



**The Impact of the Practice and Administration of  
Customary Law of Inheritance on Gender Equality in  
Contemporary Igbo Society, Nigeria**

**By**

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## DECLARATION

I, the undersigned, hereby declare that the work contained in this dissertation is my own original work and has not previously in its entirety or in part been submitted at any other university for a degree.

Signature..... Date.....

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## LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ACHPR	African Charter on Human and Peoples' Rights
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
UN	United Nations
UDHR	Universal Declaration of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ESCR	Economic, Social and Cultural Rights
NWLR	Nigerian Weekly Law Reports
ENLR	Eastern Nigeria Law Report
ANLR	All Nigerian Law Reports
FSC	Federal Supreme Court

## ABSTRACT

The topic for this study was the impact of the practice and administration of customary law of inheritance on gender equality in contemporary Igbo society. The objectives of the study were, a) to examine the economic status of the women of Igbo society b) to examine the two types of laws which are used in Nigeria on matters of inheritance c) to look at the practices and administration of the above laws in the cases of inheritance d) to establish the impact of the negative inheritance practices on women in Igbo society e) to establish what could be done in order to support women during the cases of inheritance.

The major findings of the study indicated that, inheritance of property, especially land was of great importance in the Igbo society. A woman's ability to inherit may depend on her marital status and most importantly her ability to bear a male child. Young Igbo women have no rights to inherit their fathers' property unless they remain unmarried and bear a male child in family. Igbo women, especially the traditional women were very hard working in their agricultural activities where they pulled resources and produce together with their husbands without seeking separation of possessions. However at the demise of their spouse, the pieces of land they had laboured on are taken away by kinsmen and the fate of the women are left hanging on the goodwill of the kinsmen. There was physical, psychological, social as well as economic humiliation during the time of mourning the husband and thereafter. The duplicity of laws, being, the English common law and the customary laws further complicated any chance a woman had to claiming inheritance. The constitution on the other hand, was overriding the international treaties that Nigeria has ratified, which could have supported the rights of women. From the point of view of the study, the Nigerian government needs to revisit the constitution to amend it and also to examine some of the customary laws that leaned strongly on traditional beliefs and practices.

# Chapter one

## 1. Introduction

In chapter one the researcher outlined the following sub-headings: the background, statement of the problem, the objectives, scope, significance/rationale of the study, research questions, limitations of the study, methodology, literature review, definition of terms and the outline for the study chapters.

The act of inheriting property has always been in existence to ensure stability in the family after the demise of the husband and to see that the property remains in the family. The thesis looked at the impact of cultural practices, customary laws and the role of the constitution on inheritance for women in Igbo society.

The study further looks at the provisions of International Human Rights treaties and the role of civil society towards resolving issues of inheritance among the Igbo society. The impact of the cultural practices formed part of this study as it progressed.

### 1.1. Background of the Study

#### 1.1.1. Location of the Igbo People

The Igbo are located in the southeastern part of Nigeria which is separated by provinces that consists of Onitsha, Owerri, Rivers (East), Ogoja (West), Benin (southeaset), and Warri (Northeast). Although the vast population of Igbo resides between Cross River (E) and Niger River (W), some of them also reside in the west of the Niger. The Igbo population is estimated at about five to six million. They are also one of the largest and most influential ethnic groups in Nigeria.<sup>1</sup> The Igbos speaks different dialects of the Igbo language and share a common culture expressed by various customs, practices and traditions.<sup>2</sup> Below is a map to illustrate the geographical location of the Igbo people in Nigeria.

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<sup>1</sup>According to Isichei (1976), archeological evidences show that the Igbo people inhabited this part of the country as far back as 4500 BC. Under the current Federal structure of Nigeria, Igbos are found in Abia, Anambra, Ebonyi, Enugu, Imo, Delta and Rivers States.

<sup>2</sup> E Isichei "A History of the Igbo people" (1976) London and Newyork: The Macmillan press Ltd





### 1.1.2. Political Background

The traditional Igbo society was made up of territorial groups grounded on patrilineal clans and lineages. Leadership by a single individual was very rare. Decisions were made by a group of influential elders and a few dominating leaders known as *nze na ozo*. Pre-modern Igbo societies were quasi-democratic; ruled by republican consultative assemblies of elders. To a greater extent, this system of government guaranteed its citizens equality; in contrast to the feudal system of government operated in most other parts of West Africa.<sup>3</sup>

Religion also has a political significance in the traditional Igbo society as the traditional governing authority is founded on religion. The chiefs, chief priests, elders and community head are seen as representatives of the ancestors and unseen god (*chi*), and any decision or laws laid down by them are decisions of the ancestors and should not be questioned.<sup>4</sup> It comes as no surprise why the law and custom enforced by them in regards to marriage and land were accepted as resonating from *chi* and should not be questioned so as to avoid being cursed by the ancestors.

During the colonization of Nigeria by the British government, the set up in the Igbo society was very different from every other region of Nigeria, which made it difficult for the British government to rule over them. The northern and Southwestern Nigeria had native states and kingdoms, so it was easy for the British administrators to govern them through traditional rulers by the system of “indirect rule”. However, same could not be said of the Igbos who were highly individualistic and ultra-democratic. Hence, the British government created a different method by appointing a chief for every local group.<sup>5</sup>

### 1.1.3. The Position of Women in Traditional Igbo Society

From childhood, every Igbo girl is taught that their role in life is to be domestic. She must learn from her mother how to cook, clean, farm and do everything to maintain her house/ home. And when she is married, she must learn to obey her husband’s wishes and continue to do well in her

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<sup>3</sup>There were a few notable exceptions of Igbo towns with centralized chiefdoms, which include: Onitsha, Nri, Agbor and Arochukwu – See Graham, F., Gunner, E, and Gunner, L. Power, Marginality and African Oral Literature (1995) *Cambridge University Press*.

<sup>4</sup> Isichie (n 2 above).

<sup>5</sup> B.A Cheng Chang “Women’s Status in the Afikpo Ibo Society: A Thesis in Anthropology”. 1980.

domestic sphere. She must also learn to respect restrictions set by men in social and public spheres.<sup>6</sup> A boy is expected to spend more time with his father after early childhood to learn things that men do like farming, hunting, wrestling and other physical activity that will boost his masculinity. Male children are also expected to be assertive, verbal, clear in their ambition and unequivocal as to the role others will play towards encouraging or hindering their goal.<sup>7</sup>

Igbo women are not allowed to cultivate the same kinds of crops as men. For example, the cultivation of yam which became the principal component of Igbo economy was of ultimate importance, and was therefore given a ritual and symbolic importance in most Igbo society. The spiritual and economic importance of this crop made its cultivation exclusive to men.<sup>8</sup> However, women are allowed to cultivate cassava which is mostly eaten during the period of famine preceding the yam harvest. This women's crop, the cassava, is planted after the men's crop, the yam has been harvested. Women are also allowed to plant and sell other seasonal crops like vegetables, cocoyam and fruits so as to provide food for the household.<sup>9</sup>

Proverbs, stories and drama are other reminders of the subjugating position women have been placed in traditional Igbo society. Most Igbo proverbs portray women as selfish, ungrateful, unreliable, stupid and weak. Examples of some of these proverbs are;

- I. *Onye jiri nwanyi buru ibu bu isi-adighi aju* (it is hopeless to depend on a woman)
- II. *Eri ago mere umunwanyi agbala afufu onu* (women do not grow beards due to their habitual denials of favors done to them)
- III. *A n'emere nwanyi, o n'emere onye di ya mma* (never trust a woman)
- IV. *O naghi adi mma a gbacha oso ka nwoke e bie ya ka nwanyi* (it is not proper to run a race with the strength of a man and finish with the weakness of a woman)
- V. *A n'echere nwanyi, o n'eche kwa uri ya* (women are vain)

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<sup>6</sup> Cheng (n 5 above) 27.

<sup>7</sup> Cheng (n 5 above) 38.

<sup>8</sup> Korieh C *Widowhood among the Igbo of Eastern Nigeria*.

<sup>9</sup> <<http://www.ub.uib.no/elpub/1996/h/506001/korieh/chima.html>> (accessed 18 March 2012).

<sup>9</sup> Korieh (as above).

VI. *Nwa agbogho sin ne ya n'otu nwoke ka ya n'agara onwe ya, o wee tuburu ya raa. Nne ya wee si ya gaa rakwuru. O gaa, a rachie ya ozo.* (a young lady told her mother she was raped by a boy, her mother asked her to go back and retaliate. She went back and “retaliated”) this proverb portrays women as being stupid.

The patrilineal structure of Igbo society discriminates against women by granting more powers and privileges to men in religious and socio-political institutions of Igbo society<sup>10</sup> Examples of such discriminatory practices include the exclusion of women from participating in meetings, especially meetings where decisions that affect women in the community are made, the denial of rights to hold traditional titles which bestows them with authorities to perform religious ceremonies or pass laws that could provide access to patrilineal, spiritual, and economic resources (particularly land),<sup>11</sup> and most importantly, the exclusion of women from the inheritance of family assets.

The exclusion of women from these important institutions of society continue to undermine the interest of women, thus, encouraging the continuous violation of women's right to inheritance in the Igbo culture. This system has continued to perpetuate asymmetric power relations between men and women.<sup>12</sup>

These discriminatory practices against women in Igbo society have financial, economic, social and psychological impacts on women.

#### (i) **Financial**

Women play a very significant role in the economy of traditional Igbo society. They contribute substantially to the economy of their household, and often work very hard to ensure the upkeep of their children. The Igbo custom does not recognize co-ownership of property between a man and a woman in marriage. It is assumed that all properties and assets in the family belong to the man, which makes it difficult to distinguish a woman's assets from those of her husband, in cases

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<sup>10</sup> There are some exceptions among Igbo sub-groups found in present Abia State., where matrilineal practices are common.

<sup>11</sup>K Henderson, *Onitsha Women: The Traditional Context for Political Power* (1997) 215-243 *Annals of the New York Academy of Sciences, Volume 810, Issue 1* and Henderson, R.N *The King in Every Man: Evolutionary Trends in Onitsha Igbo Society and Culture*, New Haven (1972) Yale University Press.

<sup>12</sup>The Supreme Ordinance No.6 of 1914 gave permissive expression to the operation of customary as part of Nigerian legal system.

where the woman has combined her resources with that of her husband.<sup>13</sup> This custom has far reaching implications for women, particularly in the unfortunate event of the death of the husband. In most cases, the husband's brothers and relatives will lay claim and forcefully take away everything labeled "our brother's property", without considering the fact that both parties contributed to the acquisition of the property.<sup>14</sup> This practice makes women financially vulnerable. In *Onwuchekwa v Onwuchekwa*,<sup>15</sup> the court reneged to hold an Igbo custom which disentitles a woman to her interest in a property which she jointly owned with her husband, invalid in accordance with the repugnancy test.

## (ii) Economic

Indigenous Igbo women depend mainly on subsistence agriculture for their livelihood by cultivating farmlands belonging to the husband or his family. The choice of crops cultivated by either men or women is another source of discrimination. The tradition allows men to sow and produce cash crops and perennial crops, while women sow only seasonal crops and vegetables. Despite the economic imbalance created by this structure of agricultural production, women still contribute the meager amount of resources they generate from the sale of their crops and vegetables towards household expenditure.<sup>16</sup> The importance of land in Igbo society cannot be over emphasized, as it is a very important asset and a major source of livelihood. Despite the significance of land to economic livelihood, Igbo customs deny women the right to inherit land belonging to either a late father or husband, irrespective of whether she has been farming on that particularly piece of land during the lifetime of the deceased.

Regrettably, these practices are recognized as part of customary law, therefore, guiding court judgments away from statutory law. Relevant aspects of the Nigerian legal system have remained regressive and the legislature has been hesitant to make provisions in the constitution that will protect the right of women.<sup>17</sup> In the case of *Uboma v Ibeneme*, where there was a dispute on inheritance, the court held that a widow is part of the late husband's property and as such, cannot

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<sup>13</sup>Korieh C *Widowhood among the igbo of eastern Nigeria*.

<<http://www.ub.uib.no/elpub/1996/h/506001/korieh/chima.html>> (accessed 18 March 2012).

<sup>14</sup>As above).

<sup>15</sup>*Onwuchekwa v Onwuchekwa* (1991) 5 NWLR 739.

<sup>16</sup>Korieh (n 8 above).

<sup>17</sup>As above.

lay claim to the property, given that she is a part of it. The principle applied here was: “*nemo dat quod non habet*”.<sup>18</sup> However, if the widow remains unmarried, she could be allowed to live in her late husband house, but she will not be allowed to sell any of the property, even if she needs to meet urgent financial needs.<sup>19</sup>

### **(iii) Social**

A woman’s social status in Igbo society is determined by her marital status. Marriage accords a woman social recognition and respect in the community. This elevated status of the woman changes as soon as her husband dies. The woman is forced to undergo a very humiliating process of traditional burial rites.<sup>20</sup> On the other hand, single women are regarded as incomplete and not worthy of respect because they are not married to a man. This societal view prevails irrespective of the woman’s personal achievements in life.<sup>21</sup>

### **(iv) Psychological**

The combinations of factors mentioned above have strong psychological effects on women. Most Igbo women, especially widows, are traumatized by the experience of going through the rigour of traditional burial rites, and some never get to recover from this trauma. The feeling of fear lingers on for a long time. The uncertainty of what the husband’s kinsmen would do to the woman and her children exacerbate these fears, especially if the children are still too young to fend for themselves.

The tortuous and humiliating memory of the traditional burial rites contribute to this fear. This may include shaving of hair, sleeping on bare cold floor, eating from the same unwashed plate throughout the period of mourning, laying beside the corpse of the late husband, long period of isolation from people, and most importantly the thought of how they would take care of themselves and their children after being dispossessed of all the family property by unsympathetic kinsman.<sup>22</sup> On the part of single women, there is a constant feeling of insecurity in

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<sup>18</sup>Uboma v ibeneme (1963) ENLR 251.

<sup>19</sup>Korieh (n 8 above).

<sup>20</sup>A Iwobi ‘No cause for merriment: The position of widows under Nigerian law’ (2008) *Heionline*, 20 *Can. J. Women & L.*37.

<sup>21</sup>Iwobi (as above).

<sup>22</sup>Korieh(n 8 above).

the society and they are always reminded that they cannot permanently remain in their family, and that their brother's wife has more right in the family than they do.<sup>23</sup>

In some variations of Igbo customs found in Nnewi, daughters can inherit property if they remain unmarried and bear a male child in their family home. This practice is encouraged more in situations where the woman's father does not have a male child. However, in the true sense of it, the daughter does not really inherit the property, but the son she has brought forth will inherit the property in order to keep her father's lineage alive.<sup>24</sup>

## 1.2. Statement of Problem

Igbo customary law and traditions have continued to limit the rights of women; particularly their rights to property and inheritance. Denying women the right to own properties or inherit family (husband or father) properties limits the economic opportunities available to them, especially the indigenous women whose livelihood depend on agricultural lands.<sup>25</sup> Some traditional practices in Igbo land also contribute to these violations of women's right. These include the obligation of widows and their treatment after the loss of their husband. In many cases, they are dispossessed of their family properties by the relatives of her late husband. Women are not allowed to inherit properties of their late father.<sup>26</sup>

The plurality of the Nigerian legal system has helped to perpetuate these gender imbalances. The received English law and the customary law are used interchangeably, thereby, making it difficult for the court to protect the rights of women. Most judges would refer to the customary law on issues relating to rights, inheritance and traditional property ownership.<sup>27</sup> The constitution of Nigeria did not adequately address the issue of women's right to inheritance or property ownership, and did not make provisions to protect women from customs and traditional practices which violate their fundamental human rights. Instead, the constitution gives recognition to these customs and practices and grants them the force of law under Section 12 of the 1999

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<sup>23</sup>As above.

<sup>24</sup>Civil Resources Development and Documentation Center (CIRDDOC) Nigeria. " *Women and Customary Rights of Inheritance*". (2001) Fourth Dimension Publisher Co Ltd.

<sup>25</sup>Korieh(n 8 above).

<sup>26</sup>For explanation of the special circumstances under which a woman can be allowed to inherit her father's property, see: Emeasoba Uche "Land ownership among the Igbos of south east Nigeria: A case study for women land inheritance" (2011) *Journal for Environmental Management and safety* 98.

<sup>27</sup>Iwobi (n 20 above) 41.

constitution. The constitution also limits the options available to individuals and groups under international and regional treaties, by declaring that the National constitution will always take precedence over all international or regional human right treaties ratified by Nigeria.

Unfortunately, the inadequacy of the constitution and other state laws to protect the right of Igbo women to inheritance have led to women being displaced from their marital homes after the death of their husband, not only by husband's relatives and kinsmen but through court judgments. This situation can be addressed by amending relevant sections of the constitution (e.g. Article 21), with a view of enhancing the provisions for protecting the socio-economic rights of women and place women on equal pedestal with men in terms of rights to inheritance and ownership of property. The study is conducted to assess the impact on women and girls of the cultural practices and traditions that worked together with the customary law to disadvantage women in Igbo society.

### **1.3. Research Objectives**

- a) To examine the economic status of women in the Igbo society.
- b) To examine the two types of laws which were used in Nigeria concerning inheritance rights
- c) To look at the unequal practices and administration of the above laws in the cases of inheritance for women and men.
- d) To establish the impact of the negative inheritance practices on women in Igbo society.
- e) To establish what could be done in order to support women during the cases of inheritance claims

### **1.4. Scope/Delimitation of the Study**

Although the unequal practices of inheritance occurred in most parts of Nigeria, the study specifically looked at the inheritance issues for women and girls in Igbo society, South-East of Nigeria.



### **1.5. Significance/Rationale of the Study**

The importance of this study was regarded very high in the sense that the psychological, social and economic status of the young and mature women in Igbo society was determined. This will help policy makers and the judiciary to understand the type of women they deal with and the background where they are coming from. This will help people to see women as people who belong to their culture and community. This study will help people to recognise the two types of laws and observe where they support or not support women on inheritance. The study will be able to show that the cultural practices alone are not enough in giving women an equal opportunity with men in their Igbo community when it comes to inheritance. Generally, people might know the impact of the negative cultural practices against women during inheritance discussions. But this study will be able to bring out most of the negative issues so that other societies would understand when women call for fair hearing on inheritance procedures.

It becomes imperative to explore the possibility of legal reforms and pragmatic policy options that could better align and motivate common law with those of customary law. In this regard, more stakeholders will be allowed to play a part during inheritance hearings for men and women.

### **1.6. Research Questions**

- (a) What right, if any, does the contemporary Igbo society accord to women in relation to inheritance of the estate of their deceased spouses?
- (b) What legal status do Igbo women enjoy in relation to inheritance of their deceased husbands or fathers?
- (c) To what extent are women in Igbo society affected socially, economically and psychologically by the unequal practices of inheritance in Igbo?
- (d) What is the impact of the negative cultural practices concerning inheritance for women?
- (e) What measures can be taken to allay the cultural violations against women in the Igbo society?

### **1.7. Limitations of the Study**

The time factor was on top of the list for the limitations of the study. The study processes were affected by shortage of time in terms of the methodology to gather data for the study. The other limitation rests on the fact that desktop review/data already exists from primary sources which are sometimes questionable in terms of validity and time frame issues. The information therefore, requires scrutiny on the part of the researcher to come up with authentic data.

### **1.8. Research Methodology**

This study was mostly undertaken through desktop research. While the nature of the topic would call for field work, this was not possible due to expedient and time constraint. The design for the study was a case study design basing its methodology on the desktop research approach. A case study analyses an individual or group of people/objects or events stressing the developmental factors in relation to their natural context. The population for this study was the women and girls in Igbo community including the men and the judiciary that presided on the inheritance cases in Igbo society. The present study took a qualitative approach in terms of data collection and presentation. A desktop review was conducted in order to access relevant information pertaining to the study. The researcher had to read around specific themes developed from the research questions and objectives that shaped the compilation of information for data analysis. The data for this study was presented in a qualitative manner where there are no Tables or figures used to present the data. There were 5 selected thematic areas from the research questions that were presented and data analysis was conducted under those themes. The researcher analyzed and discussed the data from those thematic areas.

### **1.9. Literature Review**

The English legal system was introduced in Nigeria during the colonial era, as Nigeria was one of the colonized countries by the British. This system comprised institutions and norms of the English legal system, which had very distinct historical and cultural origins from the customs and indigenous systems of governance and administration of justice that existed before the

advent of the British, rule etc.<sup>28</sup> these indigenous customs, institutions and normative order found expression in customary law.<sup>29</sup> Nonetheless, the British colonial authorities recognized and retained the indigenous system of customary law.<sup>30</sup>

Weeramantry observed that “upon the attainment of independence, newly emerged nations often need to take a considered decision whether and to what extent, they would wish to preserve their traditional values and cultural systems. This opportunity to make that decision, he said, “has been presented to more than one hundred nations released from the bondage of colonialism since the beginning of this century”.<sup>31</sup> He went further to state that, these nations have been faced with the challenge of maintaining cultural values while foregoing new institutions of nationhood. Their decisions are often translated into legal terms, whether constitutional or otherwise. The co-existence of these dual legal systems gave rise to pluralism in Nigeria’s legal system; a phenomenon that has generated interesting debates amongst scholars.<sup>32</sup>

The Supreme Court Ordinance No.6 of 1914 gave permissive expression to customary law, subject to the satisfaction of three validity tests: applicability, repugnancy,<sup>33</sup> and incompatibility.<sup>34</sup> These limitations of customary law were designed to remove superstitious and harsh elements of these laws; and to solve problems emanating from inaccuracies caused by the lack of codification of customary law.<sup>35</sup> Despite these safeguards in the application of customary law, many feminist advocates have continued to question -and rightfully so- the ability of customary law to deliver rights and security to women under a plural legal system e.g. right to land, inheritance rights and customary division of labor etc. Citing frustration with the treatment

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<sup>28</sup>The English law applied in colonial Nigeria comprises the rule of common law, the doctrine of equity, statutes and subsidiary legislations on specified matters, colonial legislations, and statutes of general application in force in England on January 1, 1900. The English law effectively became the law of the state, though it operated side by side with customary laws – see *ibid* (Dina, R. et al., 2005).

<sup>29</sup>Dina, R. et al., 2005 - There are two different classifications of customary law in Nigeria: Ethnic/Non-Moslem laws in the Southern part of the country and Moslem Law/Sharia in Northern parts.

<sup>30</sup>The Supreme Court Ordinance No.6 of 1914 gave permissive expression to customary law. See Yakubu, J.A., *Colonialism, Customary Law and Post-Colonial State in Africa: The Case of Nigeria*, Paper Presented for CODESRIA’s 10<sup>th</sup> General Assembly on “Africa in the New Millenium”, Kampala, Uganda, December 2002.

<sup>31</sup>G Weeramantry “The Dialogue of Cultures, Religions and Legal System: The Imperative Need for Our Times” (2007)2 *LA Trobe university center for Dialogue*.

<sup>32</sup>As above.

<sup>33</sup>*Eleko v. Government of Nigeria* (1931), A.C. 662 at 673; and *Edet v. Essien* (1932), 11 NLR 47, 48.

<sup>34</sup>*Adesubokun v. Yinusa* (1971), reprinted in 1 *Sharia Law Report*, 26 (1961-1989).

<sup>35</sup>B Uweru, “Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism” (1988) *Africa Research Review* 2.2.

of issues of customary law by common law as a matter of fact and the reluctance of appellate courts to over-turn judgments given by customary courts, feminist advocates have looked more in the direction of international conventions/charters and statutory law for the realization of gender equality.<sup>36</sup>

Akin to this predilection, Henderson asserts that “masculine thought and patriarchal assumptions have determined much of the content and shape of law, legal thinking and judicial and legislative attitudes”.<sup>37</sup> Unfortunately, the expectation that customs and social norms could easily be changed by legislative fiat could be somewhat unrealistic, given the moral and religious sanctions attached to these customs and norms.<sup>38</sup> However, alternative approaches need to be explored to remove some of the impediments to the reform and development of customary law.

According to Aidoo, “the seeming preoccupation of most African scholars on human rights veers only in the direction of issues relating to violations which occur as a result of dramatic political events and not so much on real issues as that in the civil societies where cultural traditions and customs impact negatively on specific rights such as the violation of women’s right to inheritance in the Igbo traditional society”<sup>39</sup>.

Women of the Igbo society have been led to believe that cultures cannot be changed. The ease of this conviction owes to the fact that indigenous women of the society have no proper means of exposure, and so are used to perpetuate in-human cultural violation on fellow women. Ibhawoh argues that “traditional cultural beliefs are not monolithic or unchanging. They could change in response to different internal and external pressures”.<sup>40</sup> He further stated that “the inferior status and unequal treatment of women in Nigeria derive from traditional values founded on a system of traditional belief and attitude about physiological, psychological and social inferiority of women”.<sup>41</sup> This feeling of inferiority is reflected in their social, economic and political life. “The

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<sup>36</sup>F Butegwa, “Using the Africa Charter on Human and Peoples’ Rights to Secure Women’s Access to Land in Africa”. In *the Human Rights of Women: National and International Perspectives*, ed. Cook, R.J. (1994) 495-514, University of Pennsylvania Press, Philadelphia.

<sup>37</sup>L Henderson “Law’s Patriarchy” (1991) 23 *Law and Society Review* 733-735.

<sup>38</sup>Allott AN “The Judicial Ascertainment of Customary Law in British Africa” (May 1957) 245 *The Modern Law Review* 20, Issue 3.

<sup>39</sup>A Aidoo, “Africa: Democracy without human rights?” (1993) 15 *Human Rights Quarterly* 703, 713.

<sup>40</sup>B Ibhawoh, “Between culture and constitution: Evaluating the cultural legitimacy of human rights in the African state” (2000) 22 *Human Rights Quarterly*, Q 838 2000.

<sup>41</sup>Iwobi (n 20 above) 43.

most enduring enemies of a woman's dignity and security are cultural forces aimed at preserving male domination and female subjugation—often defended in the name of venerable tradition”.<sup>42</sup>

The contention on inheritance rights in Igbo society is mainly on land and landed properties, tangible personal properties and movable properties, are not as contentious as land, this is due to the consequence of its economic value when used for agricultural purpose. Land is recognized as the fundamental beginning of opulence, authority and social footing. Emeasoba argues that,

*“Land is the foundation of all human social and economic activities. It lies at the heart of social, political, or economic life of most nations, especially African nations. Throughout history, land has been recognized as a primary source of wealth, social status and power. It is the basis of shelter, food, and economic activities; it is the most significant provider of employment in rural areas and is an increasingly scarce resource in urban areas”.*<sup>43</sup>

Agriculture has been the main stay of economic activity of the Igbo people for a very long time. Men and women farm, even though on different scales. Men have the right to grow cash crops; women were given the privilege to grow crops such as cassava, cocoyam, maize, pepper and vegetables.<sup>44</sup> Despite the small scale farming women were permitted to have, they still had the commercial intellect to convert their produce and substantially provide food for the family. However this does not vitiate the glaring discrimination of inheritance faced by Igbo women in both customary and formal system of land tenure, as the right to farm and produce food for family upkeep is taking away when bedeviled by divorce or death. This is as a result of culturally embedded discriminatory beliefs and practices, and male control of inheritance systems in Nigeria, particularly in Igbo land.<sup>45</sup>

One of the excuses from men for discrimination in land inheritance is exogamy, as the men claim that allowing women to inherit land would result in a transfer of family land to another lineage, if in the case of a daughter, she marries, or a widow, she re-marries.<sup>46</sup> Some of the reasons men have given for their strong belief and support of women not inheriting land are flimsy as Emeasoba observes. They include;

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<sup>42</sup>C Bunch “The intolerable status quo; violence against women”. A UNICEF report of Progress of Nations. <<http://www.unicef.org/pon97/women1c.htm>> (accessed 17 April 2013).

<sup>43</sup>U Emeasoba (n 26 above) 98.

<sup>44</sup>Korieh (n 8 above).

<sup>45</sup>Emeasoba (n 26 above) 98.

<sup>46</sup>Emeasoba (as above).

- Women are not intelligent enough to make wise decisions when it pertains to issues bothering on land.
- Women cannot own properties because they themselves are properties.
- Land is for family inheritance and by tradition; women are not regarded as family but are on transit, and so should not own land.
- Female children will disrespect their husbands if they are allowed to inherit land from their fathers and this will make them impatient in their marital homes and leave at the slightest provocation.<sup>47</sup>

### **1.9.1. The Influence of the Judiciary**

Court ruling and judgments have had little or no effects on inheritance issues. In the Supreme Court case of *Chinweze v Masi*<sup>48</sup>, where a parcel of land was jointly owned, it was held by the court that joint ownership leads to the doctrine of survivorship where the death of one joint owner, without having obtained a separate transfer, translates to a complete transfer of ownership to the other surviving joint owner irrespective of whether the deceased has heirs or not. Unfortunately, in this case, the deceased had a wife and daughter and their means of livelihood-being the farmland was wrested from them.

In *Ogunkoya v Ogunkoya*<sup>49</sup>, women were referred to as chattels that are inheritable by other members of the deceased husband under certain conditions.

In *Uka v Nkama*,<sup>50</sup> the inheritance of a traditional rulership by the deceased daughter was in dispute. The appellant in this matter claimed amongst other things that “in accordance with the native law and custom of Amangwu autonomous community, traditional rulership is not hereditary but alternates between ruling houses”.

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<sup>47</sup>As above.

<sup>48</sup>*Chinweze v Masi* (1989) 1 NWLR, pt 97,254-270.

<sup>49</sup>*Ogunkoya v Ogunkoy* Suit CA/L/46/48.unreported.

<sup>50</sup>*Uka v Nkama* (1963) FSC 184.

The case of *Mojekwu v Mojekwu*<sup>51</sup>, made a break through when for the first time in the history of cases, the court held that the culture of “*oli ekpe*”-a tradition where at the demise of a man without a son, his brother inherits his land and properties- was repugnant to, natural justice, equity and good conscience.

The main challenge with the “repugnancy” doctrine is that it is at the discretion of the presiding officer, hence, what one judge perceives to be a cruel practice; the next may not share the same perception.<sup>52</sup> This difference in personal credence was evident in the case of *Onwuchekwa’s case*,<sup>53</sup> the court displayed its unwillingness to hold that an Igbo custom which deprives a woman of her title to an interest in property which she had purchased jointly with her husband, was contrary to the repugnancy test. *Stricto sensu*, a woman does not have a right under the Igbo custom to share in the property of her deceased spouse.<sup>54</sup>

Regrettably, the role of the judiciary has left the fate of women hanging on the kindness of husbands’ family or her fortune of bearing a male child.<sup>55</sup> This act has encouraged levirate marriages-*ikuchi nwanyi*-where the deceased widow is inherited by a family member. Women have no option than to do the bidding of the “new husband” in a bid to protect her young children. And also encourages the culture of *nrachi nwanyi*, where young daughters whose fathers do not have male children remain unmarried and bear male children so as to keep on their fathers’ lineage.<sup>56</sup>

The judgment by the Honourable Justice Niki Tobi in *Mojekwu’s* case would have served as a turning point at which a significant change occurred for human rights and the constitution, had his attempt at expanding the provisions of the Nigerian constitution to feature broader policy issues which was raised in the “*oli- ekpe*” custom not been quashed by an overturn in the supreme court judgment, based on “technical grounds”.<sup>57</sup>

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<sup>51</sup>*Mojekwu v Mojekwu* (1997) 7 NWLR. PT 512. 28.

<sup>52</sup>*Iwobi* (n 20 above).

<sup>53</sup>*Onwuchekwa v Onwuchekwa* (1991) 5 NWLR. 739. See also *Mojekwu v iwuchukwu* (2004) 11 NWLR. 196. The name change is due to the fact that after the demise of Mrs. *mojekwu*, the matter was carried on by her daughter, Mrs. *iwuchukwu*.

<sup>54</sup>*Nezianya v Okagbue & ors.* (1963) 1 All NLR. P 352.

<sup>55</sup>See the case of *Nezianya v Okagbue* (1963)ANLR 352.

<sup>56</sup>Civil Resources Development and Documentation Center (CIRDDOC) Nigeria. “*Women and customary rights of inheritance*”. (2001) Fourth Dimension Publisher Co Ltd.

<sup>57</sup> *Mojekwu v Mojekwu* (1997) 7 NWLR. PT 512. 28.

It can be opined that the composition of legislative, judicial and executive body in Nigeria being predominantly male, which gives a sense of inherent patriarchal outlook, has rendered both legislature and the judiciary insensitive to the plight of women in Nigeria.<sup>58</sup> Having said that, it would also be fair to mention that the judiciary does not have the sole power to change the provisions of Article 6(6) of the constitution states that “*judicial powers vested in courts shall not, except as otherwise provided by this constitution extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the objectives and directive principles of state policy set out in chapter 2 of this constitution.*”

### **1.9.2. The Nigerian Constitution and its Influence on Inheritance Rights**

The Nigerian constitution being the principal instrument that regulates the exercise of state power and also being the most authoritative component of the state legal order plays a very significant position in ensuring that laws which violate the rights of women are amended or abolished.<sup>59</sup> Philip Aka draws attention to the important relationship between constitutionalism and the protection of human rights, he avers that it would be of utmost importance to have a strong and legitimate constitutional order to articulate and ensure the effective implementation of the provisions of human rights.<sup>60</sup>

Chapter two of the Nigerian constitution 1999 makes provisions for fundamental objectives and directive principles of state policy, and chapter four provides for fundamental human rights. Chapter 2, Article 17(1) of the constitution establishes the social order as being founded on the concept of freedom, equality as well as justice. Article 17(2) further states that (a) every citizen shall be equal before the law and shall be accorded equal opportunity and states obligations. And (b) the state shall recognise and respect the piety of its citizens and also improve and maintain

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<sup>58</sup>There are fourteen (14) Supreme Court justices in Nigeria, two (2) of which are women. The sixteen (16) divisions of Appeal courts which consist of sixty-two (62) justices have only eight (8) women. <<http://www.nigerianlawguru.com/information/LIST%20OF%20JUSTICES%20OF%20THE%20SUPREME%20COURT%20AND%20THE%20COURT%20OF%20APPEAL.pdf>> (accessed 17 October 2012); See also Iwobi (as above).

The senate comprises of one hundred and ten (110) members, with only six (6) women members. <<http://www.nigeriansenate.org/senators.php>> (accessed 17 October 2012).

<sup>59</sup>Iwobi(n 20 above)74.

<sup>60</sup>P Aka “Prospects for Igbo Human rights in Nigeria in the new country” (2004) 48(1) *Howard Law Journal* 165 at 175.



human dignity. Furthermore, Article 21(a) also makes provision for the protection, preservation and promotion of the cultures in Nigerian which elevates human dignity and does not act in contrary to the fundamental objectives of the constitution. Note that the provision of article 21 was an amendment of the provision of article 20 of the 1979 constitution which simply stated that “the state shall protect and enhance Nigerian cultures”.

If the provision was left in its broad state, it would have meant that the state encourages and protects Nigerian cultures which violate the right of women. Although, the provisions of the articles stated would have been a significant bearing for protecting women from harmful cultural practices including that of inheritance, they are not. This is simply because fundamental directive principles of state policy are not “justiciable”. This means “sanctions for the violation of any of the rights within the chapter are not legally enforceable”.<sup>61</sup> Article 6(6) of the constitution states that;

*“judicial powers vested in courts shall not, except as otherwise provided by this constitution extend to any issue or question as to whether any act of omission by any authority or person or as to whether any law or any judicial decision is in conformity with the objectives and directive principles of state policy set out in chapter 2 of this constitution”.*

It may be judicious to seek recourse if it can be proven that such violations contravene the provisions contained under chapter 4 of the constitution-being the fundamental human right.

Article 42 makes reference to cultural discrimination where it states in (1) (a) that citizens, irrespective of their sex, ethnicity, place of birth, religious and or political affiliation, should not be subjected to disabilities or restrictions of cultures which are present in other communities just because such individual is of a different background.

However scholars like Iwobi have argued that the provisions of article 42 may not protect widows and women who suffer violations due from their custom since the term “law” is arguably referring to the laws which arises from the legislature and judiciary of the state and does not include the less formal laws on which culture is underpinned.<sup>62</sup>

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<sup>61</sup>Iwobi (n 20 above) 76-77.

<sup>62</sup>Iwobi (as above).

Article 34(1)(a) of the constitution could be explored when challenging violations against women. It provides for the respect of individual dignity and protection from torture and all harsh treatments of degradations. But then again the issue of interpretation arises as to what constitutes “torture” which in the context of the provision, arose primarily in relation to judicial execution by hanging.

In *Onuoha kalu v the state*, where an individual was gruesomely stabbed in the neck with a broken bottle by the accused, the Supreme Court held that it did not constitute torture.<sup>63</sup> If the Supreme Court did not regard as torture, the gruesome circumstance which led to the death of the individual, it definitely would not begin to see any glimpse of torture in circumstances surrounding violation of the rights of women to inherit, or any other right for that matter.<sup>64</sup>

Section 12(1) of the constitution states that, except a treaty is enacted into law by the National Assembly, no treaty signed by the federation with any other country shall have the strength of law.<sup>65</sup> Nigeria has not domesticated most of the treaties, and for a treaty to be enforceable in Nigeria, it must be enacted as law by the legislative arm of government.<sup>66</sup>

It would be germane to say at this point that the constitution is no safe haven for women in general and for Igbo women in particular because the constitution barely gives indication whether fundamental rights supersede customary law or vice versa.<sup>67</sup> The Honourable justice of the Supreme Court Justice A.O Obaseki confirmed the inadequacies of the constitution when he stated that “experience have shown in many cases that the real question is not whether fundamental rights are asserted on paper, but whether they are recognized in practice and can be secured”.<sup>68</sup>

According to Akintola Aguda, it would be difficult for Nigeria to actualize its fundamental rights because its people are living under severe poverty and therefore are not in any mental or psychological position to begin to understand fundamental provisions contained in the

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<sup>63</sup>*Onuoha kalu v the state*. (1998) 13 NWLR 531.

<sup>64</sup> Iwobi(n 20 above)77.

<sup>65</sup>Section 12(1) Constitution of the Federal Republic of Nigeria 1999.

<sup>66</sup>E Egede “Bringing human rights home: An examination of the domestication of human rights treaties in Nigeria. (2007) *Journal of African law*, 51, 2. Printed in united kingdom.

<sup>67</sup>T Bennet, “Human rights and African Customary law under the South African Constitution” (1995).

<sup>68</sup> K Ajulo “Human rights, gender equality and economic empowerment in Nigeria” (2012) *Global legal resources.org*.

constitution, hence cannot respect it.<sup>69</sup> Poverty seems to be an underlying factor for the refusal to allow women inherit property.<sup>70</sup>

### 1.9.3. National and International Treaties

Nigeria has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>71</sup> amongst many other treaties. Nigeria was also one of the countries which participated in the United Nations Fourth World Conference on Women in 1995, that adopted the Beijing Declaration and Platform for Action,<sup>72</sup> the African Charter on Human and Peoples' Rights (ACHPR)<sup>73</sup> which includes, the protocol on the Rights of Women in Africa. These bodies explicitly call for a repeal of every form of violation and discrimination against women. However, these discriminatory acts continue to exist, especially in the Igbo societies, thereby making a caricature of the legal obligation government have undertaken to by acceding to these treaties.

Article 1 of CEDAW defines discrimination against women as any form of superiority displayed by one individual to another on the basis of sex in any social, political, economic, cultural, civil or any other environment. It further re-emphasised this point by stating that discrimination of women as any kind of act which encourages unfair treatment and behavior between men and women in their everyday lives.

Article 5 of CEDAW provides that state parties shall take every measure to change the social and cultural way men and women conduct themselves with the hope of achieving a result which would eliminate customary prejudices that exhumed the role of superiority or inferiority between men and women.

Article 2 of the Protocol to the African Charter on Human and Peoples' Rights<sup>74</sup> (ACHPR) provides that "state parties would use the appropriate legislative, institutional or any other

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<sup>69</sup> As above.

<sup>70</sup> M Hansungule "Status of an African woman from the perspective of an African eye". (2011).

<sup>71</sup> CEDAW Adopted 18 December 1979. Nigeria signed the CEDAW treaty on 23 April 1984 and ratified on 13 June 1985. See also list of International Law Treaties ratified by Nigeria. <<http://www1.umn.edu/humanrts/research/ratification-nigeria.html>> (accessed 25 February 2013).

<sup>72</sup> September 1995, U.N Doc. A/CONF.177/20/REV.1, U.N sales No.96.IV.13(1996).

<sup>73</sup> ACHPR adopted at the OAU on 28 June 1981.

<sup>74</sup> The Protocol was adopted on 11 July 2003, and entered into force on 25 November 2005.

measure available to combat all forms of discrimination against women. It also states that states parties will make consented effort towards sensitizing the public on elimination of these harmful cultural and traditional practices on both men and women.

Article 1(3) of the United Nations Charter, states that the purpose of the United Nations are to solve international issues which bothers on the economic, social and humanitarian characteristics of a country by encouraging international alliance and promoting respect for human rights and fundamental independence for individuals irrespective of their language, religion or sex.<sup>75</sup>

Article 7 of the Universal Declaration of Human Rights (UDHR) provides for the equality of every individual under the law and equal protection without discrimination. It also provides that every individual shares equal protection against any discrimination which violates the declaration and any act that would stir up such discrimination.<sup>76</sup>

Article 3 of the International Covenant on Civil and Political Rights (ICCPR) also provides that countries which are signatories to the covenant have taken it upon themselves to ensure that there is equal right between men and women in all civil and political matters as provided by the covenant.<sup>77</sup> However, with all these treaties put in place, discrimination against women continues to sprout to a worrying height.

In 2004, the CEDAW committee noted that women have never been able to achieve full *de jure* and *de facto* equality in any country in the world.<sup>78</sup> They stated that laws which discriminate against women still exist in the statute books of many countries which have signed the CEDAW treaty. They further expressed their concern on the co-existing relationship of multiple legal systems, with customary and religious laws which governs personal status and private life of individuals and which continues to prevail over positive law and even overturns the provision of equality in a constitution.<sup>79</sup>

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<sup>75</sup>United Nation Charter. Article 1 para 3.

<sup>76</sup>Universal Declaration Human Rights adopted 10 December 1948.

<sup>77</sup>International Covenant on civil and Political Rights entered into force 23 March 1976.

Nigeria ratified the ICCPR Convention by accession in 1993.

<sup>78</sup>On the twenty-fifth anniversary of adoption of CEDAW.

<sup>79</sup>United Nations committee on the elimination of discrimination against women. Statement to commemorate the twenty-fifth anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women. < <http://www.un.org/womenwatch/daw/cedaw/cedaw25anniversary/cedaw25-CEDAW.pdf> >.

Nigeria appears to be taking a selective approach to when and which treaty to implement and under what situation. In *Fawehinmi v Abacha*<sup>80</sup>, where the applicant brought an application before the court against the respondent for unlawful arrest and detention, amongst other claims, which he avers were against the provisions of the 1979 constitution-which was the existing constitution when the incident occurred.

The ACHPR in the above case gained recognition in the Nigerian judiciary. Among the essential crisis to be resolved in the case was the status of a domesticated treaty under section 12 of the constitution in relation to other municipal laws. The trial judge in the court of first instance held that the jurisdiction of the court was ousted, and struck out the case. On appeal, the court held that the enactment of the African Charter into Nigerian laws has given it precedence over other municipal laws. The judgment by Musthapher JCA was as follows;

*“It seems to me that the learned trial judge acted erroneously when he held that the African Charter contained in cap 10 of the laws of the Federation of Nigeria 1990 are inferior to the Decrees of the military government. It is commonplace that no government will be allowed to contract out by local legislation, its international obligation. It is my view, that notwithstanding the fact that cap 10 was promulgated by the National Assembly in 1983 or No. 12 of 1994 cannot affect its operation in Nigeria. While the Decrees of the Federal Military Government may over-ride other municipal laws, they cannot oust the jurisdiction of the court whenever properly called upon to do so in relation to matters pertaining to human rights under the African Charter. They are protected by the international law and the Federal Military government is not legally permitted to legislate out its obligation”*.<sup>81</sup>

The *Abacha* case is now used as precedent in the courts. Had the *Mojekwu*'s case gained such judicial attention, and not been rescinded by the higher court, it would have become a strong judicial precedent for women's right to inherit.

In an impact study by Christof Heyns and Frans Viljoen in 1999, in collaboration with the U.N office of the high commissioner for human rights, aimed at reviewing the all human rights treaties, they concluded that it doesn't seem as if international mechanism used by treaty bodies to constrain violations has had any impact. They added that the impact of treaties should be measured by judicial decisions, legislative reforms and the knowledge of individuals on about

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<sup>80</sup>*Fawehinmi v Abacha* (1996) 9 NWLR. PT 475, 710 at 747.

<sup>81</sup>As above.

the existence of such treaties.<sup>82</sup> They concluded that the coverage of the reporting process by the media was “negligible”.

#### **1.9.4. Recognition of Culture in International and National Treaties**

One of the reasons, it may seem, why Nigeria has not yet domesticated these treaties would be due to its consideration of certain beliefs and cultural values. The treaties were drafted to protect people, especially women from harmful cultural practices. But treaties recognise and respect African beliefs and traditional values, and such values will have to be put into consideration before domestication.<sup>83</sup>

Article 17 of African charter on human and peoples’ rights (ACHPR) provides that every individual has a right to participate without hindrance in any cultural activity in his/her community. It also provides that the state shall make it its duty to promote and protect traditional beliefs and values which is accepted in various communities.

Article 17 of the Protocol of the African charter on the rights of women in Africa promotes the right of women to participate in cultural activities with positive context and contribute to decisions of policies surrounding culture. It also promotes state parties duties towards ensuring that women are actively involved in the phrasing of cultural policies.

Article 15 of the Economic social and cultural rights (ESCR) provides that countries which have signed the treaty recognise the right of everyone to be part of their cultural life.

Article 13 of the convention on the rights of the child (CRC)<sup>84</sup> provides for the right of every child to speak his/her own language and enjoy the culture from his/her community or indigenous group.

The right to culture is also guaranteed in Article 15 of the Universal Declaration of Human Rights (UDHR). Being that the UDHR is just a declaration, one wonders if the right to culture is the reason why it was adopted.<sup>85</sup>

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<sup>82</sup>CH Heyns &F Viljoen, (eds) “The impact of the united nations human rights treaties on the domestic level.” (2001) 23.3*Human rights quarterly*. 483,488.

<sup>83</sup>Egede (n 66 above).

<sup>84</sup>Nigeria signed the CRC in 1990 and ratified in 1991.

It is true that treaties only support traditional practices that do not impinge on individual's human right, but how do we separate these traditions without interfering with sacred cultures or interfering with traditional practices which have been accepted as norm?

Hansungule argues that the best way would be to “*identify methods or approaches internal to the societies to be changed so that the call for change is internalised and does not come at the expense of the culture of the people whose beliefs and practices are to be encouraged to give way to new ones*”.<sup>86</sup> He further stated that “*given the stubbornness that culture has been noted for, it would be wise to realise that a complete metamorphosis in a flash is simply not possible, as it had taken a long time for these beliefs, traditions and cultural practices to germinate, it would take double the time to remedy the situation and introduce new ones*”.<sup>87</sup>

It may seem that by virtue of section 12 of the constitution and the provision of Article 1(3) thereof which states that the constitution is the supreme law that cannot be contested by any other law, and any other law which is not consistent with the provision of the constitution shall be regarded as void- that Nigeria has vetoed any interference from the international community or bodies from getting involved in any human rights issues concerning Nigeria. However, suffice it to say that even scholars have not given culture a front seat in the human right discourse. It has been relegated to the background not only in the framework of the UDHR, but also in the ICESCR, only discussed under anthropological importance.<sup>88</sup>

#### **1.9.5. An Attempt to Amend the Constitution by Civil Societies**

The federal government set up a presidential technical committee to review the 1999 constitution shortly after it came into force. This rare opportunity gave rise to an organization called National Center for Women Development. This group was made up of a host of women organizations. These women wrote a memorandum conveying proposals by Nigerian women for the amendment of 1999 constitution, which they submitted to the presidential committee.<sup>89</sup> An influential umbrella body, Citizen's Forum for Constitutional Review (CFCR), took interest in

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<sup>85</sup>Hansungule (n 70 above) 15.

<sup>86</sup>Hansungule (as above) 34.

<sup>87</sup>As above.

<sup>88</sup>As above.

<sup>89</sup>Iwobi( n 20 above) 78.

the proposal and refined it to suit the needs of women before submitting the proposal in 2001 to the National Assembly Joint Committee on the Review of the 1999 constitution.<sup>90</sup>

The CFRP proposed that the provisions of Article 34 of the constitution be enlarged and should provide that individuals should not be subjected to demeaning gender practices brought about either by the provisions of the law, religion, culture and tradition of any form. It also proposed that Article 42 be redrafted to read that every individual should have the right to quiet enjoyment of their affiliations and also obtain equal protection by the law.<sup>91</sup>

They further recommended that the constitution should include a clause which would guide the National Assembly towards making appropriate laws that would support and protect the widows' inheritance and parental rights. Added to these, were the recommendation that the constitution should formally acknowledge the rights of surviving spouse to acquire a reasonable proportion of the estate of the deceased spouse. Another recommendation was that the constitution should create a commission for Gender and Social Justice to take responsibility over the affairs of women by launching gender parity and social justice in all aspects of life and bring about the annulment of all discriminatory laws, policies, and practices that are equivocal to the basic endowment of equity and social justice.<sup>92</sup>

Some have argued that the effort of the committee failed, not just because the tenure of the National Assembly lapsed before the bill could be read a third time, but because the committee had failed to set its priorities straight. They failed to reach out to the poor and indigenous people, the religious leaders, traditional institutions and necessary groups by having meetings at very grand venues which were inaccessible to their subject matter.<sup>93</sup> Nevertheless, in 2001 a little glimpse of hope came into some parts of the Igbo society to help ameliorate the plight of widows, which included their right to inheritance, and women in general.

A first concrete step was taken by Enugu State government<sup>94</sup> which enacted in March 2001; a law entitled the *Prohibition of Infringement of a widow's and widower's Fundamental Rights law*,<sup>95</sup>

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<sup>90</sup> As above.

<sup>91</sup> As above.

<sup>92</sup> As above.

<sup>93</sup> O igbuzor <http://www.dawodu.com/igbuzor7.htm> (accessed 20 February 2013).

<sup>94</sup> Enugu state is one of the states in the southeastern Nigeria.



which is also known as “*widow’s Rights law*”. The preamble to this law mirrors that of the constitution under the fundamental human rights- right to life, to liberty and to personal dignity of human persons. Section 4 of this law identifies those traditional/ customary practices in Igbo society which impinge on the rights of women, being:

(a) shaving of head and body; (b) keeping the widow restricted in a room with the spouse’s remains; (c) refusal to receive condolence visits; (d) levirate marriage; (e) cladding a widow in a particular clothing and making her sit on the floor for the burial rites; (f) imposition upon a widow to drink the water used for washing the corpse of her spouse in order to proof her innocence; (g) insisting that a widow cries and wails to show that she feels the pain of her husband’s death; (h) imposing a period of confinement; (i) displacing a widow from her matrimonial home; (j) “any other imposition that contravenes the fundamental rights entrenched in the constitution or is degrading to the person”.<sup>96</sup>

It would be noteworthy to state that the law does not abrogate these cultural practices, it only stipulates that widows should not be coerced to participate in such inhuman practices.<sup>97</sup> Section 4(2) protects widows/widowers from being dispossessed of their deceased spouse property without his/her consent, subject to “the marriage Act, Wills law, administration of estate law or indeed any other customary law(not repugnant to natural justice, equity and good conscience)”.<sup>98</sup>

Iwobi argues that although the law was enacted with good intension, the language used lacks content neutrality. He avers that putting the plight of widowers at par with that of widows in relation to inheritance is a blatant distortion of reality, since from the onset it is Igbo women who are victimised and stigmatised within their traditional societies.<sup>99</sup> He doubts the neutrality of the law based on the ground that the state legislature, which at the date the law was enacted, was

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<sup>95</sup>*Prohibition of Infringement of a widow’s and widower’s Fundamental Rights law*, Enugu state law No. 3 of 2001. (widow’s rights law).

<sup>96</sup>Widows rights laws

<[http://www.google.co.za/url?sa=t&rct=j&q=Prohibition+of+Infringement+of+a+widow%E2%80%99s+and+widower%E2%80%99s+Fundamental+Rights+law%2C+Enugu+state+law+No.+3+of+2001.++\(widow%E2%80%99s+rights+law\)&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fsgdatabase.unwomen.org%2Fuploads%2FProhibition%2520of%2520Infringement%2520of%2520Widow%2520Fundamental%2520Human%2520Rights%2520Law%2520-%25202001%2520-%2520Enugu%2520State.doc&ei=G\\_spUc2NC4mGtAbrno\\_CYDw&usg=AFQjCNFOLT99PM7BR-HcBc7kGy1afd0pEw&bvm=bv.42768644,d.bGE](http://www.google.co.za/url?sa=t&rct=j&q=Prohibition+of+Infringement+of+a+widow%E2%80%99s+and+widower%E2%80%99s+Fundamental+Rights+law%2C+Enugu+state+law+No.+3+of+2001.++(widow%E2%80%99s+rights+law)&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Fsgdatabase.unwomen.org%2Fuploads%2FProhibition%2520of%2520Infringement%2520of%2520Widow%2520Fundamental%2520Human%2520Rights%2520Law%2520-%25202001%2520-%2520Enugu%2520State.doc&ei=G_spUc2NC4mGtAbrno_CYDw&usg=AFQjCNFOLT99PM7BR-HcBc7kGy1afd0pEw&bvm=bv.42768644,d.bGE) > (accessed 24 February 2013).

<sup>97</sup>Iwobi(n 20 above) 80.

<sup>98</sup>Widows rights law (n 131 above).

<sup>99</sup>Iwobi (n 20 above) 81.

completely composed of men. Thereby implying that the yard stick for which the law was measured, was completely biased and tilted in favour of the male folks to avoid any form of opposition from the men.<sup>100</sup> He stated that the inclusion of widowers within the ambit of the law through legislative powers will not take away the centuries of subjugation, inequality and ill-treatment that widows have had to face in most parts of Enugu state.

He further avers that the fact that the provisions as contained in section 4(a) of the law, which highlights the traditional practices which impinge on the fundamental rights of widows, have neither been abrogated nor abolished is in itself a problem. Arguing that

*“any program that seeks to abolish such deeply entrenched practices with the flourish of the legislative pen, is likely to meet with greater resistance among the traditional communities, and is therefore ultimately more likely to fail than the scheme contemplated by law which seeks to ameliorate the current predicament of widows by enabling them with legal backing of the state to choose whether or not to participate in such practices”.*<sup>101</sup>

Perhaps an unequivocal message from the government to its populace stating its intolerance with such practices would have been a better option. The government could also have ensured that there is proper dissemination of information to the populace on the amendment of the constitution. This can be achieved through the media, village chiefs, religious leaders etc, who would translate the message in the language(s) that the people understand. A right based approach would also have been appropriate. This is because human right approaches ensure that states fulfil its responsibility to individuals. Also, unlike other approaches, the human right language allows for legitimate claims to be presented with ethical authority which gives individuals a sense of purpose.

#### **1.9.6. The Mirage of Hope**

Regrettably the hope of the Igbo women were dashed as the widow’s rights law is particularly not satisfactory on issues concerning inheritance rights of widows. Section 4 (1) (I) provides that a widow should not be compelled to vacate her matrimonial home. However under section 2, the

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<sup>100</sup>As above.

<sup>101</sup>As above.

interpretation of “matrimonial home” means the place of abode of the spouse before his death, but does not include the ancestral home.<sup>102</sup> The translation of this law is dicey, as it does not define what an ancestral home is, leaving it open to possibilities that may render widows in rural areas homeless by simply avouching the home she lived in with her husband as an ancestral home.<sup>103</sup>

Iwobi observes that the provision of section 4(2) is also problematic as it is expressed to be “subject to customary law”. He explains that most customary laws do not recognise widows’ inheritance rights and do not usually give them any redress if they are dispossessed. Therefore it would be difficult to comprehend what substantial enhancement this law may have on the inheritance rights of widows and Igbo women as a whole.<sup>104</sup>

Section 5 which states that it would be against the law for any person, widow/widower to claim falsely that his/her rights has been violated under the law, will make it difficult for widows and daughters to bring such matters before the court, as this will bring about further estrangement within the family and intensify the animosity of the in-laws towards the woman and her children.

Secondly, not a lot of widows can afford to hire a lawyer if her spouse family declares that they have been unlawfully accused. Again, the penalty for breach as stipulated in section 6 being a fee of five thousand naira<sup>105</sup> is a meager sum for husband’s family who are determined to disposes a widow of her right to inherit her husband’s property. It is also very unlikely that the sentence of 2 years will ever be implemented.<sup>106</sup> On the provision of section 7 which states that any offence under this section shall be tried summarily in the magistrate court, Iwobi argued that:

*“no formal machinery has been provided either in law itself or in any subsidiary legislation made hereunder for assisting, supporting, or protecting those widows who choose to avail themselves of its provisions. This is a particularly serious deficiency when account is taken of the psychological and physical dangers to which such widows are likely to be exposed when they take on the might of their husband’s family or kinship group”.*<sup>107</sup>

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<sup>102</sup>Widows rights law (n 130 above).

<sup>103</sup>Iwobi (n 20 above) 82.

<sup>104</sup>As above.

<sup>105</sup>Five thousand naira is an equivalent to \$31 or R281.

<sup>106</sup>Iwobi (n 20 above) 82.

<sup>107</sup>As above.

There have also been calls from several Non-governmental organisations, like Women in Law and Development in Africa (WILDAF), to the federal government to domesticate CEDAW so that women will be protected under the legislature.<sup>108</sup> Scholars, learned persons like judges and justices have realised the implication of these cultural practices and the importance of using the law and other human rights treaties directly or indirectly to ward off these violations, or put them under check.<sup>109</sup> In the *Abacha's case*, one of the justices, though compelled by the content of section 12(1) of the constitution and also knowing that a treaty not enacted into law cannot be enforced, appreciated the importance of using the international human rights instrument to interpret local laws.<sup>110</sup>

### 1.9.7. An Alternative Approach

The struggles to combat cultural practice which denies women from inheritance, and violates the human rights in general have mostly been fought through legal means. In my opinion, legal luminaries, human right advocates and the United Nation bodies may have had an oversight by not involving experts from other discipline to join in this goal. It will be of ample importance to remember that human rights is not just a problem that affects the law, but rather, the input of the law on human rights issue is to retain a rule of law and provide consequences for failure to comply.

According to Twining, “a picture of law that focuses only on the state and its municipal laws would, for the most part, be too narrow”.<sup>111</sup> He argues that there should be a more versatile approach to the discipline of law which should include all facets of legal ordering and all essential forms of law, including non-state laws. To show solidarity to his line of thought, most legal scholars rejected the legal general dogma that had taken over ideas of law which had existed in for centuries in western jurisprudence.<sup>112</sup>

Most legal scholars have also thought it of great essence to venture outside the domain of state law in order to capture the complexity and multiplicity of legal pluralism. These brilliant ideas

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<sup>108</sup>Egede (n 66 above) 274.

<sup>109</sup>As above.

<sup>110</sup>As above.

<sup>111</sup>Iwobi (n 20 above) 48-49.

<sup>112</sup>As above.

and ideals are surmountable effort put in by legal scholars in a bid to bring to an end the violations of humans and their rights which state laws have been unable to achieve due to its compromised co-existence with non-state laws.<sup>113</sup>

However, there have been growing concerns amongst scholars that the approach to human rights have been legalised. They are of the view that law has had undue advantage on human rights issues through the concentration of basic human rights ideals, like definitions, interpretation, implementation, on law. They have argued that the discourses of human rights are usually entrusted to individuals with legal knowledge. This is evident, according to Basak Cali and Meckled Garcia, in the training of only judges and lawyers on human right affairs, ratifying international human rights law treaties and incorporating them into domestic law, making several calls for legal reforms, thereby giving the whole issue on human right a legal concept.<sup>114</sup>

They also expressed the fear that legal dominance of human rights has led to the “footnote phenomena”, which has subtly given non-legal approach to human rights a back seat.<sup>115</sup> Woodiwiss argued that “*although political concepts, such as those associated with feminism informed some of the campaigns for the new covenants, legal discourse became more entrenched as the source of concepts to think through difficulties as well as generally “handle” human rights issues*”.<sup>116</sup> In other words, curbing cultural practices that affect Igbo women cannot be achieved without involving other discipline- such as those in the social sciences- who share the same interest with legal scholars.

According to Marc Galanter, it would be informative to pay close attention to “rule-generating and “rule-upholding” phenomenon which has formed an integral part in cultural traditions and practices of indigenous communities, which often operates outside the scope of the state legal system, when seeking to confront the standard and values that surrounds gender relations and how it places women in African society.<sup>117</sup> For example, the discourse of culture is incomplete

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<sup>113</sup>As above.

<sup>114</sup>S Meckled-Garcia & B Cali (eds) *Legalisation of human rights: multidisciplinary perspectives of human rights and human rights law*(2005) 2-3.

<sup>115</sup>Meckled & Cali ( as above)2.

<sup>116</sup>A Woodiwiss “The law cannot be enough: Human rights and the limits of legalism. In Meckled-Garcia & B Cali (eds) *Legalisation of human rights: multidisciplinary perspectives of human rights and human rights law*. (2005)32.

<sup>117</sup>Iwobi (n 20 above) 49.

without the contributions of an anthropologist and a sociologist whose expertise lies in the study of culture and how it emanates from the society.<sup>118</sup>

- i. Anthropologists are experts on issues of development and have very strong analytical knowledge for integrating culture, history and power. The role of an anthropologist is dire to culture because through analysis of cultures, anthropologist can throw more light on over-rated cultural beliefs.
- ii. Psychologists are very relevant in the determination of rights of women because of the mental and emotional conditions of victims of various violations, either directly or by proxy. According to freeman, 'human rights behavior is the product of the human mind, and psychology therefore should contribute to our understanding of it'.<sup>119</sup>
- iii. Political scientists have advocated that issues relating to government policies should be left in the hands of political experts and not lawyers. Maiman<sup>120</sup> has stated that while, traditional legal scholarship in the field of human rights usually focuses on the most immediate products of judicial decision making, the case outcomes that actually define the state of the law, Political scientists who study human rights and other legal issues in the judicial context have pursued a range of interests that include, but also go beyond, decisional outcomes.
- iv. Sociology, intellectually enlightens the social life of rights, how rights are constructed, how power is used in the institutionalisation of rights as well as how the structures of the society help violate rights and restrict the institutionalisation of human rights.<sup>121</sup>

Traditional rulers and the media can also contribute, using their knowledge and positions, towards warding off this great ill that has taken over and overturned the lives of Igbo women.

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<sup>118</sup>Woodiwiss (n 116 above).

<sup>119</sup>M. Freeman 'Human rights an interdisciplinary approach'. (2002)90. Cambridge, polity press.

<sup>120</sup>R. Maiman 'Political cultures in conflict: contextualizing constitutional litigation in South Africa' in F Viljoen (eds) *beyond the law multi-disciplinary perspectives on human rights*. (2012) 18

<sup>121</sup>J Mlenga 'How sociology enriches human rights: The case study of Malawi's first openly-gay couple' in F Viljoen (eds) *beyond the law multi-disciplinary perspectives on human rights*. (2012) 114

## **1.10. Chapter outline**

The study was organized in four chapters using the following structure:

### **Chapter 1:**

In this chapter, the following sub-headings were given: The background of the study; statement of the problem; objectives of the study; scope/delimitation; significance/rationale of the study; research questions; limitations of the study; methodology; outline of the study chapters and literature review.

### **Chapter 2:**

Theoretical framework: The framework was, “Women’s land tenure framework for analysis: Inheritance”. This was developed by Giovarelli R. et al, 2013 of Landesa center for women’s land rights. The overview of the framework was given together with information on how it was used during the analysis of this study.

### **Chapter 3:**

The data was presented, analyzed and discussions were given.

### **Chapter 4:**

The data for the study was summarized, conclusions given and recommendations stated at the end of the chapter.

## Chapter two

### 2. Theoretical Framework

The framework that was identified for this study was, “Women’s land tenure framework for analysis; Inheritance. It was developed by Giovarelli et al 2013 of Landesa: Center for women’s land rights.

#### 2.1. Overview of the Framework

The framework is for anyone who intends to understand the complex issues of women’s land rights, for example, officials, grassroots organizations, international technical advisors, policy makers, development practitioners and programmers to assist women farmers, to mention but a few. It looks at the customary law and the formal law addressing the barriers to inherit land and how to assist women. It also assesses the current situation for women’s land rights in a specific country or state. The single Question of interest is, “Can women inherit land?” It looks at both legal rights and customary laws of inheritance to find the gaps between law and practice and where law and custom may overlap. For example, it finds sections of the customary rights as legitimate in the cases of inheritance.

#### 2.2. How the Framework was used in the Study

The framework was used during analysis and discussion of findings. It helped to understand the importance of inheritance and how the rights for women and men differ on inheritance. It stated that a woman’s rights depended on her marital status, relationship to male, cultural norms and rules and that she had no rights in cases of patrilineal and patrilocal issues, as she is considered an outsider to the bloodline. During data analysis, it was important to understand the types of property that the women wanted to inherit and to see if the property was open for such purposes or not. It also helped to understand the definition of a wife, law and marriage and the types of laws that were in effect during court cases that bothers on inheritance. Finally, the framework also outlined issues about whether women knew their rights, marital status and the issues over land to be inherited.



## Chapter Three

### 3. Data Presentation, Analysis and Discussion

In this chapter, data was presented in five (5) thematic areas which were as follows: 1) the description of the women and girls of Igbo society; 2) an overview of the two laws that were used in inheritance cases-customary law and the statutory law; 3) types of properties to be inherited; 4) the impact of the injustices on inheritance on women and girls and 5) what needs to be done in future to support women and girls.

#### 3.1. The Description of Women and Girls in Igbo Society

One statement that stands out in describing the women of Igbo society in loud and clear terms is that, ‘married women have higher status- socially or otherwise- than unmarried women and widows’.<sup>122</sup> This statement showed that the women’s status was uplifted only, when they got married and it emphasizes the point that, if a woman remained unmarried, she was nothing in the eyes of the people of the Igbo community.

The statement further indicated that the women were not given any other position of power in the family or in the community; it has to be earned and recognized through marriage.<sup>123</sup> For example, they were excluded from meetings about decision-making, they were not given traditional titles to perform during religious ceremonies or to pass laws that gave access to spiritual and economic resources, especially, land. However, Igbo women were very hard working, especially in agriculture, and were economically self-reliant.<sup>124</sup> They contributed to the household income where they combined resources with their husbands to buy property for the home. In such cases, there was no division of property from that of husband and of the woman. This indicated that the women humbled themselves and showed immense respect to their husbands by not showing off their own hard earned properties.

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<sup>122</sup> Iwobi (n 20 above).

<sup>123</sup> As above.

<sup>124</sup> Emeasoba (n 26 above).

The gender power struggles were persistent and women were referred to in degrading manners which indicated the presence of patriarchy and inequality *ab initio*.<sup>125</sup> Such statements were repeated during court hearings on inheritance: where a woman is referred to as a “chattel” and therefore cannot inherit another property;<sup>126</sup> women were not clever and may take wrong decisions on land; land belongs to the family and a woman is not part of her husband’s family. The framework for this study also emphasized the issue of women not being part of the family; they are on transit and if daughters got land, they would not respect their husbands or they would just walk away whenever they got tired of the marriage. Single girls, who remained unmarried in the father’s home, would inherit if only they had a male child out of marriage.<sup>127</sup>

The above choice of statements clearly showed that women of Igbo society were already given a very low and unfavourable position that would not allow them to inherit any property in the event of a husband’s demise. The men in Igbo society had already placed themselves on an upper position that was supported by the traditional beliefs and practices. It can be concluded that the women were powerless given the positions accorded to them by the society and perpetuated in the courts of law where traditional practices were also given high recognition.

### **3.2. An Overview of the Laws of Inheritance Administration**

During the court cases on inheritance, the customary law (CL) and the statutory law (SL) were used interchangeably in order to make decisions for women on issues of inheritance. However, the CL was used more often than not in the courts because it was in support of the views of men against women. The only situation that could have helped the women in Igbo society was the recognition of the international treaties like the CEDAW which advocated for the elimination of all forms of discrimination against women. But this again was overruled by the constitution of the country even as Nigeria as a country had ratified CEDAW.<sup>128</sup>

The customary law simply reinforced the negative thinking of men about women and how they should not be allowed to inherit any property whatsoever, especially land. Therefore, there was nothing positive to come out of it that would rescue women’s plight on inheritance matters. One

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<sup>125</sup> Iwobi (n 20 above).

<sup>126</sup> See citations above.

<sup>127</sup> Emeasoba (n 45 above).

<sup>128</sup> See the provisions of section 12 of the Constitution of the federal Republic of Nigeria 1999.

is forced assume that judges who adjudicate over these cases are men who were biased against women and favour their male counterparts. They can also be perceived as men who were protecting their own interests for the future, in the event their own demise.<sup>129</sup> The same thoughts can be said again about the customary law that, it was developed by people –men- who were busy protecting their interests against the interests of women. Therefore, the end product did not have any consideration for women’s position over inheritance cases.<sup>130</sup> However, the framework for this study pointed out that in inheritance cases, the customary law at some point would view some traditional practices as legitimate enough to be reinforced.

### **3.3. The type of Properties that were Inherited**

Basically, the kind of property in question over which women were fighting for and not getting is land. Land was regarded as the foundation of human social and economic activities. It gave authority, promoted social status of power and it’s the primary source of wealth. Land was seen as providing employment especially in rural areas and it was a commodity that was scarce in urban areas.<sup>131</sup> There were always discrepancies on the variety of crop sown between men and women. Men grew cash crops while the woman grew seasonal crops and vegetables. But all the same, they brought home money for the family and it was put together without separation.

Given the above status that was accorded to land in Igbo society, one can deduce why traditions well as customary laws were made in such a way that the women would not inherit the land at the demise of her husband.<sup>132</sup> This point was also stated in the framework that the land had names attached to it to the point of showing that certain types of land would not be inherited. It can also be observed that, the practice of not giving women land had happened over and over again and women even knew in advance that the same thing would happen to them when their husband passed away. How would they expect a favourable outcome when they had observed what had happened to other women? The men already had powers in the traditional setups to the land and other property that they considered to be of their relative. In such instances, with or without law, the women were already losers as far as land issues were concerned. We need to remind ourselves the high regard given to land as a source of all that a man could have in his life.

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<sup>129</sup> As seen in the cases enumerated above, except in *Mojekwu’s* case.

<sup>130</sup> *Iwobi* (n 20 above).

<sup>131</sup> *Eneasoba*.

<sup>132</sup> *Iwobi* (n 20 above).

This will help us to realize the predicament in which the women were in. The framework pointed out that land was for the family to be handed down from father to son so that the son would look after the family and not for inheritance purposes.

### **3.4. The Impact of Injustices on Inheritance and Cultural Practices on Women and Girls**

The effects of the culturally administered inheritance processes affected the women and girls in many different ways. The hard-working women brought into the household a lot of wealth through their agricultural work, but all that was lost into the hands of kinsmen when the husband was no more. They did not know about separation of property in those days and even in this present time an Igbo woman does not have separate properties from her husband.<sup>133</sup> The women worked tirelessly on the land and made it more productive but they lost that land at the husband's demise, yet it was the only important thing for them to survive on and also bring up their children. But as was indicated by the framework, may be the type of land was not for inheritance purposes and the type of marriage of the woman did not give her the right to inherit any property from the family.

The burial rigors affected the women psychologically, socially, economically and financially. They suffered a lot of humiliation in the name of cultural practices to mourn the deceased husband. Everything possible was done to shame the woman in front of the whole community. The practices looked like some kind of punishment. As mentioned in the literature review, the practice was meant to discourage women from killing their husbands.<sup>134</sup> The Nigerian legal systems perpetuated the unequal relationships between men and women by adopting the two types of laws and use them interchangeably. Some young girls would remain unmarried so as to stay in their fathers' homesteads. But for them to inherit, they had to have a child out of wedlock -especially a male child- so that the child would have a right to inheritance of property.<sup>135</sup> This

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<sup>133</sup> See *Uboma's* case above. However, in present day, most enlightened Igbo women have learnt to separate their property from her husband, with his permission or in secret, as it remains unheard of for a couple to have separate properties.

<sup>134</sup> *Iwobi* (n 20 above).

<sup>135</sup> As above.

particular practice encourages promiscuity among the young women, who were allowed to have many love affairs with men as long as they remained single in their fathers' homes.<sup>136</sup>

After thorough consideration, one would wonder what benefit marriage is when it ended in a situation where a woman was tortured, humiliated and left wanting in the end. Instead of the woman remaining with happy memories about her life with her husband, she was forced to regret having been married in the first place. The psycho/social effects remained with the woman long enough to see her to the last day of her life. It is no wonder that some women would not be able to recover from the turmoil of the mourning rituals that were afflicted on them. One would also add the notion the men may have done all these things so that no other man alive would admire the widow nor seek after her in view of a relationship again. The practice may also be a ploy towards arm twisting a widow into accepting marriage to a husband brother in order to have a piece of land to care for her children with. It will not be out of place to conclude that if all legal and societal structures tilt towards satisfying men, it could lead a struggle for survival for women.

The research questions in the study, Q1 and Q4 were clearly answered in the above discussion which showed that the women of Igbo society underwent a lot of violations during mourning periods and that the extent of the impact from the cultural practices was huge. This was in terms of psychological, economic, social and financial impacts.

### **3.5. What needs to be done in Igbo Society to Support the Women?**

Below are some initiatives to a positive progress towards curbing the violations;

- a) To amend the constitution in order to encourage good traditions and exclude the support of all traditional practices. This would reinforce implementable socio/economic rights to protect women on inheritance.
- b) The constitution should place women's rights at par with those of men and possibly place an ultimatum on families that practiced traditional type of laws. This way, there would be

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<sup>136</sup> See the appellate court decision on the tradition of *nrachi nwanyi* in *mojekwu's case*.

a boost in agriculture as women remain in the family home to farm their original lands, which will in turn help to alleviate suffering on the children.

- c) It would be recommended for stakeholders to analyze and understand the framework and see the different status of women and the type of land if it was for inheritance or not.
- d) Another way forward is for the government to put in place measures to recognize international treaties like the CEDAW that would support women's groups and human rights organizations that would encourage women to raise their voices in unison and express their dissatisfaction in the courts of law on the violations they experience. Currently, Nigeria has failed to implement ratified treaties which favour the rights of women. Many women who lose their inheritance have no resources to fight in the courts, more importantly, they do not have knowledge about what laws or treaties are in place to support them.
- e) If the constitution is amended, then other stakeholders would be able to interview women and write reports to the Presidential Committee to educate it on the plight of women in Igbo society.

### **3.6. Conclusion**

In chapter three, the researcher looked at the description of women in Igbo society, the overview of the laws and the constitution, types of property to be inherited, the impact of the cultural practices on women and girls and finally on what needs to be done. These were the key areas that could be identified from the results of the study to bring out the main issues of the study. A more detailed summary and conclusions is given in chapter four, below.

## Chapter four

### 4. Summary, Conclusion and Recommendations

In this chapter, the study gave a summary of the major findings, made conclusions and then gave recommendations accordingly.

#### 4.1. Summary

Two big issues considered by the Igbo society as important in the life of a woman were when she got married (this elevated the woman's status) and when her husband passed away (she was reduced to humiliation by burial rituals). The woman and her husband enjoyed a privileged way of life together when they farmed their land and pulled their resources and products together. This was however, shattered when the husband passed away and the woman had to lose the land to the hands of the kinsmen and other relatives. The women were regarded as very hard working women in the fields when they grew seasonal crops and vegetables. It is worth noting at this point that, marriage was regarded very highly in Igbo society to the extent that single women were not accorded any status even if they had high education and well paying jobs. Yet on the contrary, when the marriage ended, then the women were reduced to nothing by the same community that encouraged marriage.

The customary law and the statutory law did not in any way support the women during the hearing of inheritance cases, although they were used interchangeably. The customary law would even recognize some sections of the traditional practices as legitimate and enforce them during case hearings. The laws also were tilting heavily on the traditional side of affairs that put men above the status of women and not according women any kind of leniency. Since land was regarded as the most important asset in Igbo society, the chances of women inheriting it were slim as they were regarded as not part of the family where they were married ( the framework also highlighted this fact). The words "women are on transit" were even used to emphasis the point of alienating women.

The topic on the impacts of the cultural practices that women suffered at the death of a husband would require wider study to achieve a satisfactory coverage, as this would demand a practical

research. Only a woman who has gone through the rigours of mourning can tell the how it has affected her personally. That does not take away from the fact that her children, young or grown, will also be affected by the practice. A lot needs to be done in Nigeria in general and Igbo society in particular to address the issues of inheritance in favour of women.

## **4.2. Conclusions**

In conclusion, the researcher looked at the main features from the results of the study. It can be concluded that although the Igbo women suffered inhuman treatments from the society at the demise of their husbands, they were regarded as traditional women who were hard working in their agricultural activities. They worked and contributed economically to their households without separating their properties from those of their husbands. However, they were still not given a high status in the community which ultimately denied them the land inheritance that they deserve. The judiciary also failed to protect the rights of women by giving credence to customary laws which violated their rights and disregarding international treaties which would guarantee the protection of their rights. The constitution further put the nail on the coffin by making provisions that supports such cultural practices that violate women. The land was taken as the biggest asset in Igbo society which the men refused to share with the women even for inheritance purposes. It can also be concluded from this study that the impact of the cultural practices on women heavily affected them in many different ways. The ways to combat these problems, from the study's point of view is for the Nigerian government to revisit the constitution and to amend some sections of the laws to accommodate women's right to inheritance. Civil societies are working hard towards enlightening individuals and government on the gravity of the violations women undergo in the face of inheritance, but are yet to make a notable impact. Alternative measures using other disciplines are also being considered as a way of resolving cultural issues without disrespecting individuals or society.

## **4.3. Recommendations**

The recommendations for this study were:

1. There is need for awareness and sensitization on the issues surrounding inheritance based discrimination, including some form of media information and translation mechanism.



For example, using the media and people in the traditional society to enlighten individuals, especially women, on their rights.

2. There should be education and sensitization of men and women on issues relating to gender in order to bring about societal change and values in land and property rights. for example , the topic of gender equality should be thought in schools from as early as the tertiary level.
3. There is need to involve other stakeholders like non-governmental organizations who can bring in supportive mechanism from international treaties that the country is a signatory. NGO's have the ability to reach indigenous women and educate them on their rights in the society.
4. The government needs also to look at the constitution in order to review it and amend it for the benefit of gender equality in all sectors of the judiciary.
5. State should employ the services of traditional rulers and chiefs in regulating the affairs of members of their community instead of imposing and relying solely on state laws.
6. Igbo women should be encouraged to participate in key decision-making positions in order for them to make valuable contributions to issues concerning their welfare including participation in empowerment training programs which will expose them to being productive.
7. In order to understand the impact of inheritance rights on women and girls in South Eastern Nigeria and the country as a whole, legislation should encourage studies of inheritance and property law of inheritance across the country, and also introduce monitoring mechanisms to ensure implementation.
8. Most importantly, legal scholars should work hand-in-hand with scholars from other disciplines such as the social sciences, to ensure that the core of customary imprisonment of women under customary law and bullying under traditional practices is reached and eliminated for good.

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