

**NAVIGATING ENTRENCHED DISCRIMINATORY CUSTOMARY LAWS: A CASE  
STUDY OF INHERITANCE RULES AND WOMEN'S RIGHTS IN THE IGBO  
COMMUNITY IN NIGERIA**

**BY**

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of the degree of Master of Laws (LL.M.)**

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## **DEDICATION**

This thesis is dedicated to my father:

Engr. Cletus Eboson Chuks Igbojionu

To my loving mother:

Mrs. Victoria Nkechi Igbojionu

And to my dear husband:

Mr. Sochinweike Anthony Diji

## ABSTRACT

Gender discrimination and inequality have been part of the experiences of women all over the world, with the struggle for women's rights gaining momentum in the national, regional, and international spheres. The African human rights regime has played essential roles in addressing women's rights and discrimination for the benefit of African women. However, there have been some challenges, especially in the implementation processes. Available data shows that in the last two decades, African women's continuing vulnerability to gender discrimination and other human rights violations is entrenched in some legal systems, such as the customary laws. These laws contain various gender-discriminatory practices exacerbated by patriarchy, poverty, and illiteracy. This thesis assesses the system of gender discrimination in inheritance and family law matters within the Igbo community in Nigeria with an attempt to address these violations of human rights. It highlights the current successes of the African feminist regime while exposing the weaknesses and providing potential recommendations for policy change. The thesis uses the theoretical framework of feminism as well as the regional and international legal framework such as the *Convention on the Eradication of All Forms of Discrimination of Women (CEDAW)*, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* to access the questions of discrimination and violation of human rights at national, regional, and international levels and to provide effective mechanisms to address issues of human rights violations. The thesis also provides a comparative analysis of countries such as Kenya, South Africa, and Ghana with similar jurisdiction to offer lessons in addressing issues of conflict of customary laws with national and international human rights standards and offers fresh perspectives of social constructivism and Institutionalism to stakeholders to address the peculiar challenges of gender inequality and discrimination in the Igbo community in Nigeria.

## RÉSUMÉ

La discrimination et l'inégalité de genre ont été des expériences vécues par les femmes du monde entier, la lutte pour les droits des femmes prenant de l'ampleur aux niveaux national, régional et international. Le régime africain des droits de l'homme a joué un rôle essentiel dans la prise en compte des droits des femmes et de la discrimination à leur égard, au bénéfice des femmes africaines. Cependant, il y a eu des défis, notamment dans les processus de mise en œuvre. Les données disponibles montrent que, au cours des deux dernières décennies, la vulnérabilité continue des femmes africaines à la discrimination de genre et à d'autres violations des droits de l'homme est ancrée dans certains systèmes juridiques, tels que les lois coutumières. Ces lois contiennent diverses pratiques discriminatoires envers les femmes exacerbées par le patriarcat, la pauvreté et l'analphabétisme. Cette thèse évalue le système de discrimination de genre en matière d'héritage et de droit familial au sein de la communauté Igbo au Nigeria, avec pour objectif de traiter ces violations des droits de l'homme. Elle met en évidence les succès actuels du régime féministe africain tout en exposant les faiblesses et en proposant des recommandations potentielles pour un changement de politique. La thèse utilise le cadre théorique du féminisme ainsi que le cadre juridique régional et international, tels que la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes (CEDAW) et le Protocole à la Charte africaine des droits de l'homme et des peuples relatif aux droits des femmes en Afrique pour évaluer les questions de discrimination et de violation des droits de l'homme aux niveaux national, régional et international et fournir des mécanismes efficaces pour traiter les questions de violations des droits de l'homme. La thèse fournit également une analyse comparative de pays tels que le Kenya, l'Afrique du Sud et le Ghana ayant une juridiction similaire pour offrir des leçons dans la résolution des conflits de lois coutumières avec les normes nationales et internationales des droits de l'homme et propose

des perspectives fraîches du constructivisme social et de l'institutionnalisme aux parties prenantes pour traiter les défis particuliers de l'inégalité et de la discrimination de genre dans la communauté Igbo au Nigeria.



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**CHAPTER ONE**

**SETTING THE STAGE: OVERVIEW, RESEARCH AIMS AND GENERAL  
BACKGROUND OF THE STUDY**

**INTRODUCTION**

In March 2015, The Gender, and Equal Opportunities Bill, 2016 (S.B 116) was introduced at the National Assembly of Nigeria. This bill, aimed at eliminating the discrimination against women and ensuring that women have equal rights with men in various spheres of life across Nigeria, was voted down by members of the parliament. The bill was intended to implement provisions of the Nigerian Constitution and regional and international instruments of the Protocol to the African Charter of Human and People’s Rights and the Convention on the Elimination of all Forms of Discrimination against Women. The reason for this bill's insurmountable rejection and failure was said to be a result of religious bias by various Members of Parliament representing the northern states whose populations are predominantly Muslim and some Christians.<sup>1</sup>

The depressing gender gap in Nigerian society is manifested in the family and domestic realm and the political, economic, social and leadership spheres. This means that women occupy secondary positions and are generally excluded from attaining and enjoying equal political, social,

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<sup>1</sup> Henry Umoru, Joseph Erunke, “Northern Senators Reject Bill on Gender Equality”, (2016) Vanguard Nigeria at 1 <https://www.vanguardngr.com/2016/03/senate-throws-out-bill-on-gender-equality/>

and economic rights in Nigerian society. Religion, culture, poverty, history, traditions, illiteracy, customs, and lack of access to information are among the factors that further increase Nigerian women's vulnerability and exacerbate this inequality. While customs are subfactors under native traditions, it is crucial to trace the root of the discrimination against women in these customs to effectively give lasting solutions to the issues of inequality and gender discrimination, particularly among the Igbo ethnic group in Nigeria.

In this thesis, I adopt an ascending approach to addressing the prevalence of gender inequality in Nigeria. It is also referred to as the bottom-up approach for this thesis. This bottom-up approach is one used to target societal issues from the bottom to the top rather than the top-down approach that targets and addresses societal issues from top-down. The bottom-up approach invites the public to view matters of inequality and discrimination with recourse to the origin and historical development and to proffer solutions that instead target the root causes and cut them off completely to prevent the further spread of the disease of gender discrimination. It also encourages the use of Institutions in the Igbo society such as the Council of chiefs to directly influence ways of thinking and behaviors of the Igbo people. Through remodeling the educational, social, and behavioral patterns in families, school curriculums, religious organizations, and political and social groups.

Gender inequality has many aspects and is not an isolated issue. It is an area in the Human rights and equality framework that recognizes women's rights as fundamental to individual, societal and international development. Women worldwide have had and continue to this day to

have a complex history of subordination and discrimination based on gender. There has been a struggle for the emancipation of women from gender inequality across the globe.

The African feminist movement is marked by an additional obstacle of discriminatory culture and customs that promote the subordination of women in family and communal settings, which translates into federal compliance despite the constitutionally guaranteed fundamental rights in both domestic and international laws that prohibit this discrimination. Women in Nigeria constitute an oppressed group, especially in the Igbo community. They are discriminated against, marginalized, suppressed, and exploited in cultural, educational, socio-political, and economic aspects. This oppression can be primarily traced to the long-standing institutionalized patriarchal nature of the communities combined with colonialism has crippled the growth of equality in the African context, which enables men to dominate women in all aspects of society.

It was not until the recent Supreme Court case of *Ukeje v Ukeje* in 2014 that the court gave a ground-breaking rule against discriminatory customs, which marked a revolutionary shift in the legal protection of women against customary inequality. However, despite the court decision, institutions have been reluctant to interpret the Supreme court decision in the face of stiff resistance by the people.

Given the continued existence of socio-political and economic inequality, the contribution of women, who make up more than half of the Nigerian state, remains insignificant in the face of customs that prohibit the recognition of women as vital to the growth and development of society despite constitutional provisions and judicial precedents. It is essential to ask the questions below:

## RESEARCH QUESTIONS

The Supreme Court's judgment in *Ukeje v Ukeje*<sup>2</sup> on the inheritance rights of women in Nigeria has so far failed to change the discriminatory customary inheritance practices of the Igbo ethnic group in Nigeria. Therefore, the main research question for the study is, to what extent does the human rights approach ensure the effective internalization, transmission, and legitimacy of inheritance rules in societies with entrenched gender-based discrimination among the Igbo community in Nigeria?

The main research question raises the following related issues and questions:

1. What human rights issues arise because of Nigeria's customary inheritance practices?
2. What efforts have been made to tackle gender inequality and gender discrimination in Nigeria?
3. What factors trigger confrontational and defiant responses to liberal human rights language in inheritance rules?
4. How can the human rights approach to inheritance attract legitimacy and acceptability?
5. What human rights issues arise because of the customary discriminatory practices in the Igbo community?
6. What are the impacts of gender discrimination on the rights and status of women in the Igbo community?
7. How can the social constructivist approach advance the effective internalization, transmission, and legitimacy of the human rights approach to inheritance rules in societies with entrenched gender-based discrimination customary law rules?

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<sup>2</sup> (2014) 11 NWLR (PT. 1418) 384

8. How can the Institutions be used to advance the internalization of human rights in the Igbo community in Nigeria?

## **METHODOLOGICAL FRAMEWORK OF THE THESIS**

To investigate the research questions and achieve the research objectives of this thesis set out in Chapter 1, the thesis will be conducted mainly through doctrinal, comparative, and case-study research methodologies. The historical and empirical methods will also be used to a limited extent. The thesis will also rely on legal knowledge from national laws, international treaties and secondary texts from scholarly books and journals. These sources of law will provide the sources of law and context to which these laws are applied regarding the rights of Igbo women in Nigeria.

### **DOCTRINAL METHODOLOGY**

The doctrinal methodology is used for analyzing legal rules and principles (Hutchinson and Duncan, 2012) in primary and secondary sources. The doctrinal approach will focus on case law, statutes, and other legal authorities. The research will study the relevant laws, their applicability, and the effects of laws examining their strengths and weaknesses. The Human Rights-Based Approach (HRBA) and a framework for generating information about women's rights will be used to evaluate gender inequality and discrimination and how they affect women's rights in Nigeria.

### **MULTI-CASE STUDY METHODOLOGY**

A multi-case study approach (Gerring, 2014) will focus on the issue of inheritance rights among the Igbo ethnic group in Nigeria. This will be combined with a comparative analysis of the

customary law rules of other ethnic groups in Nigeria and legal developments in other pluralistic legal systems. A comparative study of how defiance is tackled in tax law (Braithwaite, 2009) will be undertaken to provide insights on overcoming confrontational reactions to the human rights approach to inheritance. I would also explore the social constructive approach to tackling discrimination and gender inequality by targeting various institutions charged with the responsibility of implementing policies and norms in society. This would enable us answer the research questions set out in the thesis.

## **COMPARATIVE METHODOLOGY**

The research will involve a comparative analysis of the customs and traditions of some African countries, such as South Africa, Kenya, and Ghana, with similar jurisdiction as Nigeria. The research method will be primarily desk-based. In carrying out this research, primary data would be drawn from the Constitution of the Federal Republic of Nigeria 1999 (as amended), Nigerian federal and state legislation and regional and international instruments such as the African Charter on Human Rights and Peoples Rights (ACHPR) and its Protocol, the Universal Declaration of Human Rights (UDHR) 1948 and the Convention on the Elimination of Discrimination Against Women (CEDAW). The secondary data sources for the study will include academic journals and reports from national, regional, and international organizations.

The methodologies I have listed above will aid in providing a wholesome analysis of challenges of Igbo women in the face of discriminatory customary laws with the aim of addressing them.

## RESEARCH AIMS

The Nigerian legal system recognizes customary law as a source of law, and as such, matters such as inheritance are usually governed by the custom of a deceased except where the deceased was married under statute or has chosen the statute as his choice of law.<sup>3</sup> Although a series of tests have been put in place to ensure that customs applicable by the Courts do not violate human rights and good conscience, most customs in Nigeria promote gender inequality and discrimination, especially with regard to inheritance.

These customs violate the right against discrimination and the right to equality under the Nigerian Constitution, the African Charter and other international treaties ratified by Nigeria. Still, they have been applied by the Courts until the decision of the Supreme Court of Nigeria in *Ukeje v Ukeje*<sup>4</sup>, which invalidated the male primogeniture custom in the eastern part of Nigeria.

In *Ejiamike V Ejiamike*<sup>5</sup>, for example, the Court denied a widow the right to inherit her husband's estate on the ground that under her deceased husband's custom, a woman is not entitled to inheritance. Although the decision in *Ejiamike V Ejiamike*<sup>6</sup> was arrived at before the Supreme Court decision in *Ukeje v Ukeje*, many of the ethnic groups in Nigeria still dwell in the past. They have continued to promote the male primogeniture custom irrespective of the decision of the Supreme Court.

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<sup>3</sup> Anthony Diala "A critique of the judicial attitude towards matrimonial property rights under customary law in Nigeria's southern states" (2018) 18 African Human Rights Law Journal at 100-122.

<sup>4</sup> (2014) 11 NWLR (PT. 1418) 384

<sup>5</sup> (1972) ECSR

<sup>6</sup> (1972) 2 ENLR at 11

It is clear, from the preceding, that the problem does not lie entirely with the application of discriminatory customs by the Court but with the deeply entrenched social norms and customs that perpetuate women's inequality and disadvantage. Therefore, this thesis proposes a human rights approach as a solution to gender-based discrimination in Nigeria. The thesis explores human rights issues arising from customary inheritance practices in Nigeria, the efforts made to address the issue, factors triggering defiance of court order by the different ethnic groups to equality and the extent to which a human rights approach can redress the problem. To address the research questions listed above, the aims of this study are twofold. First, the research will undertake a case study and comparative analysis of inheritance rules in Nigeria's customary law against the superiority of the constitutionalized human rights approach pronounced by the country's Supreme Court. It will highlight the history, causes and impact of customary inheritance rules and how the entrenched patriarchal practices continue to affect gender rights and impede gender rights and development even after contrary definitive judicial pronouncements. The study's second aim is to investigate how the social constructivist and Institutional approaches can also be used in conjunction with the human rights approach to advance the effective internalization, transmission, and legitimacy of the human rights approach to inheritance rules in societies with entrenched gender-based discrimination customary law rules. This will assist in overcoming resistance and antipathy to implementing the human rights approach. The study also seeks to contribute to the scholarly debate to promote gender equality and enhance women's rights in pluralistic legal systems such as Nigeria.



## RESEARCH PROBLEM

Customary law is one of the sources of law in the Nigerian Legal system. It is embedded under Section 21 of the Nigerian Constitution.<sup>7</sup> Customary law is recognized and applied in interpreting rights and obligations in the Nigerian courts; however, it is subject to various tests to determine its validity and application. In order to be valid and applicable, there are three tests that customary laws must pass: the ‘Repugnancy test,’ which requires that customs not be repugnant to natural justice, equity, and good conscience. Secondly, the ‘Incompatibility test’ requires customary laws not to be incompatible with the existing provisions of the constitution and statutes in Nigeria. The third and final test is the ‘Public Policy test,’ which requires that all customs be attuned to the public's interest, centred on protecting people's lives, security, and welfare.

These three tests have been approved to be at the epicentre of customary rules, and any customary law that fails any of the tests is declared null and void to the extent of its inconsistency. Courts in Nigeria use the tests to regulate customary law practices. The courts have often had recourse to the more liberal language of human rights in using the tests to interpret entrenched customary law rules in the contemporary world.

The decision of the Supreme Court of Nigeria in the case of *Ukeje v Ukeje*<sup>8</sup>, which nullified the Igbo tradition that prohibits females from an inheritance, confirmed the emergent trajectory using human rights language to overcome gender-discriminatory customary practices. The court held that the Igbo customary law, which disentitles a female from partaking in her father's estate,

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<sup>7</sup>Constitution of the Federal Republic of Nigeria, 1999: s.21. The State shall – (a) protect, preserve, and promote the Nigerian cultures, which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter.

<sup>8</sup> *Ukeje v Ukeje* (2014) JELR 54676 (SC).

breaches section 42(1)<sup>9</sup> and (2)<sup>10</sup> of the 1999 Constitution of the Federal Republic of Nigeria.<sup>11</sup>

The provisions are part of the constitutionalized human rights in Chapter IV of Nigeria's Constitution. The Constitution protects the equal rights of all citizens before the law. It guarantees the right not to be discriminated against expressly or through the practical application of any law in Nigeria. Accordingly, the court declared the Igbo customary inheritance rule null and void because it is discriminatory and conflicts with the constitutional provisions.

Being a Supreme Court decision, *Ukeje v Ukeje* would sound a note of finality on the status of the Igbo customary inheritance rule and serve as a precedent binding on all persons and authorities within the Igbo ethnic group and Nigeria as a whole. Despite being voided by the court, the Igbo customary practice of disentitlement of the female child seems to persist with overt and covert support by individuals and organizations of both genders in the Igbo ethnic group, which regard the judicial decision as unacceptable and potentially illegitimate. For some sections of the community, the court's decision has been received with antipathy and even outright defiance. For instance, a notable Igbo traditional ruler, Igwe Simeon Osisi Itodo of Igbo-Eze North Local government Area of Enugu, stated that the Supreme Court judgment would not change the Igbo inheritance customs and any effort to enforce it would result in chaos.<sup>12</sup>

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<sup>9</sup>S.42(1) Constitution of the Federal Republic of Nigeria, (1999) as amended: A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions

<sup>10</sup>Ibid at S. 42 (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

<sup>11</sup>Constitution of the Federal Republic of Nigeria, 1999 as amended.

<sup>12</sup> Osisi Itodo, "Female Inheritance: Court ruling can't abolish customs of Igbos — Itodo" (2020). Vanguard news at 1 <https://www.vanguardngr.com/2020/08/female-inheritance-court-ruling-cant-abolish-customs-of-igbos-itodo/>

The reality is that although the Supreme Court has judged the issue of female inheritance in Nigeria, the entrenched customary practices continue to hold sway across the Igbo ethnic group. The implementation of the judgment has faced difficulties because of the deep-rooted cultural norms, even though the Nigerian constitutional framework establishes that women and men are equal and must be treated equally under the law.

## **ROADMAP OF THE THESIS**

The thesis will discuss the Igbo customary law rules, particularly relating to inheritance and how these customary laws promote gender inequality in Nigeria. In so doing, the thesis is organized into four chapters. The current chapter, Chapter One, sets out the introduction, conceptual framework, research questions, methodology, research aims, and thesis purpose. It also provides an understanding of the historical background of Nigeria, as well as an overview of the Nigerian legal system and a brief introduction to the cultural system of the Igbo community. It, in part, sketches the problem and questions embodied in the thesis, i.e., issues of Customary law and gender discrimination in Igbo communities of Nigeria. It outlines the significant premises and arguments presented in the idea as well.

Chapter Two examines the literature review and theoretical framework of the thesis. To this end, it critically examines academic texts. It relies on relevant theories on feminism to analyze the historical background of Nigerian and African feminist struggles and lessons. The chapter also examines dominant International Feminist perspectives to analyze these critiques' adequacy and limitation on gender inequality and discrimination.

Chapter Three examines the political and legal framework for human rights implementation of human rights under Nigerian laws (domestic), African laws (regional), and international law. It examines the obligation of the Nigerian government to implement these laws and the limitations to their implementation in Nigeria. The chapter also explores the financial, economic exploitation and gender discrimination in inheritance and family law matters within the Igbo community in Nigeria.

Chapter Four provides a critical analysis of the Igbo customary law of inheritance and assesses the extent to which factors such as religion and patriarchy further exacerbate the prevalence of discrimination in customary laws within the Igbo community. In so doing, the work of this thesis and the ideas explored in the previous chapters are brought to life. Of particular importance here is the comparative analysis of the major ethnic groups in Nigeria as well as practical lessons from some jurisdictions such as South Africa, Kenya, and Ghana. It also provides various strategies and approaches for remedying the persistence of customary inequalities in the Igbo community in Nigeria, such as human rights approach, social constructivist approach, and Institutional approach.

Lastly, it provides a conclusion from the results of the thesis. It also provides recommendations for reforms in the law, policies and publicly held beliefs on women's rights, awareness creation, professional legal education, cultural competency education and training for judges, legal professionals and other administrative professionals involved in the implementation of women's human rights.

## **PURPOSE AND SIGNIFICANCE OF THE THESIS**

The case study of customary inheritance rules among the Igbo communities in Nigeria will examine the role of context in the effectiveness of the human rights approach and in implementing judicial decisions and legislative provisions that promote it. It will highlight the nexus between the level of persistent discriminatory cultural practices meted out against Igbo women in Nigeria and the resultant level of gender inequality that reflects in the political, social, and economic spheres of Nigeria.

The research will present new approaches to tackling customary practices harmful to women using the institutional and social constructivist approaches to the role of law and institutions in Nigeria. The study focuses on the vulnerable position of women faced with unfair customary practices and the crucial roles that legislative, institutional, public, and private actors will have in tackling discriminatory customary practices to end discrimination and ensure individual and social development.

This study will also address the invisibility of women in the cultural context and its transcendence into the political, economic, and social sectors, which is clearly against the goals of sustainable development as proclaimed in the United Nations Agenda 2030.

The study will provide lessons for effective law reforms and implementation in pluralistic legal systems other than Nigeria, particularly those applying a combination of long-standing customary law and relatively recent common law rules and international human rights standards.

## **HISTORICAL BACKGROUND OF THE FEDERAL REPUBLIC OF NIGERIA**

Nigeria is a sub-Saharan African country in the Western part of the continent. Named after the River Niger, it is situated on the southern coast of West Africa. Nigeria is the most populated African country, with over 200 million inhabitants. Nigeria gained its independence from the British colonial administration in 1960. Therefore, Nigeria's legal history has been marked by social, economic, and political developments during the pre-colonial, colonial, and post-colonial periods.<sup>13</sup>

Nigeria is a multi-ethnic country made up of over 250 ethnic groups, with the three major ethnic groups being Hausa, Igbo, and Yoruba, which account for more than half of the population of the country.<sup>14</sup> A remarkable development in the history of Nigeria is the amalgamation of the Northern and Southern Protectorates in Nigeria in 1914 under the Colonial Administrator at the time, Lord Lugard. Before the amalgamation in 1914, Nigeria was separated into two administrative units: (The Northern and Southern protectorates) by the British government and was governed separately. It was in 1914 that the British administrators united the two regions under one joint administration that formed the Federal Republic of Nigeria.<sup>15</sup>

Nigeria was governed primarily by the English Common Law as a colony of England. However, some of these laws were incompatible with the native customs and traditions of the various ethnic groups in Nigeria. The Colonial government, however, ensured that only native

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<sup>13</sup> Mohammed T Ladan, "Legal History of Nigeria" (2019) Nigerian Institute of Advanced Legal Studies at CXXV

<sup>14</sup> Rotimi T Suberu, "Federalism and ethnic conflict in Nigeria" (2001), Washington, D.C: United States Institute of Peace Press at 4.

<sup>15</sup> Ameze Guobadia, "Nigeria: The Legal Dynamics of Her Constitutional Development – An Appraisal" (1994) Nigerian Institute of Advanced Legal Studies, Lagos at 2.

businesses compatible with the Common laws were kept.<sup>16</sup>To this effect, the English Common law became the primary source of direction in Nigeria and other sources of law such as statutes of general application, Customary law, Shariah law and judicial precedents.<sup>17</sup>

Nigeria operates a Federal System of Government composed of the Federal government located at the Federal Capital Territory, Abuja, and 36 state governments.

Nigeria is diverse in terms of culture, language, religion, and traditions. It is divided into six geo-political zones of South-South, South-East, South-West, North-East, North-West, and North-Central, with over 250 ethnic groups. The major ethnic groups, according to population, are Hausa, Yoruba, and Igbo, native to northern, southwestern, and southeastern parts of the country. Each ethnic group has unique customs, traditions, and language, while English is Nigeria's official and more commonly spoken language. Christianity, Islam, and African Traditional Religion are Nigeria's main religions.

This thesis will notably examine the Igbo ethnic community in the Eastern part of Nigeria.

## **LEGAL PLURALISM AND THE NIGERIAN LEGAL SYSTEM**

Over the years, Nigeria has gradually evolved from its pre-colonial, colonial, and post-colonial experiences. Like many colonized countries, Nigeria received many laws from its British colonizers, now referred to as the accepted English laws. These English laws were introduced into the Nigerian legal system and existed concurrently with the existing indigenous and customary

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<sup>16</sup> Supreme Court Ordinance 1863, s 19.

<sup>17</sup> E W Park, "The Sources of Nigerian Law, Sweet & Maxwell", 8<sup>th</sup> Impression, 5-12. See also A O Obilade, *The Legal System since Independence* in T O Elias, *Law and Social Change in Nigeria*, University of Lagos & Evans Brothers, (1972) at 27.

laws that were in existence. The co-existence of various sources of rules in a country is what is referred to as legal pluralism. Legal pluralism has been given different definitions; however, it can be defined as a situation where multiple sources of law, such as customary, indigenous, and religious laws, are operated alongside or incorporated into national laws<sup>18</sup>

After its independence, the pluralist nature of the Nigerian legal system recognized various religious and ethnic groups to preserve the traditions of its multiple ethnic groups. Through this pluralist system, Nigeria identified various sources of its laws, which are:

- a. English Law – These include the English common law, doctrines of equity and statutes of general application. The origin of common law in Nigeria can be traced to Nigeria’s colonial history with England, during which common law was introduced by the British colonial administration and made part of the Nigerian legal system.<sup>19</sup>
- b. Nigerian Legislation – This constitutes the federal and state legislations, Ordinances, Acts, Rules, Orders, Laws, and Decrees.<sup>20</sup>
- c. Islamic/Sharia Law – This is made up of Islamic laws, with its principles mainly found within the Quran. Sharia law is primarily a personal law structure for Nigerian Muslims.
- d. Customary Law – This comprises the culture, norms, beliefs, practices, and traditions of the various methods of indigenous communities in Nigeria and provides a scheme of personal law. It is recognized as obligatory and regulates the people's day-to-day lives in

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<sup>18</sup> Hooker Michael Barry. *Legal pluralism: an introduction to Colonial and Neo-colonial laws* (Oxford: Clarendon Press 1975)

<sup>19</sup> Andrew Edward Wilson Park, “The Sources of Nigerian Law” (1963), Sweet & Maxwell, 8<sup>th</sup> Impression, at 1.

<sup>20</sup> Akintunde Olusegun Obilade, *The Nigerian legal system* (London: Sweet & Maxwell, 1979) at 60



the society it governs.<sup>21</sup> In most cases, the rules and principles of customary law are unwritten.

- e. Judicial Precedents – They are the decisions of courts in Nigeria which are usually binding. The findings of Superior courts such as the Supreme court are generally binding on lower courts.

Another form of legal pluralism in Nigeria exists in the country's multiple sources of law and court structures. The Supreme Court of Nigeria is the highest court of law in Nigeria (Also known as the Apex Court), followed by the Court of Appeal, Federal High Courts, the State High Courts, the Magistrate Courts, Sharia Courts, Area Courts, and Customary Courts. The Customary and Area courts are ranked the lowest courts in Nigeria in terms of decision making as appeals on decisions of customary courts can be made to higher courts of records.

There are courts at the state and federal levels. At the state level and for the national capital territory, the court structure mirrors Nigeria's recognized sources of law. There are first-instance and customary appellate courts in most states and equivalent Sharia courts for areas with significant Muslim populations. These courts exist side-by-side with the Common law-styled courts. Further appeals lie from the customary and Sharia courts to the common law-styled Court of Appeal and Supreme Court.

Another level of pluralism in Nigeria's legal system exists regarding customary law. While customary law is an indigenous and long-standing source of law and is recognized side-by-side

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<sup>21</sup> Mohammed T Ladan: "Legal History of Nigeria" (2019) Nigerian Institute of Advanced Legal Studies at Xcvii

with the other three classes of law in Nigeria, it has no single definitive and authoritative form and source. There are more than 250 ethnic groups in Nigeria, and each ethnic group has its unique customary law, which regulates the way of life of the people it governs.

The Constitution of the Federal Republic of Nigeria 1999, as amended, remains the primary source of law in Nigeria. Whenever there is a conflict between the Constitutional provision and another source of direction, it is the constitutional provision that trumps.

In addition to the Constitution, other laws regulate people's lives in Nigeria, such as national legislation (Nigerian statutes), Islamic Laws (Sharia Law), Customary law, and Judicial Precedents. The rules that regulate inheritance in Nigeria include the Sharia law, Customary Laws, Matrimonial Causes Act<sup>22</sup>, and The Evidence Act of Nigeria, 2011.<sup>23</sup>

## **BACKGROUND OF THE IGBO COMMUNITY IN EASTERN NIGERIA**

The Eastern part of Nigeria is one of the major geographical regions in Nigeria with a population of over twelve million inhabitants, making it home to the second largest ethnic group in Nigeria. The region comprises indigenous ethnic groups such as Igbo, Ijaw, Ikwerre, Efik, and Ibibio, with the Igbo ethnic group making one of the three largest groups in Nigeria.

Politically, the Igbo communities are divided into states, sub-regions, local governments, and zones.<sup>24</sup> They live in autonomous villages and towns and are governed by traditional rules and chiefs. The principle of democracy governed the pre-colonial Igbo society, which was reflected in

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<sup>22</sup> *The Matrimonial Causes Act* 1970 Cap. M7, Laws of the Federation of Nigeria (2004).

<sup>23</sup> *Evidence Act of Nigeria*, Cap. E14, Laws of the Federation of Nigeria (2011).

<sup>24</sup> Ruth Stellamaris Opara, "African Women as Victims or Heroines? Obiwuruotu Women's Music, Gender, Marriage, and Culture Among the Igbo in Nigeria" (2019) at 24.

how they elected their traditional chiefs and rulers by the majority voting system. In addition to the traditional rulers, The Igbo community also recognizes the importance of social fragments and groups in their political arrangement, typically comprised of the council of elders (also known as ndi ichies), various age groups and gender groups. These institutions are recognized as part of the Igbo political system. These groups are responsible for regulatory and decision-making in the Igbo communities.

The Igbo ethnic group is traditionally patriarchal, with a few exceptions. Within the Igbos, there are standard and variegated customary practices, including inheritance and associated gender rights. Igbos are predominantly Christians, but long-standing rules of customary law govern their rights and obligations, including rules concerning the property and estate inheritance. The ethnic group is divided into different communities, with the traditional authority vested in the community's most senior male. The traditional ruler can determine land and marriage issues and governs the relationship between people in the community. He rules jointly with a council of elders (also known as Ndi Ichies) and village chiefs chosen by the people to represent their interests at meetings and decision-making processes.

The decision-making process of the Igbo people is democratic in nature, and verdicts are reached after the meeting of the traditional ruler together with the council of elders and chiefs whom members of the communities select by obtaining popular votes in elections. These decisions are binding and often pass through a vigorously rigid process. The governing authority comprises the traditional ruler, and the council of elders and chiefs includes only men upon whom power is vested. The absence of representation of women in this council and political positions counts in

the decision-making process further accounts for the rather patrimonial system that excludes women from decision-making processes. This arrangement makes it impossible to arrive at gender-neutral decisions.

In Igbo society, men take up central positions starting from the family as the head of the house towards the communal positions. Hence men are regarded as superior to women to the effect that women generally have little to contribute to decision-making processes. The persistence of patriarchy and gender equality amongst the Igbo community poses a problem in contemporary society as such practice leads to unfairness, discrimination, and prejudice, and it is against the democratic norms and values in Nigeria.

Cultural, religious, and dogmatic norms, values, and belief systems have fueled the persistence of discriminatory practices.<sup>25</sup> Despite the legal reforms and the Supreme Court decision that was aimed to bring to a final halt the discriminatory practices associated with customary law in Nigeria, these practices persist in Igbo communities. This is because of the entrenched nature of the practice that sees men as the superior gender, which is enshrined in people's subconsciousness, including women. Hence enforcing the human rights policies has been met with unwavering resistance from the people who have blatantly refused to accept these human rights standards citing that it is against their beliefs and culture; hence, it is seen as an abomination and therefore forbidden.

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<sup>25</sup> B. N. Okpalaobi (Ph.D.) and E. F. Okaphor "Revisiting the Case of Ukeje V Ukeje Viz a Viz Igbo Customary Inheritance" (2017) NG - Journal of Social Development Vol 6 at 2.

To this end, the thesis will discuss some of the experiences of the Igbo woman in the face of the overarching discriminatory customary practices that increase the vulnerability of Igbo women in Igbo communities. It will also discuss some legal and theoretical approaches to women's rights in a quest to address these challenges.

## **CUSTOMARY LAW IN NIGERIA**

Customary law is prevalent worldwide, such as in China, Indonesia, India, and all African countries<sup>26</sup>. Every nation recognizes customary law as part of its legal system. In Canada, indigenous laws govern the affairs of the Indigenous people, and these laws are incorporated into the Canadian legal system. The existence of multiple legal systems within each state characterizes Nigeria's pluralistic legal system.

Nigeria recognizes various sources of laws, such as common law, judicial precedence, Islamic law, customary law, and national legislation. Customary law was the primary law that was used in governance in Nigeria before the colonial period, which introduced the British standard law system into the country and was used during the colonial and post-colonial periods in Nigeria. Customary law is perceived as the natural law in Nigeria, and it is the most revered source of law because of its indigenous nature.

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<sup>26</sup> Walker David Maxwell, *The Oxford Companion to Law*, (1980) Clarendon Press; New York: Oxford University Press, 1980, at 328.

According to Elias, Customary laws are not common laws enacted by the legislature but enforceable and binding within Nigeria and between the parties subject to the laws.<sup>27</sup> Some of the provisions of customary laws promote discrimination against women. This includes female disinheritance, widowhood practices, female genital mutilation (FGM) as well as some rituals that women are expected to perform because they are women.<sup>28</sup> In some ethnic groups, when a husband dies, the wife is expected to shave off all her hair, drink from the water used to wash off the husband's corpse to prove her innocence of the husband's death. In some communities, women are restricted from moving freely as they are only expected to tend to their homes.

In other communities, women are seen as the husband's property, and upon their husbands' death, wives are expected to be inherited by the husband's brothers as part of his estate. Female genital mutilation is prevalent in some communities where little girls are made to undergo this practice involuntarily, which the community believes reduces promiscuity and sexual urges and preserves the woman's virginity. Customary law has remained relevant despite attempts to onslaught them by the colonial authorities, government, and the international community. Most customary laws are primarily unwritten; hence they are entrenched in the subconscious part of the people and continue to exist.

## **OTHER FORMS OF DISCRIMINATION FACED BY IGBO WOMEN IN NIGERIA**

Apart from discrimination in inheritance laws and customs, Igbo women in Nigeria are faced with other forms of gender-based discrimination, such as violence against women and girls,

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<sup>27</sup> Elias.O. Taslim, "British Colonial Law – A Comparative study of the interaction between English and Local Laws in British Dependencies." (1962) London: Stevens and sons 323 at 70.

<sup>28</sup> Ifemeje, SC, Umejiaku, N "Discriminatory Cultural Practices and Women's Rights among the Igbos of South-east Nigeria: A Critique" (2004). Journal of Law, Policy, and Globalization 25: at 18.

sexual abuse, unequal access to education, discrimination in workplaces, unequal representation in political positions, the prevalence of harmful cultural and traditional practices, amongst others because of the low status they occupy in society. Some of these forms of discrimination are directly or indirectly caused by poverty, cultural and customary barriers, religious dogmatism, economic and political inequalities, illiteracy, biased justice systems and the lack of effective implementation of laws.

The constraints faced by Igbo women are also the primary hindrance to the adequate performance of the Supreme court's decision regarding women's entitlement to their rights to inheritance. A report from the National Bureau of Statistics (NBS) reveals that: "The literacy level of women stands at 59.3% compared to 70.9% of men and in positions of power and decision making, women are under-represented with 5.8% in the National Assembly; 29.4% in the Federal Courts and 15.4% of professors in universities and women were generally under-represented in high-ranking government administrators with decision-making powers."<sup>29</sup>

Apart from the structural and legislative challenges faced by Igbo women in Nigeria, the behaviors and belief patterns of the people that men are superior to women in Igbo communities have also proved to be problematic despite the implementation of the Supreme court decisions and laws in Nigeria.

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<sup>29</sup> Onyeka C Okongwu, "Are Laws the Appropriate Solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria" (2020) Sage Journals at 1.  
<https://doi.org/10.1177/1358229120978915>

This long-held belief in the superiority of the male gender over the female counterparts has led to discrimination against women in Igbo communities. Therefore, any laws that state otherwise are regarded as an abomination in the Igbo land. This again accounts for why implementing the human rights standard of equality have been met with strict antipathy and heavy resistance by the Igbo people, who have refused to accept these human rights standards as the norm. This behavior has proved to be a hindrance to the effective implementation of laws in Nigeria against the backdrop of entrenched discriminatory customary practices and efforts by the Nigerian Government to eliminate discrimination through ratifying some treaties and developing laws. However, these efforts have not been effective in remedying these inequalities.

The discriminatory practice is still prevalent in modern day Nigeria. Some scholars such as Onuoha, have attempted to address the issue of discrimination in Igbo customary laws however, these efforts have not been effective in remedying the existing inequality. It is therefore pertinent that this thesis attempts to address the disentitlement of women from their right of inheritance of property by tackling problems of resistance and antipathy of the masses against the implementation of national and international human rights laws to ensure the eradication of all forms of gender-based discrimination against Igbo women in Nigeria.

## **JURISDICTION AND VALIDITY OF CUSTOMARY LAW IN NIGERIA**

Customary laws are binding on those who are under the given state. In states dominated by the Igbo people, there are various Customary law rules that are binding within the Igbo jurisdiction. According to Section 2<sup>30</sup> of the Customary Court Rules of Practice and Procedure, the Customary

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<sup>30</sup> *Abia Customary Courts Law*, (Amendment) No. (8) 2008, s 2.



court has the power to exercise jurisdiction over all persons within the territorial limits of its authority as set out in Column 1 of the Third Schedule to the Edict.<sup>31</sup>

The causes and matters that are governed by customary law are as follows:

1. Land causes, matters of inheritance or devolution of property under customary law and issues relating to standard Right of Occupancy granted by or deemed to be granted by the local government.
2. Matrimonial causes in respect of marriages under Customary Law.
3. Proceedings for the recovery of the rent payable in respect of Customary Right of Occupancy.
4. Debt demand or damages claimed between persons married under customary law or arising from the orthodox union.
5. Guardianship, custody of children, and other causes and matters relating to children under customary law.
6. Causes or matters under any law, including lotteries, pools betting, gaming and casino promotions law (other than customary law), and rules regarding a debt, demand, damage or rate.
7. Causes and matters relating to succession and inheritance upon intestacy under customary law and grant or power of authority to any person to administer the estate of an intestate under traditional law.
8. Slander.
9. Desecration of custom or sacred places.
10. Cause or matters under any Law other than Customary Law.

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<sup>31</sup> *Abia Customary Courts Law*, (Amendment) No. (8) 2008

Customary Law is deemed to be binding upon a person where that person:

- (a) Is an indigene of a place in which the Customary Law is in force.
- (b) Being in an area where the Customary law is in force does an act in violation of the Customary law.
- (c) In claims under a Customary Law of inheritance, claims in respect of the property or estate of a deceased person and the dead person were indigene of the place in which the Customary law is in force.
- (d) Agrees or is deemed to have agreed to be bound by the Customary Law.

Also, according to Section 16<sup>32</sup> of the Imo state Customary Courts Law, a Customary Court or a Customary Court of Appeal shall administer:

- (a) the customary law prevailing in the jurisdiction of the Court or binding upon any of the parties, so far as it is not repugnant to natural justice, equity, and good conscience or incompatible either directly or by necessary implication with any written law for the time being in force in the State.

According to Section 14(3)<sup>33</sup>, Customary courts exercise jurisdiction over all matters relating to marriage under native law and custom, irrespective of whether the marriage was contracted in the state, if:

- (a) Both parties are indigenes of the state
- (b) Both parties are residents of the state
- (c) The defendant is a resident of the state
- (d) The goods and chattels being claimed are lying in the state.

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<sup>32</sup> *Abia Customary Courts Law*, (Amendment) No. (8) 2008, s 16.

<sup>33</sup> *Abia Customary Courts Law*, (Amendment) No. (8) 2008, s 14(3).

(e) The immovable property, the subject matter of the suit, is situated in Abia state.

Customary law is therefore incorporated into various states and their provisions are binding on the residents and indigenes of the state and those who elect to use them in their affairs. Hence, when a marriage is conducted within the Igbo community, the provisions of the Igbo customary law is automatically binding in every affair of the marriage and family including issues related to inheritance. This has been the practice within the Igbo community until recent cases such as *Ukeje v Ukeje* which brought the issue of discrimination of women particularly in family inheritance to limelight.

The case failed to pass the three ethical tests to determine customary law validity: Repugnancy, Incompatibility, and Public Policy test which called for the nullification of the custom. Section 14 of the Evidence Act cap. 112 Laws of the Federation of Nigeria 1990 provides that: “In case of any custom relied upon in any judicial proceeding shall not be enforced as law if it is contrary to public policy and is not by natural justice, equity, and good conscience.”<sup>34</sup>

The repugnancy test was developed to eliminate customs incompatible with the English doctrine of equity in cases such as inheritance, custody of children, same-sex marriage, etc. In the case of *Re Estate of Agboruja*,<sup>35</sup> it was a custom that the death of a husband does not terminate a wedding and that the widow had options before her to choose to be inherited by the family of one of the brothers or relatives of her late husbands or not. She may continue to be part of the late husband’s family. If she insists on remaining in the family, it is regarded as a voluntary continuance of the marriage.

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<sup>34</sup> *Evidence Act* (1990) cap. 112 Laws of the Federation of Nigeria.

<sup>35</sup> *Re Estate of Agboruja* (1976) 19 NLR 38.

The court held in this case that this custom was not repugnant to natural justice because it ensured that the widow was given a voluntary right of choice to exercise in the situation; however, in the case of *Yusuf v Okhia*<sup>36</sup> where a woman refused to be inherited by her in-laws, it was held that the customary law that permits enticement after the death of a person was repugnant to natural justice.

The Incompatibility test states that customary laws must not be incompatible, whether directly or indirectly, with the provisions of any law in Nigeria. This means all primary laws, common law, equity, and other general statutes. In *Salau v Aderibigbe*,<sup>37</sup> it was held that where a rule governs a subject matter, all other customary laws concerning the same subject matter are automatically nullified.

The public policy test states that Customary laws must not be contrary to any existing public policy in Nigeria.<sup>38</sup> The public policy test is invoked in instances where the laws and policies in Nigeria prohibit certain acts such as lesbianism and homosexuality. An example of where the public policy test was used was in the case of *Meribe v. Egwu*,<sup>39</sup> where the court nullified an existing marriage between two women for being contrary to public policy in Nigeria.

The three tests were designed to nullify barbaric and obnoxious customs; however, customs such as the rule that prevents women from inheriting the property of their late parents or husbands,

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<sup>36</sup> *Yusuf v Okhia* (1976) 6 ECSLR 274.

<sup>37</sup> *Salau v Aderibigbe* [1963] WNLR 80.

<sup>38</sup> *Evidence Act* (1990) Cap. (112), S. 14(3).

<sup>39</sup> [1976] NSCC 48/75 at 181, 186.

still exist primarily among some communities in modern-day Nigeria. Many scholars have attested to this discrimination created by customary laws.

According to Diala, most customs in Nigeria promote gender inequality because of the patriarchal nature of Nigerian society.<sup>40</sup> Onuoha agrees with Diala as he attributes inheritance rules under customary law, where the principle of primogeniture determines legacy.<sup>41</sup> The principle of Primogeniture is the idea that upon the death of the parents or primary owner of the property, the ownership of the said property automatically devolves to the male child of the owner. This principle also applies to communities in the Northern part of Nigeria that are yet to adopt Islam as a religion<sup>42</sup>, as well as the eastern part of Nigeria where the principle of primogeniture primarily determines inheritance.<sup>43</sup>

These customs violate the right to non-discrimination and equality under the Nigerian Constitution, the African Charter and other international treaties ratified by Nigeria. Yet, they have been applied by the Courts until the decision of the Court of Appeal in the case of *Mojekwu v Ejikeme*<sup>44</sup> and *Ukeje v Ukeje*<sup>45</sup>, which invalidated the custom of male primogeniture custom in the eastern part of Nigeria.

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<sup>40</sup> Anthony Diala “A critique of the judicial attitude towards matrimonial property rights under customary law in Nigeria’s southern states” (2018) 18 African Human Rights Law Journal at 100-122.

<sup>41</sup> Reginald A. Onuoha “Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue” <https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Discriminatory-Property-Inheritance-Under-The-Customary-Law-In-Nigeria.pdf>

<sup>42</sup> Ifeanyi Ajabor “The Female Right of Succession Under the Igbo Customary Law: A Critique” (2019) International Journal of Innovative Legal & Political Studies 7(1) at 59-67

<sup>43</sup> *Ibid* at 64

<sup>44</sup> *Mojekwu & Others v Ejikeme & Others* (2000) 5 NWLR 402

<sup>45</sup> *Chituru Ukeje & Anor v Gladys Ada Ukeje* (2014) JELR 54676 (SC).

The first case brought to a superior court of record concerning primogeniture was that of *Mojekwu v Ejikeme (2000)*, where a daughter was prevented from inheriting the land of her late father, Reuben Mojekwu. The Court of Appeal held that the Nnewi custom was repugnant to natural justice, a good conscience, and equity as it imposed gender-discriminatory tensions in matters of succession. It consequently held that female children are entitled to inherit the family's estate.<sup>46</sup> This case however, set the precedent for subsequent court decisions in cases involving matters of inheritance and prevention of female children from the inheritance of property.

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<sup>46</sup> Ibid 25 at 3

## **CHAPTER TWO**

### **LITERATURE REVIEW, THEORETICAL FRAMEWORK AND RESEARCH**

#### **METHODOLOGY**

#### **OVERVIEW OF LITERATURE REVIEWED AND DISCUSSION**

##### **INTRODUCTION**

In this chapter, I will examine the literature relating to customary law and the protection of human rights and its progress in the Igbo community. The progress has been met with some resistance by the Igbo people, partly because of the entrenchment in some religious norms and customary beliefs of the people. Academic scholars have done some work in tracing the origins and existence of discriminatory customary beliefs and practices to provide recommendations to address such practices.

This chapter also analyses some of the notable works of academic scholars such as Catharine MacKinnon, Christine Littleton, Chimamanda Adichie, Filomena Chioma Steady, Vrinda Narain, and Wendy Williams, among others that address issues relating to women's rights and the actions of stakeholders and institutions in the protection and implementation of women's rights. Their propelling perspectives of feminism and feminist theories are persuasive as it relates to the promotion of the rights of Igbo women in Nigeria and the enhancement of gender equality.

I also rely on the perspectives of Nigerian Igbo scholars Reginald Onuoha, B. N. Okpalaobi (Ph.D.) and E. F. Okaphor and Diala for their thorough work on their criticism of discriminatory Igbo customary laws. I rely on Reginald Onuoha's argument because he discusses solutions to

discriminatory Igbo customary law, such as the codification of Igbo customary laws to help flag and eliminate discrimination issues.

The literature review has two objectives. The first objective is to evaluate and analyze available resources concerning the Igbo customary law that prevents female inheritance. The second objective is to show the gap in knowledge that the thesis seeks to fill. Although the research focuses on the Igbo community in Nigeria, literature on gender discrimination generally will be considered.

As discussed in the previous chapter, Nigerian communities are influenced mainly by the historical patriarchal system, entrenched in the social, political, economic, traditional, and cultural aspects of people's lives. Most of the existing customary laws favour men, while women are continued to be discriminated against in all matters relating to property, marriage and in issues of inheritance which remain discriminatory.

For Igbo women, the prevalence of these discriminatory gender stereotypes heightens their vulnerability and further exacerbated their inability to participate actively in domestic, national, and regional governance affairs. Even though the works of African scholars such as Reginald Onuoha, African Women's Rights activists such as Chimamanda Adichie, Funmilayo Ransome-Kuti, and the International Federation of Women Lawyers (FIDA) have gained momentum in promoting the visibility of women in Africa, more work is required.



According to Onuoha<sup>47</sup>, although there are variations concerning the pattern of inheritance, especially as it relates to the intestate estate under the different customs in Nigeria, most of the customs are discriminatory in practice. He attributed this to the fact that the inheritance rules under traditional customary laws were developed through the conventional canon of descent, rooted in primogeniture rule, where the property of a deceased devolves on his eldest male son. He also attempted to link the intervention of international laws and treaties, such as those adopted by the United Nations, in describing the extent to which the treaties have influenced the laws in Nigeria.

According to him, the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the United Nations General Assembly in 1979 and ratified in 1981, provides equality applicable to both women and men, irrespective of race or culture.<sup>48</sup> However, the rules of primogeniture and other customs and practices discriminatory to women's inheritance have continued to thrive in Nigeria.

While most customs do not allow women to inherit the land, nothing stops them from acquiring land through other means other than inheritance under the same customs.<sup>49</sup> This customary practice was considered unfair to the female child of the deceased, who is left out in the estate distribution.<sup>50</sup> It has also been argued that aside from the barbaric nature of the above-

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<sup>47</sup> Reginald A. Onuoha "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue" (2016) <https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Discriminatory-Property-Inheritance-Under-The-Customary-Law-In-Nigeria.pdf>

<sup>48</sup> *Supra*, Reginald A. Onuoha 7 at 2

<sup>49</sup> Paul Okhaide Itua "Succession Under Esan Customary Law in Nigeria: Grounds for Disinheriting an Heir from Inheriting His Deceased Father's Estate under Esan Customary Law" (2018) *International Journal of Innovative Research & Development* at 17.

<sup>50</sup> Itua, *Supra note* at 17.

highlighted customs, denial of female inheritance negatively impacts the immediate families of the female child, her education and the larger community.<sup>51</sup>

In some other communities in Nigeria, like the Yoruba community, while women are not entirely denied the right to inherit property, there are usually some qualifications as to their rights to inherit.<sup>52</sup> In *Lopez v. Lopez*<sup>53</sup> as a case study, the Court confirmed that the inheritance rules initially make different provisions for male and female children. However, a deceased's male and female children can inherit equally.

Diala asserts that the issue of discriminatory inheritance rules will only be resolved if the customary laws of the different ethnic groups in Nigeria are reformed, and the best interest of the dependant principle is adopted to determine inheritance.<sup>54</sup> This approach is like that adopted by the Supreme Court of Nigeria, invalidating the Igbo primogeniture rule. However, it needs to address the problem, which is rooted in the attitude and beliefs of the community. Diala also argues for the reform of customary law inheritance rules compared to the customary law reform in South Africa, which eradicated the gender discriminatory standard rules regarding inheritance. The South African government's efforts in codifying customary laws also offer lessons to be emulated by Nigeria. This is because codification makes it difficult for misinterpretations as laws are taken for its literal meanings rather than discretionary meanings.

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<sup>51</sup> Elizabeth Achinewhu-Nworgu, Queen Chioma Nworgu, Shade Babalola, Chinuru Chituru Achinewhu, Charles Nna Dikeh "Exploring Land Ownership and Inheritance in Nigeria!" Higher Education, Lifelong Learning and Social Inclusion at 1

<sup>52</sup> Dr Babatunde Adetunji Oni "Discriminatory Property Inheritance Rights Under the Yoruba and Igbo Customary Law in Nigeria: The Need For Reforms" (2014) IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 19 at 7.

<sup>53</sup> (1924) 5 N.L.R

<sup>54</sup> Supra, Anthony C. Diala 1 at 1

The unwritten nature of Igbo customary rules makes it difficult to determine their content, flag out discriminatory provisions and make them subject to different interpretations by people and the courts.<sup>55</sup> To overcome these weaknesses, customs should be codified in a written document to ensure a fair understanding of customary laws. This will enable law and policymakers to detect discriminatory norms and traditions to eliminate them quickly. On the other hand, B. N. Okpalaobi (Ph.D.) and E. F. Okaphor argued that the legal and regulatory environment for women's rights to inheritance and gender equality in Nigeria is insufficient. They further opined that there are only a few legislations against customary discriminatory practices in Nigeria, which shows a lack of solid commitment by the Nigerian government and its agencies to curb gender equality.<sup>56</sup> They also contend that the laws and practices governing inheritance in Nigeria are discriminatory, and without reformation, it will be difficult to achieve gender equality. Also, they believe that factors such as cultural, educational, legal, and non-domestication of the CEDAW and attitudinal factors militate against eliminating the obnoxious customs that promote gender discrimination in Nigeria. Despite their claims, they failed to make practical recommendations for addressing these challenges.

Michael Attah and Bertha N. Otunta,<sup>57</sup> on their part, reviewed different discriminatory customs in Nigeria. They concluded that any culture discriminating against a female right to inheritance based on gender differential should be eradicated. Like B. N Okpalaobi's work, they

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<sup>55</sup> *Lewis v Bankole* (1908) 1 NLR 81 at 100-101.

<sup>56</sup> B. N. Okpalaobi (Ph.D.) and E. F. Okaphor "Revisiting the Case Of Ukeje V Ukeje Viz A Viz Igbo Customary Inheritance" (2017) NG - Journal of Social Development Vol 6, at 2

<sup>57</sup> Michael Attah and Bertha N. Otunta "Women, Intestacy and Forced Eviction: Evaluating Feminist and Judicial Responses in Nigeria" (2021) <https://www.scirp.org/journal/journalarticles.aspx?journalid=260>

also failed to proffer practical solutions to gender-discriminatory inheritance rules under customary laws.

The existing literature highlights the fact that Igbo women have been discriminated against in customary law and norms. However, some scholars either remained silent or did not elaborate on proffering possible solutions towards eradicating discriminatory customs, which is the knowledge gap to be filled by the thesis. Having set out the scholars I rely on in this thesis, I will now go into the theoretical framework of the thesis.

## **THEORETICAL FRAMEWORK**

### **FEMINIST APPROACH TO WOMEN'S RIGHTS**

Inequality of women in Nigeria manifests in various ways, from domestic and marital stereotypes and unfair wage gaps to the “feminization of poverty,” as Christine Littleton describes it<sup>58</sup>, to the underrepresentation of women in decision-making positions of various private and public institutions. The unending stories of Igbo women being harassed in marriages, workplaces, schools and among members of the community have raised quite an unhealthy imbalance in the overall quality of life of women in the Igbo community who live daily in fear of what next might happen to them should they dress a certain way or speak in a certain way or merely their existence as a woman. All these describe the reality and vulnerability of women around the world.

In response to these forms of discrimination and inequality, various theories of feminism have contributed to the promotion of gender equality and securing the rights of women all over the

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<sup>58</sup> Christine. A. Littleton, “Toward a Redefinition of Sexual Equality,” (1981) 95 Harv. L. Rev, at 487, 489.

world. Some of these theories are liberal feminism, African feminism, and views of Intersectionality, which is a combination of or interaction of two or more identities, such as race, class, gender, sexual identities etc., that materially shape women's vulnerability to and their experiences of discrimination.<sup>59</sup>

However, the impact of the feminist movement the fight continues as some societies are yet to feel this impact, especially in more remote and developing associations with gender-discriminatory customary practices like the Igbo community, which calls for the discriminatory customary laws to be eradicated to promote equality of the Igbo women.

## **INSTITUTIONAL AND SOCIAL CONSTRUCTIVIST APPROACH**

In addition to the feminist approach, this thesis also presents another approach to tackling customary practices that are harmful to women using the theoretical framework of institutionalism and constructivism. The theory of Institutionalism<sup>60</sup> focuses on the vulnerable position of women who are faced with unfair customary practices and the crucial roles that legislative, institutional, public, and private actors will have to play in putting an end to gender discrimination and to ensure that individual and social development are prioritized.

In doing so, Lev Vygotsky's theory on Social Constructivism<sup>61</sup> will be discussed as a strategy for remedying the persistence of customary law inequalities in Nigeria<sup>62</sup>, Also Powell and

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<sup>59</sup> Kimberlé Crenshaw, "Demarginalizing the Intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics" (1989) U. Chi. Legal F at 139.

<sup>60</sup> Powell, W. and DiMaggio, P. "The new institutionalism in organizational analysis. Chicago" (1991) University of Chicago Press.

<sup>61</sup> Lev Vygotsky, "Mind in Society" (1978) London: Harvard University Press.

<sup>62</sup> Lev Vygotsky, "Mind in Society" (1978) London: Harvard University Press.

Di Maggio's theory of Institutionalism<sup>63</sup> will be examined. These theories will be discussed at length in chapter four of the thesis.

Social constructivism, a theory developed in the field of psychology and sociology engages the use of institutions and social groups to transmit knowledge to members of that group. As a result of which creates a transformed culture of shared beliefs, customs, and practices over time. I adopt this approach in this thesis because of the social and leadership setting in the Igbo community where leaders are chosen from among the elders and knowledgeable in the community. By engaging with these leaders, I hope to inform social interactions through formal means of communication, education and learning of values such as gender equality, non-discrimination, and human right values. When values that promote gender equality are discussed from time to time by social groups that affect the lives of the people in a particular community, it becomes a good pattern that the people become guided by in their ways of life. I also argue that these legitimate institutions be made accountable to ensure that gender equality becomes a commonly held norm among the Igbo community to eliminate discrimination against Igbo women in the community.

## **FEMINIST LEGAL THEORY**

According to Christine Littleton,<sup>64</sup> there are three strands of feminist legal theory, which are first the theory of sexual discrimination arising from prejudice and stereotypes against women in society. Such as the underrepresentation of women in decision-making positions in governmental and non-governmental organizations, as witnessed in the case of *Reed v Reed*<sup>65</sup>, where the Supreme

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<sup>63</sup> Powell, W. and DiMaggio, P. "The new institutionalism in organizational analysis. Chicago" (1991) University of Chicago Press.

<sup>64</sup> Kimberlé Crenshaw, *Supra note* 53 at 500.

<sup>65</sup> *Reed v Reed* 404 U.S. 71 (1971).

Court of the United States found a provision which preferred men as estate administrators over women.<sup>66</sup>

The second strand of the Feminist legal theory addresses issues of gender inequality arising from the roles of women in homes and workplaces. Roles and responsibilities accorded to women just by being a woman. The third strand addresses the oppression and subordination of women with anything associated with women, especially regarding their bodies. For instance, abortion rights in America, issues of pornography and targeted violence against women such as rape and sexual abuse. Catharine MacKinnon uses the term “theory of sexual subordination” to describe targeted abuse against women's bodies.<sup>67</sup>

Feminist views on law have increasingly spread throughout the political, social, and legal world. What started as a political movement for women's equality and civil rights in the nineteenth century. In the 1960s and 1970s, Feminism gained momentum to address the various forms of discrimination along the lines of class, race, and sexual orientation, among others. Gradually, the feminist movement grew worldwide, and women began to gain access to law schools and political positions, which sparked success in addressing discrimination and influencing government policies that affected the quality of life of women. It moved through its various waves to what is now seen as a general encompassing movement that involves the critiquing of discriminatory laws and the advancement of the legal rights of women in social, cultural, political, and economic spheres.

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<sup>66</sup> Christine A. Littleton, “Equality and Feminist Legal Theory” (1987) 48:4 U Pitt L Rev at 1043.

<sup>67</sup> Catharine MacKinnon, “Not a Moral Issue” (1984) 2 Yale Law & Policy Review. at 321.

There have also been issues where feminists raise legal and political issues on the legality of pornography, which raises problems of *sexual subordination and devaluation of women*,<sup>68</sup> maternity rights of pregnant workers, and equality of rights of parents in disputes relating to custody.<sup>69</sup> Catharine MacKinnon's work on the theory of sexual subordination exposes the harm targeted at women by devaluing their bodies of women and inflicting all forms of abuse. This theory, however, puts the issue of choice at the backseat and instead focuses on the adverse mental and societal effects of pornography.<sup>70</sup> These various theories of feminism have shown how the realities of women are shaped by the structural inequalities surrounding women's lives in society. It can also be demonstrated how culture, norms, beliefs, customs, and practices can reproduce disparities and how women's lives are affected. Feminism has been a stepping stone and has laid the foundation for how women all over the world, including those in African societies and other third-world countries, all stand in solidarity with one another in the movement against the oppression of women, questioning power structures, demanding accountability from leadership and speaking out against the root causes of inequality and discrimination as well as researching and preferring feasible solutions to the discriminatory experiences of women around the globe.

There is a growing body of scholarly, legal, political and activism work done by some West African scholars in feminism. Most of these contributions by African feminists are crucial to African societies and they form an enormous scope of international feminism as they relate to various cultural, indigenous, and pluralist contexts.

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<sup>68</sup> Catharine MacKinnon, "Not a Moral Issue" (1984) 2 Yale Law & Policy Review at 321.

<sup>69</sup> Joanne Conaghan, "Reassessing the Feminist Theoretical Project in Law Journal of Law and Society" (2000) Vol 27 ISSN: 0263 – 323X at 8.

<sup>70</sup> *Ibid.* at 321.



## **FEMINISM IN AFRICA: The Nigerian perspective**

Feminism in Africa represents the struggles of African women in the face of the structural inequalities that exist at all levels in African societies including in Nigeria. It aims to conceptualize African women's experiences through colonial history, patriarchal customs, traditions, and unfavorable social and political structures. It is a social movement that raises sympathies with African women's history, the present realities, and future expectations.<sup>71</sup> African feminism was formed due to the failure of Global feminism to comprehend some of the facts and concerns of African women due to the prevailing intersection of race, class, gender, and culture. It is a movement that advocates for the political, social, and economic equality of all genders in society. According to Steady,

African feminism combines racial, sexual, class, and cultural dimensions of oppression to produce a more inclusive brand of feminism through which women are viewed first and foremost as human rather than sexual beings. It can be defined as an ideology which encompasses freedom from oppression based on the political, economic, social, and cultural manifestations of racial, cultural, sexual and class biases. It is more inclusive than other forms of feminist ideologies and is essentially a product of polarizations and conflicts that represent some of the worst and most chronic forms of human<sup>72</sup>

In the feminist framework in Nigeria, there is an argument about the legality of obviously discriminatory and obnoxious customs against the acceptance of the people in society, including women.<sup>73</sup> This is one area where liberal feminists encounter difficulties in eradicating discriminatory practices against women. With broader issues of colonialism, poverty, illiteracy, political exclusion, marriage, and patrimonialism embedded in most Nigerian people's cultural

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<sup>71</sup> Philippe Salazar, "African Feminism: The African Woman's Struggle for Identity" *Afr Fem* 9. at P34, para 1

<sup>72</sup> Filomina, Chioma Steady, "African Feminism: A Worldwide Perspective" in Alicia C Decker & Gabeba Baderoon, "African Feminisms: Cartographies for the Twenty-First Century" (2018) 17:2 *Meridians* at 219–231.

<sup>73</sup> Wendy Williams, "The Equality Crisis: Some Reflections on Culture, Courts, and Feminism" (1992) 14 *Women's Rts. L. Rep.* at 151.

heritage and traditions, Feminism has not gained much leverage in Nigeria. These characteristics make the issues of discrimination more severe in expression in Nigeria. A typical example of the entrenched gender discriminatory undertone in Nigeria was reflected in a recent interview with BBC in 2016, where a statement was made by the current President of the Federal Republic of Nigeria, President Muhammadu Buhari. The Nigerian President, when asked about the political party his wife belonged to, and the reply was:

“I don’t know which party my wife belongs to, but she belongs to my kitchen, my living room, and the other room.”<sup>74</sup>

This statement can mean that his wife, the First Lady of Nigeria, Aisha Buhari, belongs to the kitchen. Consequently, she has no business whatsoever in the political affairs of the government despite having occupied the position of the first lady of Nigeria. The statement further reflects the prevalence of men's entrenched behavior towards women in Nigeria, especially in domestic settings, which translates into the socio-political sphere. One of the reasons for this is the patriarchal privilege bestowed on Nigerian men, which has eaten deep into all the areas of life in Nigeria.

With the rise of Nigerian feminists such as Chimamanda Ngozi Adichie, Funmilayo Ransom-Kuti, and Chief Mary Ekpo, among others. Chimamanda Ngozi Adichie, a world-recognized writer and one of the most prominent Nigerian Feminist advocates whose works of literature have centered around the discussion of gender inequality and marginalization of women, particularly in the Nigerian Igbo context. In a famous essay adapted from her TEDx talk, “We Should All Be Feminists,” Chimamanda advocates for women's equality in all aspects of life and

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<sup>74</sup> Adesola Ayo- Aderele 2016 <https://punchng.com/wife-belongs-kitchen-buhari/>

emphasizes the need for a collective effort by all gender to embrace the concept of equality of men and women.<sup>75</sup>

Chief Mary Ekpo, on the other hand, is a Nigerian women's rights activist and feminist who became a pioneer female politician in Nigeria.<sup>76</sup> Mary led a host of other Nigerian women's rights activists in a civil movement that challenged women's subjugation and men's domination in Nigerian politics, especially in the Eastern region of Nigeria. She also joined Funmilayo Ransom - Kuti to protest the killings in the Enugu mine in the Eastern part of Nigeria. In 1954, she established the Aba Township Women's Association" where she gathered support from women to take up political positions in the Igbo community. She used her role to fight for the economic and political rights of the Igbo women in Nigeria<sup>77</sup>. At the time, the Igbo community was governed by customary practices characterized by rules such as female disentitlement from property ownership.

Furthermore, the prevailing discrimination against women regarding customary rules has been reflected in cases such as *Uke v Iro*<sup>78</sup>, *Ukeje v Ukeje*<sup>79</sup>, the estate of Agboruja<sup>80</sup>, *Mojekwu v Mojekwu*<sup>81</sup> among others which are critically discussed in Chapters three and four of the thesis.

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<sup>75</sup> Adichie, Chimamanda Ngozi, "We Should All Be Feminists" (2015) New York, NY: Anchor Books.

<sup>76</sup> Magaret Ekpo: An Amazon of Women Economic Empowerment in Nigeria" (2016) ["Empower Women - Margaret Ekpo: An Amazon of Women Economic Empowerment in Nigeria."](#)

<sup>77</sup> James S. Etim, Valentine Udoh James, "The Feminization of Development Processes in Africa: Current and Future Perspectives" (1999) Praeger Publishers, at 108-110.

<sup>78</sup> (2001)17 NRN 172

<sup>79</sup> (2014) LPELR-22724 (SC)

<sup>80</sup> (1949) 19 N.L.R.38

<sup>81</sup> (1997) 7 N.W.L.R 283

The cases depict the reality of Igbo women in Igbo society characterized by patriarchy, gender discrimination, subjugation through cultural and traditional norms, and socio-political exclusion.<sup>82</sup> For example, in the case of *Uke v Iro*<sup>83</sup>, the deceased's wife was disengaged from any decision regarding her late husband's property; Igbo women are expected to take the back seat while decisions are taken for the benefit of their male counterparts. This further exacerbates the division where men are expected to work and fend for the family. In contrast, the women are expected to provide domestic duties of cooking, taking care of children, and undertaking domestic chores. Where a person deviates from these norms, customs are used to regulate and ensure compliance.<sup>84</sup> This form of discrimination manifests in the micro, meso and macro levels. At the macro level, it manifests in the denial of women's rights, barriers to accessing justice, sexual harassment, assault, bullying and undervaluing of women, especially in political and social representations.

Similarly, political oppression manifests itself in how women are excluded from leadership positions in Nigeria, whose roots can be traced back to the patriarchal nature of the Nigerian society that sees men as superior to women and by which women are placed below men are believed to be leaders. In contrast, women are expected to be followers. A report from the National Bureau of Statistics (NBS) reveals that: “The literacy level of women stands at 59.3% compared to 70.9% of men and in positions of power and decision making, women are under-represented with 5.8% in the National Assembly; 29.4% in the Federal Courts and 15.4% of professors in universities and women were generally under-represented in high-ranking government

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<sup>82</sup> Adeniyi Aderinboye, “African Feminism and Women’s Rights in Nigeria” (2020) Dipo Okpeseyi & Co. at 7 <https://www.dipookpeseyiandco.com/post/african-feminism-and-women-s-rights-in-nigeria>

<sup>83</sup> (2001)17 NRN 172

<sup>84</sup> Uchem, Rose “Overcoming Women’s Subordination in the Igbo African Culture and in the Catholic Church: Envisioning an Inclusive Theology with Reference to Women” (2001) Irvine, CA: Universal Publishers.

administrators with decision-making powers.<sup>85</sup> At the institutional level, discrimination against women is linked to the institutional structure of society. The religions, cultures and norms that exist in the community. These discriminatory policies, laws, and customs, such as denying women's rights to property inheritance, are directly linked to systemic discrimination in Nigerian society.

At the macro level, the existence of structural inequalities in Nigeria that are directly or indirectly linked to the public laws at the national, international, and local levels. Apart from the traditional and customary influence on gender inequality, the role of colonialism and neocolonial exploitation has evolved as a second factor “given the historical practice of capturing, defining and transforming realities in the third world.”<sup>86</sup> These various perspectives and historical developments have formed the basis of African feminism compared to international feminism. We must also consider the influence and contribution of international laws such as the Convention on the Elimination of All forms of Violence against Women (CEDAW)<sup>87</sup>, the African Charter of Human and People’s Rights (Banjul Charter)<sup>88</sup> to the African feminist movement across the continent.

Feminists in third-world global south countries such as Nigeria tend to have experiences of racial discrimination and colonial exploitation. This goes beyond the Western experiences of

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<sup>85</sup> Onyeka C Okongwu, “Are Laws the Appropriate Solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria” (2020) Sage Journals, Vol 21, Issue 1 at 4.  
<https://doi.org/10.1177/1358229120978915>

<sup>86</sup> J. Oloka-Onyango and Sylvia Tamale: “The Person is Political, “or Why Women’s Rights are Indeed Human Rights: An African Perspective on International Feminism” Human rights Quarterly 17 (1995) The John Hopkins University Press.

<sup>87</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, at 13

<sup>88</sup> *African Charter on Human and People’s Rights*, CAB/LEG/67/3/Rev.5 (1981) I.L.M. at 58 [hereinafter Banjul Charter]

gender inequality. Hence scholars such as Vasuki Nesiah and Sylvia Tamale have been more critical of the transposition and generalization of Western feminism in the international arena because it tends to ignore the racial, political, customary, and colonial specifications faced by the African feminist movements. Nesiah instead urges theorists to understand gender identities as “continually reconstituted through social processes”<sup>89</sup> to understand the unique and diverse experiences, interests, and priorities of women in the international community.

In response to the prevailing gender discrimination in parts of Africa, feminist and women’s rights groups grew over the years in Western, Eastern and Southern Africa, particularly in Kenya, South Africa, Ghana, and Uganda, where much growth and development have been noted. These movements have gained popularity in their indigenous communities and spheres. In chapter 4 of the thesis, I examine customary law and women’s rights in Kenya, Ghana, and South Africa to draw lessons on eradicating discrimination against women in customary laws.

In conclusion, Chimamanda Ngozi Adichie was right in her statement, “We should all be feminists,” because it recognizes the importance of collective efforts by all genders in the eradication of all forms of discrimination in Nigeria and both men and women should be given equal opportunities in all social, political, cultural, and economic spheres. It also sets the tone for the recognition of the efforts of women. It encourages all women, including Igbo women, to join the more significant feminist movement against gender inequality in the Igbo community and Nigeria. The next part of the thesis analyses the methodological framework used to achieve the research aims.

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<sup>89</sup> Vasuki Nesiah, “Toward a Feminist Internationality: A critique of U.S Feminist Legal Scholarship” (1993) 16 Harvard Women’s Law Journal at 199.

## **CHAPTER THREE**

### **THE NATIONAL, REGIONAL, AND INTERNATIONAL HUMAN RIGHTS LEGISLATIONS THAT PROTECTS WOMEN'S RIGHTS IN NIGERIA**

#### **INTRODUCTION**

In this chapter, I shall consider the relevant national laws in Nigeria, regional laws in Africa, and international human rights laws in the international community that frames women's rights in Nigeria. To answer the question of whether the legal system in Nigeria grants sufficient protection to women against discrimination, we must examine the existing legislation that recognizes discriminatory practices and stereotypes against women. In so doing, the following relevant laws shall be considered:

- The Constitution of the Federal Republic of Nigeria 1999 Act No 24
- Violence Against Persons (Prohibition) Act, 2015 (VAPP) [Nigeria]
- African Charter on Human and People's Rights 1982 CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 [hereinafter Banjul Charter]
- The United Nations Universal Declaration of Human Rights 1948, U.N Doc, A/810
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979 General Recommendations Nos 19 and 20 adopted at the Eleventh Session, 1992

#### **THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA<sup>90</sup>**

The Constitution of Nigeria is the supreme law of the land and takes precedence over all laws, including customary laws.<sup>91</sup> Where a conflict exists between any statutory legislation and

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<sup>90</sup> *The Constitution of the Federal Republic of Nigeria 1999 Act No.24*

<sup>91</sup> Adèle Cassola Et Al., "Where Do Women Stand? New Evidence on The Presence and Absence of Gender Equality In The World's Constitutions", (2014) 10 Pol. & Gender at 200, 202, 204, 225.

the Constitution in Nigeria, the provisions of the Constitution trump. The Constitution of Nigeria makes provisions for protecting the fundamental human rights of all Nigerian Citizens. It guarantees freedom from discrimination and protection for marginalized people under Section 42<sup>92</sup>. This section specifically enshrines the right to freedom from bias of Nigerian citizens, that is, the right to equality and protection of minority rights.

Section 42 of the Constitution provides that no citizen should be discriminated against based on ethnic group, place of origin, sex, or religion<sup>93</sup>. It mandates the institutions and the judiciary to regulate customs within the country to bring about social change by enforcing these rights. Section 43 of the 1999 Constitution also states that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.<sup>94</sup>, Thus emphasizing women's rights to property ownership via any means. The constitution's wording does not preclude property ownership through inheritance.

Discrimination, sex roles, and gender stereotyping deny individual women the right to 'full personhood'. It tends to impose on her a generalized idea of who she should be to be accepted in

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<sup>92</sup> *Constitution of the Federal Republic of Nigeria*, Act No. 24 1999.

<sup>93</sup> *Constitution of the Federal Republic of Nigeria* 1999, as amended. S.42.

- (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion, or political opinion shall not, by reason that he is such a person.
  - (a) be subjected either expressly by, or in the practical application of, any law in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or
  - (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive, or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.
- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth.

<sup>94</sup> *Constitution Supra* note 83 at S.43



society and denies her the possibility of being a person in her own right capable enough to utilize her potential fully. In this sense, gender discrimination and gender stereotypes that exist in customary laws present significant challenges to achieving true equality between men and women by placing men on a higher pedestal and dominance in both private and public spheres.

Although section 42 of the Constitution provides general protection for women against discrimination, it has been criticized for not adequately catering to the realities of women and girls in Nigeria, mainly when appearing as defendants in customary law trials. The case of *Uke v Iro*,<sup>95</sup> showed that according to the customs of Nnewi, an Igbo subgroup, a woman could not give evidence about the title to land in customary courts.

One of the reasons for this tradition is that once a girl-child gets married, she becomes part of her husband's family and, therefore, no longer a part of her father's family. It would therefore be wrong for a married woman to inherit her father's land as to do that would be to enrich the husband's family to the detriment of her father's family. In contrast to customary marriages, under statutory law marriages, there is a presumption of joint ownership of property between husband and wife while the marriage subsists, and the party that survives the other inherits such property and assumes the administrator role of the estate of the deceased.<sup>96</sup> However, in customary marriages, the women are presumed not to have contributed financially or materially to the marital property unless extrinsic evidence is proved in support of such claims in customary courts.<sup>97</sup>

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<sup>95</sup> *Uke & Anor v Iro* (2001) LPELR-6964 (CA).

<sup>96</sup> *Okere v. Alaluka* (2014) LPELR – 24287 CA

<sup>97</sup> *Onyia & Anor v. Nwaigwe* (2021) LPELR – 55692 CA

Feminist legal scholar Catharine MacKinnon offered a transformative insight into the theme of feminist constitutionalism. In her work, she states, "The more a country addresses the substance of gender hierarchy in its equality jurisprudence, as opposed to taking the traditional sameness-difference approach to sex, the more it will promote gender equality through the law."<sup>98</sup> Drawing from MacKinnon's insights, I argue that although the Nigerian Constitution prohibits gender discrimination, it does not address the systematic disadvantage and the institutions that historically enabled women's subjugation.<sup>99</sup> Hence, all institutions must also be accountable for promoting and protecting constitutional rights.<sup>100</sup> This can be achieved by transforming institutions in such a way they recognize women's equality and raise awareness of the harmful effects of gender inequality and discrimination while implementing laws and regulations in the Nigerian society.

### **THE VIOLENCE AGAINST PERSONS (PROHIBITION) ACT<sup>101</sup>**

This law was enacted by the National Assembly of the Federal Republic of Nigeria on May 25<sup>th</sup>, 2015, with the sole aim of prohibiting and eliminating all forms of violence against persons in private and public life as well as providing maximum remedies and protection for victims as well as punishment for offenders.<sup>102</sup> Also known as the VAPP Act, it brought to the fore the successful conclusion of the extended social and legal advocacy movement of women's rights groups and gender activists against gender violence and discrimination in Nigeria. Women's rights

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<sup>98</sup> Catharine A. MacKinnon, "Gender in Constitutions, In the Oxford Handbook of Comparative Constitutional Law" (2012) Michel Rosenfeld & Andres Sajó Eds; at 403.

<sup>99</sup> Vrinda Narain, "Constitutionalizing Women's Equality in India: Assessing the Sabarimala decision" (2022) Columbia Journal of Gender and Law at 86.

<sup>100</sup> Beverley Baines, Daphne Barak-Erez & Tsvi Kahana, "Introduction: The Idea and Practice of Feminist Constitutionalism, In Feminist Constitutionalism: Global Perspectives 1, 3" (2012) Beverley Baines, Daphne Barak-Erez & Tsvi Kahana eds at 3.

<sup>101</sup> 2015 (VAPP) [NIGERIA]

<sup>102</sup> *Violence Against Persons (Prohibition) Act*, 2015, S 3.

groups in Nigeria such as the International Federation of Women Lawyers arose as a result of the many gender-based human rights abuse such as rape, Female Genital Mutilation, domestic violence, denial of inheritance rights of women, forced marriage, forceful ejection from home, killings of women in Nigeria.

The VAPP law is important because it offers protection and maximum remedy to women in Nigeria against forms of physical, sexual, and domestic violence such as rape, sexual assault, and the general use of force; it also covers the emotional, psychological, economic, and mental well-being of the victims as well as offers protection against traditional discriminatory practices. The Act categorized the prevalent forms of violence into five sub-groups: Sexual Violence, Physical Violence, Psychological Violence, Harmful Traditional Practices and Socio-economic Violence. Section 20 of the VAPP Act provides for the protection of victims against harmful traditional practices. It also provides for punishment for offenders.<sup>103</sup>

In addition to protecting against harmful traditional practices, the Act also provides remedies to victims of psychological harm and punishment to perpetrators, aiders, and abettors in sections 3, 10, 12 and 16.<sup>104</sup> The Act also contained provisions for effective remedies such as

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<sup>103</sup> *Violence Against Persons Prohibition Act, 2015 (VAPP) Nigeria*. National Legislative Bodies/National Authorities.

<sup>104</sup> *Violence Against Persons Prohibition Act, 2015 (VAPP) Nigeria*. National Legislative Bodies/National Authorities.

Section 3 “A person who coerces another to engage in any act to the detriment of that other person’s physical or psychological well-being commits an offence and is liable on conviction to a term of imprisonment of 3 years.”

Section 10 of the Act also stipulates that

“A person who deprives another of his or her liberty, except pursuant to court order commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or to a fine or both.”<sup>104</sup>

Section 12 of the Act covers economic abuse. It states that:

“A person who causes forced financial dependence or economic abuse of another commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N500,000.00 or both”<sup>104</sup>

Section 16(1) states that:

rehabilitation and re-integration programs for victims and access to assistance by the Federal government and its agencies. Therefore, victims are entitled to be informed about legal, social, rehabilitative and health assistance and be granted access to these forms of assistance.

Although long overdue, the Act unarguably provides a source of hope and protection to victims and a means whereby victims of discrimination, especially women who have suffered discrimination for several years in households such as victims of domestic violence, female genital mutilation, and rape. However, the Act has been criticized for only being binding if ratified by each state in the Federal Republic of Nigeria. Currently, only 19 states out of the 36 states in Nigeria have ratified this law into their state laws. This means that women residing in states that are yet to ratify the laws are not covered under the law as far as the presiding state is concerned. Hence, the limited application of law in Nigeria. Unfortunately, all Igbo states, such as Abia, Anambra, Ebonyi, Enugu, and Imo, have yet to ratify this law into their statutory regulations. This further enables the prevalence of gender discrimination in Igbo customary laws.

## **THE AFRICAN CHARTER OF HUMAN AND PEOPLE’S RIGHTS<sup>105</sup>**

As a member of the African Union (AU), Nigeria is a party to the African Charter on Human and People’s Rights (The Charter). This Charter was initially enacted in 1981 to protect

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“A person who abandons a wife or husband, children or other dependents without any means of sustenance commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or to a fine not exceeding N200,000.00 or both.”

<sup>105</sup> 1981CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 [hereinafter Banjul Charter]

the rights of the African people, including women. Nigeria ratified the Maputo Protocol in 2004. The Banjul Charter highlights most of the provisions of international treaties and laws like the CEDAW, which promotes women's rights against discrimination. It, however, considers the political, economic, and socio-cultural realities that African women face in societies and provides a framework for protecting these rights. The Charter was both ratified and domesticated in Nigeria in 1983 and is subject to the Constitution of the Federal Republic of Nigeria. However, criticisms were levelled against some provisions of the Charter which needed to be revised to protecting women's rights. This included addressing issues relating to customs and traditions relating to property and rights of inheritance, which was commonly faced by many African communities such as the Igbo community in Nigeria.

To address the issues, a Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa was established in 2003, also known as the Maputo Protocol. The Maputo Protocol was established to address the issues of discrimination against women in Africa, specifically regarding widows' rights, protection from violence, inhumane and degrading treatments, and women's rights to inheritance. The Protocol also provided provisions to member states to ensure that remedies are provided in events of each.<sup>106</sup>

Article 8<sup>107</sup> of the Protocol provides access to justice and equal protection of women before the law. The law states that women and men are equal before the law and shall have the right to equal protection and benefit from the law. It also directs state parties to take appropriate measures to ensure that women have access to judicial services.

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<sup>106</sup> Onyeka C Okongwu, "Are Laws the Appropriate Solution; The Need to Adopt Non-policy Measures in Aid of the Implementation of Sex Discrimination Laws in Nigeria" (2021) *International Journal of Discrimination and the Law* 2021, Vol. 21 (1) at 26-46. <https://journals.sagepub.com/doi/full/10.1177/1358229120978915>

<sup>107</sup> *African Charter on Human and People's Rights* 1982 CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, Art.8

The Charter has been extremely important in Nigeria in protecting and enforcing women's rights. It has provided a foundation for the Nigerian courts in the areas of customary discriminatory practices, such as in the case of *Mojekwu v Iwuchukwu*<sup>108</sup>, where the court of Appeal in Nigeria ruled against the customary practice of disinheriting women is repugnant to natural justice and fairness hence, declared the custom null and void, similarly, in the Supreme Court's decision in the case of *Ukeje v Ukeje*,<sup>109</sup> where the discriminatory customary practice was declared unconstitutional. Yet, regardless of these significant provisions and effects of the African Charter, which provides a guide to member states in the quest of eliminating all forms of inequalities, discriminations and stereotypes attached to women, its impacts have not been deeply felt in Nigerian society and developments though forthcoming, are relatively slow in progress due to the prevailing ignorance, illiteracy as well as the resistant behaviour of the local people to these laws. The African only Charter minimally addressed the human rights issues regarding women in its provisions. Consisting of over sixty articles, with only one addressing women's rights, shows the lack of emphasis on women's rights in Africa. Although the pressures from the African Women's Right movements across Africa, notably the crimes of violence perpetrated against women, female refugees in countries such as Rwanda, and Liberia, issues of female genital mutilation and several other human rights issues that women face, the Commission has not made significant progress in the fight for gender equality and the total elimination of all forms of discrimination and violence against women in the continent. Therefore, there is a pressing need for a more gender-sensitive approach to tackling gender inequality and women's rights in Africa.

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<sup>108</sup> (2004) 11 NWLR (Pt 882) at 196.

<sup>109</sup> (2014) LPELR – 22724 (SC).

This will require a more vital collaboration with the individual, national, regional, and international stakeholders to foster this development.

Furthermore, some human rights scholars such as Folake Olaleye have questioned the applicability of some International human rights norms in traditional African settings, particularly in women's rights.<sup>110</sup> Oba also accords the gender-equality perspective of human rights as very strict and does not consider cultural contexts.<sup>111</sup> For example, the primogeniture rule practiced by the Igbo ethnic community in Nigeria, where property devolves to the eldest male child in the family, an entrenched custom, cannot be easily changed without encountering stiff resistance. The Nigerian courts have also consistently upheld the customs despite the S.42 constitutional prohibition of discrimination.<sup>112</sup> These examples illustrate the difficulty arising in implementing human rights laws in Nigeria.

## **THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)<sup>113</sup>**

Under the committed efforts of the international community to promote the fundamental rights of individuals worldwide, the United Nations General Assembly in 1948 adopted the Universal Declaration of Human rights, which articulated the fundamental rights that every human being is entitled to as a human being. Nigeria is a member of the United Nations and has ratified various United Nations Human rights treaties and conventions, which remain binding on its citizens.

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<sup>110</sup> Folake Olaleye, "Cultural Diversity, Child Discipline and the Child's Rights Convention: The Quest for a Universal Child?" (2005) 4 U. Ibadan J. Private & Business L. at 162.

<sup>111</sup> Abdulmumini A. Oba, "Religious and Customary Laws in Nigeria" (2011) Emory Law Review Vol 25, at 893

<sup>112</sup> *Lawal-Osula v. Lawal-Osula*, [1995] 10 SCNJ 84, 97–98; *Idehen v. Idehen*, [1991] 7 SCNJ 196, 212–13; *Arase v. Arase*, [1981] NSCC 101, 117; *Ogiamien v. Ogiamien*, [1967] NSCC 189, at 192–93.

<sup>113</sup> 1948, U.N Doc, A/810.

The UDHR provides a yardstick and standard to measure people's freedoms worldwide and can be used to fight oppression, inequality, and all forms of unfair and discriminatory practices worldwide. Nigeria is a member state and should be bound by the Declaration. However, customary practices such as the rule of primogeniture and the denial of women's rights to inheritance are in contravention of Article 1, which advocates that all human beings are born free and equal and should be treated the same way, irrespective of gender.

Article 17 of the UDHR, on the other hand, prescribes the right to ownership of property in association with others, and no one shall be arbitrarily deprived of their property. This provision gives a persuasive argument against the unfair Igbo customary practice that prevents women from inheritance and entitlement to property.

Onuoha criticizes this involuntary practice of disinheritance of women. He refers to it as a 'repugnancy doctrine' which breeds conflict and acrimony among heirs.<sup>114</sup> The customary law of primogeniture is discriminatory and fails to meet the equality standard and norms set out in the Articles of the UDHR. Although the UDHR is not a treaty, it is recognized as authoritative by member states as a Customary International Law and considered binding on all member states.<sup>115</sup>

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<sup>114</sup>Reginald Onuoha, "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue" (2008) ICNL Research & Publications Vol 10, Issue 2 at 3.

chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Discriminatory-Property-Inheritance-Under-The-Customary-Law-In-Nigeria.pdf

<sup>115</sup> Sohn cited by Thomas Buergenthal in International Human Rights in a Nutshell at 29-32, quoted in Eze, O.: "Democracy, Human Rights and the Nigerian Judiciary" (1993) JHR LP. Vol. 3,2,3, at 69-70. binding on all nations.



## **THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)<sup>116</sup>**

In addition to the UDHR, Nigeria is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).<sup>117</sup> This Convention was ratified by Nigeria in 1985. It establishes women's rights against all forms of discrimination, which are protected under international law. It imposes obligations on state parties to combat all forms of discrimination against women relating to sex, violence, political participation, socio-cultural barriers, gender stereotypes, prejudices etc. The most significant aspect of CEDAW is that it is exclusively devoted to the protection of Women's right to equality and non-discrimination. It is made up of 20 Articles. For this thesis, the key provisions of Articles 1, 2 and 5 are significant to discrimination caused by social-cultural barriers that impede the freedom of women from discrimination.

Article 1 defines discrimination against women as anything that can bring about unequal treatment between men and women while carrying out their livelihood. It is also important to note that the article groups unmarried and married women together.<sup>118</sup>

Article 2 provides various measures to be taken by state parties to ensure the elimination of laws, customs, traditions, policies, or practices that encourages gender inequality and discrimination. In the same vein, Article 5 addresses the social, cultural, and customary stereotypes

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<sup>116</sup> 1979 General Recommendations Nos 19 and 20 adopted at the Eleventh Session, 1992.

<sup>117</sup> *Convention on the Elimination of Discrimination Against Women* (CEDAW), CEDAW General Recommendations Nos 19 and 20 adopted at the Eleventh Session, 1992

<sup>118</sup> Reginald Onuoha, "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue" (2008) ICNL Research & Publications Vol 10, Issue 2 at 3

based on the idea that promotes the inferiority of the female gender against the male counterparts, which further leads to gender discrimination.

Furthermore, The CEDAW general recommendations 19 and 20 provide a blueprint for best practices regarding women's rights against gender-based violence in the various member states. It includes acts that inflict mental, physical, or sexual harm, threats of such acts as coercion and other deprivations of women's liberty.<sup>119</sup> It was held in the case of *Vertido v. The Philippines*<sup>120</sup> that the decision of the Philippine court against Ms. Vertido was somewhat discriminatory by expressing doubts about the credibility of Ms. Vertido's testimony based on myths and misconceptions about rape and rape victims. The CEDAW committee concluded that the actions of the Philippine court in relying on gender stereotypes of unreasonable expectations of women in sexual assault amounted to a contravention of the Philippines' obligations under the CEDAW by failing to apply the standards prescribed under the Articles of the CEDAW.<sup>121</sup>

Vertido's case raises the need for courts in Nigeria to understand the importance of transforming the social and cultural perceptions of women. Meanwhile, Judges in customary courts in Nigeria have failed to recognize this need through their constant adherence to established principles of patriarchy that promote discrimination and inequality of women.

Notwithstanding the ratification of the provisions of CEDAW in Nigeria, the CEDAW has not been domesticated in Nigeria, and there is still a prevalence of some discriminatory customary laws and practices that are unfairly perpetrated against women in Nigerian society. Onuoha argued

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<sup>119</sup> *Convention on the Elimination of Discrimination Against Women (CEDAW)*, CEDAW General Recommendations Nos 19 and 20 adopted at the Eleventh Session, 1992

<sup>120</sup> *Karen Tayag Vertido v The Philippines*, UN Doc. CEDAW/C/46/D/18/2008, 1 September 2010.

<sup>121</sup> *Supra* at, paras. 8.5, 8.6, 8.8 and 8.9

that the Nigerian courts have also played a role in long sustaining some of the customary rules that subject women to discrimination based on sex despite the treaty's provisions by their interpretation of customary laws.<sup>122</sup> He argued that despite knowing that some of the customary laws are discriminatory and are against the principles of natural justice, equity and good conscience, the courts were still reluctant to implement the CEDAW.<sup>123</sup>

In section 12 of the 1999 constitution of the Federal Republic of Nigeria, international treaties can only be enforceable by courts in Nigeria if they have been enacted into law by the National Assembly. Hence, the applicability of the provisions of CEDAW in Nigeria is only guaranteed by partial ratification. According to Reginald Onuoha, despite the long process of ratification of international treaties by Nigeria, the country still needs to make relevant domestication of international laws to enable their applicability.<sup>124</sup> Courts have also, unfortunately, sustained some of these customary practices that subjugate women, as seen in the case of *Nwanya v Nwanya*.<sup>125</sup>

Another area of weakness identified by the CEDAW periodic report is that Nigerian society is characterized by a lack of education, empowerment, and sensitization of the masses, especially women, on these laws and treaties, which are intended to protect them against discrimination, hence only a few educated and enlightened women have access to this information and reap the benefits of the laws.

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<sup>122</sup> Reginald *Supra* note 102 at 3

<sup>123</sup> Reginald *Supra* note 102 at 2

<sup>124</sup> Reginald *Supra* note 102 at 3

<sup>125</sup> *Nwanya v Nwanya* 1987 3 NWLR (Pt 62) at 697.

According to Onyeka Okongwu, the CEDAW periodic reports reviewed that discrimination is embedded in the Nigerian culture and attitudes of the Nigerian people because of the deep-rooted stereotypical roles associated with women from childhood and becomes the norm all through their childhood to adulthood which they are forced to accept as a norm.<sup>126</sup>

Although the CEDAW has a good impact on some African countries, such as Tanzania, in 2016, the case of E.S. and S.C. v. the United Republic of Tanzania (Communication No. 48/2013, U.N. doc. No. CEDAW/C/60/D/48/2013) appeared before the United Nations. The case involved two Tanzanian widows who were denied their rights to inherit their late husband's property and were dispossessed of their homes under the customary inheritance laws. This case was taken to the Tanzanian courts, which ruled against the widows and succeeded in the disentitlement of the women; they allowed for the property to be devolved to the late husband's brother. These two widows and their children were dispossessed and rendered homeless without any livelihood. The two widows formally applied to the Women's Legal Aid Center. With their help, the case was appealed to the High Court in Tanzania, which criticized the custom as discriminatory. However, the High Court did not overturn the lower court's decision.

The women later took the case to the United Nations. Tanzania ratified the Elimination of all Forms of Discrimination Against Women (CEDAW) and, therefore, is bound by its full provisions and protocols. The United Nations ruled against the discriminatory customary rules of the ethnic groups in Tanzania. They declared that Tanzania had violated its human rights

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<sup>126</sup> Onyeka C. Okongwu "Are Laws the appropriate solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria" (2020) Sage Journals, Vol 21, Issue 1 at 3 <https://doi.org/10.1177/1358229120978915>

obligations under the CEDAW by failing to amend its codified inheritance laws.<sup>127</sup> Consequently, Tanzania was directed by the United Nations to compensate the two widows and repeal the discriminatory customary law on inheritance. This gave the two widows a tremendous victory for all women across the globe and especially in Africa.

In Nigeria, however, due to the non-domestication of the CEDAW, it needs to be more compelling regarding its applicability in Nigerian courts; hence, more is required in order to afford protection for Nigerian women.

Some scholars and policy analysts have identified several limitations of the CEDAW, such as the delays in examining state reports by the CEDAW, which can negatively impact the international system to protect women's rights. The delays were reportedly due to the backlog of words and the short time frame designated for sitting the CEDAW committee meetings. Also, the "opt-out" clause in the Optional Protocol allows state parties to opt out of the inquiry procedure. The option of opting out due to the clause can be seen as shortcoming as several countries, such as Colombia, Cuba, and Belize, have made opting-out declarations to the Optional Protocol.<sup>128</sup>

Furthermore, Oloka Onyango and Sylvia Tamale have criticized the CEDAW for making no provision for individuals to make complaints and petitions directly to the Organisation.<sup>129</sup> The CEDAW has also been criticized for not having a mandatory provision to mandate member-states to ratify the treaty in their domestic laws. While these member states ratify the treaty with

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<sup>127</sup> Liesl Gertholtz "Letter from Human rights watch to the United Republic of Tanzania on Compliance with UN CEDAW Committee Decision" (April 18, 2016) <https://www.hrw.org/news/2016/04/18/letter-human-rights-watch-united-republic-tanzania-compliance-un-cedaw-committee>

<sup>128</sup> UN Treaty Collection, online: <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en)>. It was accessed 11 November 2009.

<sup>129</sup> J. Oloka-Onyango and Sylvia Tamale: "The Person is Political, "or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism" Human rights Quarterly 17 (1995) The John Hopkins University Press at 715.

the international community, some member states, such as Nigeria, have yet to ratify the treaty in their domestic laws; hence, the provisions of the CEDAW do not apply in Nigerian laws. Section 12 of the Nigerian constitution requires that international treaties be domesticated by local legislation to legally bind Nigerians.<sup>130</sup> Having ratified this treaty internationally, Nigeria has yet to domesticate it in its local legislation. Hence, the treaty is not binding law in Nigeria. This illustrates the difficulty in the domestication of the CEDAW in Nigeria.<sup>131</sup>

The limitations discussed above are evident in the African context because of the inactive support from the International Community in enhancing women's rights, mainly in third-world countries. Despite the existence of the CEDAW and the African Charter, passed shortly after the CEDAW, it is evident that the provisions of these two instruments were not enough to make Nigerian leaders adopt and implement the requirements in their national laws. To overcome some of these setbacks of the international laws, I suggest that increased vigour and pressure be mounted on member states, particularly third-world countries, to ratify the treaty domestically to enable the practical application of the uniform International human rights standards in the member states, including Nigeria.

CEDAW is very relevant in this thesis because it supports my argument of offering adequate protection to women from human rights violations and discrimination as well as offering remedies to the victims.

## **CUSTOMARY LAWS OF INHERITANCE IN MAJOR COMMUNITIES IN NIGERIA**

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<sup>130</sup> *Constitution Of Nigeria*, 1999, S. 12(1)– (2).

<sup>131</sup> Tawfiq Ladan, "The Nigerian Child Rights Act, 2003: An Overview of the Rationale, Structure and Contents", (2004) 2 NIGERIAN BAR J. at 219, 230

In this section, I will examine the inheritance laws of the three major ethnic groups in Nigeria to assess some of the root causes of gender inequality and discrimination in customary laws in Nigeria. With the death of a man comes the issue relating to how his estate or property will be divided and distributed among his family. In most parts of Nigeria, particularly among the Igbos, women and female children are regarded as secondary when there is an adult male heir in the family. The male heir is entitled to inherit his late father's property under the Igbo customary tradition, while the wives and sisters are left disinherited. This practice has existed since the patrilineal system of devolution of estates in Igboland.

The rules of inheritance in customs in Nigeria are often determined by the will of the deceased person and the type of marriage contracted. For most people married under customary law, the rules of succession under customary law would determine the laws of inheritance. On the other hand, when marriage is contracted under the law (legal marriages) or religious laws (religious marriage), it is governed by the specific rules under which the marriage was contracted. For example, if a deceased marry under the Marriage Act, succession and inheritance are governed under the Act, which specifies the rules of inheritance upon the death of a party to the marriage. In contrast, if two people marry under Islamic law, inheritance and succession is determined by the Sharia Law in Nigeria.

Another major determinant of inheritance is a will. In Nigeria, the estate of the person who makes a will before his death will usually be divided by his choice. In contrast, where a person dies intestate, the estate will be divided by one of the options discussed below.

According to IE Sagay, a Nigerian human rights theorist, the rules of intestacy in Nigeria are determined by the type of marriage contracted by the deceased. He states that:

Finally, if the intestate person was an indigenous Nigerian and he did not contract a Christian or Act marriage, or even if he did, and no issue or spouse of such a marriage survived him, his estate would be distributed by the relevant customary law. If the intestate were a Muslim, then Islamic law would govern. Also, where a person subject to conventional or Islamic law dies intestate, his personal law will apply to the distribution of his property, not the *lex situs*.<sup>132</sup>

Accordingly, there are therefore three available options for inheritance in Nigeria which are:

1. Inheritance under the Matrimonial Causes Act of Nigeria for marriages contracted under the law or Christian marriages.
2. Inheritance under Customary Laws for marriages contracted under customary law
3. Inheritance under Sharia Law for marriages contracted under Islamic law.

These three options are available for people who die intestate. Therefore, the inheritance would be determined by either of the applicable rules. The law of succession technically deals with testate inheritance methods, and the rules that govern them differ from the intestate succession. Where a will exists, the will provisions take effect; however, where no choice exists, the property devolves by the applicable customary law. This subsequent devolution to customary law is problematic since customary laws with undertones of discrimination against women become the last resort. As a result, discrimination against women thrives in traditional settings. Women who are ignorant or illiterate do not understand the type of marriage they contract and the consequences following the death of a spouse.

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<sup>132</sup> Itsejuwa Esanjumi Sagay, "Nigerian Law of Succession Principles, Cases, Statutes and Commentaries" (2006) Malthouse Press Limited at 73.



For marriages under the law, the Matrimonial Causes Act<sup>133</sup> is the principal legislation guiding the dissolution of the deceased's estate. Under Section 72 of the Act, the court requires all the parties to the marriage to benefit, including the children of the parties, in the settlement of the property in a manner that the court considers just and equitable according to the circumstance of each case.<sup>134</sup>

In this case, there is no mention of either man or woman, male or female. The common law principles of justice and equity are usually the systems that determine inheritance under Nigerian statutory law. Moreover, this system is only automatic if the marriage is contracted over the Act. Traditionally, Nigerian women, particularly of Igbo descent, regard traditional weddings as more critical than marriages contracted under the act such that customary marriages are held in the highest regard over other unions. This belief is also recognized in the Igbo culture; as such, all Igbo women must perform a customary marriage to be recognized as married women within the community. Yet, to escape the ill effects of discriminatory customary laws, some women go further to have another marriage done under the act to be covered by the statutory Matrimonial Causes Act. The question to be asked now would be: What happens to the women who only had customary marriages done? The recourse is customary law in case of a partner's demise or other issues.

Apart from customary laws, other laws govern traditional marriages in Nigeria, such as religious laws like sharia laws. Under Sharia Law which exists in the Northern part of Nigeria, Inheritance in the case of intestacy is usually governed under the Faraid Rules of Distribution,

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<sup>133</sup> *The Matrimonial Causes Act*, 1970 (now Cap. M7 Laws of the Federation 2004)

<sup>134</sup> *Matrimonial Causes Act*, 2004 Cap. M7 Laws of the Federation 2004, S 72.

where property goes to the successors of the deceased. Islamic law specifies who can inherit the property of a dead and the proportion of shares to be inherited by heirs of the deceased estate individually.<sup>135</sup>

“Allah commands you as regard your Children’s (inheritance); to the male, a portion equal to that of two females; if (there are) women (only daughters), two or more, their share is two third of the inheritance; if only one (daughter), her share is a half. For parents, a sixth share of the inheritance to each if the deceased left children; 8 if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sister), the mother has a sixth. (The distribution in all cases is) after the payment of legacies, he may have bequeathed or debt. You know not which of them, whether your parents or your children, are nearest to you in benefit; (that share) are ordained by Allah. And Allah is Ever All-Knower, All-wise” [Quran 4:11]<sup>136</sup>

...” in that which you leave, their (your wives) share is a fourth if you live no child, but if you go a child, they get an eight (1/8) of that which you go...” [Quran 4:12]<sup>137</sup>

... "In that which your wife’s leave, your share is a half if they have no child, but if they live a child, you go a fourth of that which they leave" [Quran 4:12]<sup>138</sup>

The above verse shows that a wife’s share in inheritance is only  $\frac{1}{4}$  of the property where the wife has no son and  $\frac{1}{8}$  where the woman has children. In contrast, the husband inherits  $\frac{1}{2}$  of the wife’s estate following the wife's death, where the wife has children and  $\frac{1}{4}$  where the wife had no children before her demise. Sons usually are entitled to a portion equal to that of two times the females, i.e., the proportion of a son’s inheritance to that of a daughter is shared in the ratio of two to one (2:1).

In Islamic Law, apart from the nuclear family of the deceased, the extended family usually has a share in the inheritance, such as grandparents, grandsons, granddaughters etc.

Throughout this thesis, I engage with an understanding of the multiple elements that make up customary laws in Nigeria. I argue that dominating factors such as religion and patriarchy have led

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<sup>135</sup> Fiqh Al - Sunnah Vol. 3 at 498.

<sup>136</sup> The Holy Quran 4:11

<sup>137</sup> Ibid at Verse 12

<sup>138</sup> Ibid at Verse 12

to Nigeria's overarching prevalence of customary discriminatory practices. I will do so by examining inheritance laws in three of the major ethnic groups in Nigeria: the Igbo, Hausa and Yoruba ethnic groups.

### **Inheritance Law in the Igbo Ethnic Community**

The Igbo ethnic group, as discussed earlier in Chapter 1 of this thesis, is found in the Eastern part of Nigeria, made up of Abia, Imo, Anambra, Enugu, Ebonyi, Rivers and Delta states. The Igbo customary law of inheritance is essentially patrilineal in nature.<sup>139</sup> It is influenced by the belief that a man is the head of the family, a general idea that has put men at the center of all affairs in Igbo communities. Men are generally regarded as leaders born to lead, while women are secondary beings.

In marriages under customary law, the wife is regarded as her husband's property, and these customs see women as mere chattels to be owned by men. The Igbo people claim that the glory and pride of a woman is her husband. As a result of this belief, the woman cannot attain any form of equality with the man, nor can she enjoy the rights, benefits, and privileges which men enjoy in traditional society. Upon the death of her husband, the wife is often dispossessed of her husband's property as opposed to the case after that the end of his wife, he inherits all her properties under the customs. This also follows the Christian belief in the creation story of how women were created to be helpers and subordinate to men. Therefore, Igbo customs and traditions are patriarchal, and inheritance rules are generally patrilineal. The concept of primogeniture is a cardinal principle of

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<sup>139</sup> *Oyewale v Oyewale* (1987) 2 NWLR (pt 56) at 238.

the Igbo customary inheritance laws. The idea of primogeniture states that inheritance or succession devolves to the family's eldest male son, known as the 'opara' or 'diokpa.'<sup>140</sup>

On the death of the head of the family, the eldest male son succeeds the father as the new head of the family and inherits the father's powers and responsibilities known as "ofo." The "ofo" symbolizes Igbo spiritual authority and a staff that symbolizes the link between the spiritual God and man. He inherits this office to the exclusion of all the female children in the family. Such practice has been seen in a plethora of decided cases before the custom was officially declared null and void in the supreme court case of *Ukeje v Ukeje*<sup>141</sup> which I have discussed in Chapter 1 of the thesis. These beliefs in gender stereotypes that discriminate against women significantly affect the general inequality of women to men in society.

In families also, upon the father's death, the female children are more often disentitled from inheriting their deceased father's property. This is because of the decent patrilineal inheritance system, which is characterized by property dissolution to solely the family's eldest son. At the same time, the female children are left disentitled. In most cases where there is more than one son, the deceased's estate is shared among the sons to exclude the female children in the family. One of the explanations for this form of property succession is that once a girl is born to a family, she is only seen as a temporary child of the deceased who will eventually get married and leave her father's house for her husband's house. Therefore, inheriting property from her father will result in the transfer of wealth from her father to her husband's family, which will enrich the husband's family and lead to the impoverishment of her father's. Therefore, women are not allowed to inherit

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<sup>140</sup> EI Nwogugu, "Family Law in Nigeria" (2014) HEBN Publishers, Ibadan, Nigeria at 416.

<sup>141</sup> (2014) JELR 54676 (SC)

property from their fathers. Displeased with this notion, the issue of disentitlement of women has been raised in various cases, which will be discussed below:

In the *estate of Agboruja*,<sup>142</sup> where a man died intestate, leaving behind his wife and children, the deceased's brother was appointed to be the administrator of the deceased estate in line with the Igbo customary rule of inheritance. The deceased's wife brought the case before the court because putting the deceased's brother in charge of her late husband's property was inequitable and unfair. The court held that the customary practice of inheritance of the estate by the deceased's brother was not inequitable because it was a common practice among the Igbo community and other communities in Nigeria and permitted the deceased's brother to inherit the property of the dead. The custom also allowed the deceased's brother to inherit the wife and children of the deceased, subject to the wife's approval.

In the case of *Mojekwu v Mojekwu*,<sup>143</sup> the Court of Appeal made a significant decision on the compatibility of the Igbo customary law and Section 42 of the Constitution of the federal republic of Nigeria. In this case, the Plaintiff, the nephew of deceased Charles Nwofor Mojekwu, died in 1963 and was survived by his wife, two daughters and no son. Upon his death, the deceased's brother became entitled to inherit the property of the dead. He went on to perform the rites and traditions that validated the transfer of the estate to his possession; He later transferred ownership to his own son following his death. However, one of the wives of the deceased was unsatisfied with the outcome of the customary law and began to take possession of her late husband's property by building on the said land without the consent of the Appellant. Accordingly,

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<sup>142</sup> *Re Estate of Agburoja* (1949) 19 NLR 38.

<sup>143</sup> *Mojekwu v Mojekwu* (1997) 7 NWLR (Pt 512) 283.

Plaintiff tried to stop her by issuing a public notice on the property against trespass. He also brought an action before the High Court for a declaration as the property owner under the Onitsha Land tenure system of the Nnewi (Igbo) Customary Law. The High court refused to grant his request. He then appealed the decision to the Court of Appeal.

At the Court of Appeal, the appeal was dismissed, stating that the Igbo customary law of inheritance was discriminatory against women and the dictates of natural justice, good conscience, and public policy; hence, any custom that discriminates against women was firstly repugnant to natural justice, equity, and good conscience, thus, against the provisions of Section 14 of the Constitution of Nigeria. Consequently, the customary practice was declared to be null and void. The court said that the Appellant was not the legal owner of the property and hence had no legal interest in the property. Justice Olagunju noted that:

“since the abrogation of such obnoxious practice rests absolutely with the legislature of the state that still clings to such absurdity and the burden of containing the incidence of its manifestations in judicial matters lies in the apex court, the best that can be done at this level of the judicial hierarchy is to shun the practice as repugnant to natural justice, equity and a good conscience and, therefore, unenforceable, hoping that sooner than later the authorities that are in a position to do so will hasten the interment of a custom that has outlived its usefulness and has become counter-productive.”<sup>144</sup>

Considering the above decision, where customary laws are incompatible with the constitution's provisions, they will override it. The appellant, unhappy with the decision of the Court of Appeal, further took the case to the Supreme court. The Supreme Court, however, overruled the conclusion of the Court of Appeal and upheld the Igbo customary law known as ‘idigbe,’ which entitles the deceased's family to inherit the property of the dead where the deceased has no surviving male child. The Appellant’s title of the property was therefore upheld.

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<sup>144</sup> *Mojekwu v. Mojekwu*, (1997) 7 NWLR 283; at 408.

The supreme court's decision in *Mojekwu v Mojekwu* led to public outrage because of the unfair outcome, which further promoted the discrimination of women by customary laws. In my opinion, the court's reasoning and decision showed a flaw in the customary courts' upholding customs repugnant to natural justice and fairness, hence discriminatory against women.

In the case of *Uke v Iro*,<sup>145</sup>, for example, it was argued that according to the customs of Nnewi, an Igbo subgroup, a woman could not give evidence about the land title. The history of this practice is traced back to the patriarchal nature of Nigerian society, with relegated roles for the female gender and preminent position and power for the males. One of the reasons for this tradition is that once a girl-child is married, she becomes part of her husband's family and, therefore, no longer a part of her father's family. It would therefore be wrong for a married woman to inherit her father's land as to do that would be to enrich the husband's family to the detriment of her father's. Studies suggest that some ethnic groups in the northern and southwestern parts of Nigeria are more liberal than Igbo customary law regarding female inheritance.

However, in 2014, the Supreme Court took a different direction in the case of *Ukeje v Ukeje*.<sup>146</sup> The case of *Ukeje v Ukeje* which was briefly discussed in chapter 1 concerned a man who died without a will, and the daughter of the deceased was prevented from inheriting the estate and resources of her late father, the daughter brought a case before the court, and the Supreme Court of Nigeria decided it. The defendants: the deceased's son and wife applied for letters of administration for the court to claim the estate of the late owner, Mr. Lazarus Ukeje, to the exclusion of the plaintiff, Miss Gladys Ada Ukeje. Upset with the exclusion, Miss Gladys, who

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<sup>145</sup> *Uke & Anor v Iro* (2001) LPELR-6964 (CA).

<sup>146</sup> *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) at 384, 408.

happened to be the first daughter of the deceased, brought the case before a High court in Lagos State, Nigeria, seeking to be included in the administration of the estate of the deceased.

The court upheld the plaintiff's claim and declared that the Igbo customary laws that disentitle female children from property inheritance are incompatible with the provisions of the Nigerian Constitution. It, therefore, declared such customs null and void. Dissatisfied with the outcome of the case at the High court, the Defendants took the chance to Appeal to the Court of Appeal. After the findings, the Court of Appeal upheld the decision of the High Court.

The defendants then proceeded to the Supreme Court – the court of the final record. Upon getting to the Supreme Court, the Supreme Court unanimously confirmed the decisions of both the High Court and the Court of Appeal, which declared the Igbo customary practise of female disentitlement of property to be repugnant to natural justice as it conflicts with Sections 39(10), 42(1), (2) as well as Section 43 of the 1999 Constitution of the Federal Republic of Nigeria as amended, as such, null and void.

The Supreme Court of Nigeria held that:

“No matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law, which disentitles a female child from partaking in the sharing of her deceased father's estate, is in breach of section 42(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.”<sup>147</sup>

In this case, this decision of the Supreme Court was commendable because it confirmed the emergent trajectory of using human rights language to overcome gender-discriminatory

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<sup>147</sup> *Ukeje v Ukeje* (2014) 11 NWLR (Pt 1418) 384, 408.



customary practices. It also laid significant progress in female inheritance as it upheld the principle of equality in Section 42 of the 1999 constitution of Nigeria and set a good standard for subsequent cases.

In the case of *Anekwe v Nweke*,<sup>148</sup> The court took a similar turn in its decision regarding the Awka customary law preventing a married woman without a male child from inheriting her late husband's property. Justice Ogunbiyi of the Supreme court of Nigeria regarded the native custom of the Awka people as barbaric. He further stated that the custom was repugnant to natural justice, equity, and good conscience, and as such, the custom should be abolished. Justice Ogunbiyi noted as follows:

“I hasten to add that the custom and practices of Akwa people upon which the appellants have relied for their counterclaim are outrightly condemned in powerful terms. In other words, a custom of this nature in the 21st-century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive, uncivilized and only intended to protect the selfish perpetration of male dominance, which is aimed at suppressing the right of the womenfolk in the given society. One would expect that the days of such obvious differential discrimination are over. Any culture that disinherits a daughter from her father's estate or a wife from her husband's property because of God-instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and be meted out against the perpetrators of the culture and customs. For a widow of a man to be thrown out of her matrimonial home, where she lived all her life with her late husband and children, by her late husband's brothers on the ground that she had no male child is indeed very barbaric, worrying and flesh skinning.”<sup>149</sup>

From the analysis of the various cases above, significant progress has been made at the judicial level, where women have challenged the existence of discrimination in the Nigerian courts. Although only a little progress has yet to be recorded, it is essential to acknowledge the progress

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<sup>148</sup> *Anekwe v Nweke* (2014) 9 NWLR (Pt 1412) 393, 421-422.

<sup>149</sup> *Anekwe v Nweke* (2014) 9 NWLR (Pt 1412) at 393, 421-422.

made in cases such as *Ukeje v Ukeje*,<sup>150</sup> and *Uke v Iro*,<sup>151</sup>, amongst others. The theoretical position of the court has dramatically shifted from the implementation of entrenched discriminatory customary traditions to the incorporation of International human rights principles of fairness and equality as provided under the CEDAW, where gaps exist in national legislation. However, despite these court decisions, the reality of many Nigerian women does not reflect this standard.

The groundbreaking ruling in the leading case of *Ukeje v Ukeje*<sup>152</sup> which has been discussed in multiple places throughout this thesis was null and void because it was in apparent contravention of Section 42(1)<sup>153</sup> and (2)<sup>154</sup> of the Constitution of the Federal Republic of Nigeria.<sup>155</sup> This provided a precedent for subsequent rulings on protecting the rights of Igbo women in Nigeria. The decision confirmed the emergent trajectory of Nigerian courts in using human rights language to overcome gender-discriminatory customary practices. Apart from the discriminatory experiences of women in the Igbo communities, women in other communities in Nigeria also have exceptional levels of discrimination they face within their ethnic gatherings. In the following section, I will examine two ethnic groups, Hausa and Yoruba, which comprise the ethnic majority. In the following paragraphs, trace the roots of discrimination in Nigeria.

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<sup>150</sup> *Ukeje v Ukeje* (2014) 11 NWLR (PT. 1418) 384

<sup>151</sup> *Uke & Anor v Iro* (2001) LPELR-6964 (CA).

<sup>152</sup> *Ukeje v Ukeje* (2014) 11 NWLR (PT. 1418) 384

<sup>153</sup> *Constitution of the Federal Republic of Nigeria*, 1999, S42:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:- (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or (b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

<sup>154</sup> *Constitution of the Federal Republic of Nigeria*, 1999, S.42 (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

<sup>155</sup> *Constitution of the Federal Republic of Nigeria*, 1999.

## **Inheritance Law in the Hausa Ethnic Community**

The Hausa community occupies the Northern part of Nigeria. Most of the traditions and culture of the Hausa people have been influenced by Islam. In 1804, a holy war (jihad) was declared by Shehu Dan Fodio against the corrupt and immoral practices of the Hausa rulers at the time and said the jihad be legitimate under Sharia Law.<sup>156</sup> The jihad resulted in the Islamization of almost all Northern parts of Nigeria.

Following the jihad was a complete revolution in Northern Nigeria of the internal leadership structure of Northern Nigeria where the followers of Usman Dan Fodio replaced the kings and heads of the Hausa communities hence making Islam the main religion in the Northern part of Nigeria. As a result, most Hausa people became Muslims and were directly governed by the Sharia (Islamic laws) rooted in the provisions of the Quran. Therefore, most laws, including inheritance, are governed by Sharia law.

Moreover, under Islamic law, as discussed above, the general rule is that both men and women have the right to inherit the property of their husbands, wives, and parents. However, the varying proportions of the inheritance of the male and female children in the balance of (2:1) show the inequality gap between males and females under Islamic law. According to Sir Muhammad Iqbal, the fact that women have less inheritance than males was not as a result of the inferiority of the females to the males but “in view of her economic opportunities, and the place she occupies in the social structure of which she is part and parcel.”<sup>157</sup> This shows that in the Northern part of

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<sup>156</sup> Titus Adekunle, “Succession and Inheritance law in Nigeria: Resolving the discriminatory proprietary rights of widows and children” (2009) 1 prop L Rev. Pg 4

<sup>157</sup> Muhammed Iqbal, “Reconstruction of Religious Thoughts in Islam” (1957) Institute of Islamic Culture, Lahore, at 236-237.

Nigeria, there is the existence of systemic inequality justified by religious arguments and patriarchal interpretations of Islam that exists. Women are usually the victims of this inequality through customs that have lived and become part of their experiences as Hausa women.

### **Inheritance Law in Yoruba Ethnic Community**

The Yoruba ethnic group is in the South-West part of Nigeria. Unlike other ethnic groups, the Yoruba Inheritance laws embrace more equality because it makes no distinction between female and male children regarding inheritance. Devolution in the Yoruba Customary law is usually by blood. Section 16(4) of the Oyo State Customary Courts Law, 2000, provides that:

Where the customary law applying to land prohibits, restricts, or regulates the devolution on death to any class of persons of the right to occupy such land, it shall not operate to deprive any person of any beneficial interest in such land (other than the right to occupy the same) or in the proceeds of sale thereof to which he may be entitled under the rules of inheritance of any other customary law.<sup>158</sup>

According to this provision, both women and men have equal rights over inheritance in their parents' demise. Hence, any form of discrimination based on gender or class is prohibited under the Yoruba Customary law. Any practice that goes against this Inheritance law will be repugnant to natural justice, equity and a good conscience and will consequently be declared null and void.<sup>159</sup>

This rule has been further emphasized in many decided cases in the Customary courts of the Yoruba people. For example, in the case of *Okelola v Adeleke*, it was held that where a person dies intestate, the deceased's estate must be shared equally among the surviving children of the dead in equal shares regardless of their gender, to the exclusion of all others.<sup>160</sup> It was also further

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<sup>158</sup> Oyo state Customary Courts Law, (2000) S.16(4).

<sup>159</sup> *Dawodu v Danmole* (1962) 1 WLR 1053.

<sup>160</sup> *Okelola v Adeleke* (2004) 13 NWLR (Pt 890) 307.

held in the case of *Salami v Salami*<sup>161</sup> that the right of the plaintiff to inherit her father's property was not diminished because she was female. It is, therefore, insubstantial whether a person is male or female regarding inheritance in the Yoruba communities.

It is important to note that the Inheritance rules under Yoruba customary law provide essential lessons on how equity and equality should be the determining factor in inheritance rather than sex. It makes a massive difference in how women are seen and valued in some communities in Nigeria, while in others, more work must be done. The Igbo community is yet to embrace this principle of equality and equity due to the long-standing belief in the superiority of men over women.

The discussion in this chapter reflects the practicability and shortcomings of various human rights laws in addressing the issues of gender discrimination in Nigeria. The leading cases of *Salami v Salami*, *Ukeje v Ukeje* and *Uke v Iro* as discussed above are very important to this thesis because of the positions of the court in promoting women's equality rights. The courts in the cases held that customary practices which discriminates against women are void because they are against fairness, justice, and good conscience. Furthermore, the practice of denial of female inheritance was declared contrary to Section 42 of the Constitution of Nigeria as well as in contravention of the UN treaties of which Nigeria is signatory to such as the CEDAW.

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<sup>161</sup> *Salami v Salami* (1924) 5 NLR 43.

## **CHAPTER FOUR**

### **A CRITICAL ANALYSIS OF IGBO CUSTOMARY LAW OF INHERITANCE**

#### **INTRODUCTION**

In Chapter Three, I illustrated the strengths and weaknesses of international and Nigerian human rights laws in protecting women against discrimination in Nigeria. I argued that discrimination continues in the Igbo community amid these laws, which can be traced to deeply entrenched factors such as but not limited to patriarchy and male interpretations of religious norms. These factors tend to influence the overall attitude and behaviour of the Igbo people. In turn, this affects the way the status of women is constructed in the Igbo community.

With this context in mind, chapter 4 examines how religion and patriarchy influence discrimination against women in the Igbo community despite human rights laws prohibiting gender inequality and discrimination. To address gender discrimination in Nigeria, this chapter also critically examines ways to eradicate gender discrimination in the Igbo community by identifying institutions' lack of accountability and proper social constructivism. To this end, I shall investigate a social constructivist approach. This approach primarily focuses on challenging institutions within the Igbo community to advance the effective internalization, transmission, and legitimacy of the human rights approach to inheritance rules to individuals within the Igbo community. This will assist in overcoming resistance and antipathy to implementing the human rights approach.

Furthermore, I also examine the laws of inheritance in South Africa, Kenya, and Ghana to provide strategies and lessons for remedying the persistence of customary Inequalities in the Igbo

community in Nigeria against the backdrop of the superiority of the constitutionalized human rights approach pronounced by the country's Supreme Court.

Igbo women face several obstacles in their struggle to attain equality with their male counterparts in society: the unfair wage gap between men and women in employment; the lack of representation of women in political, social, economic and decision-making positions in the society; the feminization of poverty; illiteracy; lack of access to equal opportunities, the burden of family care and struggle to balance family responsibilities and work while maintaining equality and respect in the society, gender violence, rape, sexual harassment and assault, gender discrimination are amongst the persistent challenges Igbo women face in the community. Most of these ills are meted out based on gender and the overarching belief that women are inferior to men. As religion is deeply revered in Nigeria, Etim Okon states:

"Historically, religion has contributed to the marginalization of women. Religion has provided the platform for male domination of the society."<sup>162</sup>

Not only does this male domination exist in domestic settings, but it also reflects in all levels of governance where women are seen to be under-represented. For instance, women comprise only 15% of appointed Commissioners and Special Advisors in Akwa Ibom State.<sup>163</sup> This statistic shows high discrimination and underrepresentation of women in socio-political and economic spheres and a high enthronelement of patriarchy.<sup>164</sup>

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<sup>162</sup> Etim Okon, "Religion and Human Rights" (2011) Education. University of Calabar Press. Calabar. Ch.10, at 184.

<sup>163</sup> Anthonia M Essien & Donatus Ukpog, "Patriarchy and Gender Inequality: The Persistence of Religious and Cultural Prejudice in Contemporary Akwa Ibom State, Nigeria" (2012) International Journal of Social Science and Humanity, Vol. 2, No. 4 at Pg. 1 proper citation format – McGill Redbook

<sup>164</sup> Ibid at Pg. 1

In this chapter, I will consider the issue of gender discrimination through the lens of leading cases such as *Uke v Iro*,<sup>165</sup> and specific legislation, such as Chapter IV of Nigeria's constitution. I am particularly interested in understanding the discrimination against women under customary inheritance law.

A critical landmark case is that of *Uke v Iro*.<sup>166</sup> This case showed that according to the customs of Nnewi, an Igbo subgroup, a woman could not give evidence about the title to land in the customary court because it is believed that once a girl-child gets married, she becomes part of her husband's family and therefore no longer a part of her father's family. It would therefore be wrong for a married woman to inherit her father's land as to do that would be to enrich the husband's family to the detriment of her father's.

The provisions are part of the constitutionalized human rights in Chapter IV of Nigeria's Constitution. The Constitution protects the equal rights of all citizens before the law. It guarantees the right not to be discriminated against expressly or through the practical application of any law in Nigeria. Accordingly, the court declared the Igbo customary inheritance rule null and void because it is discriminatory and conflicts with the constitutional provisions.

The following case is that of *Ukeje v Ukeje*<sup>167</sup> which have been critically discussed in chapters one and three. Being a Supreme Court decision, which would sound a note of finality on the status of the Igbo customary inheritance rule and serve as a precedent binding on all persons and authorities within the Igbo ethnic group and Nigeria as a whole. However, despite being voided

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<sup>165</sup> *Uke & Anor v Iro* (2001) LPELR-6964 (CA).

<sup>166</sup> *Uke & Anor v Iro* (2001) LPELR-6964 (CA).

<sup>167</sup> SC. 224/2004, (2014) LPELR – 22724 (SC).



by the court, the Igbo customary practice of disentanglement of the female child seems to persist with overt and covert support by individuals and institutions in the Igbo ethnic communities, which regard the judicial decision as unacceptable and potentially illegitimate. The court's decision has been received with antipathy and even outright defiance by some sections of society. For instance, a notable Igbo traditional ruler, Igwe Simeon Osi Itodo of Igbo-Eze North Local government Area of Enugu, stated that the Supreme Court judgment would not change the Igbo inheritance customs and any effort to enforce it would result in chaos.<sup>168</sup> This shows the stance of customary male leaders in maintaining patriarchal control over women in the Igbo community. Male leaders are perceived to be highly influential and well respected within the Igbo community; hence, they exercise control over all the sectors of the Igbo community, from domestic to community settings.

The traditional heads of Igbo communities are the Kings, also known as Igwe, the Igwe rule in conjunction with each community chief/leader known as “ndi ichies,” who collectively make decisions, including those that affect women within the Igbo communities without female presence and inputs in the decision-making processes. The reality is that although the Supreme Court has judged the issue of female inheritance in Nigeria, the entrenched customary practices still hold sway across the Igbo ethnic group. The implementation of the judgment has also faced difficulties because of the deep-rooted culture, even though the Nigerian constitutional framework establishes that women and men are equal and must be treated equally under the law.<sup>169</sup> The lack of social constructivism, which is the unaccountability of institutions and lack of social education among the Igbo population, remains problematic and requires resolution.

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<sup>168</sup>Osi Itodo, “Female Inheritance: Court ruling can't abolish customs of Igbos — Itodo.” (2020) Vanguard news. <https://www.vanguardngr.com/2020/08/female-inheritance-court-ruling-cant-abolish-customs-of-igbos-itodo/>

<sup>169</sup> *Constitution of the Republic of Nigeria* (1999), S 42.

## **FACTORS THAT INFLUENCE DISCRIMINATION AND GENDER INEQUALITY IN THE IGBO COMMUNITY IN NIGERIA**

As discussed earlier, the roots of gender discrimination among the Igbo ethnic groups can be traced to the male interpretations of religious norms and the patriarchal culture of the people. In this section, I will consider the factors of religion and patriarchy that influence gender discrimination below:

### **Interpretations of Religious norms**

Religious laws govern some communities in Nigeria. For example, in the Northern part of Nigeria, which is predominantly made up of the Muslim population, the primary source of customary laws in those communities are Islamic laws by which the people are bound. These laws have transcended their statutory regulations, and in states that are made up of significant Muslim populations, such as Nasarawa state, Bornu state, Kano state etc., Sharia laws are upheld. For example, under Islamic law in Nigeria, the Islam religion in Nigeria permits the underage marriage of females, which in turn affects the social and career development of these women. These factors result in the overdependence of women on men and further promote inequality.

In a typical Nigerian household, there is a unified belief in a particular deity which regulates the behavior and activities of the people. For Christians, it is the belief in God the Almighty and Jesus. For Muslims, it is the belief in the Prophet Allah. For the rest, it is the belief in the traditional African deities such as Ogun (In Yoruba communities), Amadioha (in Igbo communities) etc. The global index of religiosity and Atheism states that less than one percent of the Nigerian population

is atheist. This means that there is hardly a family in Nigeria that is atheist.<sup>170</sup> This is because there is a general belief in the source of life and power over the universe that guides the existence of human beings. This belief in deities transcends into the lives and morality of most Nigerians.

Religion significantly impacts the customary traditions of the Igbo community in Nigeria. For instance, in the bible in Ephesians 5:23 is the Christian belief that a man is the head of the wife. This belief has been interpreted as the wife being subordinate to the husband; hence, the male-child preference has continued to exist. It is also interpreted as gender inequality regarding roles and responsibilities given to men and women within the family.<sup>171</sup> Women are therefore expected to take on domestic positions at home for childbearing and caretaking roles, which then translates into the broader society in matters such as inheritance, leadership, and employment.<sup>172</sup>

The belief in women's inferiority to men undermines women's human rights and conflicts with the norms of domestic and international human rights contained in the National bill of rights and other International and national legislations that guarantee equality for both men and women. This is what Sir Muhammad Iqbal meant when he stated that the inferiority of women in the communities is a result of the unequal social structure that places women at the lower end of society. This position limits women's economic and social opportunities in Nigerian communities.<sup>173</sup>

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<sup>170</sup> Leo Igwe, "Atheism in Nigeria: Challenges and Opportunities" (2017) Modern Ghana <https://www.modernghana.com/news/762881/atheism-in-nigeria-challenges-and-opportunities.html>

<sup>171</sup> Christine. A. Littleton, "Toward a Redefinition of Sexual Equality", (1981) 95 Harv. L. Rev. at 500.

<sup>172</sup> Joanne Conaghan, "Reassessing the Feminist Theoretical Project in Law Journal of Law and Society" (2000) Vol 27 ISSN: 0263 – 323X at 8.

<sup>173</sup> Muhammed Iqbal, "Reconstruction of Religious Thoughts in Islam" (1957) Institute of Islamic Culture, Lahore, at 236-237.

The case of *Uke v Iro* as discussed earlier also demonstrated how the family of Uke, a Christian family, believed in the inferior position of wives and daughters where they were subjected to disentanglement from property ownership and inheritance.<sup>174</sup> Hence, religion has been demonstrated to be a huge factor that influences the behaviours of people in the Igbo community in Nigeria.

## **Patriarchy**

As discussed in Chapters one and three of this thesis, one pervasive characteristic of the Igbo community is the persistence of patriarchy. Understood, at its most basic definition, patriarchy is a system of social variation based on gender which recognizes men as the main actors while placing discriminatory constraints on the roles and activities of the female gender.<sup>175</sup>

According to the legal scholar, Onuoha, this custom of patriarchy justifies the prejudice, marginalization, and discrimination of women, particularly in inheritance. He states that the Igbo customary rule of primogeniture, which governs the devolution of property and succession, promotes gender discrimination as it elevates the position of men above women in Igbo communities.<sup>176</sup> This practice of primogeniture undermines the authentic democratic principles of gender equality. Anthony Diala, therefore, suggests that the customary law of primogeniture across the Igbo communities needs to be reformed to the best interest of the dependents to determine inheritance.<sup>177</sup>

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<sup>174</sup> *Uke & Anor v Iro* (2001) LPELR-6964 (CA).

<sup>175</sup> Makama Godiya Allanana, "Patriarchy and Gender Inequality in Nigeria: The Way Forward" (2013) European Scientific Journal June 2013 edition, vol. 9 ISSN: 1857 – 7881. Pg 116

<sup>176</sup> Reginald A. Onuoha "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue" <https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Discriminatory-Property-Inheritance-Under-The-Customary-Law-In-Nigeria.pdf>

<sup>177</sup> *Supra*, Anthony C. Diala 1 at 1

The history of discrimination against women in Nigeria can also be traced to the religious and cultural history of the era, where women were regarded as property to be owned and controlled by men who were put in charge of all aspects of life, including leadership positions and ownership of property.

Women were discriminated against and seen as secondary beings to their male counterparts. In families, men were paid more attention to and given the best education and were exempt from performing domestic duties in the home. While men were put in charge of businesses and held jobs, women were expected to remain in domestic responsibilities of rearing children, doing house chores and catering to the needs of their men. Women were not allowed to own landed properties in Nigeria nor inherit property, as seen in the discussed cases, and it is a good custom and norm of Nigerian society. However, as time passed, women's eyes became open to the inequality and discrimination faced against them by society because of their gender. This has given rise to political, social, and legal movements for the emancipation of women from these unfair treatments and injustice, promoting gender equality, and triggering legal and social reforms in various institutions, religions, customs, and traditions throughout the country.

## **ANALYSIS OF CUSTOMARY LAW OF INHERITANCE IN SOUTH AFRICA, KENYA, AND GHANA**

To further understand the possibility of a seamless coexistence between customary and national laws and a significant reduction in the level of discrimination found in customary laws, essential lessons can be drawn from other African countries such as South Africa, Kenya, and Ghana. These three African countries have been rigorously studied and reported to have made remarkable progress in eradicating discrimination against women in customary laws. I have chosen to examine these three countries because of legal pluralism in all three jurisdictions. This refers to the coexistence of several laws, such as statutory and customary laws in South Africa, Kenya, and Ghana, like Nigeria. These three countries have also been able to investigate and eradicate gender discrimination in their customary laws.

These countries will be examined below.

### **Customary Law and Women's Rights in South Africa**

Like some other African countries which the United Kingdom colonized, South Africa is a legal pluralist country made up of a mixture of several sources of laws such as common law, religious laws, and indigenous laws in the legal system. The theme of conflict, integration, unification, and harmonization of customary (indigenous) law and English common law is common in these countries. South Africa has undergone years of colonization and endured apartheid. As a result, the struggle for independence, coupled with the quest to preserve South African culture and traditions, remained a consistent theme. According to legal scholar Anthony Allott, the South African people preferred to have disputes settled according to the rites of customary law and under traditional rulership rather than the English common law because they

believed that the English law was too advanced to be understood by the community and the feared of conflict which may arise as a result.<sup>178</sup>

The indigenous laws in South Africa were primarily uncodified and always regarded as subordinate laws by the South African colonial administration. It was with the introduction of the repugnancy test of natural justice, good conscience and equity by the Colonial Administration that accommodated customary laws to a limited extent. The repugnancy test was introduced to permit customary laws to the extent that it does not breach the requirements of natural justice, equity, and public policy of the South African legal system under the colonial administration<sup>179</sup>

South Africa underwent various stages in attaining the legality of Customary law. Before the 1996 Constitution of the Republic of South Africa, The Black Administration Act 38 was introduced in 1927. This Act contained provisions that only legalized and permitted common-law marriages in South Africa. Common law marriages only consisted of a union of one man and one woman. It did not recognize polygamous marriage, which was very common among traditional South Africans. To this end, customary marriages were not recognized due to their polygamous nature.<sup>180</sup>

The non-recognition of customary marriages in South Africa led to the dissatisfaction of South Africans with the colonial administration. Wives and children of customary marriages were not given the same status as marriages concerning inheritance and other related matters under

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<sup>178</sup> Allott, Anthony, "New Essays in African Law" (1970) Butterworths at 12-13.

<sup>179</sup> Hooker MB, "Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws" (1975) Clarendon Press at 129-135.

<sup>180</sup> *Black Administration Act* 38 of 1927, s 22(6).

common law. This led to severe hardship where cases of intestate succession and inheritance rights arose.<sup>181</sup>

In response to this conflict, The South African Law Reform Commission made several proposals and wrote many articles and discussion papers regarding the recognition of customary marriages in South Africa. The Law Reform also in their Reform tried to unite customary traditions and civil law marriages.<sup>182</sup> The efforts of the Law Reform team led to significant progress in establishing laws that recognized customary law in South Africa.<sup>183</sup>

The introduction of the new Constitution of the Republic of South Africa in 1996 recognized the legality of customary law in Sections 9, 15 and 112.

Section 9 of the South African Constitution states that:

“(1) Everyone is equal before the law and has the right to equal protection and benefit of the law”

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

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<sup>181</sup> Kaganas F and Murray C, “Law and Women’s Rights in South Africa: An Overview” (1991) 16 Acta Juridica at 1-38.

<sup>182</sup> South African law Reform Commission 1997. <http://wwwserver.law.wits.ac.za/salc/discussn/dp74.html>.

<sup>183</sup> Kaganas F and Murray C, “Law and Women’s Rights in South Africa: An Overview” (1991) 16 Acta Juridica at 1-38.



Section 15 states that:

“This section does not prevent legislation from recognizing:

- i. marriages concluded under any tradition or a system of religious, personal, or family law; or
- ii. systems of personal and family law under any tradition or adhered to by persons professing a particular religion.”<sup>184</sup>

In recognition of customary practices, however, they must be consistent with the constitution's provisions.

In addition to the provisions of the South African constitution, the Recognition of Customary Marriages Act of 1996 (Recognition Act) was introduced to implement the provisions of Section 15 of the body to recognize customary marriages and customs. By The Recognition Act, the rights of women, including the rights of inheritance and succession, were protected.

In South Africa, a valid customary marriage consists of a consensus of the marrying parties and their families, followed by a formal ceremony of transfer by the bride's family to the groom's family after the payment of a bride price by the groom known as “lobolo”<sup>185</sup>

Concerning inheritance of the matrimonial property under South African customary law, according to the KwaZulu-Natal Codes of the Zulu customary law, the property in a household remains under the control of the husband, known as the family head via the rule of male primogeniture. This rule

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<sup>184</sup> *Constitution of South Africa*, 1996, S 15(3).

<sup>185</sup> Oliver NJJ et al, “Indigenous Law” (1996) Butterworths at 186

of primogeniture was regarded as unconstitutional and repugnant to public policy in the case of *Bhe v The Magistrate Khayelitsha and Others*.<sup>186</sup>

In this case, two extra-marital daughters of the deceased were disqualified from inheriting the deceased's estate because they were qualified as minors under section 23 of the Black Administration Act and appointed the deceased father as the administrator of the deceased estate. Section 23 prohibited children from inheriting the estate of their deceased fathers. The applicants challenged the provisions of section 23 of the Black Administration Act.

After considering the application, the High court ruled that section 23 were null and void because it was incompatible with the prohibition of unfair discrimination based on birth or gender contained under section 9(3) of the Constitution. The court also considered the negative impact of the customary rule of primogeniture in the Black administration Law which mainly affected women and children in the South African community. It ruled that the applicants' prayers were granted in the interest of justice and fairness. The court's decision in the above case provides lessons to the Igbo community on the negative impact of the customary rule of primogeniture in promoting inequality and discrimination against women in the Igbo community.

Under the Recognition Act, section 7 avers that property in a marriage should be owned and managed between both spouses except otherwise agreed by the parties. In the event of a spouse's death or marriage dissolution, the property is automatically transferred to the surviving

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<sup>186</sup> *Bhe v The Magistrate, Khayelitsha* 2005 (1) SA 580

spouse and household. This arrangement further secured women's marriage position as women's inheritance rights were preserved.<sup>187</sup>

The Constitution of the Republic of South Africa recognizes customary law; however, these customary laws should not conflict with the provisions of the constitution, which is the primary law in South Africa. The Recognition Act and the Intestate Succession Act recognize customary laws in South Africa. Under the Recognition Act, customary marriages are now recognized as a hybrid customary and civil law system. This arrangement acknowledges the equal status of both husband and wife in customary marriages.

In addition to the Recognition Act, the Government of South Africa also introduced the Intestate Succession Act 81 of 1987 to regulate laws relating to intestate succession and other related matters. According to Section 1 of the Act, in the event of the death of a spouse and where no will be made, the surviving spouse shall have the right to inherit the intestate estate. Also, where a spouse and children survive the deceased, the surviving spouse shall inherit one-half of the estate, and the other half shall be shared by the children equally, regardless of gender.

The provisions of the Recognition Act and the Intestate Succession Act 81 of 1987 brought harmonization of the common law and customary laws in South Africa. These two Acts protect the rights of women and children in marriages in South Africa. Regarding succession and

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<sup>187</sup> Marissa Herbst & Willemien Du Plessis, "Customary Law v Common Law Marriages: A Hybrid Approach in South Africa" (2008) 3:1 J Comp L 105.

inheritance rights, women are regarded as equal to men and therefore given equal status with men in marriages and relation to inheritance.

The South African customary arrangements provide a good lesson that the Igbo community in Nigeria can apply to enhance the status of women and the entrenched eradication of inequality in traditional laws and other primary legislations in Nigeria. The South African courts understand that the customary law of succession cannot be reconciled with the current notions of gender equality and the protection of human dignity as espoused by the Bill of Rights. These practices violate the rights and dignity of women and, as such not in the interest of justice and fairness.

The case of *Bhe*<sup>188</sup> demonstrated that the rule of male primogeniture in customary law are discriminatory to women because it robs women of their rights to gender equality and fairness and inconsistent with the constitutional rights of women to equality and human dignity provided in sections 9(3) and 10 of the South African Constitution. It therefore holds that the current laws that determine succession in South Africa is the Intestate Succession Act which are subject to the requirements of fairness and equality in matters of inheritance and succession regardless of gender.

### **Customary Law and Women's Rights in Kenya**

Like the South African legal system, Kenya operates a pluralistic legal system that recognizes customary laws. Customary law plays a crucial role in defining the identity, regulation of relationships, marriage, access to resources, settlement of disputes and rights of succession in Kenya. Although women occupy a disadvantaged position in Kenyan societies because of their

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<sup>188</sup> *Bhe v The Magistrate, Khayelitsha* [2005] (1) SA 580

patriarchal nature, where the interests of women are subordinate to their male counterparts, most of the customary laws go against the human rights principle of gender equality. Customary law in Kenya is mostly unwritten. However, the 2010 Kenyan constitution limits the use of customary law in a way that does not conflict with the Bill of Rights and is not repugnant to justice and morality or inconsistent with the constitution or any written law in Kenya.<sup>189</sup> The Kenyan constitution generally protects gender equality and the promotion of women's rights in Kenya. Section 8 of the constitution automatically nullifies any discriminatory customary law that is inconsistent with the provisions of the constitution.

Kenya is also a signatory to several international conventions – Universal Declaration of Human Rights<sup>190</sup>, the Convention on the Elimination of all forms of Discrimination against women<sup>191</sup>, The Convention on the Elimination of All forms of Discrimination,<sup>192</sup> the International Covenant on Civil and Political Rights,<sup>193</sup> the International Covenant on Economic, Social and Cultural Rights<sup>194</sup> amongst others. Unlike other African countries, under Article 2(6), the Kenyan constitution goes a step further to automatically apply all international treaties which it ratified into application in the Kenyan body<sup>195</sup>

Article 2(5) of the Kenyan constitution 2010 provides that all general international laws and conventions be applied to Kenya. This means that the customary international standard of

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<sup>189</sup> *Constitution of Kenya* 2010, Art 159.

<sup>190</sup> *Universal Declaration of Human Rights* U.N Doc. A/810 (Dec. 10, 1948)

<sup>191</sup> *Convention on the Elimination of all forms of Discrimination* G.A res. 2106 (XX) A, UN. Doc. A/RES/2106(XX) Jan 4, 1969

<sup>192</sup> *Convention on the Elimination of all forms of Discrimination* G.A res. 2106 (XX) A, UN. Doc. A/RES/2106(XX) Jan 4, 1969

<sup>193</sup> *International Covenant on Civil and Political Rights* Dec 16, 1966, 999 U.N.T.S 171.

<sup>194</sup> *International Covenant on Economic, Social and Cultural Rights* Dec 16, 1966, 993 U.N.T.S 3.

<sup>195</sup> *Constitution of Kenya* 2010, Article 2(6)

equality of men and women and prohibition of discrimination is applied in Kenya. As such, Courts in Kenya use the international law standard of Human rights as provided by the international conventions and laws to which Kenya is a signatory. This was further emphasized in the case of *Mary Rono v. Jane Rono and William Rono*<sup>196</sup>, where the provisions of international law were used to nullify the discriminatory customary laws in Kenya<sup>197</sup>

Similarly, in the case of *Mutio Ikonyo v. Peter Mutua Ngui*,<sup>198</sup> where a customary rule prevented a married woman from inheriting her late husband's estate, the Kenyan court acknowledged the instruments of international law in deciding the outcome of the customary law case of discrimination.

Section 82 of the Kenyan constitution also prohibits discrimination based on gender. In the case of *Re the Estate of Andrew Manunzyu Musyoka*,<sup>199</sup> where the property owner died intestate, the property of the deceased was shared among the wife and sons. Aggrieved by the disentitlement, the daughter of the deceased brought a case against the family to the court that she was also entitled to her late father's estate. The respondents counted her argument, stating that the customary law of the Kamba people prevents women from inheriting the deceased father's property. The court held that the applicant was entitled to a share in the father's property. Therefore, the daughter's exclusion from inheritance was regarded as discriminatory on the grounds of sex and repugnant to

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<sup>196</sup> (2005) JELR 96925 (CA) Court of Appeal

<sup>197</sup> Muna Ndulo, "African Customary Law, Customs, and Women's Rights" (2011) Indiana Journal of Global Legal Studies, Indiana University Press pp 107. <https://doi.org/10.2979/indjglolegstu.18.1.87>

<sup>198</sup> *Mutio Ikonyo v. Peter Mutua Ngui* (2006) eKLR

<sup>199</sup> *In re the Estate of Andrew Manunzyu Musyoka* (2005) eKLR

the norms of natural justice, equity and fairness; hence it was declared null and void. The daughter was subsequently added to her deceased father's estate and was given an equal share.

The Law of Succession Act which the Kenyan Parliament passed in 1978.<sup>200</sup> The Act governs all matters of inheritance and succession in Kenya and promotes women's equal status in Kenyan society.<sup>201</sup> The Act also provides for the right of a spouse to inherit the property of her deceased husband as well as the equality of male and female children over the inheritance. According to Section 40 of the Succession Act, the grounds of intestate succession in Kenya permit inheritance regardless of gender. Hence the Act takes a gender-neutral position in all issues relating to the customary law of inheritance. Therefore, all women have equal rights to estate in Kenya unless they agree otherwise.<sup>202</sup>

The examination of the Kenyan laws relating to female heritage provides lessons to be emulated by Nigeria in recognizing the equal status of women and translating this equality into its rules to ensure that statutes mirror gender equality. This means that the Igbo community must realize the concept of gender equality both in its laws and in customary practices. Kenya's enactment of the Succession Act which provides for equality of men and women in issues of inheritance and succession should provide lessons to Nigeria on the importance of enacting specific statute to govern intestate inheritance in Nigeria. This will help to effectively remedy the issue of discrimination and gender inequality faced by women in the Igbo community.

### **Customary Law and Women's Rights in Ghana**

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<sup>200</sup> *Law of Succession Act* 1978 Cap. 160

<sup>201</sup> Winifred Kamau, "Customary Law and Women's Rights in Kenya" (2010) *The Equality Effect* at pp 27 <http://theequalityeffect.org/wp-content/uploads/2014/12/CustomaryLawAndWomensRightsInKenya.pdf>

<sup>202</sup> *Succession Act* 1978, S 40.

Ghanaian law recognizes the equality of both men and women in society. Some societies in Ghana are matrilineal, while others are patrilineal. Article 17(2) of the Ghanaian Constitution 1992 provides that:

“a person shall not be discriminated against on gender, race, colour, ethnic origin, creed or social or economic status.”

Ch. 5. Article 33 of the Constitution of the Republic of Ghana also prohibits all forms of customary practices injurious to a person's physical and mental well-being. Ghana is one of the first African countries to recognize women's equality with men.<sup>203</sup> In the case of *Akrofi v Akrofi*,<sup>204</sup> where the deceased died intestate, the plaintiff (daughter of the deceased) brought an action against her father's brother for a declaration that she was entitled to inherit her late father's estate. The deceased was from Buem State, and the customary law of the Buem State was patrilineal in the sense that property devolves to the male sons of the family in the event of the father's death. However, where a male child was absent, the female child was permitted to inherit the deceased estate.

The defendant denied the female child the right to inheritance, stating that it was not allowed for a female child to inherit property. He insisted that he was made the estate administrator. After careful investigation and assessment, the court decided that although the culture and customs of the Buem people preferred male succession, it also permitted female succession in the absence of male children. Therefore, the plaintiff was accorded the right to inherit her late father's property. The court also noted that the customary law rules that prevent women from inheriting property

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<sup>203</sup> Ok Edu, “A Critical Analysis of the Laws of Inheritance in the Southern States of Nigeria. (2016) Journal of African Law Vol. 60, No. 1, Pp. 144 – 155 <https://www.jstor.org/stable/24734877>

<sup>204</sup> *Akrofi v Akrofi* (1965) GLR 13.



because of their gender were archaic and conflicted with the rules of natural justice and public policy.<sup>205</sup> This shows the direct role of the courts in recognition of the equal rights of women.

Again, in the case of *Fianko v Aggrey*,<sup>206</sup> the Supreme Court of Ghana also held that both women and men have equal rights to inheritance of property regardless of gender or whether the family or culture is matrilineal or patrilineal. The recognition of women's equality rights at the constitutional and legislative level in Ghana highlights the crucial roles of the courts in the implementation of gender equality in society. It provides lessons to the Nigerian judiciary regarding its crucial role in determining the effective implementation of human rights standards of gender equality in Nigerian communities. Therefore, the Nigerian courts, including customary and superior courts, must ensure that gender discrimination is prevented during adjudication of cases that involves violations of fundamental rights against discrimination which is also contained under Section 42 of the Nigerian constitution.

## **A CRITIQUE OF IGBO INHERITANCE LAW**

The Igbo rules of Inheritance, which prohibit women from inheritance, are contrary to various domestic and international laws and, therefore should be abolished. Section 42 of the constitution states that no Nigerian citizen should be discriminated against based on ethnic group, place of origin, sex, religion, or public opinion.<sup>207</sup> These provisions should be strictly adhered to by the courts in determining cases that involve discrimination against women.

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<sup>205</sup> *Ibid* at 53

<sup>206</sup> *Fianko v Aggrey* (2007) SC GLR 1135

<sup>207</sup> Section 42(1) 1999 Constitution of the Federal Republic of Nigeria

Igbo Customs like ‘iri ekpe’ that prohibits women from inheriting the estate of their late husband or father based on sex are contrary to the constitution's provisions. They are also in violation of section 14(3) of the Evidence Act 2004, which states that:

“Provided that in the case of any custom relied upon in any judicial proceedings, it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience.”<sup>208</sup>

Similarly, such customs run contrary to the provisions of various international laws and conventions to which Nigeria is a signatory, such as the African Charter on Human and People’s Rights 1993,<sup>209</sup> Universal Declaration of Human Rights<sup>210</sup>, the Convention on the Elimination of all forms of Discrimination against women<sup>211</sup>, The Convention on the Elimination of All forms of Discrimination,<sup>212</sup> the International Covenant on Civil and Political Rights,<sup>213</sup> the International Covenant on Economic, Social and Cultural Rights<sup>214</sup> amongst others.

The plethora of laws within and outside Nigeria has provided a framework for eliminating all forms of customary law rules that discriminate against women. Therefore, the Supreme court and other courts in Nigeria are enjoined to give strict administration of these human rights statutes against the customary laws that prevent women from inheritance rights. Some courts have ruled these discriminatory customary laws, for example in the case of *Mojekwu v Mojekwu*,<sup>215</sup> to be repugnant to natural justice, equity, and good conscience.

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<sup>208</sup> Section 14 of the Evidence Act 2004 –

<sup>209</sup> 1982 CAB/LEG/67/3 rev. 5, 21 I.L.M. 58

<sup>210</sup> Universal Declaration of Human Rights U.N Doc. A/810 (dec. 10, 1948)

<sup>211</sup> 1979 General Recommendations Nos 19 and 20 adopted at the Eleventh Session, 1992

<sup>212</sup> Convention on the Elimination of all forms of Discrimination G.A res. 2106 (XX) A, UN. Doc. A/RES/2106(XX) Jan 4, 1969

<sup>213</sup> International Covenant on Civil and Political Rights Dec 16, 1966, 999 U.N.T.S 171.

<sup>214</sup> International Covenant on Economic, Social and Cultural Rights Dec 16, 1966, 993 U.N.T.S 3.

<sup>215</sup> [1997] 7 N.W.L.R 283

This thesis postulates that both women and men are equal in the eyes of the law and, therefore, should be accorded equal rights in all spheres of cultural, political, social, political, and economic areas of life. Therefore, women are entitled to be equally protected under the laws in Nigeria. The customary law rules of inheritance, which violate the right to equality as provided by the laws, must therefore be abolished as they are unjustifiable and impede the dignity of the victims. This effect translates into the general subordination of women and unfair treatment of women in the society that permits the existence of these laws.

The Igbo community should take lessons from groups that have successfully eliminated such unfair customary practices from their laws, such as the Yoruba community, which allows female children to inherit the estate of their husbands or fathers. Countries such as South Africa, Ghana and Kenya which have succeeded in eliminating discriminatory customary laws, should be emulated. The Igbo customary law, which disallows female inheritance, worked for the society in the past because of the legal, institutional, social, and political structure of the organization which enabled it; however, with the introduction of human rights laws and provisions which recognizes the equality of both men and women, such barbaric laws should be eliminated from the Nigerian system.

## **ADDRESSING THE GAP: STRATEGIES FOR REMEDYING THE PERSISTENCE OF CUSTOMARY LAW INEQUALITIES IN NIGERIA**

In addressing women's inequality, law plays a significant role as a spur to influence the social, political, and economic emancipation of women from all forms of discrimination and promote women's human rights. This belief in law has been the foundation of most movements, including feminists, gender equality, human rights activists, scholars, lawyers, and political reforms such as the political struggle against apartheid in South Africa.

The movement to eradicate discrimination against women in Africa is limited in its potential for absolute change because of characteristics of patriarchy, traditions and customs that promote gender inequality. The use of laws to address these changes and facilitate the liberation of women and eradication of oppression against women has had a good effect; thus, the development of the rules and better means of implementation and enforcement remains significant in addressing patriarchy which is a constant tool that promotes inequality in the political, social, cultural, and economic spheres. For example, the ratio of representation in the political positions of women to men is 1:5. Even in the House of Senate and Representatives in Nigeria, which consists of significant men with women are given little representation. This liberation movement goes beyond cultural emancipation, but with the larger picture in sight, it is essential to tackle these issues one step at a time. Therefore, in eliminating discriminatory customs, women will be given a fair playground to compete with their male counterparts at the domestic and customary level, which can transcend politically at the national and international levels.

The various human rights laws have been proven ineffective in tackling grassroots problems of gender inequality because of their “Downward” or “Descending Approach” using rules in tackling gender inequality from an African perspective as opposed to the Western perspective on inequality.

Some Igbo feminist groups created in 1929 in Nigeria, such as the “Umuada Igbo Group,” comprises women activists who have significantly contributed to the conflict management and development in various Igbo communities. It is their motto to tackle the challenges of discrimination against women in Igbo societies. The campaign began to spread across all the Igbo cultures to educate and fight for women's rights. However, their influence has not been felt in some parts of the communities. Feminist jurisprudence must develop beyond the emphasis on women's rights to tackle the root factors that affect women's rights. This approach will be more specific to the African experience. In addressing gender inequality in Igbo communities, issues in the colonial historical paradigm where women were excluded in governance under the colonial masters played a role in entrenching, legitimizing, and institutionalizing the prevalence of gender inequality in most parts of Africa, including Nigeria.

In this section, I will consider the decision of the Nigerian courts regarding women's inheritance rights under customary law, drawing on the lessons learned from the South African *Bhe case*, the experiences of Ghana and Kenya, I argue that total transformation of laws, courts and institutions must be done to enhance the experiences of women and eradication gender discrimination in Nigeria.

The Court of Appeal decision in the case of *Mojekwu v Ejikeme*<sup>216</sup> and the Supreme Court's decision in *Ukeje v Ukeje*<sup>217</sup> gave a final decision and put an end to the issue of the disentitlement of women to inheritance in law. Although judicial and institutional platforms have been made for the implementation of these laws and the protection of women's rights in Nigeria, the practice still prevails in some communities because of the deep-rooted patriarchal values, resistance by the people, including women as well as their unwillingness to accept these changes to the long-standing customs.

The legal and policy-based approach to the amendment and enactment of laws to eliminate discrimination and promote gender equality has not been sufficient in practically eradicating all forms of discrimination against women in Nigeria. Although it is evident that the current laws, policies and activities of human rights activists, judges and lawmakers have made significant strides in the pursuit of gender equality, however, these obnoxious customs and practices still prevail because of the attitudes and general cultural and religious beliefs of the people that are opposed to gender equality as well as the marked resistance of people to the current and emerging laws. This includes the women who have also been indoctrinated into these obnoxious cultures and have accepted them as their norms from childhood. It is entrenched as part of the system, so eradicating this practice will not be taken quickly by the people.

To overcome the resistance in the Igbo community and in addition to the existing legal framework of this thesis, I will explore different approaches to gender inequality and gender discrimination such as the Human Rights Based Approach, the Institutional Approach, and the

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<sup>216</sup> *Mojekwu & Others v Ejikeme & Others* (2000) 5 NWLR 402

<sup>217</sup> (2000) 5 NWLR 402.

Social-Constructive Approach to investigate how they can help to overcome gender inequality in customary laws in the Igbo community. To ensure that the customs that contribute to the systemic discrimination against women are entirely eradicated, the following approaches will be discussed in the subsequent paragraphs.

- The Human Rights-based approach
- The Social Constructivist Approach
- The Institutional Approach

## **A HUMAN RIGHTS-BASED APPROACH TO GENDER BASED DISCRIMINATION**

According to the European Network of National Human Rights Institutions (NHRIs), The Human Rights-Based Approach (HRBA) is a sustainable development framework that is used for the recognition, protection, and promotion of human rights standards of equality, freedom, empowerment, respect, accountability, and non-discrimination under the International Human Rights law. It primarily places human rights at the epicenter of state governments' policies. It seeks the participation of vulnerable groups in decision-making, the empowerment of the vulnerable people in society, enhancement of accountability of the decision-makers and ensures the remedies for breaches.<sup>218</sup>

In 1987, The General Assembly of the United Nations passed a resolution that recognized the contribution of women to the economy and made some key recommendations to promote more integration of women. It recommended that State Governments and the International Community analyze policies from a gender perspective and encourage the involvement of women in economic,

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<sup>218</sup> European Network of National Human Rights Institutions <https://ennhri.org/about-nhris/human-rights-based-approach/#:~:text=The%20HRBA%20is%20underpinned%20by,the%20enjoyment%20of%20their%20rights.>

social, and political spheres. It further recommended equal access to economic opportunities, information, financial resources, and businesses to strengthen gender equality.

### **The Principles of Human Rights Approach (PANEL)**

Under the Human Rights Based Approach (HRBA) lies various principles known as the ‘Panel’ principles of human rights. They are principles that guide institutions in determining the efficiency of the human rights approach in practice. It ensures that individual human rights are put at the center of laws and policies in the state. These principles are analyzed as follows:

- **Participation** – The principle of involvement ensures that Igbo women are given access to the meaningful participation in decisions on human rights in political, social, economic, and cultural spheres. Igbo women should be given an equal quota to occupy decision-making positions in government to influence the outcomes of policies and laws that affect them.
- **Accountability** – This principle promotes the monitoring of the rights of Igbo women and how these rights are impacted, as well as ensuring effective and adequate remedies are applied in cases of breaches of these human rights standards. To fulfil this principle, institutions in the Igbo community, such as the Association of women, political parties, and the council of chiefs, must be strengthened to promote gender equality and effective mechanisms for seeking remedies where there is a breach.
- **Non-discrimination and Equality** – The principle of non-discrimination and equality advocates for the equality of all human beings and entitlements to human rights. It also ensures that discrimination against Igbo women is prohibited, prevented, and eliminated.



- **Empowerment** – Ensures that Igbo women are encouraged and provided with adequate means to participate in the decision-making processes and development of policies and practices that affect them.
- **The legality of rights** – This principle advocates for the recognition of fundamental rights of Igbo women as legally binding and enforceable both nationally and internationally according to human rights laws. This must be codified in the Nigerian constitution to ensure easy access to the imperative laws that affect women's rights.

The PANEL Human Rights approach is vital for the Igbo communities to emulate because it integrates principles such as the accountability of institutions, empowerment of women, and the recognition of fundamental rights of women, which are significant in bridging the gender gap in the Igbo community.

Furthermore, the Human Rights Based approach recognizes the importance of state institutions as vehicles for determining gender equality in societies. The HRBA should be applied to the Igbo traditional institutions such as the council of elders, chiefs, women, and youths. It must continue to help hold the state accountable through its programs and activities to realize women's human rights against discrimination and inequality. It should inform all levels of implementation and education of the Igbo community to strengthen the accountability of all actors in the human rights discourse in Nigeria.

By ensuring the equal participation of women in governance, empowerment of women and identification of inequalities in the customary laws and policies in Igbo communities in Nigeria,

the HRBA strengthens the rights of Igbo women in their pursuit of equality, participation in socio-political processes and eradication of marginalization and discrimination in the society.

The HRBA standards can be used in the Igbo community to document rights violations, file complaints, and ensure appropriate measures against violators. Effective remedies are given to victims of gender discrimination.

## **SOCIAL CONSTRUCTIVIST APPROACH TO GENDER-BASED DISCRIMINATION**

Social Constructivism is a theory developed in the field of psychology and sociology. It is an Intentional approach that views social groups as a medium of teaching and learning in which knowledge is passed from one person to another and, by so doing, creates a custom or culture of shared beliefs, knowledge, and practices. The theory targets social groups and entities responsible for establishing relations between human beings over periods. The Russian psychologist, Lev Vygotsky, in 1978, first developed this theory.

According to Lev Vygotsky, the cultural development of a child first happens at a social level before the individual level; that is, learning and development first occur within the context of social interactions between people and with the help of people before it is internalized.<sup>219</sup> This means that human beings are a product of society and are shaped through social interactions. Vygotsky formed this theory of social and psychological learning and provided the foundation upon which other social sciences and arts theorists have expanded. Vygotsky's theory emphasizes the importance of culture as a means through which people perceive, interact, and understand the

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<sup>219</sup> Lev Vygotsky, "Mind in Society" (1978) London: Harvard University Press.

world over time. These then form a commonly held belief system that groups pass on from generation to generation.

The constructive social theory focuses on teamwork or groups that share common interests, traditions and cultures through communication and social interactions. The importance of the constructive social approach is that, as much as it is a means of learning and communicating common share beliefs and customs, it can also be used as a tool to combat the discriminatory practices and long-held customary beliefs using socially constructed groups that influence the minds of individuals from childhood. When values that promote gender equality are discussed from time to time by social groups that affect the lives of the people in a particular community, it becomes a good pattern that the people become guided by in their ways of life. I chose to examine this theory because it prioritizes the accountability of institutions and social groups in promoting gender equality through the education of the masses and ensuring the accountability of the government.

Examples of social groups in Igbo societies include the council of elders (Ichies - council of elders), chiefs, youth groups, men and women groups and forums. These groups are bound by commonly shared beliefs and practices that generally inform their thoughts and opinions about life. I argue that such groups should be held accountable to make known the negative impact of the gender bias that exists in society, the ill effects of the stereotypes accorded to women as well as bringing to light, the customary discriminatory practices meted out against women because of their gender. This, I believe, will lead to an evolution of the conventional system to influence legitimate customs, laws, and policies from a gender-equal perspective.

## THE INSTITUTIONAL APPROACH TO GENDER BASED DISCRIMINATION

It has been established in this thesis that the problem of the people's resistance to the laws against discrimination is because of the people's deeply entrenched behaviours and beliefs to issues on gender roles and stereotypes. Feminist legal scholars such as Vrinda Narain and Catharine MacKinnon have argued for the transformation of institutions that have historically enabled women's subjugation.<sup>220</sup>

To effectively remedy the systemic inequality in Igbo communities, the approach needs to shift from the usual policy-based approach. It is realistic to transform institutions so that they recognize women's equality. In doing so, Institutions will be employed to directly influence people's behavior and raise awareness of the harmful effects of gender inequality and discrimination against women. The institutional approach was developed by various scholars in the field of law, political science, sociology, and economics to address issues related to the general behaviour of individuals. They view institutions as having a superior influence on human beings' social, economic, and political attitudes.

Among such scholars are Powell and Di Maggio, whose view of institutionalism lies in positive decision-making and how individuals are pushed to maximize their behaviours over consistent preference orderings when these institutions are involved.<sup>221</sup> Powell and Di Maggio agreed with Keohane's assertion that "institutions do not merely reflect the preferences and power

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<sup>220</sup> Vrinda Narain, "Constitutionalizing Women's Equality in India: Assessing the Sabarimala decision" (2022) Columbia Journal of Gender and Law at 86

<sup>221</sup> Powell, W. and DiMaggio, P. "The new institutionalism in organizational analysis. Chicago" (1991) University of Chicago Press, at 57.

of the units constituting them; the institutions themselves shape those preferences and that power.”<sup>222</sup>

According to Douglass North, Institutions are “formal and informal humanly devised constraints that shape the political, economic and social interaction and behavior of humans.”<sup>223</sup> Institutions, therefore, shape the development of human behaviours and interactions over time by monitoring human interactions, customs, traditions and conducts and devising sanctions to create order amongst individuals in a state.

Institutionalization is a theme in the social sciences used as an instrument to shape and regulate the behavioral patterns of people. It is a concept and an approach that employs the use of Institutions responsible for directing and influencing people's affairs using institutions such as educational institutions, religious institutions, Institutions aimed at women empowerment, family groups, career and professional institutions, and social and political societies. By so doing, information is passed to the public, especially women, about the ills of society and ways to overcome them. When this is done over time, it forms the norms and values upon which the community is built.

Scott expatiated DiMaggio and Powell’s classification of institutional order. He grouped the Institutional order into three main elements: the regulative, normative, and cultural-cognitive elements, with the regulative features involving rule-setting, monitoring, and sanctioning

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<sup>222</sup> Robert O. Keohane, “International Institutions: Two approaches” (1988) *International Studies Quarterly*. Dec 1988, Vol.32, No.4 (Dec. 1988), pp. 379 – 396. <https://www.jstor.org/stable/2600589>

<sup>223</sup> Douglass C. North, “Institutions” (1991) *Journal of economic perspectives* Vol. 5 (1), at 97 -112.

activities. The normative part consists of the evaluation of social life, and the cultural-cognitive part constitutes shared conceptions that make up the frames in which social reality is defined.<sup>224</sup> The Institutional approach involves understanding and transforming the political and social institutions that exist in the various ethnic groups to influence ways of thinking and behaviours through remodelling the educational and behavioral patterns in families, school curriculums, churches, and political and social groups.

The use of institutions is paramount in eradicating issues of discrimination in society by spreading awareness as early as childhood. It begins in the family unit where parents must ensure that their children are well informed about gender equality and training their kids at every point. It should be incorporated and taught in the curriculum of schools to equip children with gender equality values and fundamental human rights free from all forms of bias and patrimonial influences. Religious institutions should also be fitted with doctrines that reflect the formal rules of equality. Human rights standards must be taught to create a religious order that promotes equality among people irrespective of gender in Igbo communities. The impact of this institutional transformation will be felt in eliminating customary discriminatory practices such as female inheritance in Igbo customary laws.

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<sup>224</sup> Richard W. Scott, "Approaching Adulthood: the maturing of institutional theory. *Theory and society*" (2008) 37(5), pp.427-442.

## **TOWARDS GENDER EQUALITY: CONCLUSION AND RECOMMENDATIONS**

The aims of this thesis are two-fold. First, I analyzed the Nigerian Igbo customary law of disentitlement of women from the inheritance of property. This practice was weighed against the backdrop of the constitutionalized human rights approach pronounced by the country's Supreme court in the case of *Ukeje v Ukeje*. I highlighted the history, causes and impact of customary inheritance rules and how the entrenched patriarchal laws impede gender rights and development even after contrary definitive judicial pronouncements. I concluded that the discriminatory practice of disentitlement of women is repugnant to natural justice, equity, and good conscience. It violates the fundamental rights of women and promotes gender inequality in Nigeria; hence should be abolished.

Secondly, in chapter three, I investigated how a socially constructive and institutional approach can be used to advance the effective internalization, transmission, and legitimacy of the human rights approach to inheritance rules in the Igbo community. I have argued for the transformation of institutions that have historically enabled Igbo women's subjugation. This transformation will assist in overcoming resistance and antipathy to implementing the human rights approach.

Moreover, the antipathy and heavy resistance by the Igbo people, who have consistently disapproved of eliminating the customary practice of female disinheritance. This resistance has proved to be a hindrance to the effective implementation of laws in Nigeria against the backdrop of entrenched discriminatory customary practices. I also noted that the efforts by the Nigerian courts through a plethora of cases examined in chapter three of the thesis to eliminate

discrimination have not been effective in remedying these inequalities nor in punishment for the offences.

I argued that although the Supreme court decision in *Ukeje v Ukeje*<sup>225</sup> offered a transformative step in the right direction by nullifying the customary practice of disentitlement of Igbo women,<sup>226</sup> did not end the practice. This is because the customs are still embedded in the Igbo customary laws, which are largely unwritten.<sup>227</sup> Apart from discrimination based on inheritance, women in Nigeria are faced with other forms of gender-based discrimination, such as violence against women and girls, sexual abuse, unequal access to education, discrimination in workplaces, unequal representation in political positions, the prevalence of harmful cultural and traditional practices, amongst others because of the low status they occupy in society. For example, according to the National Survey Report of 2014, one in four females in Nigeria is reported to experience sexual violence, with approximately 70% reporting more than one incident of sexual violence. The same study found that 24.8% of Nigerian females between 18-24 experienced sexual abuse before age 18, of which 5.0% sought help, with only 3.5% receiving any form of service<sup>228</sup>. This shows the level of discrimination faced by women in Nigerian communities.

Justice Rhodes's analysis of female inheritance aligned correctly with the principle of gender equality and the International human rights standards by declaring the practice void because of the discrimination it promotes in Nigerian society.<sup>229</sup> He condemned oppressive customs and

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<sup>225</sup> (2014) 11 NWLR (PT. 1418) 384

<sup>226</sup> *Ukeje v Ukeje* (2014) 11 NWLR (PT. 1418) 384

<sup>227</sup> Reginald Onuoha, "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue" (2008) ICNL Research & Publications Vol 10, Issue 2 at 3.

<sup>228</sup> Women At Risk International Foundation, "Rape Stats in Nigeria", Online: <https://warifng.org/rape-stats-in-nigeria/>

<sup>229</sup> *Ukeje v Ukeje* (2014) 11 NWLR (PT. 1418) 384



practices against women rooted in patriarchy and the subjugation of women.<sup>230</sup> The analysis by Justice Rhodes powerfully demonstrates the importance of tackling issues such as patriarchy which is one of the driving forces of discrimination against women in the Igbo community, which, by contrast, undermines the principle of gender equality.<sup>231</sup>

In addition to the lack of effective implementation of the Supreme court's decision in *Ukeje v Ukeje*<sup>232</sup> against the obnoxious entrenched customs, I argued that the people's attitudes ought to be targeted, and the existing traditional Institutions in the Igbo community be used as the agents of transformation. The issue of inequality and discrimination must be challenged from the roots of patriarchy and religious dogmatism in a gradual downward–upward process to promote transformative changes in the rights of Igbo women.

Lessons were also drawn from the South African, Kenyan, and Ghanaian jurisdictions in providing recommendations to Nigeria for positive changes in eradicating discriminatory customary laws. The South African case of *Bhe v The Magistrate, Khayelitsha* 2005 (1) SA 580 was examined in its application of justice and fairness in eliminating discriminatory customary laws. In Kenya, Section 40 of the Law of Succession Act 1978 provides for the equal status of women as well as the right of women to inherit property in Kenyan society.<sup>233</sup>

Furthermore, Ghana recognizes women's equality rights at both the constitutional and legislative levels. The Ghanaian courts acknowledge the rights of women to the inheritance of

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<sup>230</sup> *Ukeje v Ukeje* (2014) 11 NWLR (PT. 1418) 384

<sup>231</sup> *Ukeje v Ukeje* (2014) 11 NWLR (PT. 1418) at 384

<sup>232</sup> (2014) 11 NWLR (PT. 1418) at 384

<sup>233</sup> *Law of Succession Act* 1978 Cap. 160.

property. This right was pronounced in the Ghanaian Supreme court case of *Fianko v Aggrey*, where it was established that both women and men have equal rights to inheritance of property regardless of gender or whether the family or culture is matrilineal or patrilineal.<sup>234</sup> Thus, Ghana's doctrine of repugnancy in customary laws has been abolished.<sup>235</sup> It is essential to understand that gender equality remains the center place for the advancement of the Igbo community. Women should be given equal opportunities and a level playing field to manifest their full potential in all spheres of life without prejudice, bias, or other forms of discrimination.

Finally, I suggest that the Nigerian Government, including its executive, legislative, and judicial branches, as well as customary, political, religious, and educational institutions, must join forces to reshape the perceptions of gender relations to ensure that the issue of discrimination in customary law is eradicated through legislative and policy reforms. To this end, this thesis makes eight recommendations for gender equality in Igbo communities.

- **Legislative Reforms:** National legislation should be updated to reflect the current international human rights standards. Steps should be taken to ratify International human rights laws and treaties. The provisions of these laws, such as CEDAW, should not only be ratified at the international level. They must also be domesticated and incorporated into Nigeria's national laws and policies. Current laws must be reformed to include human rights norms, and new rules and procedures must be created to address the harms created by gender stereotypes and discrimination and to ensure adequate remedies for victims.

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<sup>234</sup> *Fianko v Aggrey* (2007) SC GLR 1135

<sup>235</sup> Asiedu- Akrofi, "Customary Law in Nigeria", (1989) *The American Journal of Comparative Law*, Vol 37, OUP at 577.

- **Imposition of stricter punishment for violation of laws:** In addition to the strengthening of regulatory frameworks and legislative reforms, more stringent punitive remedies should be prescribed to deter future breaches of these legislations and to discourage perpetrators from continuing to promote these customary discriminatory practices. Currently, no laws prescribe stringent punishments for the perpetration of discrimination against women in Igbo customary laws.<sup>236</sup> I suggest laws should be enacted to include stricter punishment for offenders, such as prison sentences, restraining orders, and payment of fines. This will help discourage the Igbo people from the obnoxious practice of female disentanglement.
- **Codification of all Customary Laws:** Unlike other laws, such as the constitution, and other statutes written and easily referred to, most customary laws are unwritten.<sup>237</sup> They are passed down orally from generation to generation. As discussed in Chapter two of the thesis, the unwritten nature of customary rules makes it difficult to determine their content, flag out discriminatory provisions and make them subject to different interpretations by people and the courts.<sup>238</sup> To overcome these weaknesses, customs should be codified in a written document to ensure a fair understanding of customary laws. This will enable law and policymakers to detect discriminatory norms and traditions to eliminate them quickly.
- **Strengthening of Judicial and Legal Frameworks in Nigeria:** This thesis advocates for strategic reforms through the judiciary to spearhead changes and uphold principles of equality. Nigerian Courts should ensure that all customary laws and practices that promote discrimination against women are eliminated while positive norms and values that promote gender equality and the rights of women be upheld. Reference should also be made to

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<sup>236</sup> Reginald Onuoha, “Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue” (2008) ICNL Research & Publications Vol 10, Issue 2 at 3.

<sup>237</sup> Ibid at 3.

<sup>238</sup> *Lewis v Bankole* (1908) 1 NLR 81 at 100-101.

international laws such as the CEDAW and the African Protocol of Human and People's rights. There is also a need for the Supreme Court of Nigeria to review some of its previous decisions, such as that made in the case of *Ogiamen v Ogiamen*<sup>239</sup>, which allowed a custom that permits only the eldest male son to inherit the property of the deceased father to the exclusion of the other children of the dead. Reviewing these decisions will provide a unified human rights standard for lower courts to follow suit.

- **Creation of awareness:** There is a need for the creation of awareness and sensitization of citizens concerning their right to freedom against discrimination, as provided in chapter 42 of the Nigerian constitution. This can be achieved through education and public policies promoting human rights norms. To reorientate the people, the patriarchal norms must be unlearned, and men must be taught to respect and treat women equally.
- **Recognition and Application of International Human Rights Standards:** In line with the United Nations recommendation that women should be educated about their rights under the Constitution, African Charter, CEDAW, lawyers, local authorities, religious leaders, policymakers, traditional rulers, judges must be trained to generate support of the people for the removal of all forms of systematic discriminatory practices that exist in the society.
- **Equal representation of women in Social, Political and Economic spheres:** A report from the National Bureau of Statistics (NBS) reveals that: "The literacy level of women stands at 59.3% compared to 70.9% of men and in positions of power and decision making, women are under-represented with 5.8% in the National Assembly; 29.4% in the Federal Courts and 15.4% of professors in universities and women were generally under-

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<sup>239</sup> (1967) NMLR 247.

represented in high-ranking government administrators with decision-making powers.<sup>240</sup>

This statistic shows the underrepresentation of Nigerian women in the socio-political sphere. Hence, one practical way of addressing social inequalities is to address the unequal representation of women, especially in law, policy, and decision-making. Women must be given equal quotas in the parliamentary reservation, in the judicial arm through the appointment of more female judges, and in executive arms of government to influence the outcomes of policies and laws that affect women, especially those in the Igbo community.

- **Education:** Academic curriculums must be updated with the current legislation, and students must be taught the harmful effects of gender stereotypes and gender bias. Human rights should be thought of as a separate subject in school curriculums. By so doing, children are trained at an early age about gender equality. Parents should also be informed and encouraged to teach their male and female children equally without recourse to any form of gender bias. Religious leaders who occupy important positions of influence and authority use their offices to raise awareness of gender equality in their religious doctrines. To address inequality, the entrenched beliefs in men's superiority and women's inferiority must be addressed using institutions such as schools, religious bodies and interest groups that influence their members to stress the importance of gender equality within the Igbo community. This, in turn, will create new norms and concepts that view gender from an equality-driven perspective to ensure sustainable human development from the grassroots.

Based on the above recommendations, this thesis addresses the invisibility of Igbo women in the cultural context and its transcendence into the political, economic, and social sectors. The

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<sup>240</sup> Onyeka C. Okongwu, "Are Laws the Appropriate Solution: The need to adopt non-policy measures in aid of the implementation of sex discrimination laws in Nigeria" (2020) Sage Journals <https://doi.org/10.1177/1358229120978915>

practice of disentitlement of women from property inheritance is discriminatory and against sustainable development goals, as proclaimed in the United Nations Agenda 2030. The thesis highlights that it is only possible to enact laws by strengthening institutions that serve as agents of human rights implementation. Chapter four of the thesis emphasizes the importance of maintaining institutions in advancing the effective internalization and implementation of the human rights approach to inheritance rules within the Igbo community. The substantive aim of awareness and implementation of human rights ideals of gender equality and elimination of discrimination remains relevant to global development studies, international human rights, and the global feminist discourse.

I acknowledge the robust role of Customary law in sustaining the historical traditions of the indigenous Igbo people, however, the existence of prevailing discriminatory practices against women, such as prevention of women inheritance, continues to undermine its existence. For customary law to be free from discrimination, measures such as codification of all customs, the enactment of specific Acts to govern succession and strengthening of institutions as discussed throughout this thesis are necessary to reflect the principles of human rights and gender equality.

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