



A Critique of the Andoni (Obolo) Discriminatory Practices Against Women's Property Rights

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ABSTRACT

The Andonian Patriarchy Structures system have manifestly affected her interplay and customary practices and same have manifested into a high level of discrimination against women's property right as enshrined in the 1999 Constitution of the Federal Republic of Nigeria, under the Fundamental Human Right Provision. The Supreme Court Judgements seem to have positive changing effect on the discriminatory Andoni practices against women's property right. Presently, at this global stage, most Andonians are no longer holding on with their cultural values which relegate and subjugate women property right to the background, a pitiable, disgraceful and inhuman situation, wherein their women are being regarded as chattels that belong to their men owners and so, can be disinherited. This present article offers a critique upon a critical review, scrutiny and evaluation of the Andonian discriminatory practices against women property right, in the light of the Nigeria's Case Law, with the aim of eliminating same.

Keywords: women's property right, discriminatory practices, Andonian Patriarchy

INTRODUCTION

The denied state of the Obolo women in Rivers State emanates from the complete absence of the means of control of property rights and some sensitive key productive resources, such as the usage of rivers, creeks, land and property. The Obolo customary law could be said to restrict women from owning and possessing land in their names, notwithstanding that women are the cultivators of land in their society.

It is a settled fundamental principle of human rights that women rights to use land and to own property is a crucial formative feature in women fundamental rights, particularly in Nigeria. It is an indispensable truth that women are neglected and are being treated with prejudice in respect of the right of succession and the right of equal opportunity under customary law, mostly with regard to property rights. This prejudice is also evident in women undergoing divorce, divorced women and woman's right to inherit from her deceased husband's estate¹. It has been said that African women do not have shorter lives than African men, but do have harder lives².

Under Andoni Native Law and Custom, women's rights to property are those rights of married women, unmarried women, and daughters to own property in their individual capacity and against their husbands and/or male parents' rights to control, manage, supervise, superintend and own their wives and daughters' properties when alive and at death. It seems that the right to own property in Andoni refers to the entirety of rights and entitlements arising from land, housing and property.

¹ Yinka Olomujobi, *Human Rights on Gender, Sex and the Law in Nigeria* (Princeton & Associate Publishing Co. Ltd, Ikeja Lagos, 2015, Revised Ed.) at 161

² McFarson, Gazek N. 2010, "Poverty among Women in Sub-Saharan in Africa: A review of selected issues, *Journal of International Women's Studies* Vol.11:4,50-72.

Property and Law are born together, die together.
Before law was made there was no property;
take away laws, and property ceases.³

In Andoni, it is their custom that the system or patriarchy structures and its governance it is solely determined by men. Men in that society have an interest and values over and above their wives and daughters, as it concerns property. The above introduces inequality between men and women per their property rights.

The Obolo Nation popularly refers to as Andoni is a patriarchal Society. It's customary norms and practices neither encourage nor enlighten gender equality, with regards to property's right, rather it discriminates and prejudices women's property right than succession-in-title to traditional chieftaincy stool. Andoni which lies and situates in the Niger Delta Region of the South-South part of Nigeria, has six Administrative Districts that made up the present Andoni Local Government Area in Rivers State; with its Headquarters situates at Ngo Town, outside the Ancestral York Obolo Deity Centre at Agwut-Obolo and with not less than Ten (10) Islands with Traditional Divisional Councils of Chiefs duly constituted upon Dialectic Geographical Zones. The Obolo nation also comprises those that live within and outside Rivers State.⁴

The custom and practices of the Andoni people greatly determine their cultural values and heritage and same to some extent undermines the dignity and property rights of women; as enshrined in the 1999 Constitution of the Federal Republic of Nigeria⁵.

This paper which clearly adopted both the doctrinal and empirical research methods, attempt to present a critique of the Andoni Discriminatory Practices against women property rights. It is divided into distinct parts, for quicker comprehension of the subject-matter. The first part discusses the discriminatory practices in Andoni against women's property right. The Second part deals with the Supreme Courts verdicts that void the discriminatory practices aforesaid, while the third part focuses on this writer's Critique of the subject-matter under consideration. The last part of this article is the Conclusion with the writer's necessary recommendation.

1.0. DISCRIMINATORY PRACTICES IN ANDONI

A definition of Women's Rights would invariable be driven from the definition of human rights, which has been described as the rights a person has, simply because he or she is a human being. The question is; do women have these same human rights as male human being? Or are their rights less because they are women. Women's rights can therefore be seen at the human rights of women and viewing it as such, is to emphasis the globally and individuality of all Human Rights and their applicability to women as human being.⁶

Under Andoni Native Law and Custom Inheritance and succession-in-title are both patrilineal and matrilineal in nature;⁷ however women are prevented from inheriting their father's and husband's property under certain circumstances.⁸ This long age customary practices are basically fashioned on ground of gender inequality. When a man dies, his daughter(s) or widow(s) is/are disinherited, on the following grounds:-

³ Jeremy Bentham & Dumont, Etienne. 1864. *Theory of Legislation*. (London: Truber & Company).

⁴ The Kala-Ido, Eastern Obolo in Akwa-Ibom State, Oro (Oron) People, Ohafia in Abia State, who all have in common the same and similar cultural heritage.

⁵ 1999 Constitution of the Federal Republic of Nigeria (Supra)

⁶ O.E. Briggs: *Women's Right under Nigeria Criminal law*, Legal Research Initiative (BOWOCORP LTD; Port Harcourt, 2004) at 5

⁷ Elder Nna Nelson Ogogo-Wariso: *Oral History of Wriso's Family in Ebukuma-Andoni*. Compendium of the Ebukuma Families on how they were formed. (Unpublished work by His Honor, Igoni Ephraim Solomon Esq.)

⁸ According to HRM, King Israel Uzamandeng Otuo (IX, JP). *The Okan-Ama of Unyeada Kingdom*, on the issue of Women Property Rights in Obolo.

Whenever it is declared that a daughter is born out of wedlock, or owing to wife's infidelity and/or promiscuity, such a female child cannot inherit her foster father. When a widow refuses to remarry a relation of her late husband or immediately remarry outside her late husband's family, she cannot inherit her husband. If a widow has no male child or child at all, she can decide to remain in her late husband's house and as a member of her husband family, she cannot in most cases inherit her husband landed property.

Again, if a widow or daughter is been customarily declared to be responsible for the cause of death of her husband/father, such widow/daughter cannot inherit the deceased and shall be disinherited, if she holds any of the deceased's property. If it appears that a widow/daughter refuses to customarily participate in her late husband's/father's burial rites, such a person cannot join in the sharing and owning of the deceased's properties. Upon the death of a man, his surviving wife and daughter, like any other nucleus family member are by the Andoni custom subjected to certain customarily burial rites performance, shaving of head, the widow's shaving of her private parts and head, exchanging of clothes for the dissolution of customary law marriage/vows and wearing of mourning black clothes for a specific period of not less than six months and the performance of End of Burial Rites.⁹

In Andoni, as a woman get married her properties automatically becomes her husband properties. The Man being the Head of the Family controls all properties. A widow's property is subjected to be converted by her husband. While unmarried women and daughters properties are the properties of their father, or other male relations. Again a widow's outside her matrimonial home belongs her parents or family.

Married Women are prohibited from inheriting their father's Estate, if there is/are male child (ren) of the same parents or of the same lineage. Daughters cannot also inherit their parents (mostly fathers) based on the patriarchal customary policy of inheritance. Succession-in-title to Traditional Chieftaincy Stoll in Ebukuma-Andoni is based on equality of sub-family units, without discrimination on gender background. Ironically, women are not allowed to success to any traditional chieftaincy stool, even when it is their entitlement. However, a son may ascend and being enthroned through his maternal lineage, but has to do with the permission of his paternal family.¹⁰

Women in Andoni are entitled to all domestic utensils and feminine related property, even upon the dissolution of marriage. Here, a wife's property can only be inherited by her female children or male children wives. No man in Andoni can disinherit a wife of her domestic/feminine property. It is a taboo to do so.¹¹

2.0. CASE LAW ON THE PROTECTION OF WOMEN'S PROPERTY RIGHTS.

The Nigeria Court has upheld the custom denying a widow's right to inherit her husband's property for the reason that she was considered part and parcel of her deceased husband's estate¹², as husband and wife in law are being regarded as one person. The Supreme Court of Nigeria does not at a time recognize women's rights to own property, as it overlooked the constitutional rights of equality and the freedom from discrimination. It seems that the Supreme Court Verdicts aforesaid in many ways discriminates against rights to own property.¹³

⁹ Arikini Wariso: Oral History of Aman-Obolo & Obolo Women's Rights (Unpublished Work by Igoni Ikpo-Wariso)

¹⁰ CCU/3/2016: Oriente IKwut Biariko & Anor v. Simeon Amie & 4 Ors.

¹¹ Ccu/3/2010. Chief Malachi d.e. Ogween v. Mrs. Victoria Malachi, ccu/6/2010. Mr. Isaiah Isaiha Ome v. Mrs. Evidence isaiah (Being the Unreported Judgments of the Unyeada Customary Court, in Andoni Rivers State.)

¹² Shaibu v Bakare (1983) Supreme Court Judgment 115

¹³ Neziyanya v. Okagbue (1963) ALL NLR 352, Nzekwu v. Nzekwu (1989) 2 NWLR 373, Akinnubi v. Akinnubi (1997) 2NWLR 144, Ojiogu v. Ojiogu (2009) 9 NWLR (PT. 1198) 1.SC

The In the Case of **Ugboma v. Ibeneme**¹⁴, it was held that, under the Igbo Customary Law, female members of the family do not possess the right to inherit land, that is, neither the daughters nor the widows of the deceased have rights in respect of his real estate. In this case, Rev. Ibeneme, a native of Awkuzu died intested leaving a number of landed properties at Onitsha, including No.44 New Market Road. He was survived by two sons and several daughters. The eldest son sold No.44 New Market Road to 2nd Defendant; so the second son with his six sisters sued their eldest brother, seeking a declaration that the property in question, being the joint property of all the children of Rev. Ibeneme, could not be sold and conveyed by the first Son/Defendant alone. Consequently, they requested the court to set aside the sale, cancel the deed of conveyance and order an account by the 2nd Defendant. The Learned Trial Judge, Egbuna J, held thus:-

In accordance with the general Igbo Custom which also is the custom of Awkwuzu, home of the deceased Rev. Ibeneme, women are not entitled to inherit land from their father; consequently the female plaintiffs have no locus standing in the action.

The Supreme Court verdicts declaring discriminatory practices against women property right illegal and void appear recently to be light at the end of the tunnel of such discriminatory practices. It will be said that, the Supreme Court voided the custom that denies a women without a male child, the right to share in her late husband's estate and the one that prevent a female child from sharing in her late father's property. The court declared the discriminatory practices, which formed part of the tradition of the people of Umuhia (Abia State) and Awka (Anambra State) unconstitutional.

In Suit No: SC 224/2004¹⁵, which appeals was filed by Mrs. Loise Chituru Ukeje (wife of the late Lazarus Ogbonna Ukeje, a native of Umuahia, who lived and died in Lagos State) and their Son, Enyinaya Lazarus Ukeje against Ms Gladys Ada Ukeje (the deceased's daughter). Gladys sued the widow of her father and her son at the Lagos High Court, claiming that as one of the children of Late Lazarus Ogbonna Ukeje, she should be among those to administer the deceased's estate. The High Court found that she was a daughter of the deceased and was qualified to benefit from the estate of her late father. Her father died intested in Lagos in 1981. The Court of Appeal, Lagos Division upheld the judgment of the trial Court therein, the family appeal to the supreme.

Having studied, reviewed, scrutinized and evaluated the Brief of Arguments of the parties and the records of proceedings from the lower court, the Supreme Court, in its judgment, held that the court of Appeal was right to have voided the Igbo Native Law and Custom that disinherited female children.

“No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from Her father's estate.”¹⁶

Consequently, the Supreme Court held that, 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.¹⁷ Wherein, His Lordship added that:-

the said discriminatory customary law is void, as it conflicts with Section 42(1) and (2) of the constitution. In the light of all that I have been saying, the appeal is dismissed. In the spirit of reconciliation, parties are to bear their own lost.¹⁸

In another Supreme Court Case filed by Onyibor Anekwe and Chinweze (Descendants of Anieke Nwogbo, the half brother of the late Nweke Nwogbo) Against the Lower Court's Decision, which favoured Mrs. Maria Nweke (wife of the late Nweke Nwogbo). In 1991, Mrs. Nweke sued the Appellants

¹⁴ (1967) FNLR at 251,

¹⁵ Ukeje v. Ukeje

¹⁶ Ukeje v. Ukeje (supra) per. Bode Rhodes-Vivour JSC, who read the lead judgment

¹⁷ The fundamental Human Rights Provision guaranteed to every Nigerian Citizen (1999 CFRN)

¹⁸ Bode Rhodes-Vivour JSC in Ukeje v. Ukeje, Suit No. SC 224/2004

at the Anambra State High Court, Awka, when the Appellants moved to evict her from the land she got from her late husband. She said that the land was given to her late husband before his death. He died shortly before the civil war. The land in dispute forms part of what is now known as 19 Ogbuago Lane, Amikwo Village, Awka. She told the trial court that the Appellants (who were defendants) asked her to vacate the House, on the ground that she have no male child, even when she have six female children. Mrs. Nweke claimed that she was disinherited by her late Husband's family, because she had no male child, for her husband. According to her, she refused to vacate the land, insisting that a woman, under the custom of Awka people can inherit the property of her late husband, whether she had a male child or not. She added that the OZO AWKA SOCIETY arbitrated in the dispute and agreed with her that she had a right to remain on the land.

On the part of the Defendants, they disagreed and 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 Trial Court and the Court of Appeal decided the case in favour of Mrs. Nweke. The Defendants appeal to the Supreme Court was dismissed, on the ground that the Appellants on record failed to provide any credible evidence to enable the apex court overturn the judgments of the two lower courts. His Lordship¹⁹ added thus:

I hasten to add that the custom and practices of Awka, upon which the Appellant have relied is hereby out-rightly condemned in very strong terms. A custom of this, in the 21st century societal setting will only tend to depict the absence of the relatives of human civilization.²⁰

Such discriminatory customary practices is punitive, uncivilised and only intended to protect the selfish perpetuation of male dominance, which is aimed at suppressing the right of the women folk, in the given society. One would expect that the days of such obvious differential discrimination are over.²¹ Any culture that disinherit a daughter from her fathers's estate or wife from her husband's property, by reason of God instituted gender differential, should be punitively dealt with²²

In *UDENSI v. MOGHOSH*,²³ the Supreme Court held that, the exclusion of female children from succession to land or interest in land is not applicable in all situations. It has been established that female children may succeed to their father's Kola Tenancy in Onitsha. In the instant case, the Plaintiff based his claim to real property in Onitsha, which is held on KOLA TENANCY both on the Right to succession and ILI-EKPE Custom of the people of EZINIFITE, to which the Udensi family belongs. The Defendant's were the daughters of the last holder of the Kola Tenancy. His Lordship, IDIGBE JSC. considered the claim based on ILI-EKPE "as misconceived and found that Kola Tenancy creates a LANDLORD and TENANTS relations, between the parties to it. The Tenancy is certainly more than a mere occupational licence which confers no interest in land. Like most customary tenancies, Kola Tenancy confers on the grantee full right of possession, but it confers no more than a mere possessory right, that is, a right of occupation of the tenant. The particular custom governing Kola Tenancy determines whether it is inheritable and it is a matter of evidence of each case.

It follows therefore that it is difficult to say that, ipso facto, a customary tenancy is an interest of inheritance. In the instant case, it was held that, Kola tenancy, under the Mgbelekeke family customary law, is inheritable by the children of a deceased, Kola tenant, no matter the sex, but only upon production by the succeeding child as acceptable by the Mgbelekeke family of further Kola.

By virtue of Section 42(2) of the 1999 CFRN, which provides thus:-

¹⁹ Per Clara Ogunbiyi JSC in *Nwogbo v. Nwogbo*-Suit No. SC. 129/2013

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ (1976) 7 SC at 1. Also in the case of *MOJEKWU V IWUCHUKWU* (2004) 11 NWLR (PT.883) 196, per Uwaifo JSC at 214

No citizen of Nigeria shall be subjected to any disability or deprivation, merely by reason of the circumstances of his birth.

Discrimination against female children of their property rights is prohibited, as it is a discrimination based squarely on sex and circumstances of birth. Female children are by the provision of the constitution now entitled to share equally with their male counterparts in succession to land and interest in other landed properties.²⁴

According to Denton – West, JCA²⁵:-

..., I will want to emphasize here that, the Learned Trial Judge was not only right in his ruling/judgment, but he adequately took the bull by the horn and upheld the constitution and was able to declare that a native law and custom that was repugnant to natural justice, wherein some citizens of the country Nigeria are discriminated against, on account of their place of origin, sex, religion, or political opinion, to hold property, when such property was indeed also given by a grandfather to his daughter and son; per. Exhibit “A”, if not upheld, is repugnant,

3.0. CRITIQUE OF THE SUBJECT-MATTER

A critique of the Obolo discriminatory practices against Women’s Property Rights by this writer, is aimed at determining whether the listed, Obolo discriminatory practices aforesaid are presently being adequately addressed by the provisions of the 1999 Constitution and the Case Law on the Subject-Matter.

The Constitution is supreme and its provision shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.²⁶ The decisions of the Supreme Court shall be enforced in any part of the Federation, by all authorities and persons by courts with subordinate’s jurisdiction to that of the Supreme Court.²⁷

1. The Supreme Court declaring discriminatory customary law practices (Andoni inclusive) to be unconstitutional, void, illegal, repugnant to natural justice, equity and good conscience; means that, the Supreme Court, judgments, whether they do affect any person(s), community, body or authority in particular, has binding force and effect and must be applied to facts and circumstances of persons or community per the national law and custom. Here, the doctrine of the supremacy of the constitution requires everybody to uphold the tenet of the constitution and be bound by its provisions, as against the customary norms of the people in Nigeria including Andoni.
2. The discriminatory Andoni customary law practices against women property right cannot be reconciled presently with the global current notions of equality and woman dignity as contained in the 1999 Constitution of the Federal Republic of Nigeria and other Bills of Rights. The exclusion of women from inheritance (property) on the ground of gender is not only a clearer violation of S.42 (1) & (2) CFRN, but also, it is a form of discrimination that entrenches past patterns of disadvantage among a vulnerable group, exacerbated by old notions of patriarchy and male domination incompatible with the guarantee of equality under the 1999 Constitution Order; it violates the rights of women to human dignity.²⁸
3. Case Law on the subject-matter are mainly fashioned and rooted in the Roscoe Pound’s School of Law, which states that; judgment should be tools of social engineering, redefining the way people should live, remolding obnoxious cultures and abolishing primitive practices. This school of law is a clear direction and learning light to follow for future purposes, so it has failed to address our

²⁴ Okonkwo Timothy v. Sunday Oforka & Ors (2008) 9 NWLR (PT.109) at 204

²⁵ Ibid at 217

²⁷ Section 287 (1) CFRN 1999

²⁸ Charlotte Sibi v. Mantabeni Freddy Sithole & Ors CCT. 6903, Constitutional Court of South Africa, (reported at 423 in Family Law in Nigeria, Nwogugu E.I., 3rd Ed)

present and the past. The aforesaid is mainly aimed at enshrining fairness, equality and justice in all strata of the society, without any form of discrimination, especially, those based on birth, gender, sex etc; where victims (women) are helpless or are not the cause, it should be noted that, it will take time for the desired change to come, rather there is need to change the change.

4. The Supremacy of the constitutional provision and Supreme Court verdicts cannot be enforced against certain discriminatory practices affecting women property rights as the verdicts shall in turn be customarily subjected to traditional principles and practices of inheritance and succession, at the community level, where the implementation of the said verdicts can no longer be coordinated through judicial processes. The communities have already existing and generally acceptable way of dealing with such issues²⁹ and as such the people are only interested in the maintenances of their culture rather than the Supreme Court verdicts in which looks at the fundamental rights of the individuals rather than their culture.
5. Female children by the Andoni Native Law and Custom are expected to get married outside their parents home or families. So being excluded from inheriting landed property, do not infringe on their rights of inheritance per property. Customarily in Andoni, the female children getting shares of their parents (mostly fathers) landed properties and share in another property somewhere per their marriage, will amount to getting double ratio of inheritance/succession
6. Married female children inheriting their parents landed property connotes the transfer, alienation, grant, allocation of such properties to yet another family or community, where they are presently being members of such family or community than that of their parent, is against the tenets of Customary Law inheritance that maintain the recycling of properties within a given family or community: A Woman under Andoni Native Law and Custom, is expected to bring things (property) into her parent's family rather than taking/transferring property to yet another family/community. Assuming such an Andonian woman is married away to (as close as) Ogoni land, Anan, Ibibio or as far as Hausa land, will she be expected to transfer her inherited father's property to the places mentioned, or would her husband family come all the way from Hausa land to inherit her at death? It is practically impossible customarily.
7. A major problem with our Case Law is that the Justices of the Apex Court are in most cases alien to the very Customary Law Practices, which they declared discriminatory in nature. The Justices mainly based their verdicts on the principles of Fundamental Human Rights and the provisions of the Nigeria Constitution, rather than the customary law norms of whose land is to be inherited by the widows/daughters of the deceased. It is practically impossible for those verdicts which are been held on ground of fundamental rights and which are alien to the customs of the people to have a binding force on the people whose believe are anchored on their custom.

CONCLUSION

It is the strong belief of this writer that the combination of our Case Law and the abidingness and enforcement of the women fundamental rights, as enshrined in the Constitution of the Federal Republic of Nigeria (1999) shall to great extend put an end to the discriminating practices in Andoni, to women property rights; therefore, allowing women to inherit, succeed their parents or husbands landed properties without any bar or impediment of customary law practices.

RECOMMENDATION

In my humble view, as much as the present Supreme Court verdicts (Case Law) and the Constitutional Provisions assisting the efforts of many women who are seeking a total break-through from the inhuman, unjust, degrading, derogating and discriminating Adonian traditional practices against women property

²⁹ According to Eze O.J. Ananaba, The Traditional Ruler of Umuokahia Autonomous Community in Obingwa Local Government Area, Abia State. Eze Clement Offia Chukwu Udensi, Traditional Ruler of Okwo Aja Community, Amokwe-Item, Bendel LGA Abia State

rights, are being followed in their strict terms, the discriminatory practices shall be a thing of the past. It is again my candid legal belief that the aforesaid legal instruments are inadequate engendering the much radical fundamental rights reformation and remedies that is needed as change by the female World of inheritance and succession to landed property in Andoni.

Consequent upon the above, I make therein the following recommendations:

1. The Andoni customary Law discriminatory practices against women property rights which militates against women, who are disinherited, based on gender, deserves to be condemned, as repugnant to natural justice, equity and good conscience
2. Reliance on Case Law and the Constitution need to be combined with grass-root enlightenment campaigned intending to assist the Andoni nation gradually to change the discriminatory traditional (that date back centuries and had been generally accepted as their norms) that militates against woman property rights.
3. Mass values, public information campaigns among other strategic should be adopted by Civil Society, Groups, Professional Body like NBA, FIDAS, the Press, market women, sponsored adverts, public interviews featuring Law lecturers, Political leaders, Governors, Traditional rulers, important personalities in the society, are veritable steps that will hasten women property rights in Andoni.
4. Government on her part need to embark on a deliberate regular campaigns and Town-Hall meetings to educate the Andoians on the fundamental women rights of landed property via inheritances and succession and thereto do away with their discriminatory customary law practices against women property rights.
5. Female Gender Rights Organization with the support of Government and Civil Society Groups can also do much to achieve the desire result, by embarking on collaboration campaigns, from village to village, with the cooperation of the village Heads and Town Unions.