



Rethinking Some Cultural Practices that Affect the Rights of Women and Children in Nigeria

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Abstract

Human Rights have been identified as encompassing and embracing the rights of all humans which are entitled to. These rights, amongst others, include civil and political rights such as the right to life and liberty, dignity, equality before the law and freedom of expression. Others are those of the right to work, the right to education, participation in culture and economic rights. The Universal Declaration of Human Rights (UDHR) affirms the universal recognition of the inherent dignity, equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. Thus, both men and women are entitled, on equal footing, to full protection of their rights and freedom because they are human beings. This research therefore examines the role of customary laws and their impacts on women and children's rights in Nigeria - a developing country, since according to available information, it is in these regions that women's rights are mostly violated and there is an urgent need for action to eliminate such practices. The doctrinal research method has been adopted to achieve the goal of this research and we conclude with some far reaching suggestions and recommendations for implementation

Key Words: Cultural Practices, Widowhood, Right of Women and Nigeria

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Introduction

The Universal Declaration of Human Rights (UDHR)³ affirms the universal recognition of the inherent dignity, equality and inalienability rights of all members of the human family as the foundation of freedom, justice and peace in the world⁴. Thus, both men and women are entitled, on equal footing, to full protection of their rights and freedom because they are human beings. Gender, custom or law cannot be used to validly deny them these rights and freedom⁵. Human Rights have been identified as encompassing and embracing the rights which all humans are entitled to⁶. It condemns all forms of discrimination or whatever sentiment goes against UDHR⁷. The Declaration condemns in unmistakable terms any principle that makes it possible for these rights discrimination to flourish. Despite the recognition of these rights, however, there are always attempts in different countries to limit their enforcement, either through constitutional provisions, legislative enactments or decrees especially by undemocratic regimes⁸. Certain areas of activity have been exclusively made the preserve of men, perhaps, due to the age long notion that women are the weaker vessels. There is no room for women participation in cultural affairs beyond the so called God given role of “fulltime housewife” which is predominantly that of child bearing and keeping the home.

Under most traditional religion and cultures across the globe, women are not given opportunity to explore their potentials⁹, simply because they are women. However, Women’s rights have come to be identified as human rights, as such; women are not seeking any other rights other than the rights that human beings are expected to have.

³ Universal Declaration of Human Rights (UDHR), adopted by United Nations General Assembly Resolution 217(111) of 10th December 1948.

⁴ Preamble of the Universal Declaration of Human Rights, para. 1.

⁵ Atsenuwa, A., “Human Rights of Vulnerable and Marginalized Groups”: In Human Teaching in Schools. Constitutional Rights Project (CRP) (1998) p. 209.

⁶ UDHR, Art.1.

⁷ Ibid., Art. 2.

⁸ Decree justifying Administrative Detention of Military opponent, known as Security (Detention) of Persons Decree No.2 of 1984 during General Buhari Regime, See Section 33 (1)(2) (a-c) 1999 Constitution of Federal Republic of Nigeria.

⁹ Omiyi S. “A Critical Appraisal of the Legal Status of Widows under the Nigerian Law” in Women and

Discrimination against women on account of sex does not in itself create right, rather it brings to the fore the fact that human rights are being denied women¹⁰. Human Rights are supposed to be fair, neutral and of universal application but this has not been the case as it regards women. The cry by women to be given their rights is, therefore, not a cry for the generation of new rights. Instead, women are simply insisting that their male counterparts should desist from usurping and denying them of their rights and give them equal opportunity in every aspect of human endeavour. As a result of the dynamic activities of women, the United Nations and its specialized agencies engaged from inception in the promotion and protection of the rights of women. The Charter of the United Nations reaffirms that “...faith in the fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women...”¹¹ That was the first international instrument to define equal rights for men and women in precise terms¹². At its first session in 1946, the General Assembly adopted Resolution 56(1) recommending that all member states who have not already accorded women voting rights, should adopt measures to grant women those rights¹³. In the same year, the Economic and Social Council set up a Commission on the status of women to report and make recommendations on the promotion of the human rights of women and to recommend measures to achieve equal rights for men and women¹⁴. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979 by the United Nations General Assembly is often described as an International Bill of Rights for Women¹⁵. CEDAW defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as:

Children under Nigerian Law, (ed.) Federal Ministry of Justice, Lagos 1980 pp. 68-78.

¹⁰ Atsenuwa, op cit., p. 210.

¹¹ Nwankwo, O., *Human Rights of Women: A Compilation of International Treaties and Instruments*, CIRDDOC; Printed in the Federal Republic of Nigeria, Peculiar Instinct Production, 2005. P.2.

¹² Ibid., p.3

¹³ Ibid., p 3.

¹⁴ Ibid., p.3

¹⁵ See summary of the women’s convention prepared by the International Women’s Right Action Watch (1998) quoted in C. Bunch, *Feminist Vision of Human Rights in the Twenty First Century: A Global Challenge*, Mohaney and Mohaney (Eds.) 1992 p. 974.

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field¹⁶.

By adopting the Convention, State parties committed themselves to undertake series of measures to end discrimination against women in all its forms including, incorporation of the principle of equality of men and women in their legal system, abolition of all discriminatory laws and the adoption of appropriate ones by prohibiting discrimination against women. Other measures were to establish tribunals and other public institutions to ensure the effective protection of women against discrimination as well as to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.¹⁷ The Convention provided the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life – including the right to vote and to stand for election as well as education, health and employment¹⁸. In addition, the convention directed specific attention to the need to eliminate prejudices and customary practices that insist on stereotypical roles for men and women and drew attention to issues of distinct concern for women vis-à-vis: trafficking in women, prostitution, widowhood practices and so on. On the 6th of October, 1999, the United Nations General Assembly adopted by consensus an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and this came into force on the 22nd of December 2000¹⁹.

¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Art. 1.

¹⁷ The Convention was adopted by United Nations General Assembly Resolution 34/180 On 18 December 1979 (1249 U.N.T.S 13) and it entered into force on 3rd September 1981., Art. 2 (a - e).

¹⁸ CEDAW, Art. 3.

¹⁹ CEDAW, Optional Protocol which empowers CEDAW Committee (A Body of 23 Independent experts, with monitoring CEDAW performance at National level to consider complaints brought directly by individual or group). Also see Article 1 & 2 Optional Protocol to CEDAW.

Both the Conference on Human Rights²⁰ and the Fourth World Conference on Women²¹ had called for the introduction of a right to petition under the Convention. The Protocol contains two procedures namely: a communications procedure allowing individual women or group of women, to submit claims of violation of rights protected under the Convention to the Committee on the Elimination of Discrimination against Women, and the optional protocol²².

It has been observed that the implementation procedures of women's convention have been weak compared to the implementation procedures of other human rights instruments²³. For instance, CEDAW is marginalized by the fact that it receives less staff and smaller budget and it is required to complete its work within a shorter period of time than other human rights bodies. It is important to note that neglected by social policy researchers, the women's movement and consequently the international community, are the legal, social, cultural and economic status of world women (widows)²⁴. Human Rights instruments have come a long way in the protection of women generally. This is evident in the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and more specifically, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). At the regional level, there has been the African Charter on Human and Peoples Rights (the African Charter) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of women in Africa. The women's Protocol to the African Charter has made commendable strides in protecting the rights of women in Africa²⁵. In all these instruments, however, not much attention is devoted to the specific categories of women identified as widows.

²⁰ Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 23rd June 1993.

²¹ The Fourth World Conference on Women (Beijing 1995).

²² CEDAW, Arts. 6 – 12 Optional Protocol to CEDAW.

²³ Okagbue, I., *Women's Rights are Human Rights*; Lagos: Nigerian Institute of Advanced Legal Studies, 1996 p. 6

²⁴ Limann, L.H., *Widowhood Rites and the Right of Women in Africa*. <http://www.up.ac.za/dspace/2263/1036?mode=full&submit-simple>Show+i...> Accessed 10/27/2009 p. 2 of 3.

²⁵ Protocol to the African Charter on Human and Peoples Rights, which provides for protection of widows rights; Art. 21 provide that a widow should have the right to equitable share in the inheritance of the property of her deceased husband.

This generalization of the law has created a situation in which this group of women, that is the widows, have not been adequately protected from abuse. The issue of widows is rarely on the agenda of most international conferences. Interestingly, domestic legislations of many African Countries have drawn inspiration from human rights instruments in protecting the rights of women. In many instances, widows only seem adequately protected by the national legislation, but not withstanding these developments, the situation on ground in most African countries ironically reveals that the rights of widows are being violated with impunity²⁶. This is attributed to the fact that most African countries have multiple legal systems where there is interplay of the National Law, Statutory Law, Common Law and the Customary Law²⁷. The customary law recognizes the traditional and cultural practices which discriminate against women and which in the final analysis negate all attempts by the international, regional and national legislation that are geared towards the protection of the rights of widows. This is evident from practices such as the customary inheritance practices and widowhood rites which women (widows) are subjected to, across the entire continent²⁸. This situation is aggravated by the fact that most widows, who bear the brunt of these discriminatory practices are found in the rural societies where illiteracy and ignorance of the law (written law) is rife.

Nigeria, like most African countries, has an impressive number of legislations that seek to protect widows. However, empirical evidence as to what actually happens in reality proves that these laws are words on paper that have no practical effect²⁹. This problem now requires urgent attention given the extent and severity of the discrimination. Over the centuries, millions of women of all ages, all over the world endure extreme poverty, ostracism, violence, homelessness, ill-health and discrimination in law and custom³⁰. They also suffer from lack of inheritance, domestic violence and abuse.

²⁶ UNIFEM Malpractice Against Widows and widowers (Prohibition) Law of Anambra State, Women's Aid Collective 2005 pp.3-9.

²⁷ Ewelukwa, U.U., Post Colonialism, Gender, Customary and Injustice; Widows in African Societies. *Human Rights Quarterly*, Vol. 24 No. 2, May 2000.

²⁸ Widowhood: Inheritance Laws, Customs and Practices Among the Southern Africa (Maputo, Women and Law in South Africa) (WLSA) 1995).

²⁹ Limann, Op. Cit. p. 2

³⁰ Ibid.,

Furthermore, the practice of degrading and life threatening mourning and burial rites are all prime examples of human right violations that are justified by “reliance on culture” and tradition³¹. This research therefore examines the role of customary laws and their impact on women and children’s rights in Nigeria - a developing country, since according to available information, it is in these regions that women’s rights are mostly violated and there is an urgent need for action to eliminate such practices. The doctrinal research method is adopted to achieve the goal of this research and we shall conclude with some far reaching suggestions or recommendations.

Cultural Practices that Affects the Rights of Women and Children

Culture is the accepted pattern of behaviour or a way of life of any group of people or society which has been handed down from generations to generations, either verbally and or by practice. Therefore, culture consists of ideals, customs and arts produced by a particular society. Most cultural practices are linked with pagan religion, folklore, superstition and they are reflected in forms of marriage, dress code and style of living, values, beliefs and attitudes. It is a body of learned behaviours common to a given human society. Culture in itself is dynamic and therefore it adapts to social changes in a society. Most of the cultural practices obtained in Nigeria indeed violate the human rights principles. Unfortunately, most of the customary practices have acquired the force of law and have become part of the customary law practiced in any given society where they exist. It is in this light that customary law has been said to be a body of unwritten customs and traditions accepted as obligatory by members of the community for the regulation of the relations between its members³². Again, it has been said that customary law derives its force from acceptance by members of a community as obligatory³³. Customary law is resilient and adjusts positively to changing social conditions. Any custom which fails to respond to changing social conditions loses its character as law. It is its quality of adaptability to changing social conditions

³¹ Nergui Manalsuren, “Widowhood means Denial of Basic Human Rights”,
<http://southasia.oneworld.net/Article/2018widow-means-denial-of-basic-human-rights...3/31/2010.p.3of4>.

³² Karibi-Whyte, Customary Law of Succession; Paper Presented at All Judges Conference Port

Harcourt, Anatra Co. Ltd 1993, p.162.

³³ Omiedun Owoniyi v Omotosho, (1961) 304-309ALLNLR.

that has earned it the apt description of a mirror of accepted usage³⁴. The normative force and legitimacy of customary law is that it is derived from the idea that is ancient and passed from generation to generation.

Customary law has a great impact on the lives of majority of citizens in the area of personal law with regards to matters such as marriage, widowhood practices, inheritance, guardianship, traditional authority and so on³⁵. But customary law is discriminatory against women as it tends to see women as adjuncts to the group they belong, such as clan and tribe, rather than equals. There has been a major debate between human rights activists and traditionalists, centered on whether customary law norms are compatible with norms contained in the International Conventions and National Bill of Rights in the National Constitutions³⁶. While the traditionalists argue that by promoting traditional values, customary law makes a positive contribution in the promotion of human rights, activists argue that certain customary norms undermine the dignity of women and are only used to justify treating women as second class citizens³⁷. However, it is apt to state that not all customary law practices are bad or repugnant or inflict violence on women. Nigeria generally has rich cultural practices which are humane, unique and allow for true bonding in the family, with emphasis on unity which is the social fabric of the society. But within the different cultures are some practices that are discriminatory and lopsided against women and are archaic in modern society. The Constitution of the Federal Republic of Nigeria contains provisions guaranteeing equality, human dignity and prohibiting discrimination based on sex and it is the same Constitution that recognizes the application of discriminatory customary law without resolving the conflict between it and human rights provisions³⁸. Customary law emphasizes rights in the context of the community and the duties of individuals to their communities, while human rights norms

³⁴ Anyebe , A.P. Customary Law, The War without Arms; (Enugu; Fourth Dimension Publishers, 1985) p.8.

³⁵ Muna , N.; African Customary Law, Custom, and Women's Rights : *Indian Journal of Global Legal studies* Vol 18 No.1(Winter 2011)@ Indian University Maurer School of p.88.

³⁶ Mwambene, L.: *Marriage Under African Customary Law in the Face of the Bill of Rights and International Human Rights Standards in Malawi*, 2010. pp. 78, 82

³⁷ Ibid. p. 89.

³⁸ Muna, Op. Cit.

typically enjoin state parties to treaties to respect human rights and to take all appropriate measures to eliminate discrimination against women³⁹. Human right norms proceed on the basis that women's rights under the international conventions are universal norms to which all countries must adhere⁴⁰; women are entitled to respect and to exercise their human rights as well as fundamental rights and fundamental freedoms within the family and society. Human rights norms also proceed on the basis that protection of family as a social unit should not be used to justify restrictions on individual rights on a family member. The difference in approach has resulted in clashes between the customary law norms on one side and the internationally protected rights and the bills of rights inspired by international norms on the other side. As Rwezaura rightly pointed out, the opposition to change is based on the ideology that characterizes attempts at reforming customary law as contrary to African traditions and culture, and an attempt to westernize African society⁴¹.

Such a position is usually a political reaction to colonial imposition of the common law on African states and also an effort to assert African dignity. In such a context, efforts to reform customary law has been interpreted as an effort to impose Western values on African societies. This reaction to efforts at reforming customary law is often accompanied by an almost religious exhalation of the virtues of the traditional system of law in as much as it is imperative that we draw attention to the fact that most of Western understanding of African customary laws is influenced by their negative attitudes towards everything African. It is important to note that African theory and practice have been influenced and have become part of the global movement of globalization of human rights.

³⁹ Muna, Op. Cit.

⁴⁰ Marsh, A.F. International Women's Rights Action Watch, Human Rights in the Family: Issues and Recommendation for Implementation, Articles 9, 15 and 16 of The Convention on the Elimination of All Forms of Discrimination Against Women 1 (1993).

⁴¹ Rwezaura, B.A. Traditional and law Reform in Africa: being a paper presented at a seminar jointly arranged by Fundamental Rights and Personal Law Research Project, Centre for Applied Social Sciences, and the Department of Law University of Zimbabwe; 1983 p.539

Nigeria being a signatory to most international human rights instruments and having adopted African Charter on Human and Peoples Rights as well as the Protocol to African Charter on Human and Peoples Rights on the Rights of Women in Africa,⁴² means they are embracing human rights movement and its universality. The contexts and implications of the vulnerable groups are always important in the interpretation of rights. Eze rightly pointed out the categories of rights protected as well as their scope and ultimately who enjoys any of these rights in the end is determined by the nature and character of the society that is being examined⁴³. Much has changed in Nigerian societies since the advent of colonialism. The process of industrialization is widely associated with movement from rural areas to urban centers⁴⁴. The fact that customary law is changing in response to urbanization, interethnic marriages and education is not a phenomenon peculiar to Nigeria. This means that the social, political and economic life in Nigeria is rapidly and radically changing and it calls for modification of customary law. It is a known fact that certain old practices and customs have disappeared and new ones appear to deal with new situations. It is, therefore, puzzling that cultural practices, which discriminate against women, refuse to change with the changing situation. This is because of the patriarchal nature of our society.

It is worthy to note that in an effort to advance women's rights, the role of courts is crucial. While recognizing the role legislation can play in law reform, the study argues that the fight for gender equality needs to move to the courts and mass movements. The challenge however, is how to ensure that the court interprets the law in such a way that gender equality is advanced. This will require social pressure on courts and society to act on the interest of gender equality⁴⁵. It is suggested that there should be improved access to courts so that women bring claims based on discrimination, thereby giving opportunities to the courts to reform the law.

⁴² Protocol on African Charter on Human and Peoples Rights, Art. 21 which specifically provide for the protection of widows with special reference to widow's inheritance rights

⁴³ Eze, O.C.; 'Human Rights and Social Justice: An African Perspective' *3Empowerment & Action Research Centre, Annual Lecture, Series No.4* 1998.

⁴⁴ Muna, N.; *The Changing Nature of Customary Marriage in Zambia*, Zambia 1984, pp.143-153.

⁴⁵ *Ibid*, pp.143-156.

Customary Law and its Impact on Women's Rights in Nigeria

In most parts of Nigeria, traditional customs, deep-rooted cultural norms and religious beliefs, largely tend to compete with and overshadow Common law and Statutory laws with regard to issues relating to violence against women. Although after independence, new constitutions containing bills of rights that guaranteed human rights of all on the basis of equality of men and women were put in place, which at the same time, immunized customary laws against human rights scrutiny. For instance, section 21 of the Nigerian Constitution provides that: 'The state shall protect, preserve and promote the Nigerian culture which enhances dignity and are consistent with the fundamental objectives as provided for in this chapter'. However, the courts' decisions during this era left much to be desired especially on the issues of women's rights⁴⁶. It is therefore opined that strict compliance with the Constitution would sweep away all discrimination and preferential treatment. The colonial masters brought their laws into the country but it was specifically provided that native law and custom would be upheld provided they are neither repugnant to the principle of natural justice, equity and good conscience nor inconsistent with any valid local enactment.

The doctrine was introduced to enable the Bar and the Bench to jettison some of the obnoxious customary laws⁴⁷. Generally, in most communities in Nigeria, discrimination and violation of women's fundamental rights which have from time immemorial been imbedded in most cultures, has been accepted as a way of life of most people. Socio-culturally speaking, the traditional norm has subjected women to consistent discrimination against their fundamental rights thereby undermining their self-esteem⁴⁸. In fact, these harmful cultural practices against women in Nigeria at large, are not only present but are well institutionalized⁴⁹ due to the fact that women have been subjected to socio-economic and cultural deprivation for a long time. Crimes like murder and robbery are universally accepted crimes and are

⁴⁶ See the cases of *Ejiamike v Ejiamike*, *Uboma v. Ibeneme*, *Nezieanya and Okagbue &ors*.

⁴⁷ See the case of *Laoye & ors v. Ojetunde*.

⁴⁸ Ifejeme, S.C.; A Critique of Gender Discrimination Practices in Igbo Customary Law of Marriage, *Journal of Women and Minority Rights*, Consortium of Female Lawyers in Academics, Faculty of Law, Nnamdi Azikiwe University, Awka, 2008, p.58.

⁴⁹ Shoba, S ; *op cit* p. 22. Also see *Uwabuike, E.C.; Some Cultural Practices Violating the Rights of Women in Imo State*, Unpublished Material 2007.

condemned, but crimes against women are justified and condoned even by the women themselves. Women are reared in an atmosphere which slowly but negatively helps them to develop feelings of inferiority, that they become so used to their low status and find nothing wrong in some of the crimes committed against them in the name of culture⁵⁰. This has increasingly crippled any effort women are making to re-invent their positive image and erase gender discrimination. For example, the preference of male child is as entrenched in Nigeria society as evidenced in the pathetic speech made by a Nigerian mother who went to London in search of her only son, who was killed by a bomb blast⁵¹. To further show the importance of this preference, a close family friend express the following feeling too, “well what can we say, especially in an African society, which places high emphasis on a male child”. Sex based differential treatment is derived mainly from the arbitrary and culturally prescribed division of male and female roles which exist throughout the world⁵². Gender bias plays a role in the way parents send their children to schools, especially in situations of scarce resources, though the pattern is changing but still lot of women do not go to school. Ogwu noted that illiteracy among women is a common impediment to their participation in the development process; it puts the women in the position that they do not have access to information which will benefit their lives and the lives of their families. Female Genital Mutilation is deeply rooted in the traditional practices of Nigeria and is another form of violence against women with serious adverse effect on their health. Child marriage is rampant in the Nigerian society. Some years back, customary law allowed child betrothal as well as child marriages. Despite the express provision of Section 21 of Child’s Rights Acts of 2003, which fixed marriageable age at 18 years, child marriage has continued to persist in most parts of the country⁵³. It is therefore right to say that early marriages denies a young girl of her right to choice of who to marry, right to education and consequently affects the dignity of her person as guaranteed in section 34 of the Constitution of the Federal Republic of Nigeria. Widows in Nigeria are faced with problems which range from inhuman mourning rites, disinheritance, force remarriage, impoverishment, and stress related to health problems, negative social

⁵⁰ Ibid. p. 22

⁵¹ She surrendered in resignation when she told the whole world that, “...In African society, we hold on to sons...I am grieve, I am sad, I am distraught, I am destroyed...”

⁵² “My heart goes out to the Fatayi Williams Vera Cruz ” a close friend of the family lamenting

⁵³ A serving senator married a 13 year old girl

attitudes, neglect, inadequate provision and protection under the law and discrimination. Women are treated like chattels that are as one of the properties to be inherited on the demise of the husband⁵⁴. Widows in Nigeria are usually viewed as abominable, especially when they are young.

Custom is used to oppress and exploit them. The low status, poverty and violence experienced by widows stem from discrimination in the patriarchal nature of the society, and the domination of oppressive traditional practices and customary codes which at times takes precedence over constitutional guarantees of equality, modern laws and international human rights standard⁵⁵. It is this act that jeopardizes life, integrity and freedom of women. It is usually perpetrated by men who often want to flex power and superiority, using alleged misbehavior as an excuse⁵⁶. Domestic violence has brought untold hardship to thousands of women by subjecting them to psychological and social trauma. Women's Advancement and Protection Alternative (WRAPA), a Non Government Organization (NGO), reports that in Abuja between March 1999 and February 2001, 44.1% of the total cases handled were cases of violence against women in one form or another⁵⁷. Unfortunately, the Constitution of Nigeria has not been able to fully protect the rights of women (widow), though there has been remarkable improvement in the treatment of widows in recent years. In the new dispensation, courts are now responding to the need for change and are showing an understanding of the existing social and economic conditions.

The low status, poverty and violence experienced by widows stem from discrimination in the patriarchal nature of the society, and the domination of oppressive traditional practices and customary codes which at times takes precedence over constitutional guarantees of equality, modern laws and international women's human rights standard⁵⁸. Widowers across Nigeria rarely go through trial ordeal as prime suspects in the demise of their wives or suffer long confinement periods and physical abuse as part of mourning

⁵⁴ .Ifemeje, Op. Cit.

⁵⁵ Evil or Dirty Nigerian Culture should be abolished, <http://wwwnairaland.com/187778/evil-dirty-nigeria-culture-should/9> accessed 10/11/2010

⁵⁶ Achunine Op. Cit.

⁵⁷ WRAPA VOL.2 April 2001 p.6.

⁵⁸ Evil or Dirty Nigerian Culture should be abolished, <http://wwwnairaland.com/187778/evil-dirty-nigeria-culture-should/9> accessed 10/11/2010.

their deceased wives, the reverse is the case⁵⁹. From the moment a man dies the wife is exposed to some of the most humiliating, physical and psychological violence, often in the name of culture, usually by those who should console her and support her in her time of bereavement⁶⁰. These cultural practices have tended to impact negatively on the lives, health and wellbeing of widows. Nwoga stated that it is possible to give an immediate verdict on the matter of widowhood practices by saying that human greed exists in most Families and the death of a male member of the family offers an opportunity to other males of the family to increase their holdings of the scarce and inelastic commodity, land, which can extend to houses, cars, furniture and so on. It is this acquisitiveness which basically controls the treatment of widows. Dehumanized and humiliated by religious rituals and other practices, the widow becomes more amenable to keep silent over other forms of oppression which end up ultimately as economic despoliation⁶¹. The ordeal of a widow commences on the announcement of the death of her husband. The in-laws will demand a lot of the man's property and holdings. She may even be forced to take an oath as a proof that she has not concealed any helpful information of her husband's wealth⁶². After this she will be required to bring certain gifts such as kegs of palm wine, cola-nuts, goats and so on, to the male relations of the husband⁶³. It should be noted that this gifts vary from one community to another. After the presentation of these gifts, the widow is then handed over to the "Umuadas" the female relations of the deceased husband, who assemble to make decisions on every matter concerning her⁶⁴.

⁵⁹ Aransola, J.I. & Ige, A.; Widowhood practices among the Yorubas of South West of Nigeria: Are there difference in what women experience due to their status? <http://www.faqz.Org/periodicals/201012/2187713301.html>. p 2 accessed of 20/7/12.

⁶⁰ Ibid, pp.9-11.

⁶¹ Nwoga, D.I.; "Igbo Concept of Family" Widowhood Practices in Imo State Proceedings for the Better Life Programme for Rural Women Workshop Owerri, June 6-7, 1989 pp. 5-13.

⁶² Onyekuru, B. I.; Obnoxious Cultural Practices Associated with Bereavement Among the People of South –East Geopolitical Zone Of Nigeria *Journal of emerging Trends in Educational Research Policy Studies (JETERAPS)* 2(5):355-360. Scholarlink Research Institute Journals, 2011.

⁶³ Ibid p.355.

⁶⁴ Nzewi, Op. Cit. p.46.

The decisions by these female relations involve cultural practices which violates the rights of widows in many aspects. Widows may be subjected to the following cultural practices. Scraping or cutting of hair (on the head and pubic area) with blunt razor or pieces of broken bottle; Crying loudly for long and sustained periods; Lying down or sleeping next to the corpse of the dead spouse; Forced to drink water which has been used to wash the dead spouse; Stripped naked or made to bath in public; Jeered and pushed around if she fails to cry loud enough or long enough; Made to sit on a hard floor while she cries; Dressed in filthy clothes or rags as a sign of mourning; Subjected to hurtful comments and possibly accused of causing her husband's death; Prevented from washing or having bath for a given period; Forced to eat from unwashed plates and Requested to mourn for between 3months to 1year⁶⁵. The widow is declared unclean or impure because the death of her husband is a sign of ill-luck or bad omen and therefore, she is not expected to touch herself, her children or anyone around so as not to defile them⁶⁶. A piece of stick is therefore given to her to scratch herself. The ordeal is expected to last for four weeks or twenty –eight days⁶⁷.

Inheritance Rights under Customary Law Marriage

Customary Law Marriage is potentially polygamous in nature and it is the indigenous form of marriage in Nigeria. This marriage is governed by various customary laws recognized in Nigeria which differ not only from one ethnic group to another but even within the same society⁶⁸. Under Igbo customary law, women are prohibited from acquiring or inheriting landed or immovable property. In the vast majority of Igbo communities, the family is patrilineal⁶⁹. Thus, inheritance is based on the principle of primogeniture⁷⁰, that is, succession by eldest son known as *Okpala*⁷¹. Where the deceased is a

⁶⁵ Okoye, P.U.; *Widowhood: A Natural or Cultural Tragedy*, (Enugu: NUCIK Publishers), 1995 p. 75

⁶⁶ Nergui Manal Suren, Widow means denial of basic Human Rights, http://southasia.oneworld.net/Article/2018widowhood_mean_denial_of_basic_human_rights accessed 31/3/2010.

⁶⁷ Onyekuru, Op. Cit. p. 356.

⁶⁸ Ezeilo, J. Law & Practice Relating to Women's Inheritance Rights in Nigeria. An Overview, Faculty of Law . University of Nigeria, Nsukka, Waco/Nigeria.org/law and practice. Doc. 10-23 accessed 12/9/2007.

⁶⁹ Ibid, pp. 10 -23.

⁷⁰ Ibid, pp. 10 -23.

⁷¹ Bini rules on inheritance in the mid-western Nigeria which is similar to Igbos in Ogiamen v.

polygamist and has many sons from several wives, the eldest sons of each of the wives may take part in sharing of the estate, but daughters and wives have no right to succession to their deceased father's property. However, if the eldest son inherits absolutely, he can allocate land to other male siblings upon them making a request as it was held in *Ejiamike v Ejiamike*⁷². The eldest son holds the property as a trustee - beneficiary for his brothers and himself. The female members of the family can reside or utilize allotted parcel of land according to their needs, but it is temporary in nature as daughters and wives cannot inherit landed property as it was held in *Uboma v. Ibeneme*⁷³. Basically, wives cannot inherit because they are objects of inheritance themselves as it was held in the case of *Nezieanya and Okagbue & ors*⁷⁴. Fundamentally, under customary law, parcels of land are held communally amongst the male members of the family. The parcels of land are always allocated to adult males either for agricultural purposes or for erection of houses. In some parts of Anambra state, it has been the customary practice that the only way a female can inherit among the Igbos is, where a daughter remains unmarried and has agreed to bear children particularly male children for her father for simple reason that her father does not have a male child, as earlier seen in the case of *Muojekwu v Ejikeme*⁷⁵ and the Court held amongst others that this custom is repugnant to natural justice equity and good conscience and encourages promiscuity and prostitution contrary to CEDAW.

The plethora of the cases cited above shows that widows and daughters in the past cannot inherit from their deceased husbands and fathers among Igbo tribes in Nigeria. In *Uka v Ukama*,⁷⁶ it was held that daughters and widows cannot inherit their deceased father's/husband's property but they have a right to occupy the building or parts of the building belonging to the deceased husband or father subject to good behaviour. Also in *Nezianya v Okagbue*⁷⁷ widows were held not to have any interest in their deceased husband's estate. Implicit in the above case is the fact that, this aspect of our customary law needs urgent reform because, it is capable of working great hardship in modern times where wives make significant contributions to the

Ogiamen (1987) N.M.L.R.245.

⁷² (1972) 2 E.S.N.L.R 11.

⁷³ *Supra*.

⁷⁴ *Supra*.

⁷⁵ *Supra* p.12.

⁷⁶ *Supra*

⁷⁷ *Supra* p.9.

wealth and properties of their husbands. It is right to say that time has come for radical change for all customary practices relating to women's rights to inheritance in Nigeria, to ensure equality of all persons. Though in rare cases where courageous women have defied threats of violence and taken their cases to court, some independent and creative judges have decreed that international law as laid down under the Convention on the Elimination of All Forms of Discrimination Against Women takes precedence over customary law and religious laws⁷⁸.

The widow, without a son, is left without property, but where she has a son, the property passes on to the first son because he is automatically the head of the family. The only situation where a daughter can inherit is where, for example, she chooses to remain unmarried in her father's house with a view to raising children in her father's home. The idea behind this type of custom is to save the lineage from extinction. The daughter is entitled to inherit both movable and immovable property of her deceased father's estate. The legal interest vests in her until she gives birth to her own children. However, if she bears sons and daughters, the sons and not the daughters, will succeed her in accordance with the rule of primogeniture. This custom was held to be repugnant to natural justice, equity and good conscience. As it has been mentioned earlier, the practice encourages promiscuity and prostitution contrary to the provisions of CEDAW⁷⁹. From the foregoing, we can infer that tradition or custom does not allow the widow to inherit the property of the husband. She only has a possessory right over her husband's estate or property. The situation is made worst if she does not have a male child at all. The brother-in-laws are ready to snatch all the property belonging to the couple and the poor widow dares not raise any objection as she will be called

⁷⁸ This is where a group of daughters in Owerri refused to relinquish their deceased Father's house and were subsequently taken to court by their uncles. Justice Odili heard the case and used the clause in the 1979 Constitution of the Federal Republic of Nigeria which state that 'no child shall be disadvantaged on account of birth'. Justice Odili 1997 judgment allowed the children to remain in their Father's property. As a result of this verdict, the Nigerian court of Appeal now permits sons and daughters to inherit equally. This statute was endorsed by the Supreme Court in 1998. It took a lot of courage and conviction for a daughter of the soil to rule in favour of minors in a male dominated society.

⁷⁹ Article 6 CEDAW which provides that Parties shall take appropriate measure including legislation to Suppress all forms of trafficking in women and exploitation of women.

evil names. These greedy relations always claim that the said property, including the woman herself, belong to their late brother and as such she has no right to make claims⁸⁰. Unfortunately, the constitution of Nigeria has not been able to fully protect the rights of widows, though there has been remarkable improvement in recent years. In the new dispensation, the recent cases seem to have changed the tide as it regards to women's right to inheritance.

New Dimensions in Case Laws

In the case of *Muojekwu v Moujekwu*,⁸¹ Under the Nnewi's custom, if a man dies leaving male children, the male children inherit the deceased's property. However, if the man leaves no male issue, the brother will inherit his property. If the male issue who survives the father dies, leaving no male issue, the father's brother inherit the property and on it goes along the male line only. In the above case, the son of the deceased's late brother inherited the property of his relation to the exclusion of the daughter of the deceased. The Nigerian Court of Appeal held that the Nigerian custom that effectively prevented female family members from inheriting her deceased father's property is repugnant to the principles of natural justice, equity and good conscience. Recent judicial pronouncements tend to have a second look at the discriminatory customs against women. In *Mojekwu v. Mojekwu*,⁸² the Court held amongst other things that the "Oli-ekpe" custom of Nnewi in Anambra State under which only male children inherit their father's property is unconstitutional. Niki Tobi J.C.A. delivering the lead judgment asked the following questions: 'Is such a custom consistent to equity and fair play in an egalitarian society such as ours?' Day after day, month after month and year after year, we hear of and read about customs which discriminate against women who are regarded as inferior to men in this country. Why must it be so? According to the learned Justice of the Court of Appeal:

All human beings-male and female are born into a free world, and are expected to participate freely, without any

⁸⁰ Ikpeze O.V.C.; *Gender Dynamics of Inheritance Rights in Nigeria: Need for Women* (Onitsha: Folmech Printing Co . Ltd. 2009). pp. 156 -160.

⁸¹ *Supra*

⁸² (1997)7 NWLR p. 283, judgment of Court of Appeal of Nigeria sitting in Enugu.. see also the judgment Oputa J. in the case of *Chinweze v Masi*

inhibition on grounds of sex and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional is an antithesis to the society built on the tenets of democracy, which we have freely chosen as a people. We need not travel to Beijing to know that some of our customs including Nnewi Oli-ekpe custom relied upon by the appellant are not consistent to a civilized world in which we live today. In my view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagreed with this divine truth, I believe that God the Creator of human beings is also the final authority of who should be a male or 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. On my part, I have no difficulty in holding that the "Oli-Ekpe" custom of Nnewi is repugnant to natural justice, equity and good conscience⁸³.

The above customary practice in Anambra State in the words of Justice Niki Tobi is discriminatory, inconsistent with equity and fair-play, and unconstitutional as it violates S.42 of the 1999 Constitution of the Federal Republic of Nigeria that guarantees nondiscrimination on the basis of sex. Aduba described this new development as a "death nail hammered into this age old custom"⁸⁴ Other cases worth mentioning which upheld gender equality include the case of *Uke v Iro*⁸⁵ where under Nnewi customary law, a woman was precluded from giving evidence in land matters. The Court of Appeal held that the right of all sexes are protected under the Constitution, being an organic law of the land, therefore, any argument or assertion that a

⁸³ *Supra*

⁸⁴ Aduba *Op. Cit.* p.202

⁸⁵ (2001) 11 NWLR (PT. 723) 196.

woman cannot give evidence in relation to title to land is oblivious of the Constitutional provisions which guarantee equal rights and protection for all sexes under the law and therefore offends all decent norms as applicable in civilized societies. In the case of *Ukeje v Ukeje*⁸⁶, the Supreme Court held that the Igbo native law and custom which disentitles a female from sharing in her deceased father's estate is void as it conflicts with Section 42 of the Constitution⁸⁷. Justice Bodo Rhodes-Vivour who read the lead judgment, held that no matter the circumstances of birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, he averred that the Igbo Customary Law which disentitles a Female Child from partaking in the sharing of her deceased father's estate is a breach of Section 42 (1) and (2) of the Constitution of Federal Republic of Nigeria, 1999, a fundamental right guaranteed to every Nigerian. Also in the recent case of *Onyibor Anekwe and Anor v. Mrs Maria Nweke*,⁸⁸ the Supreme Court voided the aspect of the Igbo Native Law and Custom that denies female children inheritance right. Justice Ogunbiyi who delivered the lead judgment, held that the custom of Awka people in Anambra State which the appellants had relied on for their counter claim is hereby out rightly condemned in very strong terms. In other words, a custom of this nature in the 21st Century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance, which is aimed at suppressing the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against perpetrators of these culture and custom.

For a widow of a man to be thrown out of her matrimonial home, where she had lived all her life with her late husband and children, by her husband's brother(s) on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning, especially when it has been proved scientifically that it is the man that determines the sex of the children. She continued by stating that it is indeed disturbing especially where the counsel representing such perpetrating clients, though learned, appear comfortable in identifying, endorsing and approving of such demeaning custom. She further stated that

⁸⁶ (2014) FWLR (Pt. 730)1323.

⁸⁷ Constitution of Federal Republic of Nigeria, 1999 (CFRN)(as Amended)

⁸⁸ (2014) LPELR 22699 (SC).

the impropriety of such a custom which militates against women particularly, widows, who are denied their inheritance, deserves to be condemned as being repugnant to natural justice, equity and good conscience. The repulsive nature of the challenged custom is heightened in this case at hand, where the widow of the deceased is sought to be deprived of the very building where her late husband was buried. The condemnation of the appellants' acts is in the circumstance without any hesitation or apology. She therefore affirmed the judgment of the trial High Court of Anambra State, and dismissed the appeal. These two landmarks pivotal cases have succeeded in overhauling the discriminatory inheritance laws and have been greeted with much euphoria by women activists. The Supreme Court ruling is a victory for gender equality in Nigeria. Although the implementation of the judgment is likely to be fraught with difficulties because the inheritance custom it voided is deep-rooted and likely to be resisted by men folk in traditional communities. The Nigerian government has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) without any reservation and also the African Charter on Human and Peoples Rights (1981)⁸⁹, which require states to eliminate all forms of discrimination against women recognized in the International Conventions and Declarations⁹⁰.

Consequently, it is expected that the government should adopt appropriate legislation and actions aimed at modifying discriminatory laws, regulations and practices against women. Women are faced with several specific obstacles and challenges to their rights to inheritance. Legally, the inadequate laws regulating administration of deceased estates particularly at the federal level constitutes a major obstacle to women's inheritance rights. Compounding this problem is also the legal system which gives rise to the operation of at least tripartite system of laws that function simultaneously. The existing laws dealing with inheritance and succession are not entirely free from gender bias. In fact, Nigerian women are marginalized as they face lack of access to power and decision-making positions through which meaningful changes can be realized. Women's social status is still very low. This is mainly due to illiteracy, poverty, and cultural practices which treat women as mini persons and objects of inheritance rather than subjects of inheritance. The Traditional, Cultural and Religious beliefs that women are

⁸⁹ The Charter is now part of Nigerian's domestic law by virtue of its incorporation – see CAP 10 Laws of the Federal Republic of Nigeria, 1990.

⁹⁰ Art.18, African Charter on Human and Peoples Rights

inferior and subordinate to men tend to perpetuate widespread practices involving violence which is very harmful to women. The discrimination in education of girls and boys is borne out of this patriarchal attitude including son preference ideology. At times, importation of native laws and customs of inheritance to the execution of the will of a testator duly made under the Wills Act results in hardship to even wives of statutory law marriage. For example where a testator bequeaths his matrimonial home to his wife in perpetuity, objections are raised to the execution of such bequest on the ground that by native law and custom of the Igbos, a man's dwelling house (matrimonial home) belongs to his eldest son or to his male next-of-kin. Where he is not survived by any male issue, the eldest brother of the deceased inherits such property. Economically, women's status has jeopardized their inheritance rights. Women owing to several factors, lack access to means of production and since women's rights to property is subject to varying traditional and cultural practices, their ability to secure credit is hampered. There are two major religions practiced in Nigeria, that is, Christianity and Islam and their acts militate against women's rights to inheritance.

A woman is not viewed as a man's equal; consequently, both religions hardly concede equality of share in inheritance. The varying systems of religion relegate women to the background thereby reinforcing the inferiority of women. It is submitted that harmonization of the received English law, local statutes and customary law, particularly in the area of family law - marriage and inheritance is of great importance. This has been successfully done in Tanzania which is one of the first countries in Africa to attempt the unification of customary laws in its various tribes⁹¹. It was also observed that South African human rights activists are not doing badly in trying to reform some of the customary discriminatory laws that are inconsistent with their Constitution. Although it is recognized that law is not a panacea to all problems, it is a very useful beginning that can ensure that the different types of marriages enjoy social and legal parity of status. However, westernization, education and statutory laws, have transformed the African society, Nigeria in particular. And with British colonization, some African customs are eliminated as they were judged to be repugnant to justice, equity, good conscience and human dignity.

Conclusion

Culture plays a great role in the violation of the fundamental rights of

⁹¹ Constitution of Tanzania 1988, S. 5(1) of the 5th Amendment Act.

women. This, it does by undermining the rights of women in issues of marriage, harmful widowhood practices and inheritance. The authors observed that widowhood rituals that terrorize widows serve no purpose other than to humiliate them and perpetuate a desired social control over them. It is unfortunate to observe that the legal and regulatory environments for women's rights to inheritance are not sufficient and the little legislations that exist show a lack of commitment to gender equity in inheritance rights. The laws and practices governing inheritance and succession under customary law are very discriminatory and constitute a major obstacle to the achievement of equality of men and women. Social justice demands that both marriages (statutory and customary marriages) should be given equal treatment especially when both are recognized under the different laws as valid. Nigeria being a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, should keep its signatory obligation as a state party. Section 20⁹² places an obligation on the government to take all appropriate measures, including the creation of legislations to modify or abolish any existing law, regulation and customs as well as practices which constitute discrimination against women. The African Charter on Human and Peoples Rights in Article 18 stipulates that 'states shall ensure the elimination of discrimination against women and children as stipulated in the international declaration and convention'. These must be implemented.

We have drawn attention to the fact that challenges facing women are immense and widows continuously suffer indignities due to sex-role socialization. It is observed that male chauvinism is another important reason for widowhood rituals, that is, the myth of male supremacy is as ingrained in the society as men are decision makers, traditional rulers, and custodians of culture and policy makers. Women, especially widows are called upon to widen their perspectives on life through education, economic empowerment, and to shun moral decadence as well as heartlessness which is inappropriate for good character and nation building. Action needs to be taken to ensure that gradual changes which appear to have started would continue until discriminatory practices are eliminated. Again, for effective grassroots coverage, both electronic and print media must be employed to join the crusade on the war against harmful widowhood practices in all nooks and crannies of the African society.

⁹² CEDAW, Op. Cit.