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RESEARCH ARTICLE

THE RIGHTS OF AFRICAN WOMEN TO INHERIT THEIR HUSBANDS PROPERTY IN THE PRESENT MODERN DEVELOPMENT

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ABSTRACT

It is highly unfair to discriminate against any human being but some culture, some customs and societies outlaw equal rights between the free born man and his counterpart woman. Various researches and studies show that majority of African societies discriminate against women particularly in the area of devolution of demised property of either their father or their husband under the customary law of inheritance succession and the practice of primogeniture. That is inheritance by son heirs. Hence, the main focus of this article is the right of African women to inherit their father and their husband in the present dispensation of modern development where women are the anchor of many successes in all fields of endeavours including domestic affairs of their various homes. Another area of concern to this work is the S42 (2) of the 1999 Constitution of Federal Republic Nigeria (as amended in 2011) which removes stigmatization and discrimination against any Nigerian citizen. This discrimination against women and new development from the judicial decisions with particular reference to declaration of rights of women to inherit the estates of their husbands and their fathers under various customary laws shall be discussed in the body of this work.

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INTRODUCTION

Some writers in this area of Law have ascribed different meanings to the word "Succession" and that of "Inheritance". E. A. Hoebel¹ defined inheritance from a social anthropological perspective not as "the entrance of living persons into the possession of dead person's property", but rather as "the transference of status from the dead to the living with respect to specific property object". Inheritance can be defined as an estate in land which descends from a man to his heirs. That is, property received from an ancestor under the law of intestacy. While, Succession can be defined as "the passing of property to person upon the death of the owner".²

However, for the purpose of this discourse, the terms "succession" and "inheritance" will be used interchangeably.

Also, to ensure that justice is done to this dissertation, an overview of "inheritance rights" in Africa will be done, with major reference to Nigeria, before analysing them in the present modern development and women successes in all fields of life. Generally, African Customary law is unwritten; therefore, the question of disposing of any property by will does not arise. What becomes operative is to decide those entitled to inherit. This is to be governed by the traditional rules of the indigenous community. There is need to observe that by specifically referring to marriages celebrated in accordance with the provisions of the Marriage Act³, the law excludes monogamous marriages celebrated outside Nigeria and customary law marriages, whether contracted within or outside Nigeria.⁴ With respect to intestate succession in Nigeria, there is a wide gap between law and practice. The existing laws with regard to intestacy of persons married under the Act are hardly enforced. The position in practice is that when a man dies intestate, the tendency or the usual practice in most Igbo-speaking states of Eastern Region is to subject all his estate: both real and personal, to customary laws of intestate succession. Needless to say, these customary laws are

¹ E.A Hoebel, *The Law of Primitive Man* (1954) pp 59 – 60, quoting from Cole G.D, "Inheritance" *Encyclopedia of the Social Sciences*, VIII, 1932) page 35; This was corroborated by Oyewo and Olaoba in their book titled, *A Survey of African Law and Custom with particular Reference to the Yoruba Speaking People of South – Western Nigeria*, (Ibadan: Jator Publishing Company, 1999) p 137; See also Ademola A Taiwo, *Doctrine of Estate Administration under African Customary Law*, published in *Journal of Social Policy and Society*, volume 10, Number 1, 2015, page 26

² T.O.G Animashaun and A.S Oyenyin: *Law of Succession, wills and probate in Nigeria*. See *Restatement of Customary Law in Nigeria*, Includes Index As Adopted and Promulgated by The Nigerian Institute of Advanced Legal Studies at Abuja, 29th April, 2013, pages 110 - 101

³ Marriage Act 1915, this was an English model before the Nigerian Marriage Act, Cap 218, Law of Federation of Nigeria(LFN) 1990

⁴ See Nwogugu E.I., *Family Law in Nigeria*, Revised Ed. (Lagos: Heinemann Education Books, 2006) p.386.

very discriminatory against women.⁵ The probate divisions of the High Court would hardly grant one person alone Letters of Administration (LA). Rather, it must be less than two persons either male or female and must not be less than 18 years, and relative of the deceased husband. Who and who can apply for letter administration? The Administration of Estates (Small Estate Payments Exemption) Law, Law of Lagos State 2005 expressly provides as follows:

The following are entitled to apply for the issuance of a certificate under this Law in order of priority

- The surviving spouse;
- Children of the deceased (including adopted children);
- parents;
- Brothers and sisters of whole blood;
- Brothers and sisters of half-blood;
- Uncles and aunts; and
- Other persons who may inherit under relevant legislation⁶

This clearly shows that the wife alone where she is the surviving spouse is in fact in law, foremost entitled to the grant of an administration of estate (in cases where there is no will)⁷.

Inheritance under customary law: It would be impossible to review the diverse customary inheritance practices that exist within Nigeria in the scope of a short paper, given that not only each people but also family group, may have their own unique inheritance practices. An attempt to provide a working sketch of customary practices is reductionist which is particularly problematic given that this replicates an overly simplistic view of African peoples as well as the abstraction of their practices from their context and worldview. Instead, this paper will sketch out some broad trends of the inheritance practices that have been recognized by the courts, and therefore provide a general picture of the formal customary law rights of widows.⁸ It is therefore useful to provide the examples of the Yoruba and Igbo peoples as the two dominant ethnic groups in Southern Nigeria. Their rights have been well documented and discussed within the court and their inheritance patterns are representative of two general trends found amongst other groups: that of inheritance equally to all children and of primogeniture. It is significant to observe that the lives of the majority of Nigerians are governed by customary laws. Not surprisingly about 80% of disposition of property are settled under customary law. The fact that many states do not have appropriate laws to deal with intestate succession has also increased the application of customary laws in distribution of real and personal property. Since customary laws are generally heavily weighted against women, their rights of inheritance suffer unduly in the face of systematic gender discriminatory and oppressive rules. Similarly, in Ghana the diverse inheritance customs across ethnic groups, such as the male primogeniture among the Ewe

people and the Krobo people, or matrilineal inheritance is common among the Akan people. This contributed in no small measure to the occurrence of children living in the streets. In Sierra Leone, the inheritance customs prevalent in the country, were either the eldest son or the eldest brother inherits the property, create insecurities for widows and her children after the demise of her husband and breadwinner⁹. In South Korea, inheritance favours the eldest son and it has been predominant almost up to recent times, despite laws of equal inheritance for all children regardless of their sexes¹⁰. In the past North Korea has the same pattern of inheritance as the South; however no details about current inheritance practices have been available since the county's proclamation of independence¹¹ in 1948. However, the degree of acceptance that a society may show towards an inheritance rule can also vary as the custom. In South Africa, for instance, the influence of more modern, western social ideas has caused strong opposition, both civil and official, to the customary law of patrilineal primogeniture traditionally prevalent among black peoples, and inheritance customs are gradually changing¹². As regards South Africa, the pattern of succession in South Africa is a little bit different from what operates among the Yorubas. If a man dies having four wives, and each of them has three children or four each, the estate of the deceased man would be divided into four parts and it is the eldest of each wife who is entitled to inherit. It is his or her duty to provide for the remaining members of his own mother's side¹³. But among the Akan people in Ghana, inheritance takes a form of matrilineal leaning. However, it must be noted that Akan Law and practice are not of universal application; for in some parts of Ghana, devolution of property takes a different form altogether¹⁴.

Igbo Customary Law of Inheritance: In the vast majority of Igbo communities, the family grouping is strictly patrilineal.¹⁵ Thus, inheritance is based on the principle of primogeniture; that is, succession by the eldest son known as "Okpala" or "Diokpa".¹⁶ Where the deceased is a polygamist and has many sons from several wives, the eldest sons of each of the wives may take part in sharing of the intestate. However, daughters and wives have no right to succession to their father's movable and immovable property.¹⁷ However, the altitude of the competent courts have changed the discrimination and

⁹ Tettegah, Christine A.N 'Streetism' or Living in street, an Emmerging Phenomenon as a Way of Life in Developing Countries; A case Study of Children Living in Ghana, 2012, PhD Thesis, University of Nottingham, achieved from the original on 3rd December. Retrieved on the 19 July, 2018.

¹⁰ Human Rights Watch (organization), Sierra Lone; 'WE 'Il kil you if you cry. Sexual Violence in the Sierra Leone Conflict Human Right Watch, 2003. Retrieved on the 19 July, 2018.

¹¹ *ibid*
¹² https://en.wikipedia.org/wiki/Historical_inheritance#cite_note_95. Retrieved July 19, 2018.

¹³ Seymour – Native Law in South Africa p 38

¹⁴ Schapera Isaac. A, Handbook of Tswana Law and Custom, history of the church in Botswana University, 1994 p 13. Retrieved 19 July, 2018.

¹⁵ There are few cases of matrilineal communities in which the right of succession is through mothers or females. It has also been observed that - no Nigerian system fits into this purist form of matrilineal inheritance. Towards A Restatement See Professor Uche, "The Matrilineal System of Inheritance – The Nigerian Modern in Nigerian Customary Law op. cit., p. 174-186.

¹⁶ Bini rules of inheritance in Mid-Western Nigeria are similar to those of the Igbos. See the following cases *Ogiamen v. Ogiamen [1967]* N.M.L.R. 245; [1967] 1 ALL N.L.R. J 91; also the recent case of Chief Saka *Lawai-Osuala and 4 others v. Lydia Modupe Lawai Osuala & 5 others [1993]* 2 NWLR p. 158.

¹⁷ The recent and modern exception to this anachronistic, highly repugnant, inequity and deprivation were the brilliant decisions in *Majekwu v Majekwu (1997) 7 NWLR (PT 572) 284; / (2000) 5, NWLR (PT 657) 402; ukeje v Ukeje (2000) 5 WLR 142.*

⁵ Ademola A Taiwo, Legal Pluralism and the Law of Succession in the South West Nigeria.; PhD Thesis, (2017) p 26 and also pages 86-90

⁶ See Section 5, Administration of Estate (Small Estates Payments Exemption) Law, Law of Lagos State, 2005.

⁷ Even the Administration of Estate Law, Lagos 2005 has similar provision – making the surviving spouse foremost entitled to inheritance before any other person

⁸ *Ibid*

disinheritance formulae with respect to customs which exclude wives as widows and female children from inheriting their father and husband respectively. For example, in *Ukeje v Ukeje*¹⁸ where the Supreme Court unanimously held that the Igbo Native Law and Custom which disentitles a female regardless of the circumstances of her birth to a share of her deceased father's or to her deceased husband's Estate is void as it negates the Section 42 (1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)¹⁹. The Supreme court further held that.

No matter the Circumstances of the birth of the 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 father's estate is in breach of Section 42 (1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory law is void as it conflicts with Section 42 (1) and (2) of the Constitution.²⁰ Hitherto, daughters, like wives, do not inherit under Igbo customary law. The only situation where a daughter can inherit is where, for example, she chooses to remain unmarried in her father's house with a view to raising children in the father's home. This is known as "*nrachi*" or "*Idegbe*" institution. It usually happens when a man left on death a substantial estate, but no surviving sons or other male issue of the lineage to inherit it. The idea behind this practice is to save the lineage from extinction.

The daughter, as an "*idegbe*" or "*nrachi*" is entitled to inherit both movable and immovable property of her deceased father's estate. The legal interest vests in her until she gives birth to her own children. However, if she bears sons and daughters, the sons and not the daughters, will succeed her in accordance with the rule of primogeniture. In respect of an unmarried daughter who is not an "*idegbe*", her estate is inherited by full brothers; in default, fathers. If there is no surviving father or brother, the half-brother will inherit but a sister or half-sister can never inherit. In a situation where a wife pre-deceased her husband, succession is as follows: the sons will inherit, failing sons, husband. The wife's property like money, cattle, yams and other important chattel goes to the sons or husband as the case may be, while the daughter inherits what is regarded as feminine properties, for example, jewelry, domestic utensils, dresses, cocoyam and livestock (fowls).

Yoruba Customary Law: Generally, under the Yoruba customary law, it is the children of the deceased, whether male or female, who are entitled to succeed to the deceased father's property on his death intestate to the exclusion of other relations.²⁰ The property is shared among the children, either equally per capita ("*ori-jori*") or per stripes ("*idi-igi*") where the deceased man has more than one wife. In *Sule v. Ajisegiri*,²¹ it was held that the partition must be equally between those entitled regardless of sex. Thus, the defendant's

claim that being a male he was entitled to a larger share was rejected. In contrast, a wife has no right of inheritance in her deceased husband's estate. Under customary law marriage, the widows form of the estate their husbands²². As Jibowu, F. J. observed in *Suberu v Sunmonu*²³. It is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is, like a chattel, to be inherited by a relative of her husband. Again, in *Sungunro-Davies v. Sungunro*,²⁴ Beckley J. said that the reason for depriving a wife of inheritance' rights in the deceased husband's estate was because devolution of property under native law and custom follows the blood. Consequently, unless a property given to a wife is proved to be an outright gift it will pass on the husband's death to the husband's family. She has partial right of inheritance²⁵. The Administration of Estate Law, Western Region, 1959 as adopted by the eight states created from the defunct region and applicable to the whole Yorubaland which gives spouse right to succeed to each others property.²⁶ Although, the landmark decisions of the apex court in Nigeria on the inheritance is universal position of the law in Nigeria, Yoruba land is not exempted.²⁷

Islamic Law of Inheritance: Succession rights under Islamic law are mathematically laid out in the Qur'an. Under the law, wives and daughters are entitled to participate in the sharing of the estate of their deceased husband or father. When there are children or other descendants, the widow's portion is one-eighth of the deceased estate. If there is more than one widow, the one-eighth is shared equally amongst them. A woman without any child inherits one-quarter of the deceased husband's estate.²⁸ Unlike the English system of intestate succession, the Sharia system is clear and simple, as it is specified within the Qur'an. The basic principle under the Maliki system is that, if a Muslim dies intestate his estate must be shared between his heirs entitled to share under Islamic Law, and that his male children must have equal shares and his female children half share each of a male child.²⁹ The general division is that if there are children, widows are entitled to one eighth of the property, including realty, and they are entitled to one quarter of the property if there are no children. Daughters take half the share of their brothers, and if they are the sole survivor, will take half of the net estate. In total, woman can inherit under six of the nine categories as "Quranic sharers": as wives, mothers, daughters, and germane, consanguine, and uterine sisters.³⁰ Women can also inherit from slaves and by

²² That was then, the tide has changed due to civilization and contribution of women to the family property acquisition.

²³ (1957) volume II F.S.C. 3

²⁴ (1929) 2 N.L.R. 79

²⁵ See generally, Justice Muri Okunola "Relationship between Islamic Law and Customary Law of Succession in Southern Nigeria" in Towards a Restatement of Nigerian Customary Law op. cit., pp. 151-173. Also Obilade A.O. (ed.) Women in Law, (Published by Southern University Law Centre, and Faculty of Law, University of Lagos, 1993) Chps. 7 and 13).

²⁶ Ademola A Taiwo supra p 86- 88. See *Ukeje v. Ukeje* (2014) AFWL, part 730, page 1323 at 1341. See also Professor Epiphany Azinge, Restatement of Customary Law in Nigeria, (Abuja; The Nigerian Institution of Advanced Legal Studies, 29th April, 2013) p p 49-50.

²⁷ Even where persons are subject to custom, the Administration of Estate Law, Lagos State 2005 (in Yorubaland for example) allows each spouse the right to succeed each other's property. Please refer to Comment 3 above.

²⁸ *Ahmadu Sidi v. Abdullah Sha'aban* [1992]4 NWLR p. 113.

²⁹ *Yanusa v Adesubokun* (1968), Suite No. J23/67, Reported 1968 N.N.L.R. 97, full text of case as compiled by Yahaya Mahmood, Sharia Law Reports of Nigeria (/96/-1989) Ibadan: Spectrum Books Limited, 1993) 15 at 15.

³⁰ Pat U. Okoye, *Widowhood: A Natural or Cultural Tragedy* (Enugu: Nucik Publishers, 1995) at 164

¹⁸ (2014) AFWL part 730 @ 1341; See also *Anekwe v Nweke* 736, 2014- 04- 11, SC.

¹⁹ No matter the Circumstances of the birth of the 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 father's estate is in breach of Section 42 (1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory law is void as it conflicts with Section 42 (1) and (2) of the Constitution.²⁰

²⁰ See Orojo, Customary Court Manual, Ondo State, 1980, p. 119.

²¹ 13 N.L.R. 146.

gift or purchase. Finally, a non-Muslim cannot share in the intestate succession of a Muslim, although a Muslim is not precluded from taking under the personal law system of a non-Muslim.³¹ It is important to know that there is a history of non-enforcement of women's rights to inheritance under the Sharia system amongst the Hausa people. When Kano was first made into an Islamic state in 1804, similar to the, doctrine of continuity, those laws consistent with Sharia were maintained, and all others abolished. However, women's rights to inheritance under Sharia were not consistently applied.³²

In 1923, Emir Abdullahi issued an edict saying women were not entitled to inheritance. On March 7th, 1924, Emir Abdullahi partially remedied his position by issuing an edict that recognized widow's right to inherit the deceased's house on his death if there were no male heirs. However, this edict also recognized women's non-inheritance of farmland, and did not recognize inheritance of the house if there was a male next of kin. It was not until April 15, 1954 that Sarki Sanusi annulled this practice to ensure that Hausa women could inherit under Shari'a law³³ The necessary adjunct to recognizing women's ability to hold land and receive land through inheritance is the caveat that male family members retain control over the property. In Abdullahi and Hamza's study of inheritance practice in Northern Nigeria, this practice was attributed to the perspective of male family members that women did not need independent legal rights to the land, and that they would be catered to by their husbands and male relatives. It is of-additional note that many Hausa women practice purdah and therefore may be limited in their ability to independently administer their land. Generally, for intestacy, the rule is that the binding law is personal law, not that of *lex situs*.³⁴ For the Yoruba peoples, property devolves equally to all children, regardless of age or gender,³⁵ *Lewis v Bankole (1908)*, 2 N.W.L.R. 66 recognized the eldest son could himself be replaced by the eldest daughter, and *Abibatu v Flora Cole*³⁶, where the court held that where all the children are female, the eldest female would be the head. Though, the eldest male typically succeeds as the Dawodu, or family head, with responsibilities as trustee of the family property.³⁷ However, in the absence of a male child, the eldest daughter can also become the Dawodu.³⁸ There are two different systems of equal distribution between the children, being *Idi-Igi*, in which an equal portion is attributed to each wife and equally distributed amongst her children, versus *ori-ojori*, in which each child gets an equal share.³⁹ There can be no alienation of this family property without consent of the other members. Lack of recognition of contribution is significant, as widows may lose rights to jointly owned properties or property in which they have invested. For the Ibo, succession is on the principle of primogeniture and primarily patrilineal, with both the rights of control and property itself flowing to the eldest

son or, if there is none, to the brother. The eldest son therefore holds land on trust for himself and his brothers.⁴⁰ Even if there are female children, the property will pass to the brother of the deceased.⁴¹ The widows' rights are also very limited. As Kasunmu explains:

The spouses have no right in each other's property either during marriage or on the death of one of them. The husband may during his lifetime allocate a house or land to the separate use of his wife. Unless an outright gift is proved, the property allocated to the wife will on the death of the husband still pass as family property. Rather, the widow's right in the land is to mere possession of a parcel of family property subject to her good behaviour. Therefore, the widow lacks any rights to control the property, and is vulnerable should an absentee son or family member fail to ensure she has access to land. It is trite to note that the essence of judicial activism has drastically changed the tide of all form of discrimination against womenfolk in Nigeria without qualification. It is therefore foreclosed in accordance with the constitutional stipulations particularly section 42 (2) of Constitution.

Widow's Status in Nigerian Society Before Ukeje v Ukeje⁴²

decision: Perhaps, the most well documented factor of the widow's cultural context is the practice of widow rites, a series of practices through which a widow must proceed upon the death of her husband before being able to rejoin her community. Many of these practices are potentially dehumanizing and make women vulnerable to property grabbing. While they differ by region, and an exhaustive analysis being beyond the scope of the paper, understanding some of the common practices is important to understanding the full legal and cultural status of widows in Nigeria. Ewelukwa identifies that while widow rites vary across Nigeria, that common elements include "varying degrees of isolation and confinement, restricted freedom of movement and association, and hair shaving." For example, amongst the Edo in the south-West, practices include an enforced period of mourning for seven days, shaving of the hair, eating from unwashed plates, being forced to cry, and washing the dead man's body and drinking the water. In Rivers state, the widow may have to swim across the river and throw herself over the body of the deceased several times. Forms of marriage also have an impact upon the vulnerability or resiliency of women faced with limited inheritance rights. Polygamous marriages mean that even if women had rights to inherit property, there may be an insufficient land base to provide for all women and children. Another factor that should be recognized is the fluidity of marriage within certain cultures. Abdulrashid⁴³ found such fluidity present in her study of Northern Nigerian both amongst the Muslim Hausa and Maguzawa. Upon divorce, the Hausa women would lose their inheritance rights to their ex-spouse⁴⁴. This reluctance is further supported by the impediment that the majority of rural women in Nigeria are illiterate, and have neither the capacity to themselves write wills, read wills, or read popular literature targeted at educating them about such rights.

³¹ I.O. Agbade, "Legal Pluralism: The Symbiosis of Imported Customary and Religious Laws: Problems and Prospects" in *Fundamentals* at 239.

³² Ademola A Taiwo's PhD Thesis, supra pp 98-101.
³³ *ibid* pp 99- 101

³⁴ Chamsonv. Wobill (1947), 12 W.A.C.A. 181.

³⁵ *Lope: v. Lope (1924)*, 5 N.L.R. 43; *Yusuff v Dada (1990)* 4 NWLR (pt. 146) 657; *Amusan v. Olawumi* (Nigeria, Court of Appeal, (2002) FWLR 1385.

³⁶ (1986) 2 NWLR 369

³⁷ *Lewis v Bankole (1908)*, 2 N.W.L.R. 66.

³⁸ *Lewis v Bankole (1908)*, 2 N.W.L.R. 66 recognized the eldest son could himself be replaced by the eldest daughter, and *Abibatu v Flora Cole, (1986)* 2 NWLR 369 held that when all of the children are female, the eldest female should be the head; *Ashipa v. Ashipa*, Nigeria, High Court of Lagos State, (2002)

³⁹ *Taiwo v Lawani (1961)* ANLR 733.

⁴⁰ E.I. Nwogugu, "Family Law" in CO. Okonkwo, ed., *Introduction to Nigerian Law*, ed. CO. Okonkwo (London: Sweet & Maxwell, 1980) at 303.

⁴¹ *Uboma v. Lbeneme (1967)*, E.N.L.R. 251; *Udensi v. Mobgo (1976)* 7 S.C. 1.

⁴² (2000) 5 WLR 142.

⁴³ Abdulrashid Yusuf & Okoh Sheriff E.E, *Succession under Islamic Law*, (Zaria: Malthousse Press Limited, 2011)

⁴⁴ The decisions of Apex Court in the recent time have erase all repugnancy customs and traditions that draw Africans backward in the Comity of Nations, See *Ukeje v Ukeje (2014)* AFWL, part 730 @ 1341.

Addressing the Problem of Women's Inheritance Rights in Nigeria:

There are lot of concerted efforts and actions taking by numerous organizations in Nigeria and beyond, to wit: Amnesty International, International Federation of Women Lawyers – FIDA, DAWN: founded by Semhar Araia, the Diaspora African Women’s Network (DAWN), She Leads Africa: founded by Yasmin Belo-Osagie and Afua Osei, WAAW Foundation: founded by Unoma Okorafor, Wellbeing Foundation: Founded by Toyin Saraki, the Wellbeing foundation is dedicated to educating women on maternal, newborn and child health information. All these efforts are channeled toward canvassing and sustaining women and female children’s rights including inheritance and succession. An impact has been made. Some women, particularly women married under the Act (statutory marriage), enjoy better inheritance rights and are bothered about the situation of other women subject to customary laws. A good example of this is a draft Bill on Administration of Estate 1965, Laws of Eastern Nigeria⁴⁵ which received so much criticisms from religious and women’s organisations because it purportedly:

- Defined a “wife” to mean “a wife of a marriage celebrated in accordance with Nigerian customary law including Muslim law”, and;
- It also acknowledged the right of an illegitimate child to inheritance.

The work of NGOs concerned with the promotion of women's rights in Nigeria has been mainly at the level of advocacy - creating awareness about the type of marriage that will give a woman better inheritance rights and encouraging men to make wills. Now this advocacy has been targeted at influencing laws and policies pertaining to inheritance rights which have started yielding fruit and improving the status of women in Nigeria vis-a-vis inheritance rights. The Nigerian government has not done well either. There is a clear lack of political will to effect any legislative changes particularly at Federal (National) level. The Draft Bill on “Marriage Act” submitted to the Federal Government in October 1984⁴⁶ made recommendations for Registration of all types of marriages and also a scheme for intestate succession applicable not only to monogamous marriages but also to those marriages that are registered. All these efforts are still ongoing and we are going to get there and be other who have not only promulgate laws but has started enforcing same. Furthermore, there are both economic and political will to use existing governmental structures; for example, Federal and State Ministries of Women Affairs and Social Justice and National Commission on Human Rights to improve women's rights to inheritance. Although, Section 42(1) and (2) the Constitution of the Federal Republic of Nigeria 1999 prohibit discrimination on grounds of sex, race or birth. This leaves important issues that have serious implication for women in Nigeria in various states that make up the federation to individually decide. The Nigerian government has ratified the Convention on Elimination of All forms of Discrimination against Women (CEDAW, 1979) without any reservation and also the African Charter on

Human and Peoples Rights (1981),⁴⁷ which requires states to eliminate all forms of discrimination against women recognised in International Conventions and Declarations.⁴⁸ Consequently, it is expected that the government should adopt appropriate legislation and actions aimed at modifying discriminatory laws, regulations, customs and practices against women.⁴⁹ As at now, there is no national committee charged with the supervision of implementation of CEDAW in Nigeria.

Specific Obstacles to Women's Inheritance Rights

Legal: Inadequate laws regulating administration of deceased estate particularly at federal level constitutes a major obstacle to women's inheritance rights. Compounding this problem is also our legal system which gives rise to the operation of at least a tripartite system of laws that function simultaneously. The existing laws dealing with inheritance and succession are not entirely free from sexist biases.⁵⁰ Furthermore, there is gap between law and practice. For example, on intestacy customary law applies notwithstanding the fact that the parties have entered into statutory marriage.

Political Obstacles: Generally speaking, Nigerian women are politically marginalized. They lack access to power and decision-making positions through which meaningful changes can be realised. Government political appointments hardly favour women. They have always been tokens. For meaningful progress, women’s political participation must be full and not mere tokenism.

Socio-Cultural Obstacles: Women's social status is still very low. This is mainly due to illiteracy, poverty and cultural practices, which treat women as mini persons, objects of inheritance rather than subjects of inheritance. The traditional, cultural and religious beliefs that women are inferior and subordinate to men tend to perpetuate widespread practices involving violence and very harmful to women. The discrimination in education of girls and boys is borne out of this patriarchal attitude including son preference ideology. Frequent importation of native law and custom of inheritance to execution of wills of a testator duly made under the Wills Act results in hardship to even wives of statutory law marriages. For example, if a testator bequeaths his matrimonial home to his wife in perpetuity, objections are usually raised to the execution of that bequest on the ground that by native law and custom of Igbos, for example, a man's dwelling house (matrimonial home) belongs to his eldest son or to his male next-of-kin where he is not survived by any male issue⁵¹.

Economic Obstacles: Women's economic status has further jeopardized their inheritance rights. Women, owing to several factors, lack access to means of production and since a woman's right to property is subject to varying traditional and cultural practices, her ability to secure credit is undermined. Women in Nigeria perform multiple economic and household responsibilities in the face of systematic discrimination in

⁴⁵ See Eastern Nigeria Gazette No. 66, Enugu 17 September 1965 Vol. 14. Following criticisms, the Bill was withdrawn to enable full consultations with these interested bodies. But the whole exercise was cut short by the military takeover in January 1966. As Prof. Nwogugu, op. cit., rightly observed: The 1965 Bill would have been the most comprehensive and revolutionary effort to put the law on administration of estates on a rational basis.

⁴⁶ See Law Reform No.2, November 1981, pp. 15 - 57 (published by the Nigerian Law Reform Commission, Lagos.

⁴⁷ The Charter is now part of our domestic law by virtue of its incorporation - see CAP 10 Laws of the Federation of Nigeria, 1990.

⁴⁸ Article 18(3) of the Charter

⁴⁹ See in particular articles 2(t) and 16 of CEDAW.

⁵⁰ A reading of section 120(b) of the Administration and Succession (Estate of Deceased Persons) Law illustrates the gender biases in our laws.

⁵¹ This is also the applicable rule under the Edo Law of inheritance- succession generally called Promogenitor doctrine, where the eldest male heir inherit Igiogbe or the blood brother of the deceased where the deceased died without a male child.

accessing the basic technologies and resources which are required in order to function in an economically productive and efficient manner. This discrimination imposes considerable limits on women's capacity to participate in development. The role of women in Nigerian economy is largely unrecognized.

Religion as an Obstacle: Both religions practiced in Nigeria, that is, Christianity and Islam⁵². These major religious bodies recognizes women rights, though men are placed above them in terms allocation of rights and privileges under inheritance rules, thereby reinforcing the inferiority of women but not as dehumanizing as under customs and traditions of Africa..

Conclusion and Recommendation

The rights of African women to inherit their husbands' property in the present modern development and women successes in all fields of life, as discussed above cannot be generalized as different laws apply to different customs/tribes. This is simply because of the heterogeneous nature of the country, Nigeria. It is lucid that the rights of African women to inherit their husbands' property have been infringed upon severally. The Judicial pronouncement in the recent time have tremendously boost the right of woman as widow and female as child to inherit her husband and father under customary law have helped to solve the problem of discrimination imposed by the customs and tradition. However, it can be deduced from the lot that women are often times deprived of inheriting their husbands' property. This is hinged on the rule of double jeopardy, in that, since the law does not permit a husband to inherit from his wife, the, wives too should not be allowed to inherit their husbands' property, since wives would inherit from their fathers. There are however circumstances where a husband leaves his property in the name of his wife; this is said to be done in trust for the children of the marriage, and thus, such property would devolve on the children upon attainment of majority. The legal and regulatory environment for-women's rights to inheritance are not sufficient and the little legislation that exist show lack of commitment to gender equity in inheritance rights. Social justice demands that both forms of marriage should be given equal treatment, more so, when both marriages are recognized under the law as valid. Nigerian government also is a signatory to CEDAW and should keep to its signatory obligation as a state party. In particular, section 2(t) which placed an obligation on the government *to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women should be implemented*. Similarly, the African Charter on Human and Peoples Rights in Section 18 (3) stipulates 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*.

⁵² On inheritance, there is no impeding or hampering provision that bars the right of a woman to inherit in the Bible; in fact, there are instances of equal inheritance between male and female children in the Bible. See particularly The Holy Bible - Book of Joshua, chapter 13 and 14, where God commanded Joshua to divide inheritance by lots to all the nine tribes of Israel, and the Half-tribe of Manasseh both comprising of Male and Female. The Holy Quran Chapter IV also identified women right to inheritance though not equal to that of men. But women rights of inheritance are recognized by the Holy Quran.

This also should be implemented to the letter. Thus, the infringement on the rights of African women to inherit, which poses a form of discrimination, which is in itself contrary to the provisions of the constitution should be addressed immediately.