



Change in Tide in the Discriminatory Customary Inheritance Rights of Women in South East Nigeria: A Charade?

Samuel Nwatu; Miriam Anozie & Ikechukwu Chime

ABSTRACT

This article is a critique of the discriminatory aspects of the customary law regarding property inheritance by women in Southeast Nigeria, which comprises predominately the Igbo ethnic group. This discriminatory practice is rooted in the patrilineal structure of the society and its fostering of male dominance and female subjugation. In many places in Igbo land, women are regarded as property and subject to inheritance. Although the tide is changing, in the sense of radical change in case law, according to women's equal rights as men to inheritance, the reality on the ground is striking quite different. Nonetheless, there are measures that, when fully implemented, can transform the newly found gender equality in property inheritance to *defacto* reality. Exploring these measures, as well as associated challenges, constitute the task of this paper.

Keywords: *Aniisi obi*, Customary, Discrimination, Inheritance, *Obi*, *Ofo* (In sigma of office), *Okpala* or *Diokpa* or *Diokpala* (first son)

1. INTRODUCTION

For many centuries, women all over the world have been treated as subordinate to men. Even an early thinker like Aristotle thought that women were merely defective and mutilated males. He said, '...Female's faculty of deliberation was inconclusive and lacking authority, suitable only for those who are ruled, rather than those who rule.' Therefore, 'the male naturally is fitter to command than the female.' All these were to justify his view of the subordination of women, thereby endorsing the legal status quo in ancient Athens, where women of all classes were treated as mere chattels. (Aristotle 1982, 737a 28, 775 15).¹ This situation is today applicable in Nigeria, particularly the South East, where men are regarded as being superior to women and thus dominate every sphere of life. Women here are even treated as chattels and property of their husbands². They are discriminated against with respect to their property inheritance rights under customary law, notwithstanding the anti-discriminatory provision in the

Samuel Nwatu, PhD, Faculty of Law, University of Nigeria, Enugu Campus, samuel.nwatu@unn.edu.ng
Miriam Anozie, PhD Faculty of Law, University of Nigeria, Enugu Campus miriam.anozie@unn.edu.ng
Ikechukwu Chime, Faculty of Law, University of Nigeria, Enugu Campus, ike.chime@unn.edu.ng

¹Aristotle, The Generation of Animals, in J. Barnes (ed.) (1982), *The Complete Works of Aristotle* (Oxford University Press) pp. 737a 28, 775a 15 cited in Fredman. Sandra. 1997. *Women and the Law*. Oxford: Clarendon Press.

² See *Ogunkoya v Ogunkoya* Suit CA/L/46/48 (Unreported) where the Court of Appeal held that wives are also regarded as chattels who are inheritable by other members of the family of the deceased under certain conditions.

Constitution of the Federal Republic of Nigeria, 1999³ (hereinafter referred to as the Constitution), international⁴ and regional⁵ instruments to which the country is a Party.

Nigeria comprises six geo-political zones, including the South East zone. This comprises of five states, namely, Anambra, Enugu, Abia, Imo and Ebonyi, and they are of the Igbo ethnicity and language. Customary rules in the South East differ from one community to another, but some have general application with minor variations.⁶ For instance, throughout Igbo land, customary law is patrilineal, and that being so, customary inheritance is generally by the rule of primogeniture. Thus, the rules of customary law dealing with inheritance in the southeast of Nigeria are fraught with injustice and noticeable discrimination among family members who are supposed to be beneficiaries. This is because some members of the family, by custom, have the right to inheritance while some are denied such right. In almost all cases, women are the 'victims'⁷.

This article will, therefore, examine critically the rules of customary inheritance in South East Nigeria, unravelling the persistent discrimination against the right of women to inherit, which has so permeated the society that despite the provisions of the Constitution⁸, international⁹ and regional¹⁰ instruments to which the country is a Party and current favourable judicial decisions¹¹ to women's inheritance rights, the practice of discriminating against them persists. The article is divided into five parts. Part one discusses the nature of the customary inheritance rights in South East Nigeria, detailing the types of properties that can be inherited and who has the right to inherit them. It also discusses the impact of customary inheritance rights on women in the South East of Nigeria. Part two discusses discrimination against women's inheritance rights under customary law and the reasons for the discrimination. Part three explores the efforts made so far to protect the inheritance rights of women, especially at the international, regional and local levels. Part four shows that the inheritance rights of women in the Southeast of Nigeria are a charade despite the recent pronouncements made by the courts that customary law inheritance rights are not only unconstitutional but also repugnant to natural justice, equity and good conscience. Part five, the concluding section, recommends the way forward and how to eliminate the discriminatory nature of customary inheritance rights in South East Nigeria.

2. The Nature of Customary Inheritance Rights in South East Nigeria

Inheritance, suitable under Igbo culture, has several peculiarities.

2.1 Inheritance of Property under Igbo Customary Law:

The properties that can be inherited when a man dies include a man's land and houses, economic trees, farm produce, farm implements, livestock, money, furniture and wearing apparel, Ofo (insignia of office) and family headship, titles, and of course the widow/widows.¹² In modern times, one would add shares, investments, cars, and other things.¹³ All these are inherited by his male dependants, e.g. his sons and brothers. In the case of a woman's death, her estate is inherited by her husband or sons. For the unmarried daughter, her estate goes to her father or brothers. In all these scenarios, daughters and wives would only inherit things like trinkets, tools of the trade of their mother or sister, dresses, kitchen utensils, sewing

³ See s.42, Constitution of the Federal Republic of Nigeria, Act No. 24, 5 May 1999

⁴ Universal Declaration of Human Rights, 1948 (UDHR); Convention on the Elimination of all forms of Discrimination against Women (CEDAW)

⁵ African Charter on Human and Peoples Rights (ACHPR)

⁶ Egwummuo. John. 2003. *Nigerian Legal System*, Enugu: Academic Publishing Co.

⁷ This was initially approved by the courts, for instance, in *Ejiamike v Ejiamike* (1972) 2 ECSLR 11, the court held that the widow had no right to the late husband's estate.

⁸ *Ibid*, (n. 3)

⁹ See art. 1 of UDHR and arts. 2 & 5 of CEDAW

¹⁰ See art. 18(3) of ACHPR

¹¹ *Ukeje v Ukeje* (2014) 11 NWLR (Pt.1418) 384 SC

¹² Obi. Samuel. 1977. *The Customary Law Manual*. Enugu: Government Printer.

¹³ Enemo, Ifeoma. 2016. *Customary Inheritance and Rights of Women in South East Nigeria: An Appraisal*, Kuru: National Institute.

machine, cocoa yams, not yams, and such items¹⁴ In this article; property shall connote mainly real or immoveable property such as land, economic trees thereon and houses. These are the essential goods for most Igbos in a subsistence economy.

2.2 *The right of men to inherit under Customary Law:*

By the rules of customary inheritance in South East of Nigeria, on the death of an Igbo man, his eldest son, known as *Okpala* or *Diokpa* or *Diokpala*, is to succeed him as the head of the family. Thus the management of the deceased man's estate automatically devolves on him. This is otherwise known as the rule of primogeniture¹⁵ Subsequently, as the new head of the family, he controls the properties of his late father. He inherits the father's personal property, including his personal staff "*ofa*", his title, if any existed prior to his death, his wearing apparel, and the father's dwelling house, the "*obi*" together with the immediate surrounding land (*aniisi obi*).¹⁶ In *Onuora Mba v Sylvanus Chigbo Mba*,¹⁷ the plaintiff built and lived on land he claimed to have been given to him by his father, Mr Mba Utobo, while he was alive. Mba Utobo died intestate. The defendant, in his counter-claim, maintained that he owned title over the said land given to the plaintiff by their father because, according to him, the native law and custom of the Amansea people accord him the right to inherit the said property as the first son (*Diokpala*) of the deceased. The trial court dismissed this counter-claim of the defendant and he appealed. The Court of Appeal held that the appellant/defendant, as the first son, is entitled to inherit their father's *Obi* (the suit property) but subject to the rights of the respondent and his other siblings and their families to reside and live therein until any of them is given *ana-obi* (another land outside the *Obi*) and moves to live in his house built thereon. The court also ordered that the respondent/plaintiff, his servants, agents or privies were restrained from even interfering with the appellant's management and control of the commercial stores and the seven rooms' bungalows therein.

The eldest son, therefore, enjoys the special status of a trusted beneficiary as he controls and manages other properties of his late father, even for the benefit of the whole family, especially his brothers.¹⁸ In the Onitsha community in Anambra State, for example, the deceased's property devolves on the eldest son exclusively, in accordance with the rule of primogeniture, under which the eldest son is expected to look after younger children and may even sell the house over the wishes of the other children or treat it as his property.¹⁹ This responsibility cannot be shared or taken away without his consent.²⁰ He cannot also be removed from the position bestowed on him by nature (that is, head of family), even if he is incompetent. His brothers can only report to the extended family, maybe to intervene and call him to order. Thus, his family members seem to be subject to his discretion, hoping he will act wisely when sharing the properties with the family members. Where there is no issue or no male issue, the deceased's brother or uncle inherits the property, again as a custodian, to administer the estate for the benefit of the deceased's family (even if he was an enemy of the deceased while he was alive).²¹ This rule of primogeniture indeed implies that a woman is unfit and cannot inherit or administer property. This is dehumanising and discriminatory against women and is contrary to the provisions of the Constitution, and international and regional instruments, as will become evident shortly.

2.3 *The right of women to inherit under Customary Law:*

The women in Igboland suffer untold hardship due to discrimination arising from customary inheritance rules regardless of whether they are daughters, married, unmarried, divorced or widows.

¹⁴ *Obi* (n. 15) *ibid*

¹⁵ *Obi*. Samuel (1966) *The Ibo Law of Property*. London: Butterworth, Okoro. Nwakamma. 1956. *The Customary Law of Succession in Eastern Nigeria*. London: Sweet and Maxwell. Basden, George. 1961. *Among the Ibos of Nigeria* 2nd ed. Ibadan: University Press.

¹⁶ *Nwafia v Ububa*, (1966) 1 All NLR 80; *Ezeokafor v Uba*(1975) 1 UILR 162, *Osolu v Osolu* (2003) All NLR 252(SC).

¹⁷ Suit No: CA/E/121/2010 Holden at Enugu Judicial Division (Unreported)

¹⁸ *Ejiamike v Ejiamike* (1972)2 ECSLR 11; *Ngwo & Nwojei v Onyejene* (1964)1 All NLR 352

¹⁹ Elias, Taslim (1971) *Nigerian Land Law*, 4th ed. London: Sweet and Maxwell.

²⁰ *Enemo, Ifeoma*. (2008) *Basic Principles of Family Law in Nigeria*, Ibadan: Spectrum Books Ltd.

²¹ *Ibid*

2.3.1 Inheritance Rights of Daughters (married, unmarried or divorced): Under Igbo custom, daughters do not have any right whatsoever to inherit their father's estate. In *Ugboma v Ibeneme*,²² the female members of the family who challenged the sale by the eldest male sibling of landed property located at Onitsha, which belonged to their late father, failed. However, this inability to inherit seems to be mitigated by their right to be maintained by the person who inherits their father's property until they are married, become financially independent, or die.²³ They are regarded as non-members of their paternal home because they are expected to marry outside their family; they are not supposed to carry the family's wealth to another family.²⁴ This is why, if they dare query the son or whoever inherits their father's property, over impropriety or for any reason whatsoever, they would be ignored or asked to go and marry and leave the family as appropriate, having no say or right in the property. Indeed, this treatment is dehumanising.

The only situation in which a daughter can inherit is when she is forced or persuaded, and she agrees to remain unmarried in her father's house, to raise male children therein who would continue her father's lineage.²⁵ This happens where a man does not have male children, in order to save his lineage from extinction. This is known as *Nrachi* or *Idegbe* institution and it is a custom that encourages promiscuity and prostitution²⁶. Such a daughter is thereby entitled to both moveable and immovable property of her deceased father's estate. The legal interest vests in her until she gives birth to her children. If she bears sons and daughters, only the sons will succeed her in accordance with the rule of primogeniture.²⁷

As already noted, if a daughter dies, her brothers would inherit her property, or her father, and where this fails, her sisters will not inherit.²⁸ Also, where their mother predeceased their father, the sons would inherit her property, or their father, as the case may be. Thus, while property like money, cattle, yams, and other important chattel go to the sons or their father, the daughters would inherit what is regarded as feminine properties like jewellery, domestic utensils, dresses, coco-yams and fowls.²⁹

2.3.2 Inheritance rights of wives/widows: A wife becomes a widow at the death of her husband. As a wife, she has limited rights in all areas of life, including the right to own property.³⁰ Indeed, appropriately described the position of women with respect to property in Igboland, when he stated that, "Women have but few rights in any circumstances and cannot hold such property as their Lords." Nwogu³¹ noted that the only possessions that can be labelled as the property of a wife are her basket, calabash, cocoa yam, farm, cooking utensils and water pot. One may ask, what becomes of her rights at the death of her husband?

Customarily, a widow has no right to inherit her husband's estate in Igboland. The situation of a widow without an issue, or with only female issue or issues, is worse. For, here, the properties of her late husband would as a matter of course pass to the closest male relation of the husband, who administers the same as he pleases. It is of no consequence that the closest male relation is the nephew or even a distant relation of her husband.³² The question is, why should the widow without an issue and the one with issues

²² (1967) ENLR 251.

²³ Nwogugu. Edwin. 2014a. *Family Law in Nigeria*, Enugu: HEBN Publishers Plc, p.421

²⁴ Enemo, (n. 23) p. 404.

²⁵ Ibid.

²⁶ See *Mojekwu v Ejikeme* (2000) 5 NWLR (Pt. 657) 402, where it was held that the *Nrachi* *Nwanyi* customary practice of *Nnewi* (Eastern Nigeria) encouraged promiscuity and prostitution and therefore constituted discrimination against women.

²⁷ Enemo, (n. 23) p. 404.

²⁸ Obi (n. 15) p. 12

²⁹ Ibid, p. 13

³⁰ Basden, (n. 18) George. 1921. *Among the Ibos of Nigeria*, London: Seeley, Service & Co Ltd.

³¹ Nwogu. Mary. 2015. The Legal Anatomy of Cultural Widowhood Practices in South Eastern Nigeria: The Need for a Panacea. *Global Journal of Politics and Law Research* 3. www.eajournals.org/wp-content/uploads.

³² Enemo, Ifeoma (2014) *Dangerous Families in Nigerian Law: A National Albatross?* 83rd Inaugural Lecture of the University of Nigeria, Nsukka: University of Nigeria Press Ltd.

be accorded the same treatment?³³ rightly answered the question as follows: "...the wisdom in it or lack of it, might stem from the notion that females were not issues; which is rather revolting when imagined, and even worse when applied". Thus, the widow and the female children suffer the same fate, regardless of their education or status in the society.

In a polygamous family in some parts of Igbo land, the property of the deceased will be distributed in as many shares as there are wives with male children (this happens in Onitsha in Anambra State, Owerri in Imo State and Aba in Abia State, among others).³⁴ The wife without issue or with only female issues is left out and would be unable to lay claim to any property as of right, except those given to her gratuitously. Paradoxically, the wives who brought those male issues into the world will get nothing, but those male issues get everything and administer as they please (Ikpeazu, 2007).³⁵ In fact, these wives are regarded as the property of their husbands, and therefore objects of inheritance themselves. After all, how can property inherit property? One may rightly conclude that it is the issue of payment of bride price by a man to secure his wife's hand in marriage that places her in a position of inheritable property; after all, she was paid for and bought.³⁶ shares this view when he posits that women do not inherit because, the widow is regarded as part of the estate, (acquired by the deceased husband upon payment of her dowry at the time of marriage) to be inherited by the son or relative. Affirming this position, the Court of Appeal in *Ogunkoya v. Ogunkoya*³⁷, held that wives are also regarded as chattels who are themselves inheritable by other members of the family of the deceased under certain conditions.

A widow may choose to remain in her husband's house and in his name, even though she has no children or she has only female children. In such a case, her husband's family will have to maintain her. She may be allowed to stay in her husband's property, and use the farmland, but her interest there is merely possessory not ownership. This means that she cannot dispose of it. The courts had earlier confirmed this in *Nezianya v. Okagbue*³⁸. Here, a widow married under Onitsha customary law had a female issue. Upon the death of her husband, she assumed the administration of his estate. She let out portions to tenants, sold a portion and erected houses with the monies she realised. She even went as far as disposing of part of the estate in her will. The Supreme Court held that under Onitsha customary law, although a widow could not be described as a stranger with respect to the estate of her husband, she cannot deal with the property without the consent of the family...she has however the right to occupy the building or part of it, *subject to good behaviour*³⁹. After 20 years, the Supreme Court again reaffirmed this decision in *Nzekwu v. Nzekwu*⁴⁰, *that subject to good behaviour*⁴¹, the widow had the right of possession of her late husband's property, and not the right of ownership. The question is, who determines good behaviour? Of course, whoever is in control of the estate (husband's son, brother, uncle, distant cousin or relation) will determine whether the widow is of good behaviour. A favourable judgment would depend on how subservient the widow is to his orders, needs, and demands, which would likely include amorous advances.⁴²

The customary rules as they are, portend great injustice, discriminatory, inhuman and degrading treatment of the widow. A woman that must have toiled with her husband during his lifetime, only to be wickedly

³³Ikpeazu.Onyechi. 2007. Some Aspects of Gender Discrimination on Right of Inheritance: A Call for Judicial Activism. Lecture delivered at B.M.C. Etiaba Memorial Lectures in Enugu, 15 December, 2007).<https://allafrica.com>200712180202>.

³⁴Nwogugu. Edwin. 2014b. Emancipation of Female Rights to Intestate Succession under Igbo Customary Law.*Nigeria Juridical Review*. 12: 2.

³⁵ Ibid

³⁶Onuoha. Reginald. (2008) Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue. *The International Journal of Not for Profit Law*, 10 (2): 34

³⁷ (1988) Suit No CA/L 46 (Unreported)

³⁸ (1963) 1 All NLR 352

³⁹ Emphasis ours

⁴⁰ (1989) 2 NWLR (Pt. 104) 373

⁴¹ Emphasis ours

⁴² Enemo, (n. 23) 398

dispossessed on his death. This is horrendous. It is only fair that a widow be allowed to reap the fruits of her labour by being able to exercise inheritance rights over her husband's property. Unfortunately, the social perception of women is very low, and it is mainly due to illiteracy, poverty and cultural practices which view women as sub-humans, objects of inheritance rather than subjects of inheritance⁴³. This forms the basis for the widespread perpetuation of acts, some of which are very harmful to the overall well-being of women, for example, the disinheritance of women.⁴⁴

2.4 *Impact of the Customary Inheritance on the Rights of Women in South East Nigeria:*

Customary inheritance in South East Nigeria has some serious consequences on women and their rights, in that they are permanently excluded from benefitting and inheriting their fathers' or husbands' property which devolves under customary law. They are not allowed to exercise their right of inheritance which is a human right. The inability to exercise the inheritance right has impoverished the females and led to the death of some widows, even barely a few months after their husbands' death, simply because they lost hope and due to the traumatic experiences they went through.⁴⁵ It is important to mention that in most cases, immediately after the man dies, even before his burial, all documents relating to his property, including land, investments, bank accounts and others, are wrestled from the woman. This is despite the fact that she lived and toiled with her husband for very many years and has children to cater for.

Even the temporary access given a widow to her husband's landed property, especially in the rural Igbo areas (because she cannot inherit), will only remain, as long as she has sons and continues to live in her husband's house and is of good behaviour. The land is for farming purposes to sustain herself. She loses control of this land once her sons get married or come of age and share their father's property. The temporary right ceases⁴⁶. This easily makes mother-son/sons relationship go sour because of the contention over who controls the land. The family thereby disintegrates, and the woman suffers, as she fights for survival because her ability to meet her basic needs is thereby affected.

Again, the inability to secure the property of a late husband deprives women of their bargaining power and that could be a factor in diminishing their risk of contracting Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS), which result from sexual violence or from experiencing other forms of violence.⁴⁷ A husband's brother or relative who wants to inherit the widow can easily transfer HIV and AIDS to the widow who is vulnerable and needs help, especially in the area of her children's welfare. On the contrary, if a widow owns her husband's property, she becomes empowered to address her economic difficulties and that of her family, with better bargaining power and boldness to refuse being inherited.

These adverse consequences arising from disinheritance of women also affect the children and the society at large. As the widow wallows in poverty due to disinheritance, the children are adversely affected because the standard of living drastically falls: hunger, ill health, dropping out of school, psychological trauma and other problems all set in. These people become bitter with the society and may turn violent. The larger society would of course feel the negative impact. Again, for the daughter who is disinherited, she has no say in the way the first son who is entrusted with their father's property handles or misappropriates the property. Any attempt to speak up or intervene elicits a negative reaction from other members of the family, asking her to go and marry, as she has no business in her father's house or with her father's property. If the brother does not take care of her as he should, or decides not to pay her school fees, she becomes a dropout and may remain poor. Thus, poverty as a result of disinheritance will prevent wives and daughters from even going to court to assert their rights.

⁴³ See *Ogunkoya v Ogunkoya (Supra)*

⁴⁴ Mordi. Richard. (1989) *An Appraisal of Inheritance Rights of Women in Nigeria*.
www.academia.edu/7187814/AN_APPRAISAL_OF_INHERITANCE_RIGHTS

⁴⁵ Ike Christine (2005) *Scourge of Widowhood (WACOL)* in Bazza (ed.) 'Domestic Violence and Women's Rights in Nigeria' *Societies without Borders* 4(2) p.183, available at <http://scholarlycommons.law.case.edu/swb/vol4/iss2/6>

⁴⁶ See *Oloko v Giwa* (1939) 15 NLR 31 & *Aileru v Anibi* (1954) 20 NLR 46

⁴⁷ Swaminathan Hema. et al. 2007. *Women's Property Rights, HIV and AIDS and Domestic Violence*, Cape Town: Human Sciences Research Council, p.3-9. <https://www.icrw.org/wp-content/uploads/2016/101>.

It is noteworthy that, the only avenue through which a daughter could inherit her father's property under Igbo custom, is through the Nrachi custom, which violates the very essence of family life⁴⁸ but has been struck down by the court as being repugnant to natural justice, equity and good conscience.⁴⁹ It exposes the daughter to prostitution since she must give birth to "male" children for her father. It also denies paternity of the natural father/fathers of the children.⁵⁰

3. Discrimination against Women's Inheritance Rights

Social and legal discrimination against women remains a major obstacle to their inheritance rights. Women do not have equal rights with men to inherit property in South East Nigeria. This is so because of the discriminatory customs and the patriarchal system of the people. As we have seen, they can inherit items from their mothers or other items that are not worth much. But when it comes to land, buildings and any immovable property, women are found not to deserve such. Yet women in the South East constitute the majority of the agricultural labour force. The effect is devastating for them because they and their children suffer poverty, violence, homelessness, indeed untold hardship and even death. This constitutes an affront to their human rights. The following are some of the reasons for the discrimination against women's inheritance rights.

3.1 *Customs*: The customs on inheritance are discriminatory. The Constitution of Nigeria which is the supreme law of the country⁵¹ prohibits discrimination based on sex⁵², yet the customary laws which are discriminatory against women and give men all the rights over property ownership are recognised and practised by the indigenes of South East Nigeria and even upheld by the courts⁵³.

3.2 *Status of Women in Igbo land*: Men who are generally the leaders and traditional rulers in Igbo society are biased against women. They accord low status to women. The fact that Igbo land is mainly patrilineal in structure encourages male dominance and control over females in all spheres of life, thereby giving room to gender inequality, as against the Yoruba ethnic group from the South West of Nigeria, that, up to a point does not allow gender imbalance. For example, a female could become the head of a family, and their daughters do inherit from their fathers just like their sons; while women in the South East were and are still regarded as chattels or property owned by their husbands. The cultural settings and social institutions/attitudes which see women as inferior seem to be responsible for this. Enemo⁵⁴ noted that people greet the birth of a baby boy in Igbo land with excitement and joy, while that of a girl is greeted with some sadness, feeling of resignation to fate and, weeping by the woman, especially if she has a good number of them. Thus, tradition, culture, mindset, attitude, and social institutions have directly or indirectly, caused or contributed to the continuous subjugation and discrimination against women by men

4. Efforts at Protecting the Inheritance Rights of Women

Efforts abound to protect the inheritance rights of women at the international, regional, national, and state levels. We shall briefly discuss these.

4.1 International Level:

Women's rights are human rights; thus, the inheritance rights of women are an integral part of human rights. There are international and regional instruments protecting the human rights of women, including their inheritance rights, which Nigeria ratified. The formation of the United Nations after the Second World War⁵⁵, marked a new chapter in the development of human rights. The need for a global regime for

⁴⁸ Enemo (n. 23) 404.

⁴⁹ *Mojekwu & Ors. v. Ejikeme & Ors.* (2000) 5 NWLR (Pt. 657) 402.

⁵⁰ Enemo (n. 23) 404.

⁵¹ See s.1(1) Constitution, (n. 3)

⁵² S. 4 (1), *ibid.*

⁵³ See *Ugboma v Ibeneme* (1989) ENLR 251, *Ejamike v Ejamike* (1972) 2 ECLSR 11, *Ngwu & Nwojei v Onyejeme* (1964) 1 All NLR 352.

⁵⁴ Enemo (n. 23). 48.

⁵⁵ The Formation of the United Nations, 1945-Office of the Historian,<https://history.state.gov/milestones/un>.

the protection of human rights brought about the adoption and proclamation of the Universal Declaration of Human Rights, 1948 (UDHR). In fact, in 1948, the United Nations General Assembly declared in the preamble as follows: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world...”⁵⁶ The world now is conceived of as one large family, in which everyone has a recognisable part and the UDHR, is a milestone document in the history of human rights⁵⁷.

Other human rights instruments and institutions, both national⁵⁸ and international⁵⁹ have taken their form and shape from the UDHR. Therefore, the inheritance practices and customs that discriminate between women and men violate women’s human rights. As affirmed in article 1 of the UDHR, “All human beings are born free and equal.” Articles 1 and 8 of the United Nations (UN) Charter reiterate the importance of the inherent dignity and worth of all human beings, thereby affirming the equality of males and females and guaranteeing non-discrimination on the basis of sex, as well as protection from inhuman treatment.

Article 5 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979 and ratified by Nigeria in 1984, “States that States Parties shall take all appropriate measures; 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 stereotyped roles of men and women.” It is a most far reaching international convention on the rights of women because it moved beyond earlier human rights instruments which are gender neutral in terms of equal treatment of men and women. It rather recognized that peculiar forms of discrimination against women need to be addressed. It therefore specifically gives the meaning of discrimination in Article 1 as follows:

Discrimination against women shall mean 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, human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW indeed, largely contains a wide range of gender-specific human rights provisions⁶⁰ that guarantee freedom from discrimination

4.2 Regional Level:

The African Charter on Human and People’s Rights (ACHPR), domesticated in Nigeria as the African Charter on Human and People’s Rights (Ratification and Enforcement) Act⁶¹, in Article 18(3) states that, “the State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women...” Then, Article 21 of the Protocol to this African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), adopted on July 11, 2003, and ratified by Nigeria in 2004⁶², states that “a widow/widower shall have the right to inherit each other’s property in the event of death, whatever the matrimonial regime, and to continue living in the matrimonial home.” By Article 21(2), “women and girls shall have same rights as men and boys to inherit in equal shares their parents’ properties.”

The Solemn Declaration on Gender Equality in Africa, 2004, reaffirms the principle of gender equality as enshrined in Article 4(i) of the Constitutive Act of the African Union, 2000, and in Chapter 7, member

⁵⁶ UDHR 1948.

⁵⁷ History of the Document/United Nations, www.un.org>universal-declaration>his...

⁵⁸ The Constitution and Child Rights Act, 2003 (CRA)

⁵⁹ See e.g. the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of all forms of Discrimination Against Women, 1979 (CEDAW) Convention on the Rights of the Child, 1989 (CRC).

⁶⁰ See arts. 1,2,3,7,8,9,10,11 and 16 CEDAW

⁶¹ Cap. A9 Laws of the Federation of Nigeria (LFN) 2004.

⁶² Ratification Table/Protocol to the African Charter on Human and People’s ... www.achpr.org>instruments>ratification Accessed 29 July 2018.

states declare “to actively promote the implementation of legislation to guarantee women’s land, property and inheritance rights including their rights to housing.”

4.3 National Level:

The Constitution guarantees equality of both sexes and enshrines the fundamental rights of every citizen in Chapter 1V. The Constitution therefore guarantees the right to dignity of persons⁶³ and the right to freedom from discrimination based on sex⁶⁴. According to (Nwogugu2014a, 421)⁶⁵

“The continued validity of the Igbo customary rules of intestate succession as they affect women and the impact of section 42(1) of the 1999 Constitution have been of great concern to the nascent movement for women liberation in Nigeria”

Another positive action taken by the Nigerian Government in the protection of women’s rights was the adoption of a gender policy in 2007⁶⁶.

4.4 State Level:

Several states have adopted laws to protect the rights of women/widows. These states are Enugu (2001)⁶⁷, Oyo (2002)⁶⁸, Ekiti (2001)⁶⁹, Anambra (2004)⁷⁰, and Edo (2004)⁷¹. Also states in the South East have even enacted laws to cover their inheritance practices, for, example, Anambra, Enugu and Ebonyi states⁷². Unfortunately, these laws notwithstanding the discriminatory inheritance practices are still practised in many communities in the South East of Nigeria till date, mainly because female dependants are ignorant of these laws and even when they are aware, do not have the resources or confidence to fight for their rights in the law courts, and mostly because some of the sections this law are discriminatory against women⁷³.

Despite all the international and regional conventions, the Constitution and other federal and state laws mentioned above recognizing and guaranteeing the rights of women, including inheritance rights, these rights are still not meaningfully protected as a result the lives of many women have not been improved.⁷⁴ Eze noted that despite all these, African women are subjected to various forms of inequalities in the political, social, economic and cultural fields. Again, Adikema-Ajaegbo⁷⁵ rightly stated that: “...unfortunately, the rights and ideals (as stated in the laws and conventions) have remained paper tigers,

⁶³ See s.34 of the Constitution.

⁶⁴ See s.42 (1), *ibid*.

⁶⁵ *Ibid*.

⁶⁶ The National gender policy 2007 includes provisions on gender base violence, such as domestic violence, sexual harassment, trafficking in human beings and sexual violence. One of the objectives of the gender policy is to reduce gender inequalities.

⁶⁷ Enugu State Prohibition of Infringement of Widow’s and Widower’s Fundamental Rights Law, 2001

⁶⁸ Oyo State Widows’ Empowerment Law, 2002

⁶⁹ Ekiti State Gender – Based Violence (Prohibition) Law, 2001

⁷⁰ Anambra State Malpractices against Widows and Widowers (Prohibition) Law, 2004

⁷¹ Edo State Inhuman Treatment of Widows (Prohibition) Law, 2004

⁷² Administration and Succession (Estates of the Deceased Persons) Law, 1987 applicable in Anambra, Enugu and Ebonyi states.

⁷³ See s.120 (b) & (c) of the Administration and Succession (Estate of Deceased Persons) Law, 1987; s.120 (b) provides that ‘where the intestate leaves a husband or wife as well as children (whether or not he also leaves parents or brothers or children of brothers and sisters), the residuary estate shall be held on trust as to the value of one third thereof for the surviving spouse. The interest of such spouse shall be absolute in the case of a husband and in respect of a wife, for her life or until remarriage, whichever first occurs. The remainder of the estate together with any residue on the cesser of the wife’s interest, shall be held on trust for the children in equal shares absolutely or failing children, on trust for the children of the interstate’s children in equal shares absolutely’. The discriminatory factor in this provision is that the interest of the husband or children on the estate is absolute while that of the wife is not.

⁷⁴ Osita Eze, (1984) *Human Rights in Africa: Some Selected Problems*, Lagos: Nigerian Institute of Advanced Legal Studies.

⁷⁵ Grace Adikema-Ajaegbo (2014) “The Rights of Women in Nigeria”. *The Lawyers Chronicle*, September 9, 2014. www.thelawyerschronicle.com/the-rights-of-women-in-nigeria.

mere theoretical postulations without any practical bearing on the lives and conditions of the Nigerian women.” Also, Nasir⁷⁶ observed that, the establishment of the rights for women is a normative exercise. It shall remain so until all these laws would not only merely exist but would become effective and capable of implementation. It is our view that the problem may stem from the disconnect between law and the deep-rooted customary practice. Custom is not sacrosanct and should be seen as such. Therefore, it should be repealed once it is in conflict with the laws, Constitution, conventions or treaties, which are superior to it or where it causes injustice to members of the society. There is a need for a holistic re-orientation of the populace towards realising this and acknowledging and supporting the vital role of women in the development of society, and the enhancement of their status. There must be an end to all forms of discrimination against the inheritance rights of women or denial of any of their human rights based on sex.

4.5 Faith-Based Organizations (FBOs), Community-Based Organisations (CBOs), Non-Governmental Organisations (NGOs) and Civil Society Groups:

Different groups have made a lot of efforts to protect the rights of women generally and their inheritance rights in particular. FBOs, CBOs, NGOs, as well as various other organizations have always acted as indispensable agents in the protection and promotion of the rights of women. They have continued to intensify their efforts to promote women’s inheritance rights through various programmes and church admonitions. NGOs such as Women’s Aid Collective (WACOL), Women in Nigeria (WIN), Civil Resource Development and Documentation Centre (CIRDDOC), Widows, and Orphans Empowerment Organisation (WEWE), among others, have carried out programmes aimed at educating, enlightening and informing women and the society on the need to recognise discriminatory customs such as inheritance customs, against women, and eliminate them. Some of these NGOs, like WACOL, even offer free legal services to the poor women/widows who report matters of their disinheritance to them. All these are done to reduce or end discrimination experienced by women, since most people are ignorant of their rights, not to mention their knowledge of the law. The only setback in this regard is that most of the poor women/widows do not benefit from the services offered by the NGOs and generally do not have offices or outlets in rural areas. They thereby become inaccessible to these women, who due to poverty, cannot as much as transport themselves to the cities where the offices are located. At the end of the day, the women remain in a helpless state and continue to wallow in poverty because of being disinherited.

4.6 Judicial Attitude

Women’s right to inheritance in Igbo land has been the cause of many litigations and judicial activism. However, the courts for long sustained the customary inheritance practices which discriminate against women. In *Nezianya v Okagbue*⁷⁷ and *Nzekwu v Nzekwu*⁷⁸, the Supreme Court upheld the Igbo customary law which does not give a wife the right to inherit her deceased husband’s property, but could occupy the property with the consent of the husband’s family subject to good behaviour. In *Sunguro-Davies v Songuro-Davies*⁷⁹, Beckley, J. stated that, “... under native law and custom, devolution of property follows the blood”, therefore a wife or widow having no blood relationship with the husband, is regarded as a stranger in her matrimonial home, and therefore has no claim to any share of her deceased husband’s property. Yet her blood flows in the veins of those qualified by their biological make up, to succeed. This is indeed a paradox! However, Pat-Achalonu JCA (as he then was) in *Uke v Iro*,⁸⁰ held that a custom which strives to deprive a woman of constitutionally guaranteed rights is otiose and offends the provision that guarantee equal protection under the law. According to him, “It offends all decent norms as applicable in a civilised society”.⁸¹ Indeed laws in South East Nigeria have secured the interest of the

⁷⁶ JM Nasir (1998) “Women’s Rights in Nigeria” in Muhammad, T. & Ladan. Mohammed (eds.) *Individual Rights and Communal Responsibility in Nigeria*, Abuja: National Human Rights Commission, p. 67.

⁷⁷ (1963) 1 All NLR 352.

⁷⁸ (1989) 3 SCN 167.

⁷⁹ (1928) 8 NLR 79.

⁸⁰ (2002)FWLR (Pt.129) 1453.

⁸¹ *Ibid* at p.1459.

widow in her late husband's estate, for example, section 4(2) of the Prohibition of Infringement of a Widow's/Widower's Fundamental Rights Law 2001 of Enugu State and section 4(1)(a) of the Anambra State Malpractices Against Widows and Widowers (Prohibition) Law, 2005⁸².

In the case of daughters, a wind of change came in *Mojekwu v. Mojekwu*,⁸³ where the Court of Appeal, per Niki Tobi JCA (as he then was), declared repugnant to natural justice equity and good conscience, the 'Oli-ekpe' custom in Igbo land which debases and debars female children from inheriting property of their deceased father. Unfortunately, the Supreme Court found the reasoning of the Court of Appeal to be incorrect in that case, based on the fact that the *Oli-ekpe* custom was not in issue, and therefore the Court of Appeal had no justification to declare the custom repugnant. That decision was dismissed. In another case, *Okonkwo Timothy v Sunday Oforka*,⁸⁴ a grant of land made to a daughter was challenged, on the ground that it was in breach of Oraifite customary law which forbade women and children from dealing with land. Denton-West JCA commended the action of the trial judge for adequately taking the bull by the horns and upholding the Constitution and declaring the native law and custom as repugnant to natural justice for discrimination. He upheld the decision of the High Court and found that the Oraifite customary law violates section 42(2) of the 1999 Constitution.

The real change came in 2014 with the Supreme Court's ground-breaking decision on this matter, which invalidated the age-long Igbo customary rule of inheritance against women. In *Lois Ukeje and Enyinnaya Lazarus Ukeje v Gladys Ada Ukeje*⁸⁵, Lazarus Ogbonnaya Ukeje died intestate. His daughter sued the deceased's wife and son (her stepmother and stepbrother) before the Lagos High Court seeking that she be included among the persons eligible to administer the deceased's estate. The High Court voided the Igbo customary law excluding female descendants from inheritance. This was upheld by the Court of Appeal and on further appeal, the Supreme Court, unanimously affirmed the decisions of the lower courts and held that the Igbo inheritance rules that exclude women from inheritance violate the Constitution. According to Bode Rhodes-Vivour,

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(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian.⁸⁶

By this decision, henceforth in the South East, every female child should get a share of her deceased father's property, whether the deceased had male children or not.

Again, in the case of *Onyibor Anekwe and Chinweze v Mrs Maria Nweke*,⁸⁷ a widow (plaintiff/respondent) instituted a case at Awka Division of the Anambra State High Court praying among other things that the court declares her as the person entitled to the statutory right of occupancy in respect of the parcel of land in dispute. The defendants/appellants asked her to vacate that land which she claimed she inherited from her husband, on the ground that she had no male child in the house, even when she had six female children. They argued that by the native law and custom of Awka people, the land was inherited by their father as the first and only surviving son. The appeal before the Supreme Court by the defendants/appellants was therefore against the judgment of the Court of Appeal, Enugu

⁸² s.4 (2) of the Enugu State Law provides that 'No person for whatever purpose or reason shall compel a widow or widower to vacate the matrimonial home'; s.4 (1) (a) of the Anambra State Law provides that 'No person shall compel widow or widower to vacate his or her matrimonial home on the ground that he or she has no male child or no child at all.

⁸³(1999)7 NWLR (Pt. 215) 283.

⁸⁴(2008) 9 NWLR (Pt. 109) 204.

⁸⁵ (2014) 11 NWLR (Pt. 1418) 384 SC.

⁸⁶*Ibid* p.408.

⁸⁷(2014) 9 NWLR (Pt. 1412) 393

Division, which upheld the judgment of the trial High Court granting the respondent's claim and dismissing the defendant's counterclaim. Ogunbiyi JSC observed as follows:

...I hasten to add at this point, that the custom and practices of Awka people upon which the appellants have relied for their counter-claim is hereby out rightly condemned in very strong terms. In other words, a custom of this nature in a 21st-century societal setting will only tend to depict the absence of realities of human civilization. It is primitive, uncivilized, and only intended to protect the selfish perpetuation of male dominance which is aimed at suppressing the right of the women folk in a given society⁸⁸.

Going further he said:

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 a wife from her husband's property by reason of God's 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 the perpetrators of the 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 late husband's brothers on the ground that she had no male child, is indeed very barbaric, worrying and flesh skinning⁸⁹.

His Lordship concluded that:

The impropriety of such a custom which militated 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 further in the 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' act is in this circumstance without hesitation or apology.⁹⁰

These two Supreme Court decisions are transformative judgments that should go a long way in completely changing the status of women in the South East and Nigeria as a whole. Unfortunately, despite these pragmatic decisions, and laws, the age-long discriminatory practices, including disinheritance of women, continue unabated.

5. Is Women's Right to Inheritance in South East Nigeria a Charade?

For a long time, the issue of inheritance rights of women has brought about serious controversies, disunity, poverty, untold hardship, hopelessness etc. to many families. It is clear from the above discussions that a lot of efforts have been made to deal with this societal challenge. Do these amount to wasted efforts since current practice demonstrates a continuation of denial of inheritance rights of women?

In Nigeria and South East in particular, culture, which is the way of life of the people has gained so much wide acceptance among the people that it has the status of law and would at times work negatively against the provisions of the law. These are patriarchal societies, where women, as culture and tradition demand, take the second place, to be seen and not heard, and are accorded low status. Thus, our forefathers believed women were perpetual minors and had to lead their entire lives under the guardianship of their fathers, their husbands or their sons. Yet when there are serious issues in the family the woman is looked upon for solution.

⁸⁸*Ibid* p.421

⁸⁹*Ibid* pp. 421- 422

⁹⁰ *Ibid* p.422. Note that the strong disapproval of this custom by the court was also shown by the award of a heavy and punitive cost of two hundred thousand naira against the defendants/respondents.

The males are believed to be the ones that perpetuate generations and continue their fathers' lineage, unlike the woman who is not permanent in her father's house and is married off to another family and bears the name of her husband. They thus cannot take their father's property to another family. Women are regarded as chattels to be inherited themselves and not to inherit. After all, can property inherit property?

Unfortunately, the Igbo society has held firmly, rigidly and tenaciously to this discriminating tradition and culture. The way relatives rush the property of a man who has only daughters is disgusting. Igbos, who are mainly Christians, seem to be quick to forget the story of the daughters of Zelophehad.⁹¹ At the death of their father, they requested to inherit their father's property and Moses brought their case before God. God decided that brother-less daughters should inherit their father's property. In the case of a widow, the callous way the husband's male relatives rush the man's property leaving the widow and her children empty-handed and in poverty, is oppressive and wicked.⁹² Obioma⁹³ thus cried out as follows:

It is crazy out there in Igbo land because the kinsmen of the deceased jump at these widows and take everything that belongs to them and their children without a second thought on how they will cope. Today, landlords are trying to sleep with some of these widows in exchange for rent...

This is a pitiable situation. Regrettably, despite all the efforts enumerated above, the issue of discriminatory inheritance rights has not been laid to rest. Most women are vulnerable, subservient, timid, and lack economic power; they cannot approach the courts on this matter. They have been brainwashed by sociocultural norms and structures in the society which have implanted in them the idea that they are subordinates in favour of men. They are afraid to challenge the family members and fight for their rights. Freeing themselves from the bondage of tradition and culture, especially those affecting their inheritance rights, therefore becomes to them a huge insurmountable task. If by chance the woman becomes courageous and ventures to fight for her property right, and goes to court to assert her right, her family or her husband's family as the case may be, would ostracize her or send her packing. Access to court is also a huge challenge to women, especially the poor and uneducated ones. Even the educated ones keep quiet and would not want to dabble into the long process of litigation that could tear their family apart in most cases, to their detriment. Unfortunately, NGOs do not have enough resources to pursue such matters for the women and the Legal Aid Council is also not well funded to be able to take on these cases.

Until we dismantle the strong affiliation we have towards the age-long tradition; stop holding tenaciously to them despite the injustice they perpetrate; change the mindset of members of the Igbo society, especially the men; teach men to make an early will to avoid application of the discriminatory and degrading custom; educate the girl child, enlighten women about the existing laws and court decisions which support their right of inheritance; produce more courageous and bold judges, the issue of inheritance rights of women will remain a charade despite the enormous efforts made so far.

6. CONCLUSION

Human beings are born free and equal in dignity and rights. Every human being, therefore, irrespective of status or sex, is vested with some basic rights, such as right to life, right to fair hearing, right to education, right to inheritance, among others. However, many women all over the world have continued to experience discrimination because state laws and policies in some countries prohibit women from equal access to land, property and housing, and make them suffer economic and social discrimination amongst others. Today, things have certainly improved for women, with all the positive efforts so far made, but they are still far away from being equal with men in the area of inheritance of property as that right is still being trampled upon and violated especially in South East Nigeria. Even the implementation of the two

⁹¹ Numbers 27, the Holy Bible

⁹² Joy Ezeilo, (1998-9) "Law and Practices Relating to Women's Inheritance Rights in Nigeria: An Overview", *Nigerian Juridical Review* 7: 131-139.

⁹³ Ferdinand Obioma, (2011) "They Sold Everything". *Vanguard*, 26 November.

Supreme Court judgments proved difficult because the discriminatory custom is deeply rooted and the men folk have continued to resist any contrary practice. The sooner they realise the havoc this is causing in various families and our societal development, the better.

To eliminate the challenges posed by customary inheritance rights of women in South East Nigeria, it is necessary to adopt the following measures. First, State Governments in South East Nigeria should organise massive public enlightenment programmes and campaigns that would lead to attitudinal change by both women and men, towards the inheritance rights of women for at least an initial five-year duration. Second, the South East state governments should fund legal literacy campaigns to create awareness of the existing laws and court decisions, and educate women on their rights and how to enforce them. Third, the South East State Governments and the Local Governments should take steps to empower women and girls educationally and economically. Fourth, the South East state governments should take steps to review and codify the customary laws/rules of inheritance, enhancing the rights of women. Fifth, the Federal Government should take steps to strengthen the Legal Aid Council in rendering free legal assistance to poor women and also encourage State and Local Governments to establish free legal assistance units and other assistance programmes for poor women and widows in both the urban and rural areas. Sixth, the Judges should become bolder and more proactive in determining issues concerning the inheritance rights of women, having regard to judicial precedent. They should also develop customary laws through their bold and pragmatic decisions to meet changes in global attitudes and standards as it relates to women's inheritance rights. They should also encourage women to bring inheritance matters to court by giving a speedy disposal action to such matters.