 1st and 2nd Appellants to hand over the administration of the estate to the Administrator- General pending when the deceased children would choose 3 or four of them to apply for fresh letters of administration. The Appellants were aggrieved but their appealed to the Court of Appeal and to the Supreme Court were unsuccessful as the Supreme Court upheld the decisions of the trial court and Court of Appeal.

In **Mojekwu v. Mojekwu**,⁵⁷ the custom is that where a man dies either childless or without a son or grandson, his closest agnate relation survives to immovable property. In that capacity, he 'inherits' the deceased widow and has authority to give his nieces or cousins away in marriage. Tobi JCA in a famous decision handed down a judicial assault to this custom while upholding the right of women to inherit as follows:

“We need not travel all the way to Beijing to know that some of our customs... are not consistent with our civilized world in which we all live today. It is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing.”

⁵² (2014) 9 NWLR (Pt. 1412) 393, noted in B. Oni, “ Good Riddance: Supreme Court Judgment on Female inheritance in Igbo land Upholds Gender Equality,” (2014) 32 Journal of Private and Property law, 155

⁵³ R.A Onuoha P.19

⁵⁴ (2014) 11 NWLR (Pt. 1418), 384, discussed in M. Attah, “ State Protection of Individual Interest in the Family: An Evaluation of Recent Judicial Decisions in Nigeria’s Family law,” (2015/16) Nigerian Current law Review, 176

⁵⁵ Ibid at 407- 408.. See also **Mojekwu v. Iwuchukwu** (2004) (Pt. 883) 196, affirming **Mojekwu v. Mojekwu** (1997) 7 NWLR (Pt. 512) 283 and **Muojekwu v. Ejikeme** (2000) 5 NWLR (Pt. 657) 402, CA

⁵⁶ Ibid.

⁵⁷ (1997) 7 NWLR (Pt. 512) 283

Pats-Acholonu JCA's also lend his voice in the judicial advocacy against relegation of women as second class citizens and to put women's right to inheritance in the front burner. He held in the case of *Uke v. Iro*⁵⁸ thus:

*“Any law or custom that seeks to relegate women to the status of second class citizen thus depriving them of their invaluable and constitutionally guaranteed rights are laws and customs fit for the garbage and consigned to history. It is apostasy to say that a woman cannot be sued or cannot be called to give evidence in relation to land subject to customary right of inheritance. I reject that argument in its entirety. A custom which strives to deprive a woman of constitutionally guaranteed rights is otiose and offends the provisions that guaranteed sexual protection under the law.”*⁵⁹

Courts recognize that native law changes with socio-economic and cultural realities. As for the most part, there is no forum at the traditional level for changing native law, it behooves on the Judges to ensure that the law keeps in step with social realities.⁶⁰

CONVENTIONS

The United Nations Convention on Elimination of All Forms of Discrimination against Women (CEDAW) was evolved in response to discrimination against women inheritance right. In *Muojekwu v. Ejikeme*⁶¹ Tobi JCA, a gifted legal jurist suggested the use of Article 5 of CEDAW as a legal tool to ensure that daughters have access to their parents' estate by inheritance⁶²:

*“By Article 5 (of CEDAW), State parties are called upon to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women. In my humble view, (the house –owner's daughter) is a victim of the prejudices anticipated in Article 5. In view of the fact that Nigeria is a party to the Convention, courts of law should give or provide teeth to its provisions. That is one major way of ameliorating the unfortunate situation (the house-owner's daughter) found herself, a situation where she was forced to rely on an uncouth custom not only against the laws of Nigeria but also against nature.”*⁶³

There are also other International and Regional Declarations, Conventions and Treaties which prohibits discrimination against women and or protects her right to inheritance. These includes Universal Declaration of Human Rights of 1948, International Covenant on Economic, Social and Cultural Rights,⁶⁴ Beijing Conference/Declaration of 1995 adopted by 189 countries, African Charter on Human And peoples' Right,⁶⁵ and the Protocol to the African Charter on Human and

⁵⁸ (2001) 11 NWLR (PT. 723) 196

⁵⁹ Ibid at 202-203

⁶⁰ Ibid. p. 204

⁶¹ *Muojekwu v. Ejikeme* (2000) 5 NWLR (Pt. 657) 402, CA

⁶² *Itse Sagay* Ibid 323

⁶³ Ibid at 324

⁶⁴ This is a multi lateral treaty adopted on 16th December, 1966 and became operational on 3rd January, 1976 by the United nations General Assembly. This Covenant binds members to ensure and grant economic, social and cultural rights to citizens of their State.

⁶⁵ African Charter on Human and Peoples' Rights (ACHPR) was adopted on 27th June, 1981 and became enforced on 21st October, 1986. Nigeria is one of the signatory to this Charter and same has been

Peoples Right on Rights of Women in Africa 2003 (the Maputo Protocol), Violence Against Persons (Prohibition) Act, 2005 amongst others⁶⁶.

THE REST OF US

If you change the way you look at things, the things you look at would change. This brings to the fore the issue of perspectives- how we see things or people. It takes a change of perspective to have a change of attitude.⁶⁷ For the rest of us, it is advocated that no one whether traditional rulers, court, legislature, executive or individual citizens should retain a custom which undermines the right of women to inheritance in this fast-changing world. No Court should concede to a litigant's urging to put the clock back.⁶⁸ Children, irrespective of gender, and even the wife of a man may have even assisted their parents and or husband financially, morally or otherwise in the acquisition of the property which is the subject of contest of intestate succession⁶⁹. It is clear in such circumstances and indeed, in all circumstances that there is huge inequity where a daughter or wife is prevented from inheriting the same property solely on the account of gender. In the light of the above, what should therefore be the proper perspective in which we should understand or apply gender, class and ethnicity so as not to undermine inheritance rights of women? It must be emphasized that women are by nature designed to carry out separate or different roles from their male counterparts and vice visa. They are therefore not subordinate to men but different from men in terms of roles, responsibilities and abilities. Women are the backbone of families and communities who provide care, support, and nurturing to their families and are essential to the development of children. They should therefore be given equal opportunity like their male counterparts to create and make wealth and which will enhance speedy development of their families and society. They should not be seen as second-class citizens. Women like Chimamanda Adiche the international Bestselling Author, Ngoji Okoji Iweala the World Bank President amongst the host of others have shown that women are intellectually endowed and leaders who are capable of shaping governmental policies, create impact and engender human development if given the opportunity. Ethnic practices carry with it the identity, beliefs and values of any society. They should truly be cherished by all but where there is a conflict between these cultures and inalienable rights of women from discrimination and dignity of human person, the former must give way in the interest of justice, equity and good conscience. It is primitive for one to think that women are in competition with men. Their roles are rather complimentary.

The world has become small and its shrinkage continues as the communication of ideas quickens so that today comparisons between legal institutions in different parts of it are not only possible and meaningful, but imperative. Deep-seated local preferences should yield to today's contacts with other parts of the world⁷⁰.

domesticated in Nigeria as one of our laws. See: African Charter on Human and Peoples' Rights (Ratification Enforcement) Act Cap. A9, LFN 2004.

⁶⁶ For further information on Human Rights Treaties within States' Legal and political systems, see J. S Henry et al, *International Human Rights in Context: law, Politics, And Morals* (1st Edn., UK: Oxford University Press, 1996) pp. 725-729

⁶⁷ W. F Kumuyi 'Daily Manner A daily Devotional Guide' Life press Ltd, Lagos 2018 p. 230

⁶⁸ R.A Onuoha Ibid Pg. 12

⁶⁹ Ibid. p. 12

⁷⁰ Ibid. p. 13

COMPARATIVE ANALYSIS OF OTHER JURISDICTIONS IN WOMEN INHERITANCE RIGHTS: GHANA, ZIMBABWE AND ENGLAND

GHANA

Ghana prides herself as an exemplary country and leader in the protection of women inheritance right in Africa⁷¹. This is particularly given her passing into law the Intestate Succession Law in 1985.⁷² In Ghana, traditional authority and customary rules plays the most significant influence in land ownership and use arrangement⁷³. The Intestate Succession Law⁷⁴ protects a spouse's property rights in intestate succession. The law applies to self-acquired property after 1985 which has been bought, inherited or would have been inherited⁷⁵. This Law was considered by Tivuyanago⁷⁶ as the most progressive inheritance and succession law on the continent. The law provided a uniform intestate succession system applicable throughout the country irrespective of class, marriage and lineage. It suffices to state that this law pushed inheritance rights to the Statute Book⁷⁷ thereby further securing and preserving women's inheritance rights unlike Nigeria where this protection is largely based on advocacy of some Judges and at the whims and caprices of traditional rulers or villages heads where men hold sway and where patrilineal customary land tenure system is practiced.

ZIMBABWE

Like Nigeria, Zimbabwe is a constitutional supremacy jurisdiction whose legal system is pluralistic/hybrid and or mixed in that, it is a combination of English Common law, Roman- Dutch Civil Law and Customary law⁷⁸ Zimbabwe's Age of Majority Act 1982 gives women equal inheritance right in Zimbabwe. Prior to this Act, women were regarded as perpetual minors under native law. By the Act, this fundamental principle of native law was abolished and equal status was crated between men and women thereby removing the legal disabilities Zimbabwean women suffered.⁷⁹ Shortly after the Act was enacted, the Zimbabwean Supreme Court applied it to hold that a daughter was rightly appointed the intestate heiress to her father's property⁸⁰. Again, the procrastination on the part of the Nigerian parliaments to enact statutes such as this one from

⁷¹ This is in addition to her ratification of numerous international human rights treaties and Conventions including Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the African Charter on Human And peoples Right.

⁷² The Provisional National Defense Council, or PNDC, Law 111)

⁷³ G. A Sarpong, (2006) Improving Tenure security for the rural poor- Customary case study. LEP Working Paper No. 2 Workshop for Sub-Saharan Africa <http://www.fao.org/3/a-k0783e.pdf> accessed on 16/02/2018

⁷⁴ The Constitution of Ghana in Articles 18 and 20 also makes provision for the right of all citizens including women to acquire and own immovable properties in the country.

⁷⁵ Intestate Law in Ghana-CQ legal <https://www.cqlegal.net> accessed on 06/08/2018 by 11:02pm.

⁷⁶ S. Tivuyanago ' Is Customary Law A Hindrance to Women's Right in Democratic South Africa?' (2015) Global Journal of Human Social Science: Sociology & Culture Vol. XV issue viii, p. 14-32

⁷⁷ K. Skinner 'The most extensive reform ever made in the private law of Ghana': a political history of the 1985 Intestate Succession law <https://doi.org/10.1080/09612025.2018.2367801> published online: 19th June, 2017. Accessed on 06/02/2018 by 11:27pm.

⁷⁸ Litigation & Dispute Resolution laws and Regulations Zimbabwe 2017 <https://icl.com>practice-areas> accessed on 06/08/2018 by 11:42pm

⁷⁹ Itse Sagay Ibid p.324

⁸⁰ Chihowa v. Mangwende SC Judgment No. 84/87 cited in S. Coldham, "Customary Law and Local Courts Act, 1990 of Zimbabwe," (1990) 34 Journal of African law, 163, 164

Zimbabwe to strengthen court declarations to alleviate the plight of daughters belies its commitment to the terms of CEDAW.⁸¹

ENGLAND

Extensively, Nigeria's succession law reflects that of England and this is largely due to its colonization by the British Empire⁸². However, in 1922, the law of property Act enabled a husband and a wife to inherit each other's property, and also granted them equal rights to inherit the property of intestate children. Under legislation passed in 1926, women were allowed to hold and dispose of property on the same terms as men.⁸³ Interestingly and recently in 2014, England promulgated a new law which further boasted and enhanced women's inheritance right. That is, the Inheritance and Trustee Powers Act, 2014 (ITPA 2014). This law has changed the rules relating to intestacy resulting in a more favourable distribution of spouses and civil partners. Before this ITPA Act, where a deceased dies leaving a surviving spouse or civil partner but no children, in such a case, the surviving spouse or civil partner was entitled to 'Statutory legacy' of 450,000 dollars inheritance tax free. The rest of the estate would then be divided between other members of the deceased's family such as parents or siblings. However, under the new rules, a surviving spouse or civil partner will inherit the entirety of their deceased partner's estate where there are no surviving spouse and children. This new law which simplifies intestate process is seen as a positive change because it favours or rather protects the surviving spouse who may be a surviving widow or civil partner. It has been argued alternatively that the new rule (Act) put too much emphasis on the rights of a surviving spouses and civil partners and not enough focus on the children, who stand to lose out as a result of the ITPA 2014. This feeling of injustice for the children is often exacerbated when the spouse due to benefit under the new rules is the result of deceased's second or third marriage. The ITPA also makes no provision at all for common law couples.⁸⁴ It is observed from the above that Women in England do not suffer discrimination, class stratification or ethnocentric practices which Nigerian women suffer in inheritance right. Nigeria should emulate England and be proactive in amending and or repealing out rightly old laws or customary rules that discriminate against women inheritance right.

CONCLUSION

This paper has highlighted and identified some customary practices and rules in Nigeria which has negatively affected the women inheritance right. The primitive social perception of women as second-class citizens only because they are women further exacerbate this ethnocentric and discriminatory practices against women. Gender, class, and ethnicity paddled by its handlers have negatively impacted on Nigerian Women inheritance Rights and this is so despite Supreme Court of Nigeria's laudable decisions reiterating and declaring women's fundamental right from freedom

⁸¹ Itse Sagay Ibid p.324

⁸² Colonial Nigeria was ruled by the British Empire from the mid-nineteenth century until 1 October 1960 when Nigeria gained independence. Britain annexed Lagos in 1861 and established the Oil River Protectorate in 1884: Wikipedia

https://en.m.wikipedia.org/wiki/Colonial_Nigeria#:~:text=Colonial%20Nigeria%20was%29ruled%20by,Oil%20River%20Protectorate%20in%201884. Accessed on 07/02/2018 by 1:07am

⁸³ U.K Parliament Marriage: Property and Children <https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/propertychildren/> accessed on 07/02/2018 .

⁸⁴ Leathes Prior Solicitors 2014, Inheritance and Trustee Power Act 2014-Change to the intestacy rules, <https://www.leathesprior.co.uk/news/inheritance-and-trustee-powers-act-2014-change-to-the-intestacy-rules> accessed on 07/02/2018

from discrimination and right to own property like their male counterpart. It is observed that this attitude is largely due lack of a concise and clear and succession law and or property rights law in Nigeria like we have in Ghana, Zimbabwe and England. There is therefore need for robust campaign for the protection, preservation and enforcement of women's inheritance rights by all relevant stakeholders in Nigeria including the Government, courts, NGOs and the rest of us especially given our pride as the giant of Africa.

RECOMMENDATIONS

1. There is need for Nigerian Government to consciously call for a Succession or Property law Conference where issues patterning to women's rights and inheritance would be properly identified and discussed for effective implementation.
2. Review and amendment of all Gender discriminatory laws in Nigeria.
3. The Legislature should make a law that effectively protects and preserves women's inheritance right. This would further strengthen the various laudable decisions of Nigerian Courts especially the Supreme Court's decision regarding Women's inheritance rights and freedom from discrimination. A law similar to Ghana's 1985 Intestate Succession law should be enacted by Nigeria to provide uniform intestate succession law which would be applicable throughout Nigeria irrespective of gender, class or ethnic background.
4. There should be an immediate abrogation of all obnoxious, class stratification and all ethnocentric/traditional practices in Nigerian communities that impede women's inheritance right.
5. There is need for more educational and economic empowerment of women and the girl child.
6. Judicial activism in the protection of women must go on unabated. Courts of various levels not just the Supreme Court should be in the forefront of declaring and upholding women's inheritance right in Nigeria. In line with this, there should be continuous training of judicial officers on the right of women.
7. There should be awareness campaign on the rights of women through media outfit, social media and in Schools.
8. All other international Treaties and Convention dealing on Women inheritance right and freedom from discrimination on the basis of gender should be ratified and domesticated by Nigeria.
9. Chief amongst these recommendations is a call for change of attitude and negative perception of women by the men-folk. Women should be appreciated and respected for their distinct role they play in the society and given equal right to inherit what is due to them. There should not be unhealthy rivalry and competition with women. They are only different by reason of their gender as women and not less human. Proper perspective of women's gender, class and ethnic background and their complimentary roles they play in the society must be enthroned by all and sundry.
10. There should be human capacity building seminars, programs and conferences for our Traditional Rulers, village chiefs and heads of various communities on the fact that customary law is dynamic and not static and that its flexibility and adaptability to modern conditions and realities is what makes it potent.
11. For effective and positive result, it is recommended that all forms of discrimination against women by reason of gender, class and ethnicity should be criminalized through a law made by the National Assembly.
12. It is recommended in the whole that advocacy, legal reforms, harmonization of cultural nuances/values should be vigorously pursued by Judges, lawyers, NGOs and all relevant stakeholders as this would ultimately engender fair and egalitarian practices that would be accepted by all.