



# Widows and Inheritance Rights in Nigeria: Beyond the Letters of the Law

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## ABSTRACT

The Constitution of the Federal Republic of Nigeria expressly prohibits gender based discrimination. Nigeria is signatory to several international and regional instruments that seek to promote equal rights for men and women. These include The Convention on the Elimination of all forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights and the Optional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. In addition, the apex court in Nigeria has given landmark judgements upholding the inheritance rights of women in general and widows in particular. In spite of the existence of these laws, some systems of customary law in Nigeria disallow widows from inheriting from the estates of their late husbands. This paper argues that laws alone cannot compel attitudinal change. In recognition of this fact some international instruments to which Nigeria is signatory, require governments to educate their populace with a view towards changing negative societal norms and cultural practices. It is therefore the responsibility of the Nigerian government to engage the agents of socialization with the aim of educating her populace on the need to respect the rights of women including the inheritance rights of widows.

**Keywords:** Inheritance, widowhood, Peoples Rights, discrimination

## 1. INTRODUCTION

The dehumanising and discriminating treatment accorded to widows is one of the major unfortunate circumstances that women have had to face in Nigeria. Law as a tool for social re-engineering is an instrument for the protection of women from injustice. Nonetheless, the provisions of the law alone are inadequate in protecting the widow from firmly entrenched customs that seek to divest her of her rights, including the right to inherit from the estate of her deceased husband.

A great number of women in their life time have faced, at least, one form of discrimination, whether subtle or overt. Discriminatory acts against women could be in the form of workplace sexism,<sup>1</sup> harmful traditional practices, religious practices, domestic and sexual violence.<sup>2</sup> Statistics show that at least one in three women will experience some form of violence during their lifetime.<sup>3</sup> One of the avenues through which women have been subjugated and discriminated against is in relation to their inheritance rights.<sup>4</sup> The woman suffers this discrimination even though her right to own immovable property anywhere in the country is guaranteed by the Constitution of the Federal Republic of Nigeria 1999, s43.<sup>5</sup> The

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<sup>1</sup> Gillian B White, 'Beyond Sexual Harassment' *The Atlantic* [amp.theatlantic.com](http://theatlantic.com), accessed 3 July, 2020;

<sup>2</sup> See generally 'E4J University Module Series: Integrity & Ethics; Module 9: Gender Dimensions of Ethics' [www.unodc.org](http://www.unodc.org) accessed 3 July, 2020; 'Facts & Figures' *UN Women* [www.unwomen.org](http://www.unwomen.org) accessed 3 July, 2020.

<sup>3</sup> 'Violence against Women and Girls: Enough is Enough' *Oxfam International* [www.oxfam.org](http://www.oxfam.org) accessed 3 July, 2020.

<sup>4</sup> *Ugboma v Ibeneme* 19 (1967) FNLR 251.

<sup>5</sup> CFRN 1999, s43 provides that every citizen of Nigeria shall have the right to acquire and own immovable property in Nigeria.

Nigerian woman is sometimes told she cannot own land situate in certain areas.<sup>6</sup> Women have faced the challenge of disinheritance whether in their birth families or marital families. In her birth family, the woman is asked to inherit from her marital family where, in some customs, she is in actual fact treated as a 'chattel' to be inherited by a relative of her late husband. Under some customs in Nigeria, upon the death of her husband, the widow is seen as part of the properties left behind by her deceased husband and will not be allowed to inherit her deceased husband's estate.<sup>7</sup> Long standing cultural practices, social norms and religious beliefs have fueled the continued disinheritance of women<sup>8</sup> despite the existence of statutes and recent judicial pronouncements that advocate for equal treatment of all citizens.

The plight of the widow in Nigeria is pitiable because, not only is she saddled with harmful customary widowhood practices that she may have to go through to mourn her husband and in some cases, prove her innocence in the death of her husband, she might also face the challenge of being dispossessed of her matrimonial home. The widow, in some instances, may be stripped of all the properties herself and her husband laboured to acquire over the years.<sup>9</sup> This is indeed a tragedy. These customary practices exhibit an overwhelming sympathy for the male child and sustain the unjust treatment of women.

The Preamble to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) notes that despite the provisions on equal rights of men and women contained in the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenants on Human Rights<sup>10</sup> discrimination against women persists. It persists in the face of 'international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women.'<sup>11</sup> Discrimination against women persists despite the existence of 'resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women'.<sup>12</sup> In addition, the state parties to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in the preamble of the protocol, recall that

women's rights have been recognized and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination against Women and its optional protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights;

It is against this background that this paper seeks to examine the extent to which inheritance rights of widows in Nigeria are guaranteed by law, the effectiveness of these laws in the protection of inheritance rights of widows and the need to uphold the laws by adopting measures geared towards the actualization of these rights.

## 2. Clarification of Terms

In order to put the paper in proper perspective, it is necessary to define some terms that are relevant to the discourse;

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<sup>6</sup> In *Tony Chibueze Okolonwamu & Anor v Mrs Theresa Nkem Okolonwamu & Ors* (2014) LPELR-22631 (CA), the appellant's counsel argued that under to Asaba native law and custom on succession a testator cannot devise his property in Asaba village to his daughters.

<sup>7</sup> See *Onyibor Anekwe & Anor v Mrs Maria Nweke* (2014)LPELR-22697(SC) 42, paras A-F.

<sup>8</sup> 'Pushing for Stronger Laws to Protect Widows' Rights in Nigeria' *Women's Advancement Deeply* [www.newsdeeply.com](http://www.newsdeeply.com) accessed 3 July, 2020.

<sup>9</sup> E.I Nwogugu, *Family Law in Nigeria* (3<sup>rd</sup> edn, HEBN Publishers Plc 2014)426-429; see generally 'Widowhood Practices Project' [www.nials-nigeria.org](http://www.nials-nigeria.org) accessed 4 September, 2017.

<sup>10</sup> These are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>11</sup> Preamble to CEDAW.

<sup>12</sup> See preamble to CEDAW.

i. Widow

A widow is a woman whose husband is dead, and has not remarried; she is that woman who has lost her spouse or partner to death and has not remarried. The widow bears the responsibilities of her immediate family which was borne by herself and her spouse before his demise. The death of a male spouse exposes the widow to obnoxious practices carried out in the name of culture.<sup>13</sup>

ii. Inheritance

Inheritance is the entry of a living person into possession of a dead person's property.<sup>14</sup> Inheritance, according to Black's Law Dictionary, is property received from an ancestor under the law of intestacy. Inheritance refers to property received by bequest or devise.<sup>15</sup> It operates where property is personally owned and signifies personal interest by devolution.<sup>16</sup>

iii. Rights

Dorwick classifies rights as those claims which are also supported by or in accord with some objective standards (or some general theory) whether those of a code of morality or ethical theory or those of political system or political theories or those of a legal system.<sup>17</sup> Simply put, rights are those sets of claims as well as wants, desires and aspirations of the people. It is a claim which is justified, recognised and protected by law which cannot be taken away from any citizen. A right may be said to be that which a person is entitled to have, to do or to receive from others and which is enforceable by law. They are therefore an essential component of human life that enable individuals realize their full potentials in a conducive environment regulated by law. According to the Nigerian Supreme Court, a right is an interest recognized and protected by law.<sup>18</sup>

iv. Women's Rights

The inclusion of women's rights as a category of human right is a recent development because women were, under the universal theory, subsumed under the term human. This has been subject to a lot of criticisms considering the peculiar nature and needs of women. Women's rights can be defined as 'the rights of women to be treated equally to men in all areas of society'.<sup>19</sup> They are the rights claimed for women worldwide based on her peculiarities and needs.

### 3. Legal Framework

It is important to state that a widow is first a woman and has rights by virtue of being human as expressed in the Universal Declaration of Human Rights, (UDHR) Art 1<sup>20</sup> which declares equality of all citizens irrespective of sex, race, colour, religion or status. This instrument reaffirms faith in Human Rights and in the dignity of men and women. Some other international instruments which, to a reasonable extent, protect the rights of women in Nigeria are:

- a. The Convention on the Elimination of all Forms of Discrimination against Women: This instrument was adopted in 1979 by the United Nations General Assembly.<sup>21</sup> CEDAW entered into force as a treaty in 1981.<sup>22</sup> This Convention reaffirms the equal rights of men and women. All the articles contained in this convention are geared towards getting state parties to eliminate all forms of discrimination against women. CEDAW is therefore generally referred to as the

<sup>13</sup> Oloko, SB, *Widowhood in Nigeria: Problem, Issues and Prospects* (Spectrum Books 1997) 54.

<sup>14</sup> Yakubu, MG, *Property Inheritance and Distribution of Estate under Customary Law in Towards A Restatement of Nigerian Customary Laws* (Federal Ministry of Justice 1991) 136.

<sup>15</sup> Garner, B.A., *Black's Law Dictionary*, (9<sup>th</sup> edn, West 2009) 853.

<sup>16</sup> Ikpeze, OVC, *Gender Dynamics of Inheritance Rights in Nigeria: Need for Women Empowerment* (Folmech Printing and Pub. Co Ltd 2009)7.

<sup>17</sup> Dorwick, F, *Human Rights, Problems, Perspectives and Texts* (Saxon House 1979) 8.

<sup>18</sup> *Afolayan v Ogundipe* (1999) NWLR (Pt 127) 369.

<sup>19</sup> *Cambridge Dictionary*, <https://dictionary.cambridge.org> accessed 7<sup>th</sup> July, 2020.

<sup>20</sup> Adopted by the General Assembly of United Nations on 10<sup>th</sup> December, 1948

<sup>21</sup> Nigeria ratified this convention on the 13<sup>th</sup> of June, 1985. <https://tbinternet.ohchr.org> accessed 4 July, 2020; [www.aacoalition.org](http://www.aacoalition.org) accessed 4 July, 2020.

<sup>22</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, [www.un.org](http://www.un.org) accessed 4 July, 2020.

international bill of rights for women.<sup>23</sup> Art 1 of the Convention defines discrimination against women as

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 or any other field.

Preventing a widow from inheriting property simply because of her sex, falls within the above definition of discrimination. Such discriminatory acts are therefore in contravention of the provisions of CEDAW.

- b. International Covenant on Civil and Political Rights (ICCPR): This treaty was adopted by the United Nations General Assembly in 1966 and came into force in 1976.<sup>24</sup> Art 3 of the Covenant provides for the equal rights of men and women in the enjoyment of their civil and political rights.<sup>25</sup> In Nigeria, Civil and Political rights can be found in the Constitution of the Federal Republic of Nigeria 1999, chapter 4. The rights to own immovable property and to be free from discrimination on the ground of sex are categorized as civil and political rights.
- c. International Covenant on Economic, Social and Cultural Rights (ICESCR): This covenant was adopted by the UN General Assembly in 1966 and came into force in 1976.<sup>26</sup> The Preamble to this treaty reaffirms the 'equal and inalienable rights of all members of the human family'. Art 2(2) of the Covenant enjoins state parties to ensure that the rights contained in the covenant will be exercised without discrimination as to sex, among other things. In Art 3 of the covenant, state parties 'undertake to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.' Economic, Social and Cultural rights can be found in the Constitution of the Federal Republic of Nigeria, chapter 2. The rights contained in this chapter of the Constitution are, however not justiciable.<sup>27</sup> This category of rights can also be found in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, 1983.<sup>28</sup> Economic, social and cultural rights as contained in this Act are justiciable.<sup>29</sup>
- d. The African Charter on Human and Peoples' Rights, (ACHPR) 1981:<sup>30</sup> This is the first and most comprehensive human rights instrument adopted and implemented in Africa. This treaty provides not only for socio-economic rights but also for civil and political rights. Nigeria domesticated this instrument vide the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, 1983.<sup>31</sup> Articles 2 and 3 of the Charter provide for equality of all persons before the law. Art 14 guarantees the right to own property. Art 18(3) provides that 'The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.'<sup>32</sup>

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<sup>23</sup> Ibid.

<sup>24</sup> 'Compass: Manual for Human Rights Education with Young People' [www.coe.int](http://www.coe.int) accessed 4 July, 2020.

<sup>25</sup> Nigeria ratified this treaty on 29 July, 2009. <https://tbinternet.ohchr.org> accessed 4 July, 2020.

<sup>26</sup> [www.ohchr.org](http://www.ohchr.org) accessed 4 July, 2020. Nigeria ratified this treaty on 29 July, 1993. <https://tbinternet.ohchr.org> accessed 4 July, 2020.

<sup>27</sup> S.6(6)(c) CFRN 1999. See generally, Dakas CJ Dakas, 'Beyond Officialdom: Fallacies and Hypocrisy in Economic, Social and Cultural Rights Discourse and Implementation In Nigeria' in A.A. Yusuf (ed.), *African Yearbook of International Law*, 29-47.

<sup>28</sup> Laws of the Federation of Nigeria Cap 10, 1990 and Cap A9 Laws of the Federation of Nigeria, 2004.

<sup>29</sup> Dakas (n 27) 44-45.

<sup>30</sup> The African Charter on Human and Peoples' Rights 1981 is domesticated in Nigeria in accordance with CFRN 1999, s12(1).

<sup>31</sup> Dakas (n 27) 44.

<sup>32</sup> See also ACHPR 1981, Art 28.

- e. The Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003:<sup>33</sup> the main purpose of this protocol is to affirm the equality of men and women and to establish mechanisms for the enforcement of women's rights in Africa. Art 1 of this Protocol defines discrimination against women as

any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life;.

This article defines violence against women to include 'all acts perpetrated against women which cause or could cause them ... economic harm, including the threats to take such acts;....' It defines harmful practices to include 'all behavior, attitudes, and/or practices which negatively affect the fundamental rights of women and girls, ....' The Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003, Art 2 enjoins state parties to 'combat all forms of discrimination against women through appropriate legislative, institutional and other measures.' Art 21 of the Protocol provides that

1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.<sup>34</sup>

- f. African Charter on the Rights and welfare of the Child, 1990:<sup>35</sup> Art 3 of this Charter provides that every child is to enjoy the rights and freedoms contained in the Charter regardless of sex, among other things. Article 21 provides that 'Governments should do what they can to stop harmful social and cultural practices, such as child marriage, that affect the welfare and dignity of children.'

Most of the international and regional instruments discussed above place a responsibility on state parties to put measures in place that ensure that men and women are treated equally. For these international instruments to have any meaning in Nigeria, the government needs to reflect these principles of equality in her local laws.<sup>36</sup> In recognition of this fact, the Preamble to the Constitution of the Federal Republic of Nigeria, 1999 states that good government and welfare of all persons in the country shall be promoted based on the principles of 'Freedom, Equality and Justice'. The principle of equality should therefore be of critical importance in the Nigerian society. From the preamble to the constitution, it can be gleaned that the framers of the constitution intended to have a society where all persons would be treated equally irrespective of sex. To this end, the Constitution of the Federal Republic of Nigeria 1999, s42 guarantees the right to freedom from discrimination on the basis of sex, amongst other things.<sup>37</sup> In the same vein, the Constitution of the Federal Republic of Nigeria 1999, s43 provides that, 'subject to the provisions of

<sup>33</sup>This Optional Protocol is also known as the Maputo Protocol. It was adopted by the second ordinary session of the General Assembly of the African Union on the 11<sup>th</sup> of July, 2003, and came into effect on 25 November, 2005. <https://au.int>; Nigeria has ratified this Protocol. 'Status of Implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' <https://reliefweb.int/report/world> accessed 4 July, 2020.

<sup>34</sup> See also Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003, Art 20.

<sup>35</sup> The African Charter on the Rights and Welfare of the Child was adopted in 1990 and came into force in 1999. 'Using the African Charter on the Rights and Welfare of the Child to Address Child Marriage' [www.girlsnotbrides.org](http://www.girlsnotbrides.org) accessed 4 July, 2020; Nigeria acceded to this instrument on 13 July, 1999, 23 July, 2001 and 2 May, 2003. 'Ratifications Table' [www.acerwc.africa](http://www.acerwc.africa) accessed 4 July, 2020.

<sup>36</sup> Izzi, M.O., 'Repositioning the Girl Child in Contemporary Nigeria: The Human Rights Perspective'[ 2005] (3) *Benin Journal of Public Law* , 56.

<sup>37</sup> This right applies only to citizens of Nigeria.

this Constitution, every Nigerian citizen shall have the right to acquire and own immovable property anywhere in Nigeria.’ However, if law is to continue to be relevant in the society, it must be demystified and must respond to the heterogeneity of human experiences.<sup>38</sup> Citizens should be enlightened and educated on relevant statutory provisions.

#### 4. Patterns of Inheritance in Some Parts of Nigeria

The patterns of inheritance,<sup>39</sup> particularly intestate estate under customary law, in Nigeria has many variations due to the existence of many ethnic groups in Nigeria. The common feature in all these variants is discriminatory practice against women, although the degree of discrimination varies across customs. Customary law developed rules of inheritance for intestacy through the traditional canon of descent and the rule of natural justice as applied by the courts. Below are some patterns of inheritance in Nigeria.

##### a. Inheritance amongst the Yoruba People of Nigeria

The Yoruba Law of Succession and Inheritance makes no distinction between male and female children, they are both entitled to share in the estate of their deceased father. Amongst the Yorubas, where a person dies intestate leaving children surviving him, his real property will devolve on all his surviving children to the exclusion of other blood relations.<sup>40</sup> This customary practice was confirmed by the court in *Salami v Salami*<sup>41</sup> where it was held that the plaintiff had a right to inherit her father’s estate along with her two brothers.

The Yorubas traditionally recognize the oldest surviving son as the head of the family but in *Lewis v. Bankole*<sup>42</sup> the right of women to ascend to the headship of a family was also recognized. The issue was revisited by the court in *Abibatu Folami v Flora Cole* where all the surviving children were females; it was held that the eldest female should succeed as head of the family. Does this practice apply to women who fall under the category of wife/widow? The answer is negative. For according to Justice Beckley in *Sogunro-Davies v Sogunro-Davies*,<sup>43</sup> in an intestacy under native law and custom, the devolution of property follows the blood. Therefore a wife or widow not being of the blood has no claim to any share. In *Oloko v Giwa*<sup>44</sup> the court held that in Yoruba land, widows generally do not inherit their husband’s property but they are allowed a portion of farm land, and to remain in the house. The widow only has possessive rights not exclusive rights. The widow under Yoruba Customary law of inheritance is left in the cold with nothing from her deceased husband’s estate that she may have toiled all her life to nurture.<sup>45</sup> This practice is repugnant to natural justice, equity and good conscience as widows are treated differently based on gender peculiarities.

##### b. Inheritance amongst the Igbos

Under Igbo native law and custom, the eldest son steps into his father’s shoes as ‘Okpara’ or ‘Diokpa’ upon the father’s demise. This system is made explicit in *Ngwo v Onyejena*<sup>46</sup> where the Court of Appeal held that when a father dies, his property is inherited by the eldest son who holds it in trust for other children. Usually, the children referred to here are the surviving sons. Daughters have no right to inherit from their deceased father. Where the deceased is not survived by a son, his estate is inherited by surviving brothers of full blood of his father. However, the court in *Nzekwu v Nzekwu*<sup>47</sup> held that the woman is entitled to remain in her deceased husband’s house subject to good behaviour.

<sup>38</sup> Atsenuwa, A, *Feminist Jurisprudence: An Introduction* (Florence and Lambard 2001).

<sup>39</sup> Elias, T.O., *Nigerian Land Law* (Sweet and Maxwell 1971) 120; Obi, S.N.; *Family Law and Southern Nigeria* (1966)

<sup>40</sup> *Okelola v Adeleke* (2004) 13 NWLR (pt 890)307.

<sup>41</sup> (1924) 5 NLR 43.

<sup>42</sup> (1909) 1 NLR 81; *Amusan v Olawunmi* (2002) 12 NWLR (pt 780)30.

<sup>43</sup> *Ibid.*

<sup>44</sup> (1939) 15 NLR 31.

<sup>45</sup> Izzi, M.O., “Discriminatory Practices against the Women Folk under Customary Law of Succession” [2006-2007] (1 & 2) *Journal of Private, Public and Comparative Laws*.

<sup>46</sup> (1964) 1 ANLR 352; Where the deceased father was polygamous, the oldest son of each wife takes part in the sharing of the estate. See *Ifejuna v Ifejuna* (1999) 1 NWLR (pt 587)492.

<sup>47</sup> (1998) 2 NWLR (pt 104) 373.

It is worthy of note that the courts have addressed the issue of women's right of inheritance in a plethora of cases. In *Mojekwu v Mojekwu*.<sup>48</sup> The court held that the customary law that allows only males to exercise right of inheritance and denied female children the right of inheritance while conferring the right on a distant male relative is not only discriminatory but equally repugnant and unconstitutional as it conflicts with the provisions of the Constitution of the Federal Republic of Nigeria. In 2014, the Supreme Court gave 2 landmark judgments that upheld the rights of women to inherit property from their husbands or fathers. In *Mrs Lois Chituru Ukeje & Anor v Gladys Ada Ukeje*<sup>49</sup> the Supreme Court held that 'Agreeing with the High Court, the Court of Appeal correctly found that the Igbo native law and custom which disentitles a female from inheriting, in her late father's estate is void as it conflicts with sections 39(1)(a) and (2) of the 1979 Constitution (as amended).'<sup>50</sup> In *Onyibor Anekwe & Anor v Mrs Maria Nweke*<sup>51</sup> one of the issues raised was 'whether the custom of the Awka people of Anambra state which denies a woman of her rights to her deceased husband or father's property is repugnant to natural justice, equity and good conscience.' The Supreme court, per Ogunbiyi, JSC<sup>52</sup> held 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. .... Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender deferential should be punitively and decisively dealt with.... 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 skinning.

In *Anekwe v Nweke*<sup>53</sup> the widow's predicament was aggravated by the fact that she had no male child with her deceased husband. The Supreme Court noted that a custom that prevents a woman from inheriting in the 21<sup>st</sup> century society is punitive, uncivilized and only intended to protect the selfish perpetuation of male dominance which is aimed at suppressing the rights of women.

#### c. Inheritance According to Ikwerre Customary Law

The Ikwerre people are found in the Niger-Delta region of Nigeria, mainly in four Local Government Areas of Rivers State.<sup>54</sup> Amongst the Ikwerres, land is commonly owned by families. Daughters cannot succeed to land but if unmarried, she can be allotted some portion of land for farming, she has no proprietary claim over such land. She is also allowed to remain in her father's house and if per chance she has a male son whilst in her father's house, the son is entitled to inheritance with other male members of the family. This right is not extended to her because she is female. This practice is the height of discrimination as it is most unfair and unequitable. The practice is repugnant and ought to be expunged from our customary law of inheritance. It is also inconsistent with the provision of the Nigerian Constitution that expressly prohibits any form of discrimination based on sex.

The Ikwerre widow, just like her counterparts in most parts of Nigeria also cannot inherit from her deceased husband's estate.<sup>55</sup>

#### d. Islamic Law of Inheritance

Traditionally under Hausa custom, female spouses do not inherit properties from their deceased husbands neither do young males and females.<sup>56</sup> However, with the advent of Islam, most parts of northern Nigeria are governed by Islamic laws. The rules governing inheritance under Islamic Law are

<sup>48</sup> (1997) 8 NWLR (pt 512) 283.

<sup>49</sup> (2014)LPELR-22724(SC).

<sup>50</sup> The provisions of CFRN 1979, s39 (1)(a) and (2) are now contained in CFRN 1999, s42 (1)(a) and (2).

<sup>51</sup> (2014) LPELR-22697(SC); 2014) 9 NWLR (pt 1412) 393.

<sup>52</sup> Pp 36-37, paras A-B.

<sup>53</sup> (2014) 9 NWLR (pt 1412) 393; (2014) LPELR-22697(SC).

<sup>54</sup> Namely Ikwerre, Emuoha, Port-Harcourt and Obio/Akpor Local Government Areas.

<sup>55</sup> Recently a window of opportunity has been given to inherit in Ikwerre land with the decision in *Ordu v Elewa* (2018) 17 NWLR (pt 1649) 514.

<sup>56</sup> *Mohammed v Mohammed* (2002) NWLR (pt 708)104.

based on the principle that the property of the deceased should be used primarily to support persons who were entitled to be supported by the deceased in his life time. Under Islamic law, daughters and wives are entitled to inherit from their fathers and husbands.<sup>57</sup> The Qur'an stipulates that the woman is entitled to ¼ of the residuary intestate estate or 1/8 if there are grandchildren and where there is more than one wife, the widows share equally between themselves the ¼ or 1/8 as the case may be. In the case of daughters ¼ of the estate is shared equally amongst them whilst the sons get ½ the share of the estate. A sole surviving daughter receives ½ of the net estate whereas the sole surviving son receives the entire estate. In the case of a woman without a child, she inherits ¼ of the deceased husband's estates.

As fair as these provisions may seem because females are not completely excluded from inheriting, the sharing formula is not guided by the principles of equality. The females whether as wife or daughter are not treated fairly as they are discriminated against. They suffer gender injustice despite the provisions of the constitution<sup>58</sup> that ought to protect them.

### **5. Widows' Inheritance Rights in Nigeria**

When a person dies intestate, the issue of which law applies in the devolution of his property is determined by the law under which the deceased lived or his personal law (laws of his place of origin/customary law). In *Olowu v Olowu*,<sup>59</sup> the Supreme Court held that the deceased had acquired Benin heritage having lived in Benin like a Benin man and took title; that his personal law had changed from Yoruba Customary Law to that of a Benin man by virtue of his status.

The nature of marriage contracted by the deceased is usually taken into consideration in determining how his property will devolve.<sup>60</sup> Generally, where the marriage is valid under the Marriage Act, and the deceased is survived by a spouse or issue of that marriage, the relevant statute on administration of estates will apply depending on the life style of the deceased.<sup>61</sup> If he was polygamous or behaved in accordance with the custom of his people and dies without making a will, then customary law will prevail in the distribution of his estate. In *Okon v Administrator General of Cross Rivers State*<sup>62</sup> the court held that the evidence of the fact that the surviving spouse was married under the Act, does not automatically entitle her to be appointed as administrator of her deceased husband's estate. This puts the widow in a disadvantaged position. This is particularly so when the position under most customary laws in Nigeria is that a wife has no right to inherit from her deceased husband's estate<sup>63</sup> because she is part of his estate to be inherited by one of his male relatives.<sup>64</sup>

Where the deceased writes a will, nobody can validly change the wish of the testator if it was made in accordance with the law.<sup>65</sup> In *Idehen v Idehen*, the Supreme Court supported the superiority of the will under the Will's Act to Customary law. Where the property is a family property that has not been partitioned it cannot be disposed by a will since it is family property, the deceased does not have the power to dispose of it.<sup>66</sup> Where a widow is not reasonably provided for financially in the will of her late husband, the Wills Law of some states<sup>67</sup> allows the widow to make an application for reasonable financial provision to be made for her from the estate of her deceased husband. This application must be brought within 6 months from the grant of probate.

Until recently, under customary law, women were not seen to be eligible to own their own immovable property in Nigeria and by extension it translates to ownership of such property by inheritance,

<sup>57</sup> Qur'an Chapter 4 Verse 7

<sup>58</sup> See Sections 42,43 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>59</sup> (1985) 3 NWLR (pt 13) 372.

<sup>60</sup> *Tapa v Kuka* (1945) 18 NLR 5.

<sup>61</sup> See for instance, Rivers State AEL 1988, s1(2).

<sup>62</sup> (1991) 6 NWLR (pt 248) 473.

<sup>63</sup> *Sogunro-Davies v Sogunro-Davies* (1957) 2FSC 31.

<sup>64</sup> *Akinnubi v Akinnubi* (1997) 4 NWLR (pt 486) 144.

<sup>65</sup> *Igboidu v Igboidu* (1997) 1 NWLR (pt 585) 27.

<sup>66</sup> *Ogunmefun v Ogunmefun* (1931) 10 NLR 82.

<sup>67</sup> See, for instance, Wills Law of Rivers State, s2.

particularly when there are men within the family to inherit from the deceased person,<sup>68</sup> regardless of how distantly related or profligate these men are.<sup>69</sup> Perhaps this is the resultant effect of patriarchy. Patriarchy is that form of social organization in which the father or the eldest male is recognized as the head of the family or tribe and descent or kinship is traced through the male line, it also influences inheritance in most communities in Nigeria. The question then, is whether upon the death of a spouse, the surviving spouse will be entitled to the deceased's property. Based on the laws and the principles of equality the answer ought to be in the affirmative; particularly with the provisions of the Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003, Art 21 which is dedicated to women's rights to inheritance and provides them with a fair share of their husband's properties. This means that widows have a right to continue to live in their matrimonial homes upon the demise of their spouses. It therefore follows that a widow should not be deprived of her inheritance rights on the grounds that she is female. Widows are often restricted after the death of their spouse over the control of marital property regardless of her financial input into the property. This is a violation of her inheritance rights.

### 5.1 Matters Arising

From the forgoing, it has been established that there is disparity in inheritance between both sexes. The present reality is that although the Nigerian constitution and other international instruments have prohibited discrimination of any form, there are still impediments that violate the inheritance rights of widows.

With Nigeria being a patriarchal society, women are still treated like second class citizens which accounts for the continued existence of obnoxious cultural practices<sup>70</sup> that disallow women from inheriting properties from their deceased husbands and fathers.<sup>71</sup> Below are matters that must be dealt with if discrimination against widows is to be eliminated.

5.1.1. High cost of litigation: Although the Supreme Court, in recent times, has condemned customary practices that subjugate women and deny them of their rights, women face draw backs in accessing justice; considering the high cost of litigation and the long duration most cases take before judgment. A significant number of widows cannot afford the legal fees as they may be grappling with financial difficulties caused by the death of their husband, who may have been the sole breadwinner of the family. This category of widows lack funds to approach the court to seek redress when they are disallowed by their late husband's families from inheritance. What is the essence of a right when such a right cannot be enforced? Access to justice, as Anyogu<sup>72</sup> puts it, is not just equivalent to legal aid, it means being treated fairly according to the law and if not, being able to get appropriate redress. When citizens have access to justice, it means that they can effectively seek for the protection or enforcement of their rights without any limitations, anything short of the forgoing is an impediment to access to justice.

5.1.2 Cultural Barriers and Socialisation of Gender Norms: Another challenge widows' face in the actualization of their inheritance rights in Nigeria is the inhibition created by cultural barriers. A woman who has been prevented from inheriting her late husband's property by her in-laws may choose to quietly accept her fate rather than seek redress in court. She may opt for the path of quiet acceptance so as not to be shunned and labeled deviant by the society in which she finds herself. Cultural barriers affect the rights and liberties of most women within the communities. Relevant strategies must be adopted to enable women enjoy these rights. The Optional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003, Art 17(2) provides that 'States Parties shall take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.' The implementation of this provision by the Nigerian government is critical to the elimination of discriminatory cultural practices against women in general and widows in particular.

<sup>68</sup> *Mojekwu v Ejikeme* (2000) 5 NWLR (pt 657) 404; *Mojekwu v Mojekwu* (1997) 7 NWLR (pt 512) 283.

<sup>69</sup> *Ejiamike v Ejiamike* (1972) 2ECSLR 11.

<sup>70</sup> *Anekwe v Nweke* (2014) 9 NWLR (pt 1412) 393.

<sup>71</sup> Ogunbemi, M.O., *Succession in Nigeria, the Plight of Widows*. (Destiny Publishers 2003) 58.

<sup>72</sup> Anyogu, F, *Access to Justice in Nigeria: A Gender Perspective* (Ebenezer Productions Ltd 2013)13.

The socialization of gender norms involves passing societal beliefs regarding gender roles from one generation to the next. For instance, women are generally regarded as weaker and not ideal for certain leadership roles.<sup>73</sup> ‘Children can be socialized from an early age to believe that women and men have different and proper gender roles in society. Those children may then grow up to perpetuate the existence of these damaging and restrictive roles in society.’<sup>74</sup> It is in this manner that cultures that disinherit widows are perpetuated. One generation teaches the next that widows are not to inherit their husband’s property even though husbands and sons can inherit properties belonging to their deceased wives and mothers respectively.<sup>75</sup> This inequitable custom is perpetuated even by women. Thus, the widow who fights to inherit her husband’s property is considered deviant. ‘Essentially, the power structure at the basis of discrimination and violence against women is reinforced through the process of internalizing stereotypes and gender roles. This historical process, it should be stressed, does not exclude any region of the world.’<sup>76</sup>

Education is a critical instrument of social engineering. Through socialization, ‘the child learns to acquire the cultural values, norms and skills of his society....’<sup>77</sup> To curb discriminatory practices against women, agents of socialization<sup>78</sup> must be effectively engaged and employed in promoting and entrenching the rights of women. It is in recognition of this fact that the Optional Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003, Art 2(2) mandates the use of 2 agents of socialization; mass media and education, in tackling discrimination against women. This article provides that

States Parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices 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 for women and men.

The mass media and education can influence other agents of socialization such as the family, religious bodies and the peer group. Art 5(a) of the Optional Protocol contains provisions relating to elimination of harmful practices to women, which are similar to those contained in Art 2(2) of the Optional protocol. The Optional Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003, Art 12(1)(b) and (e) provide that ‘State parties shall take all appropriate measures to eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination;’. Similarly, Art 12(1)(e) of the Protocol requires state parties to ‘integrate gender sensitisation and human rights education at all levels of education curricula including teacher training.’ In the same vein, the African Charter on the Rights and Welfare of the Child 1990, Art 11 provides that

Every child has the right to an education, to develop his or her personality, talents and mental and physical abilities to their fullest potential. This education also includes the preservation and strengthening of *positive* African morals, traditional values and cultures. Governments should also take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community. (emphasis added)

The educational system at all levels in Nigeria must therefore be deliberately structured to promote positive African values, while discouraging negative cultural practices such as those that disinherit widows. To buttress this point, the International Covenant on Economic, Social and Cultural Rights, Art 13 provides that ‘... education shall strengthen the respect for human rights and fundamental freedoms.’

<sup>73</sup> ‘Gender Dimensions of Ethics’ [www.unodc.org](http://www.unodc.org). accessed 3 July, 2020.

<sup>74</sup> Ibid.

<sup>75</sup> *Nwugege v Adigwe* (1934)11NLR 134; *Nwogugu* (n 9) 431-432.

<sup>76</sup> Ibid.

<sup>77</sup> B.E Aluode, *The Basics of Sociology of Education* (Prize Publishers Ltd 2002) cited in Josephine E Elekwa and Bright Okanezi *Sociology of Education: Simplified Analysis* (Harey Publications Coy 2013)31.

<sup>78</sup> The agents of socialization are Education (School), mass media, family, peer group and the church or mosque. Elekwa and Okanezi, *ibid* 36-39.

To effectively combat discrimination against widows, Nigeria, as a signatory to this regional instrument, needs to, as a matter of priority, revisit the content of its syllabus and textbooks used in the educational sector with a view towards changing the negative perception of women as inferior humans. Arguably, all discrimination against women is hinged on this perception. There is also need for the Nigerian government to promote the rights of women through the media. This can be done in collaboration with the National Broadcasting Commission, the Advertising Practitioners Council of Nigeria, National Film and Video Censors Board<sup>79</sup>, the Actors Guild of Nigeria and other relevant bodies. In 2003 MTN Nigeria produced an advert popularly referred to as the ‘Mama na boy’ advert. This advert subtly promoted the male child as being superior to the female child. The advert was condemned as sexist by some sections of the Nigerian public and was consequently pulled off the air.<sup>80</sup> Adverts such as the ‘Mama na boy’ advert should be discouraged and in fact prohibited from the air waves.

5.1.3 Type of Marriage: The type of marriage contracted by a woman, gives her some rights and privileges. Where a woman marries under the Act, she is protected to some extent whilst those married under various customs are not so protected.<sup>81</sup> Where the marriage is contracted under customary law, she is bound by the customary law<sup>82</sup> which in most cases does not allow widows to inherit their husband’s property.<sup>83</sup> Any custom which disentitles widows from inheritance is contrary to the provisions of the Constitution of the Federal Republic of Nigeria 1999, the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, 1983 and relevant international instruments to which Nigeria is signatory. Such a customary practice is repugnant to natural justice, equity and good conscience and as a matter of urgency should be expunged from our custom.

It is suggested that all marriages contracted in Nigeria should confer the same status on the parties. It is no longer tenable for customary marriages to be inferior. At this stage of development and level of awareness, Nigerians must drop every trace of colonialism and racism. It is no longer fashionable to hold on to such archaic notions. It must be realised that civil, political, economic and social rights are integral parts of a coherent system of global human rights and that any form of discrimination against women is a denial of her rights. In South Africa, the Constitutional Court in *Nonkululeko Letta Bhe v Magistrate Khayelitsha*<sup>84</sup> condemned customary practices that discriminate against women inheritance since it cannot be reconciled with the current notions of equality and human dignity as contained in the Bill of Rights. No law, custom or tradition or religious consideration should condone discrimination against women generally and widows in particular.

In cases where the deceased husband had executed a Will before his demise, the problem is straightforward as the devolution of his properties will be in accordance with his wishes as contained in his Will, the nature of the marriage he contracted notwithstanding. Any person can make a Will irrespective of the nature of the marriage he contracted provided the requirements of the statute are complied with.<sup>85</sup> A Will helps to put to rest the negative impact of applying Customary law in the devolution of his properties and solves the problems of disinheritance of widows, as the deceased person through the Will directs the distribution of his or her estates upon death.<sup>86</sup> It is recommended that every

<sup>79</sup> One function of this board is to ‘Institute reward mechanisms for the production of “positive” themed movies,...’ [www.nfvcb.gov.ng](http://www.nfvcb.gov.ng) accessed 6 July, 2020.

<sup>80</sup> Adeyemi Adegaju, ‘Colour, Culture and Dexis as Elements of Meaning in the Discourse of Advertising Mobile Telecommunications Networks in Nigeria’ (2)(1) *The Public Journal of Semiotics* 32, [https://journals.lub.lu.se/pjos>view; https://www.semanticscholar.org](https://journals.lub.lu.se/pjos/view;https://www.semanticscholar.org) accessed 6 July, 2020; Onoshe Nwabuioku, ‘How does MTN see women?’ <https://punchng.com> accessed 6 July, 2020; ‘MTNs “Mama Na Boy” As a Corporate Rebellion!’ [www.streetdirectory.com](http://www.streetdirectory.com)

accessed 6 July, 2020.

<sup>81</sup> *Amadi v Nwosu* (1989) 2 NWLR (pt 488) 373.

<sup>82</sup> *Administrator General v Tunwase* (1946) 18 NLR 88.

<sup>83</sup> *Nezianye v Okagbue* (1963) 1 ANLR 352.

<sup>84</sup> (2005) CHR 31

<sup>85</sup> Izzi, M. and Okpara, G.A., “Will-making and Aging Implication: A Legal Perspective” Okene (ed), *In Excellence in Governance and Creativity*. Legal Essays in Honour of His Excellency, Chief (Barr) Nyesom Ezenwo Wike (Princeton and Associates Publishing Co. 2018) 433.

<sup>86</sup> Abayomi, K., *Wills Law and Practice* (Mbayi and Associates Nigeria Ltd, Lagos)

adult, whether male or female should endeavour to make a Will so as to save the family members the trouble of fighting over who gets what.

## 6. CONCLUSION

In Nigeria, a time there was when the most celebrated case on the right of a woman to inherit from her husband's estate was *Nzekwu v Nzekwu*<sup>87</sup> where the apex court in the country held that a widow could remain in her late husband's home subject to her good behavior. In 2014, the tide turned in favour of the Nigerian woman as the Supreme Court gave 2 celebrated judgments upholding the inheritance rights of the woman. Today, the right of a widow to inherit from her late husband's estate is recognized by the Supreme Court, serving as binding precedent to lower courts.

Nigeria as a signatory to regional and international human rights instruments that seek to promote equality of all persons has not displayed the required commitment towards the full implementation of these instruments. She has failed to domesticate some of these instruments.<sup>88</sup> Nonetheless, the Nigerian Constitution is clear on discriminatory practices and prohibits it in no uncertain terms. Therefore any discriminatory customary practice contrary to the provisions of the Constitution, is to the extent of its inconsistency, unconstitutional.

Unfortunately, the letters of the law and the pronouncements of the Supreme Court of Nigeria are not enough to put a stop to the disinheritance of widows. Not every widow has the financial means to engage in litigation towards enforcing her right to inherit. There is therefore need for attitudinal change from the present social and culture perception that allows women to be subjugated, abused and discriminated against. Because the socialization process is inherently programmed to foster discrimination against women, women themselves sometimes enforce, uphold and even celebrate these discriminatory customs. For instance, other women in a family may ostracise the widow who insists on her constitutional rights not to be discriminated against by reason of her sex. Customary practices that hinder gender development and empowerment should be discouraged. It is imperative that there is cultural transformation and effective legislative interventions for the enforcement of the inheritance rights of widows. The courts, across all levels, must continue to deliver judgments that declare such obnoxious cultural practices repugnant to natural justice, equity and good conscience. For according to Philip and Morris, 'A widow's independence and freedom to choose her own mode of life could probably best be secured if she were entitled to receive at least a substantial portion of her husband's estate if he dies intestate.'<sup>89</sup>

The provisions of the law geared towards protecting the widow from discrimination cannot be said to be inadequate. The laws are however largely ineffective because laws alone cannot compel attitudinal change. It is in recognition of this fact that some of these laws require governments to educate their populace with a view towards changing negative societal norms and cultural practices. It therefore behooves the Nigerian government to make necessary amendments and additions to the educational curriculum at all levels in the country, towards educating citizens on the need to respect human rights, including the rights of widows. The government is also to engage religious bodies to sensitize their members on this issue. All agents of socialization must, in fact, be effectively engaged to secure a society free from discrimination against widows. In this quest to protect the inheritance rights of widows, the ball is in the court of the Nigerian government to kick-start the process of engagement geared towards getting all members of the society to treat women as human beings with equal human rights as men. When this is achieved, Nigeria can be said to have joined the developed world in attaining best international human rights practices which emphasize equality of all persons.

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<sup>87</sup> (1998) 2 NWLR (pt 104) 373.

<sup>88</sup> For instance, Nigeria is yet to domesticate CEDAW, 'Domestication of CEDAW' [www.aacoalition.org](http://www.aacoalition.org) accessed 8 July, 2020.

<sup>89</sup> Philip and Morris, *Marriage Laws in Africa* ( Oxford University Press, England, 1971)52.