



WOMEN'S RIGHTS IN INTERNATIONAL LAW:
AN ASSESSMENT OF NIGERIA'S OBLIGATION AND COMPLIANCE

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ABSTRACT

This paper examines the issue of the right to Freedom from Discrimination and other harmful practices against women and international safeguards and legislations put in place to protect Women. International instruments and conventions are examined and appraised to see whether Nigeria has done enough in the area of domestication and implementation in the global war against discrimination. The paper used comparative methodology to examine the issue of Discrimination and Women's Right in Africa and efforts made at the national and regional levels to deal with the issue in Nigeria. The paper finds that Discrimination and Women's Rights discuss is the past-time of Nigeria Legislature while the country continues to shy away from her international and treaty obligations. The Nigerian government has deliberately refused to muster the political will to domesticate most of these instruments thus relegating the issue of Women's Rights and Discrimination to the background.

Keywords: Women's Rights, International Instruments, Nigeria.

1. INTRODUCTION

The Universal Declaration of Human Rights (UDHR)¹ perhaps the most celebrated international statement of human rights, asserts in Article 2 that: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Those rights articulated in the Declaration include: the rights to equality before the law and to equal protection,² the right to equality with respect to marriage,³ the right to own property,⁴ and the right to an adequate standard of living, including the right to adequate housing.⁵ The International Covenant on Civil and Political Rights⁶ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) elaborate and

¹ GA Res. 217A (III) (10 December, 1948).

² U.D.H.R. Article 7.

³ U.D.H.R Article 16.

⁴ UDHR, Article 17.

⁵ U.D.H.R. Article 25(1).

⁶ UN GA Res. 2200A(XXI) (16 December, 1966).

codify the rights articulated in the UDHR, and also explicitly recognize the right to equality between women and men and the right to non-discrimination. These rights to equality and non-discrimination have direct implications with regard to women's access to property and inheritance. General Comment No. 28 of the United Nations Human Rights Committee⁷ on article 3 of the ICCPR (entitled 'Equality of Rights between Men and Women') explicitly requires that State parties to the ICCPR must also ensure equality in regard to the dissolution of marriage, which excludes the possibility of repudiation.⁸ The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children. Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.⁹

Several other human rights instruments specifically recognize women's rights to property and inheritance. For example, the Declaration on the Elimination of Discrimination against Women¹⁰ states in its Article 6 that; all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular: (a) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage. Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹¹ the foremost international treaty on gender equality, State Parties agree to take a series of measures to combat discrimination against women. These measures are stipulated in Article 2 of CEDAW.¹² Much to its credit, CEDAW also recognizes that, in many cases, the driving force behind discrimination against women runs deeper than the rule of law. Under Article 5, the Convention requires that:

State Parties modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

This issue of customs and traditions proves to be highly relevant to inheritance rights. With regard to inheritance rights, Article 16 of CEDAW provides that States Parties shall take

⁷The UN Human Rights Committee monitors State Party compliance with the ICCPR. General Comments (also called General Recommendations) are issued periodically by all of the UN human rights treaty-monitoring bodies and are widely regarded as authoritative legal interpretations of the rights contained in the respective Covenant or Convention.

⁸See ICCPR instrument

⁹Gen Com 21(26), sixty-eighth Sess., (29 March, 2000).

¹⁰G.A. Res. 2263(XXII), (7 November, 1967).

¹¹U.N. G.A. Res. 34/180, (Dec. 18 1979), to date, CEDAW has been signed by 98 countries and ratified by 175 countries, including the vast majority of sub-Saharan African States (excluding Swaziland).

¹²The provisions include: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle; (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and, (g) To repeal all national penal provisions which constitute discrimination against women.

all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

The United Nations Committee on the Elimination of Discrimination Against Women, the body that monitors State Party compliance with CEDAW, has also issued General Recommendation No. 21 on Equality in Marriage and Family Relations, which noted that there are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.¹³

The Beijing Declaration and Platform for Action,¹⁴ reiterates these concerns and calls upon governments to undertake legislation and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other properties, credit, inheritance, natural resources, and appropriate new technology.¹⁵ The Istanbul Declaration and Habitat Agenda¹⁶ of 1996 additionally define obligations regarding women's housing and inheritance rights. The signatory governments committed themselves to providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technologies.

The right of women and girls to adequate housing, land and inheritance has been further supported in various resolutions¹⁷ passed at the UN Commission on Human Rights, a standing body of select Member States that examines all human rights issues. Most recently, in a resolution entitled 'Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing' the Commission affirmed that discrimination in law against women in relation to the accessing, acquiring and securing of housing and land constitutes a violation of the human right to non-discrimination. It therefore urged States to ensure that 'women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance, and to undertake administrative reforms and other necessary measures' to ensure such rights, including the transformation of customs and traditions that discriminate against women.

Regional human rights instruments also protect the rights of women to non-discrimination on the basis of sex and recognize women's rights to equality before the law. Significantly, they do so by calling upon governments to fulfill their international obligations. Article 2 of the African Charter on Human and Peoples' Rights¹⁸ states that: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the

¹³ Gen. Rec. 21(35), 13th Session (1994).

¹⁴ Beijing Declaration and Platform for Action, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995).

¹⁵ Id., para. 63(b).

¹⁶ Habitat II Agenda, July 1996, A/CONF.165/1996.

¹⁷ A resolution, while not legally binding per se, indicates a political willingness on the part of a government that has voted for it, to support and work towards the achievement of its content.

¹⁸ The African Charter came into force on 21 Oct. 1986 and has been ratified by all Member States of the Organization of African States (now the African Union).

present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.

The African Charter makes clear that discrimination should be eliminated and integrates international legal standards, for example in Article 18 (3); The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. The Protocol to the African Charter on Human and Peoples' Rights of Women in Africa which was adopted in Maputo, Mozambique on 11 July 2003 is a vital step towards raising the status of women. The Charter particularly recognizes the need to protect the rights of widows from widow rituals and property grabbing. The Protocol provides, in Article 16 on the right to adequate housing, that; Women shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, State Parties shall grant to women, whatever their marital status, access to adequate housing.

Article 20¹⁹, addresses widows rights, and article 21 protects inheritance rights of both widows and daughters According to article 21, a widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it. Besides women and men shall have the right to inherit, in equitable shares, their parents' properties.

Under Article 21, women and girls are also ensured the right to inherit their parents' properties in equal shares with boys. These articles on inheritance are groundbreaking in that they clearly articulate a free-standing right of women to inherit, outside of the procedural scope of equality and non-discrimination. The need to address the plight of widows cannot be overemphasised. In many African cultures, widows have suffered from a regressive heritage in their being ostracised from their communities at worst or being discriminated against at best. It is not uncommon for a widow to be labelled 'a witch' who is responsible for the death of her husband. She is consequently dispossessed of all her family's assets and left to grapple alone with her liabilities.

The Nigerian Constitution and all International Conventions that Nigeria has signed and ratified, explicitly recognize the right to equality between women and men and the right to non – discrimination. The hitch however is that Nigeria is yet to domesticate and incorporate these laws into its national laws except for CEDAW which was partially domesticated in 2005. Except these conventions are domesticated, it shall have no force of law in Nigeria and the provisions of the Protocol would be more imaginary than real.²⁰

2. COMPARATIVE ANALYSIS OF WOMEN'S RIGHTS IN AFRICA

A complex mix of factors underlies women's rights violations in sub-Saharan African countries. Chief among them are discriminatory laws and customary practices, ineffective enforcement of laws, biased attitudes, unresponsive authorities, inept courts, women's low

¹⁹Optional Protocol on the Rights of Women in Africa, Art. 20; Widows' Rights; States Parties shall take appropriate legal measures to ensure that widows enjoy all human rights through the implementation of the following provisions:

- a) that widows are not subjected to inhuman, humiliating or degrading treatment;
- b) that a widow shall automatically become the guardian and custodian of her children, after the death of her husband, unless this is contrary to the interests and the welfare of the children;
- c) that a widow shall have the right to remarry, and in that event, to marry the person of her choice.

²⁰ Section 12 of the CFRN 1999.

levels of awareness of their rights, and the social stigma of women being considered greedy or traitors to culture if they assert their rights.²¹

2.1 BOTSWANA

‘The Batswana’, a term used inclusively to denote all citizens of Botswana, also refers to the country’s major ethnic group. Before the influence of the Europeans was felt in the region, the Batswana were primarily herders and farmers under tribal rule. During the Zulu wars of the 1880s, they migrated to the area from what is now South Africa. In 1885, the British Government placed the area of ‘Bechuanaland’ (now Botswana and neighboring areas of South Africa) under its ‘protection’. The southern territory eventually becomes part of South Africa; the northern territory remains as present-day Botswana. An expansion of British central authority and the evolution of tribal government resulted in the 1920 establishment of two advisory councils representing Africans and Europeans. In 1934, proclamations regularized tribal rule and powers, and served to entrench patriarchal custom and norms. In June 1964, Britain accepted proposals for democratic self-government in Botswana, and the first general elections were held in 1966. Botswana has been considered a democracy ever since.

Recent changes in legislation and the ground-breaking decision of *Unity Dow v. Attorney General of Botswana*²² as well as subsequent decisions, have conclusively outlawed sexual discrimination in Botswana. This is one of the few cases in Africa in which international law was successfully utilized in favour of women’s rights. Interestingly, Botswana has only recently ratified several of the major human rights conventions,²³ acceding to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1995, and the International Covenant on Civil and Political Rights in 2000. It has so far failed, however, to ratify the International Covenant on Economic, Social and Cultural Rights, a glaring omission for a country that seems ready to adopt human rights standards and norms into its national legislation. The Courts of Botswana, having successfully relied upon CEDAW in favour of women’s rights in the *Unity Dow* decision, have shown a certain degree of commitment to integrating and enforcing the human rights of women as set forth in the international covenants.

Customary law applies to devolution of the property of a deceased Botswanan who was married by customary rites, unless she/he has written a will.²⁴ As will-writing is quite rare, it follows that the estates of native Botswanans are most often devolved through customary law. A number of traditional laws enforced by tribal structures and customary courts generally restrict women’s property rights and economic opportunities. A woman married under customary law is held to be a legal minor and requires her husband’s consent to buy or sell property, apply for credit, and enter into legally binding contracts.²⁵

For the most part, Botswanan customary law is based on a system of primogeniture, whereby the eldest son inherits the bulk of his father’s estate. Along with that property,

²¹Human Rights Watch, Women and Property Rights Website, ‘Q &A: Women’s Property Rights in Sub-Saharan Africa’, <http://www.hrw.org/campaigns/women/property/qna.htm>, accessed 14 December 2012.

²²*Unity Dow v. Attorney General of Botswana* [1991] BLR 231(Botswana). This case decided the validity of Botswana’s discriminatory citizenship acts. The decision was ground-breaking for African women everywhere.

²³Botswana is a State Party to the following human rights treaties: The International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the African Charter on Human and Peoples’ Rights.

²⁴This is confirmed in the Married Person’s Property Act 1971, Sect. 7(1). However, should the couple wish to be exempt from customary law, they may sign a waiver to be exempt from the provision of customary law.

²⁵US Department of State, Country Reports on Human Rights Practices: Botswana, released by the Bureau of Democracy, Human Rights, and Labor (31 March, 2003).

however, the child inherits certain obligations, such as the duty to support dependants including his mother and his siblings, regardless of their sex. The eldest male thus maintains control, although ideally he should support the dependents in consultation with his mother.²⁶ Under the primogeniture system, eldest daughters only have the right to maintenance from the estate. They are not entitled to receive any actual property from the estate. Girls may only receive property belonging to their mother, and, potentially, various items set aside for them by their father during his lifetime.

2.2 ETHIOPIA

To say that Ethiopian women have an ancient history is an understatement. The fossilized bones of Lucy, a young woman living in the area over 3.5 million years ago, were found in Ethiopia in 1974. She is of the genus *Australopithecus*, possibly early ancestors of modern humans, and has become the most famous woman in the world of palaeoanthropology. Another famous woman, the Queen of Sheba, is an ancestor of Ethiopia's first emperor, Menelik I. His dynasty ended with the last emperor, Haile Selassie, who ruled from 1930 until 1974. In 1974, as students, workers, peasants and the army rose against him, Haile Selassie was deposed and a military dictatorship took power. Under the leadership of Mengistu Haile Mariam, the oppressive military government, the Derg, threw out Americans, jailed trade union leaders, banned the church and turned to the USSR for economic aid. Imports were halted, especially of luxury items. No dissent or opposition was tolerated, and human rights abuses went unchecked.

Dissent grew among the populace; in May 1991, a rebel coalition led by the Ethiopian People's Revolutionary Democratic Front (EPRDF) overthrew the oppressive Mengistu regime. They inherited six million people facing famine and a shattered economy, but attempted to make moves toward democracy. A new constitution was ratified in 1995, notably allowing any of Ethiopia's nine regions to become independent if they so wished. Ethnic groups have, for the most part, continued to apply their own norms and customs. In 1995, the Constitution, while reiterating the concept of gender equality and non-discrimination on the basis of sex, legally reopened the issue of the applicability of customary law. It provided that if parties to a dispute of personal status agreed to the applicability of customary law, then this law would apply.

Legislation is yet to clarify whether such agreement includes application of sex-discriminatory customary laws.²⁷ Outside the major cities, customary law continues to govern intra-family relations including inheritance. This is especially true in the Muslim-dominated areas and in certain other parts of the country (the Oromia, Gemo Gofa and Shoa regions), all of which have inheritance rights systems that differ greatly from the civil law. Inheritance is usually patrilineal and occasionally matrilineal. Indeed, few of Ethiopia's 89 distinct ethnic groups traditionally practice matrilineal systems of property. Even then, most matrilineal systems do not actually benefit women.

Ethiopia has made great strides in attempting to integrate international human rights law into its national laws and policies. The current Constitution and the new Family Code of 2000, contain provisions that protect women's equality and right to non-discrimination. However, these laws contradict each other on many fronts. While the Family Code sets civil law above custom and tradition, the Constitution makes provisions that allow for deference to customary and religious laws in family or personal law disputes. While it is clear that an attempt to balance custom and statutory law is being made, this deference to custom can often lead to the continuation of severe discrimination against women. Provisions allowing for the

²⁶If relations with the mother are not good, he is not obligated to consult with her.

²⁷<http://www.worldbank.org/afr/findings/english/fin d126.htm>, accessed 12 July, 2013.

application of customary law must be conditioned by a subsequent provision that such customary law may not discriminate against women.

2.3 GHANA

In the 35-year period following Ghana's independence, the country experienced a broad spectrum of government rule: nine different types of administration (three civilian and six military), including a Westminster style parliamentary democracy, a Socialist single-party republic, and several military regimes that came to power in coups. Ghana, the heart of the Gold Coast, struggled under colonial rule from the early 15th century to the mid 1900s. The first European rulers were the Portuguese, followed by Danes, Germans, Swedes and finally the British. The long period of colonial rule, followed by a governmental system in constant flux, has resulted in laws that are riddled with inconsistencies. Surprisingly, though, women have been able to achieve some recognition of equality through the law. Since colonial times, women have been subject to multiple systems of law governing marriage. The various legal types include marriage under customary law, ordinance marriages, both polygamous and monogamous marriages, and consensual unions. Marriages may be contracted under any of these systems, though it is believed that up to 80 percent of all marriages are still entered into under the customary system.²⁸

Even though Ghana is a signatory to many international human rights conventions²⁹ and has made seemingly genuine attempts to integrate these laws into its domestic legal system, women still suffer various discriminatory practices, including 'property grabbing' following the death of their father or spouse. Women in Ghana cultivate over 40 percent of all the cultivable land. Despite this, they are far less likely than men to exercise independent control over their land. They do not control the proceeds from the land and are unable to dispose of the same through sale or inheritance.³⁰ Women-headed households make up about 30 percent of the rural households. Education is a rare commodity for Ghanaian women: in 1994, girls comprised 47 percent of primary school pupils and only around one-third of senior secondary school students. At university level, only about one quarter of the students was women.

Statistics taken in 1989 show that around one-third of all marriages in Ghana are formally polygynous, though more than two wives is rare. The highest rates of polygyny are found among the uneducated women of northern Ghana.³¹ Also commonplace is the acquiring by husbands of 'concubines'; that is, an informal union with another woman. In such cases, there is little to no social prejudice against the man who fails to formalize such a union. Nor is there any reciprocal social 'allowance' for the women involved.³² Lineage is one of the most important notions in Ghana, even today. As in many customary systems, the lineage as a social institution greatly predominates over that of the nuclear family. To a large extent, the importance of the lineage, or the extended family, determines the political and socio-economic organization of society. It determines the property and succession rights to be enjoyed within

²⁸ <http://www.ids.ac.uk/bridge/Reports/re19c.pdf>, accessed 30 June, 2013.

²⁹ Ghana is a State Party to the following human rights treaties: The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its First Optional Protocol, the Convention Against Torture, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the African Charter on Human and Peoples' Rights.

³⁰ Jeanmarie Fenrich and Tracy E. Higgins, 'Special Report: Promise Unfulfilled: Law, Culture, and Women's Inheritance Rights in Ghana', *Fordham International Law Journal*, 25:259-341 (Mar. 2002), <http://law.fordham.edu/htm/cr-pubs.htm>, accessed 01 June 2013.

³¹ Ghana Statistical Service (1989), cited in Baden, et al. (n. 124 above), p. 55.

³² Fenrich and Higgins supra p. 275.

the traditional system¹⁷⁰ and is the cohesive force that maintains the social structure of a community.

If a man dies without a will (that is, intestate) under customary law, his property becomes lineage property and it is distributed accordingly. In neither the matrilineal nor the patrilineal system does the wife (or, for that matter, the husband, if his wife has died intestate) have a right to inherit from the deceased directly. However, there is an inequity in that the man is seen as the owner of the property acquired during marriage. Thus, when the wife dies, the ownership of the property is relatively uninterrupted, for the husband remains in control and possession. However, the wife, as she has gained no proprietary interests in the marriage property, does not.

Every Ghanaian belongs either to a matrilineage or a patrilineage, and the number of tribes practising the former almost equals the number practising the latter. A matrilineage consists of all persons, male or female, who are descended in a direct bloodline from a common female ancestor; in a patrilineage, the common ancestor was a male. In matrilineal systems, the children belong to the mother's family, the binding relationship being that between mother and child. Thus, siblings born of the same mother usually have strong ties to each other. A matrilineage consists of a woman, her mother, her brothers and sisters, her maternal aunts and uncles, her male and female children, her daughter's children and so on.

In both types of lineage system, men maintain the positions of authority. In matrilineal systems, the mother's brother is typically the head of the smaller family unit. He is the guardian of women and children within the extended family, and will most likely have a close relationship with his sister's children. His own children are not regarded as part of his family, but of his wife's.³³ In matrilineal systems, the intestate estate becomes 'family property.'³⁴ If a male dies intestate, his 'uterine brother'³⁵ is the first in line to inherit his self-acquired property.

In patrilineal systems, the children are considered part of the father's line. A patrilineal extended family consists of a man, his father, his brothers, his paternal aunts and uncles, his own male and female children, and so on. His sisters are also part of his family — however, their children are not (unlike in a matrilineal system). They are considered part of their father's (her husband's) family. The children of the man's son are part of his lineage; his daughter's children are not. Therefore, inheritance is almost always to the sons, for the thinking is that the daughters will become members of another lineage upon marriage. A customary successor, determined by the lineage, is appointed, and in turn determines which child inherits and how large a share she/he gains. Preference is usually given to boys, especially with respect to land. (Girls receive 'feminine' chattels). The deceased husband's lineage has a moral responsibility to maintain his widow until she remarries. Of course, this leads to difficulties, with the widow relying on the good graces of the lineage.

The widow has no legal right to enforce these moral responsibilities of the lineage to maintain her. Indeed, these responsibilities are usually ignored. Where there is property and/or a will, too often the husband's male relatives take over the negotiations and applications. If the widow challenges their actions she only attracts (more) abuse and violence, including beating and expulsion from her husband's house and land. For many widows, the hurdles they would have to leap are so high and thorny that they abandon their rightful claims, leaving everything to the relatives.

Some men actually 'watch out' for widows trying to claim their inheritance and 'marry' them under false pretences. Having misappropriated their money, they promptly desert them. Ghana has had some success in attempting to integrate international human rights laws and

³³Fenrich and Higgins 272.

³⁴Matrilineal systems are also known as abusua systems.

³⁵That is a brother born of the same womb, though he may have a different natural father.

standards, but laws alone cannot bring about a total change on the ground. This is partly due to the appalling lack of education on the inheritance law that affects women's lives. Women who cannot or do not read do not find out about the law that may protect them, and even those who do become aware of it are informed neither about its contents, nor how to access it. It is shocking that the enforcers of the law themselves, the police, are not told about the law and how it should be enforced. All in all, Ghana has been making great strides forward. However, until the time when all customary practices violating women's inheritance rights and women's rights in general, are abolished or superseded by appropriate and 'enforced' civil law, Ghanaian women will continue to suffer at the hands of those customs and traditions that discriminate against them.

3. RETROSPECTIVE TRENDS IN DECISION AND THEIR CONDITIONING FACTORS

Despite regional and individual efforts made by the international community, local and international NGOs to improve the status of African women, only modest progress has been made. Widows in Nigeria continue to suffer from widow rites and discrimination on inheritance rights in Nigeria, despite this being in clear contravention of the protection of equality rights under the Constitution, it is clear that a more pro-active approach to protecting their rights is necessary. Social stigma is another enormous obstacle to the realization of women's inheritance rights, and even in cases where the law provides protections; women may be reluctant to claim their rights in a court of law because of the severe social stigma that can result from doing so. Formal adjudication is alien to most traditional African cultures, which generally have their own customary means of resolving disputes.

A lone woman going outside the traditional system and presenting her claim within the court system tends to be viewed in a very negative light. She may be regarded as being greedy, disrespectful, or smug. In particular, a woman laying claim to her housing and land rights after the death of her spouse may be accused of being after his money. Often, the widow is even accused of having caused his death in order to seize the property for her, and may be harassed, physically assaulted and/or left entirely destitute. Many widows have good reason to fear that they and their children will be targeted and harmed if they attempt to claim their inheritance rights. This chapter explores all interventions that are being tested in Nigeria and other African nations that may ameliorate the conditions of widows while respecting their particular cultural milieus. There are a few uncontroversial changes that are possible.

It is widely recognised and unanimously agreed that gender equality does not solely benefit women but the whole world. A World Bank study conclusively demonstrates that discrimination against women is a major obstacle to economic and human development in general. It will appear that investing in women would be the best way of achieving not only equality but also efficiency. In the economy sphere, Nigerian women remain marginalized. Nigeria is fundamentally an agricultural economy, which amounts for 37% of its Gross Domestic Product (GDP). Women's³⁶ labour is largely unpaid. They are lowly represented in the formal sector and their full contributions in the informal sector are not taken into account in calculating the Gross National Product (GNP). Investing in education empowers girls and women to have greater control over their lives and is the single highest - yielding investment that a developing country can make. Promoting equality between women and men is an integral part of sustainable development. It is not enough to put legislation in place. Women must be trained and sensitized about their rights and the laws protecting these, in order to allow them to claim and champion their rights. A devastating factor for women is the widespread lack of

³⁶This is especially true of rural women who work on non - monetized sectors of the economy and are hardly recognised for their efforts.

awareness and knowledge of their rights. In communities where women have access to information on their legal rights, and the resources to secure these rights, the women are much more empowered to seek a better future for themselves and their families. Laws are extremely complicated, and simplified legal information in plain language is very rarely disseminated. Yet without basic, essential information it is difficult, if not impossible for women to confront and improve their situation; Information is power.

There is a lack of awareness, especially at local levels, of what constitutes women's human rights violations and laws protecting women. This suggests a general apathy and ambivalence by much of society towards initiatives of this kind. Since one of the effective ways to effect change is to have a critical mass of public support, sensitization and enlightenment cannot be ignored, the values and mindset of Nigerians regarding cultures and traditions, especially discriminatory practices against women and harmful cultural practices are in dire need of change. This can only be achieved via sensitization and enlightenment.

In June 2005, over 100 Non-governmental Organisations in Nigeria came together in Abuja, the federal capital of Nigeria; under the umbrella of Women's Organisation for a representative national conference (WORNACO)³⁷. All the Organisations had one goal which was to create awareness on discriminatory practices against women in Nigeria and to produce a manifesto on women which would be the voice of all Nigerian Women and same would be presented the National Assembly for action. Various thematic areas were focused on, and different NGOs based on their individual expertise were assigned under this thematic areas to come up with a draft working paper which was later collated into the women's manifesto. The conference was a success to all Nigerian women. Presently the recommendations are still in the National Assembly for implementation.

3.1 THE DOMESTICATION OF THE PROTOCOL TO THE AFRICAN CHARTER

The Protocol on the Rights of Women in Africa is a protocol to the African Charter on Human and Peoples' Rights (ACHPR), which addresses a broad range of human rights concerns and advances the human rights of African women through creative, substantive and detailed language. The Protocol, for the first time in international law, explicitly sets forth the reproductive right of women to medical abortion when pregnancy results from rape or incest or when the continuation of pregnancy endangers the health or life of the mother. In another first, the Protocol explicitly calls for the legal prohibition of female genital mutilation. It also contains other equality advances, such as calling for an end to all forms of violence against women. This includes unwanted or forced sex, whether it takes place in private or in public. The Protocol recognises that protection from sexual and verbal violence is inherent in women's right to dignity.

The Protocol also endorses affirmative action to promote the equal participation of women, including equal representation of women in elected office, and calls for the equal representation of women in the judiciary and law enforcement agencies. Articulating a right to peace, the Protocol recognises the right of women to participate in the promotion and maintenance of peace. The broad range of economic and social welfare rights for women set forth in the Protocol includes the right to equal pay for equal work and the right to adequate and paid maternity leave in both private and public sectors. It also calls on states to take effective measures to prevent the exploitation and abuse of women in the pornographic industry and in advertising. Furthermore, it specifically recognises the rights of vulnerable groups of women, including widows, elderly women, disabled women and 'women in distress', which includes

³⁷I represented The Human Rights Law Service (HURILAWS) at this conference.

poor women, women from marginalised population groups and pregnant or nursing women in detention.

Most importantly, the need to address the plight of widows cannot be overemphasised. In many African cultures, widows have suffered from a regressive heritage of being ostracised from their communities at worst or being discriminated against at best. It is not uncommon for a widow to be labelled a witch who is responsible for the death of her husband. She is consequently dispossessed of all her family's assets and left to grapple alone with her liabilities. The Protocol states that widows should not be subjected to inhuman, humiliating or degrading treatment; they should automatically become the custodian of their children, unless this is contrary to the children's interest and welfare, and that they should have the right to marry the person of their choice. Finally, as a safeguard, it has a provision³⁸ ensuring that where higher standards of rights exist in national, regional or international laws; those would then prevail over provisions in this Protocol.

The disconnection between the pronouncements made at the regional level and the actions taken nationally and locally, demonstrates that the road to domestication and implementation is riddled with challenges that will have to be overcome if the Protocol is to benefit the women it seeks to protect. Against this background, a couple of regional organisations including The Human Rights Law Service (HURILAWS) and Women's Rights Advancement and Protection Alternative (WRAPA), both NGOs based in Nigeria decided to form a coalition called Solidarity for African Women's Right (SOAWR), to encourage governments to bring the Protocol into force swiftly and ensure its subsequent domestication. The coalition began its campaign with a petition to the heads of state campaigning for the speedy ratification of the Protocol. This was posted on the Pambazuka News website; a weekly electronic newsletter produced by Fahamu, and attracted lots of support from across Africa. In Nigeria, HURILAWS and WRAPA used various other strategies at national level to popularise the Protocol. These various strategies include: Producing advocacy materials which were widely distributed; Holding press briefings, television and radio interviews and issuing press releases as a way of consistently holding the Nigerian government accountable while also popularising the Protocol; Print media advocacy; writing of articles popularising the Protocol; Legislative advocacy and courtesy calls with members of the National Assembly about the process of domestication; and, Organising public fora, thereby reaching out to the entire Nigerian populace.

The Women's Aid Collective (WACOL) of Nigeria seeks to mobilize women and men around issues of gender, democracy and good governance. WACOL makes creative use of popular media such as radio and television to spread the message of gender equality throughout Nigeria. It also produces popular materials such as easy to read pamphlets, posters and booklets on various gender-related issues, especially violence against women, denial of women's inheritance, and female genital manipulation (FGM). These materials are widely disseminated for use in training programmes and everyday discussions. In addition, WACOL conducts group sensitization and training targeted at judges and police officers, in order to build awareness of gender issues and to promote the enforcement of women's rights. Furthermore, WACOL functions as a direct service provider to women, offering free legal aid and a shelter for female victims of violence.

3.2 LAWS PROTECTING WIDOW'S RIGHTS IN NIGERIA

A lot of cases on violence against widows never get to be argued in the four walls of a court room. This is due to the fact that the perpetrators of such evils are usually rich and can

³⁸ Protocol on the Rights of Women in Africa art. 31.

afford to bride anyone in a position to take the matter to court and the widow on the other hand neither knows how to commence the court proceedings nor can she afford to pay a lawyer. Some of those cases, which eventually make it to court, are decided in favour of archaic and repugnant customs which are predominantly discriminatory against the widow. Customary law is largely in favour of the men folk and as a result of this, the widows suffer. One of such cases is the case of *Nezianya vs. Okogbue*³⁹ In this case, upon the husband's death, his widow began letting his house to tenants; later she sold a portion of the land and with the proceeds, she built two mud huts on another portion of the land which she also let out.

The only child she had for her husband was a daughter who predeceased her living children. When she tried to sell more of the land, her late husband's family objected that she had no right. Her grand children sued the husband's family claiming a right to exclusive possession on the ground that the widow, their grandmother, had, had long and adverse possession of the land. The matter was governed by the Onitsha native law and custom, which prohibited women from inheriting property from their father. The plaintiff contented that the custom ought not to be applied as contrary to equity. The trial judge held that the claim failed.

The matter went on appeal to the Supreme Court. The Supreme Court held that under the native law and custom of Onitsha, a widow's possession of her deceased husband's property is not adverse to her husband's family and does not make her the owner; she cannot deal with his property without the consent of his family which may be actual or implied in some circumstances. It also held obiter that if a husband dies without a male issue; his real property descends to his family. His female issue do not inherit it, according to Onitsha custom. This case which was decided as far back as 1963; 43 years ago, has been partly affirmed in some fairly recent judicial decisions, though these same decisions have sought to give some measure of solace to widows.⁴⁰ They however, skirted around the main issues and did not come right out to declare the particular infringing custom repugnant. So as it turned out, the customs were still in force but the widows were given some privilege over something, which was otherwise their right. The judicial decision which bravely took the bull by the horns and commenced a new era for woman was the land mark decision in *Mojekwu vs. Mojekwu*.⁴¹

Unfortunately, certain customs and traditions severely undermine the rights of women. The more egregious widowhood rites demean women and infringe upon their rights to equality and dignity. Certain customary laws continue to deprive women of their rights to own land and housing. Women are only allowed to inherit if, in so doing, they serve a man's purpose, as we have seen in the context of the nrachi custom. Women can only benefit from their own marital estate, albeit in a limited way and/or at the whim of their sons or in-laws.

Nigeria is a country with a dual legal system, thus customary law and Nigerian legislation are applicable, provided that the customary law is not repugnant to natural justice, equity and good conscience. Most of the Nigerian legislation is English law received into Nigeria. Some of them were adopted as part of Nigerian law. In spite of the fact that a lot of the laws provide that where the custom is repugnant to natural justice, equity and good conscience, it should not be applied, the measure of repugnancy remains uncertain. As a result of this, these repugnant customs still remain in existence and create a lot of problems. These repugnant customs can be invalidated in two ways, viz; judicial decisions declaring such customs as

³⁹ (1963) 1 A.N.L.R. 352.

⁴⁰ *Nzekwu vs. Nzekwu* (1989) 2 N.W.L.R. 373, *Muojekwu vs. Ejikeme* (2000) 5 N.W.L.R. 402 where it was held that a widow has the right to remain in her late husband's house and that if his family fails to maintain her, she is entitled to let part of the house and use the proceeds to maintain herself.

⁴¹ *Ibid*

repugnant, and legislation expressly prohibiting its application. So far, lot of these obnoxious customs have been invalidated by legislation⁴² but some of them are still exist.

One of such legislation is the Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law 2001.⁴³ This legislation was the result of advocacy by a Non Governmental Organisation based in South – Eastern Nigeria; Women's Aid Collective (WACOL) for the Enugu State House of Assembly to recognise and improve the sufferings of the widows. This law makes it unlawful for anyone to perform those widowhood rites, which are degrading and inhumane to the widow. Those widowhood rites are in conflict with the Constitution of the Federal Republic of Nigeria particularly Section 34 which guarantees the right to dignity of the human person, freedom from inhuman and degrading treatment. This law is a major step towards the alleviation of the suffering of widows. However, like I have already reiterated, making the law is one thing while implementing the law is another. Many people especially women are not even aware of this law and how to use it to their advantage and the government on its part is not making any effort to ensure its publicity.

4. PREDICTION OF FUTURE DECISIONS

Inheritance is a fundamental issue with regard to how wealth is transferred within a society, and it directly relates to the protection of a woman's housing and land. It reflects some of the systemic reasons for women's disproportionately high levels of poverty and housing insecurity not just in Nigeria but in Africa. Women's rights to inherit housing and land are enshrined under international and regional human rights laws. Protection for women's equality and rights to non – discrimination are outlined in numerous Conventions, Covenants and Resolutions, which additionally defend women's rights to housing, land and property ownership, access and control, and the right to inherit on an equal basis with men.

Most governments have established machinery, either in the form of ministries or departments, to oversee government initiatives for the empowerment of women. However, at the review in Addis Ababa in October 2004 of the Beijing Declaration and Platform for Action, 10 years after it was agreed, considerable concerns were raised about the machinery's performance. In particular it was noted that their capacity to spearhead the women's rights agenda is extremely limited due to severe and in many cases disproportionate cuts in budget allocation and human resources. This chapter explores the societal drawbacks in achieving women's human rights.

4.1 BUREAUCRATIC BOTTLENECKS WITHIN THE POLITICAL AND LEGISLATIVE SPHERE IN NIGERIA

In spite of the undertaking made by heads of states including Nigeria's in the Solemn Declaration on Gender Equality in African in July 2004 the political and legislative sphere in Nigeria is still fraught with bureaucratic bottlenecks. This is indicative that there is no political will to substantively address the rights of women in Nigeria. The pronouncements made at international and regional levels, and the action taken nationally and locally, demonstrates that the road to gender equality is riddled with challenges that has to be overcome. It is however trite that the major challenge is the patriarchal nature of Nigeria and indeed the political and legislative level. Engaging the state in women's rights has been an extremely difficult struggle with varying degrees of success. Historically the state has been at worst hostile and at best

⁴²Abolition of Osu Caste System Law of Eastern Nigeria, Abolition of Slavery Ordinance, Oli – Ekpe Custom, Nрачи Custom, Female Genital Mutilation e.t.c.

⁴³Laws of Enugu State of Nigeria (2003) No. 3.

extremely slow to respond to advancing the rights of women. For instance before the Enugu State House of Assembly agreed to pass the Bill on The Prohibition of Infringement of a Widow's and Widower's Fundamental Rights Law in 2001, after years of lobbying, the house categorically stated that the phrase "Widower" had to be included into the bill before it could be passed into law; this further goes to portray the chauvinistic nature of the male dominated legislative sphere in Nigeria.

The government have established machineries in form of ministries and departments to oversee government initiatives for the empowerment of women. Most of these institutions are seen as toothless bull dogs because they lack machinery performances. In 1999, The Human Rights Law Service began a consultative and lobbying process at the National Assembly, Abuja, to establish a Commission on Gender Equality in Nigeria. It has also drafted and sent a bill to the National Assembly on gender equality. This was done to build on what has already being recorded in the area of women's rights today in Nigeria.

Political will is an important element of social change, and an indication of responsible leadership that takes women's human rights seriously. Unfortunately, in too many cases, political will is altogether lacking, as authorities in power shy away from potential controversies related to upholding women's human rights. Men, in particular, be they community members, tribal leadership or legislative representatives, may be hesitant to challenge and change a socio-legal structure which effectively benefits their gender status. The indifference and inertia of political leaders in Nigeria, be it due to corruption, ineptitude, or simply because 'women's issues' are inevitably given low priority in public policy, is a major reason why so many women continue to face an uphill struggle with regard to their inheritance rights. Political authorities excuse their own lack of leadership on a multitude of grounds.

Politicians blame the predominant culture, traditional norms, and the lack of resources in some cases. They even blame women themselves for not fighting hard enough for their rights. Legislative and judicial authorities point fingers at each other, passing the buck for the slow pace of change. It is always someone else who is not doing their job properly. No one will take responsibility, let alone the blame. As a result, women's concerns all too often fall on deaf ears. Lack of political will is an extremely difficult issue to address, as it often pervades the entire system. It is frustrating, for a few sympathetic advocates in positions of power can make a huge difference on behalf of women's rights. Ideally though, we should have more to depend on than just the occasional progressive politician to uphold women's human rights. Political Will must extend beyond the individual and become institutionalized; for example, with the creation of special offices, agencies or ministries which have as their mission the improvement of women's lives and the realization of their rights. However, such specialized agencies cannot be the only solution: ultimately, all political bodies must integrate a gender-focused and gender-sensitive framework. They themselves must become part of the fight for women's human rights. A department or agency, standing alone, will not suffice to move the often stagnant, and deeply patriarchal, political machinery that runs most of the world's governments, especially in Africa. When political will exists, governments and state agencies can play an enormous positive role in protecting and promoting women's rights, in overturning discriminatory laws, and in challenging gender stereotypes.

4.2 ACCESS TO JUSTICE

Legally defined, 'access to justice' or 'access to court' is the right to have a charge, allegation or civil dispute examined by a competent judicial authority.⁴⁴ The failure to address the problems of backlog and delay in many court systems could constitute denial of access to

⁴⁴ B. Stormorken & L. Zwaak; Human rights terminology in international law: A thesaurus 21 (1988).

justice especially since protracted litigation provides a strong disincentive for using the courts. Where legal and judicial outcomes are not just and equitable due to delays in the process, access to justice is definitely denied. Where litigants are weary or reluctant to approach the courts due to the length of time it will take them to obtain a remedy, the right of access to justice is threatened. Some litigants avoid the court if the remedy claimable would be ineffective because of delay.

A judiciary that understands the varied and complex manifestations of women's inequality is a key to rapid advancements of women's human rights. The adverse impact of a judiciary that is not able to appreciate the sources of women's inequality is often to confirm and further entrench discriminatory laws that exacerbate women's inequality.⁴⁵ Inheritance rights issues extend far beyond the mere letter of the law. The inaccessibility of courts is a key obstacle to the realization of women's inheritance rights. While law is an important tool, it is not in and of itself the equivalent of social change. Rather, women must be encouraged to use the law on their own behalf and to their own benefit, and need support, both legal and moral; in doing so. The phrase 'lack of adequate legal protection' refers not only to shortcomings in the law on the books, but also to the inaccessibility of legal remedies and/or the unacceptably low quality of those remedies. Court procedures are complicated; they take a lot of time and require considerable financial resources.

Access to legal aid and legal assistance through pro bono lawyers is critical for women. Legal aid is crucial because, very often, women literally lose everything upon the death of their spouse. Not only do they lose their life partner, but often their home and their property too. In economic terms, the stark reality is that such women are in an extremely precarious position by the time they present a claim within the court system. If a woman does not even know that the law is on her side, she may feel that there is no hope of changing her situation. Even in cases where a woman is aware of the law, she may not be able to afford legal representation without financial support. If she does not know how to apply the law properly and has no one to guide or assist her in court, the law will most likely not work in her favor. Thus, the access to legal assistance is indispensable.

Engaging the state in women's rights has been an extremely difficult struggle in Nigeria with varying degrees of success. Historically, the state has been at worst hostile and at best extremely slow to responding to advancing the rights of women. It has entrenched this practice through a regime of discriminatory laws and policies. *Mojekwu's case* is a land mark decision that is worth emulating. It recognised that it was unfair practice to deprive a widow and her daughters of property, which they struggled alongside their husband and father to acquire just because the man does not have a male child who would continue the man's lineage. The case is a breakthrough in the fight for the recognition of the inheritance rights of women. Sadly however, most of the judges whom these cases appear before are males and they form part of the prejudiced society that believes that a woman should not inherit because she will marry and carry her inheritance to another man.

While discrimination based on sex is illegal under the Nigeria Constitution and is also seen as an affront of God, actions that are blatantly discriminatory are often permitted, and any protections provided by the Federal System are inevitably few. Women's rights are seldom enforced legally in Nigerian human rights jurisprudence, perhaps this is because of the traditionally stratification system which puts women at a disadvantage; economically, socially and politically. Most international obligations as regards women's rights are not incorporated

⁴⁵ The South African Constitutional Court has on two occasions been confronted with indirect discrimination against women; in Jordan case dealing with commercial sex workers and Robinson decision, which dealt with the rights of parties in domestic partnerships. On both outings the court has failed to appreciate the gendered nature and extreme vulnerability of parties in domestic partnerships and of women who are commercial sex workers.

into the national laws because of traditional bias. Where law has guaranteed those rights, women are often reluctant to resort to litigation for fear of being classified as confrontational. Also, the attitude of law enforcement officers and the judiciary who would usually see violations of women's rights as the way of life in Africa, rely on the traditional roles of male and female in Africa.

5. CONCLUSION

Increasing awareness of human rights secured in international instruments have created avenues for challenging unjust, oppressive and discriminatory practices that have persisted for years in the name of customary law. In 1997, in the Nigerian case of *Mojekwu v. Mojekwu*, the Court of Appeal held, overturning a long-standing custom in south-east Nigeria, that a widow is entitled to inherit her husband's property. Under the 'oli-ekpe' custom which was the subject-matter of the case, inheritance of the property of a deceased man was by his son, or if he had no surviving son, by a surviving brother.

The judgment rejecting this custom was a unanimous decision by an all-male panel of judges who observed that "a court of law being a court of equity as well, cannot invoke a customary law which is repugnant to natural justice, equity and good conscience. The 'oli-ekpe' custom is one of such customs." This pivotal precedence was consolidated by the same court in the 2000 case of *Mojekwu v Ejikeme* in which the same custom in conjunction with a related one known as 'nrachi' came up in issue and were both rejected on grounds of repugnancy. The oli-ekpe and nrachi customs had been invoked to exclude the appellants (a woman, her son and a third relevant person) from the property of the woman's grandfather which had passed onto her in the absence of a son in the generations succeeding her grandfather. In rejecting this custom, the Court of Appeal, again constituted by an all-male panel of judges, observed that "a lineage refers to a direct line of descent and one can only talk of extinction of a lineage when the line of descent is extinguished or wiped out in the sense that it is no longer in existence or it is dead.

Where there are children or even grand-children and great-grandchildren, directly traced or traceable to the ancestor, it will be wrong to hold that the lineage is extinct....can the learned trial judge be heard to come to a conclusion that Reuben Mojekwu's lineage became extinct when Virginia, the daughter is alive? Thus, a woman's right of inheritance of her father's property was established by this judicial precedence. Despite all this groundbreaking and life changing judgements, this heinous cultural that has plagued south – eastern women still persists; the question is why?

Women remain silent about various forms of violence in the home for a range of reasons. They feel there is no point in taking complaints to the police because they will not be taken seriously. Women in long-term cohabitation or marriage may endure physical abuse in silence for fear of breaking up the relationship and facing financial insecurity. Many women in Nigeria experience deprivation and discrimination in access to economic resources. Discrimination against women starts at birth. In Nigeria, families force young girls into early marriages. In education, fewer girls than boys attend school or go on to higher education. In adult life, women face discriminatory treatment at home, in their communities, and in employment. The physical violence they face in their homes and communities can leave them traumatized, seriously injured or dead. Women are frequently unaware of their human rights or that violence against women in the family may constitute a human rights violation by the authorities. Women's lack of awareness of available legal remedies may also contribute to the under-reporting of domestic violence. They may fear violent reprisals if they attempt to bring an abusive partner to justice.

When women resort to take complaints to traditional leaders with jurisdiction to administer customary law in their communities, their rights may not be protected by a male-dominated justice system in which women are rarely represented and which may uphold traditional practices harmful to women⁴⁶. For example, when a marriage takes place under customary law, the family of the prospective husband must pay a bride price or dowry in the form of money or a gift to the family of the prospective wife. Although historically this payment indicated appreciation for the characteristics and skills of the bride, it is now frequently regarded simply as payment for a commodity and reinforces the inferior status of women within customary marriages. Some customary law systems also prescribe that a widow is "inherited" by a male relative of the former husband. The widow is seen as the property of the former husband's family.

Nigerian women are not economically empowered, thus they wallow in poverty as soon as there is no man to take care of them. Traditionally, it is believed that women lack any value and as such training a woman is a waste of money because she will be married off anyway. In some families, only the male children are sent to school. In those families that send both male and females to school, once a suitor comes knocking at the door, the girl is withdrawn from school to marry. Absence of any substantial educational qualification will result in the woman not getting any gainful employment. This invariably leads to her not having any means of survival and this makes her dependent.

All universal and regional human rights treaties prohibit discrimination on the basis of sex. Yet women continue to face widespread and systematic inequality in the realisation of their economic, social and cultural rights. The UN Development Fund for Women (UNIFEM) has concluded that women's average wages are less than those of men in all countries where data is available. States that are party to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and Protocol to the Rights of Women in Africa are obliged to pursue without delay a policy of eliminating discrimination against women. This is a significant challenge. Discriminatory practices towards women are justified by reference to traditional historical, religious and cultural attitudes.

Factors Such as the segregated labour market, disparate social roles in terms of family responsibilities and gender based violence present additional obstacles to equal achievement of Economic Social and Cultural Rights by women. For example, the traditional assignment to women and girls of the role of primary care giver in the family restricts women's freedom of movement and consequently their access to paid employment and education. Even where states fail to give adequate priority to primary education at all, it increases the likelihood that families will decide to send boys to school over girls. Land is an essential resource in many contexts to achieve the right to an adequate standard of living, yet women are often denied land, inheritance and housing rights.

In Nigeria predominantly in the South - eastern part, traditional culture inhibits a widow or female children from inhering their husbands or fathers as the case may be. This is simply because women who are themselves human are regarded not as thus but as mere properties who are themselves to be inherited. Furthermore, they may not have access to courts in order to enforce their rights, even where these are nominally guaranteed. The scale and scope of violations of women's inheritance rights in Nigeria and Africa at large are daunting, and may seem overwhelming. A lot of older people will advise the younger ones that in considering whom to marry, the locality of the person matters because these widowhood practices are prevalent in some particular areas.

It is clear, though, that what women ultimately require overcoming the legal and non-legal obstacles to realization of their inheritance rights are multi pronged and creative solutions

⁴⁶ Personal interview with a widow from Anambra State, Nigeria (April 26, 2005)

and strategies. The good news is that change, while slow, is happening — mainly due to the tremendous efforts of women's advocacy groups throughout sub-Saharan Africa. It is encouraging to see that women are slowly taking front wheels in politics and government and change and policies that affect women are also changing all over Africa. Liberia's Ellen Johnson – Sir Leaf made history when she became the first woman in Africa to be elected head of state in 2005. In Swaziland, Constance Simelane was appointed Deputy Prime Minister a post that has previously only been held by men. Swaziland's constitution was amended in 2005 to guarantee women equal rights⁴⁷. Also, Kenya passed a progressive law against sexual offences, Zimbabwe enacted legislation against domestic violence and Togo's parliament enacted a comprehensive law against sexual harassment. Various organizations have developed a range of effective strategies aimed at challenging discriminatory attitudes and, ultimately, at changing discriminatory practices. These strategies target various groups, from high-level political decision-makers, through traditional community leaders, to women living in remote rural areas. The process may be slow but I see the light at the end of the tunnel.

6. RECOMMENDATIONS

Increasing awareness of human rights secured in international instruments have created avenues for challenging unjust, oppressive and discriminatory practices that have persisted for years in the name of customary law. In most African societies, culture and tradition have been used by men to justify discrimination against women. Culture and tradition have been used by men to justify discrimination against women. Culture constitutes the totality of people's way of life, their values, moral principles and religious and social practices. A culture can thus be a force for liberation or oppression. Male dominated ideologies in Africa have tended to use culture to justify oppressive gender relations. African governments could use the standards of the Protocol to remove all negative stereotyped cultures that discriminate against women and hinder their full advancement.

Overall, Nigeria's legal system has failed to address key issues around inheritance rights. Ignoring for the sake of argument the chaos in relation to the applicability of laws, the existing laws fall far short of adequately protecting women and their rights. There is too much deference to the confusing plethora of customs, which are often discriminatory. There is a clear need to streamline the system and establish a hierarchy of laws to be adhered to uniformly throughout the country. Specifically, there is a need for a federal inheritance and succession law clearly setting forth the requirements for and limitations on inheritance, with consistent federal applicability. The law should ensure that the widow and her children inherit the bulk of the matrimonial estate, with some provisions for competing interests to ensure, as far as is possible, that all potential heirs may be satisfied and the law will not be violated. With strictly implemented provisions like these, widowhood would be seen as more of an unfortunate circumstance than a curse. On this note, I proffer the following recommendations as thus;

- There should be a thorough reform of all law affecting inheritance rights: new laws should protect spouses of marriages entered into under customary and religious rites. Ideally, there should be a single law on inheritance for marriages contracted under the existing Marriage Act, as well as for customary law marriages.
- Nigeria should immediately ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted July 2003), which has provisions on women's rights to inheritance, housing and land.
- Nigeria should domesticate CEDAW and ratify the Optional Protocol to CEDAW.

⁴⁷ <http://www.irinnews.org/report.asp?Report>, accessed 11 February, 2013.

- Policies and reforms should be created to ensure that more women are placed in management and leadership positions in the country, as this will put women in a better position to influence decisions and policies concerning them.
- Nigeria government should provided free legal aid services for poor women to seek redress in cases of violations of their inheritance rights.
- The United Nations (UN) should strengthen its existing mechanisms to protect women's housing and land rights, including the Beijing Platform for Action and the Habitat Agenda. The UN should encourage all governments to fulfill their obligations under these and other instruments, particularly emphasizing the need to protect the rights to adequate housing, land and equal inheritance, as well as providing concrete suggestions as to how such rights may be fulfilled.
- The Committee on the Elimination of Discrimination against Women (CEDAW) should adopt a general recommendation on women and the right to adequate housing that should also substantively address issues of women's inheritance and ownership rights.
- The African Union should highlight the crucial role that women play in the African economy, and thereby emphasize the critical need for respect of women's rights, including their rights to inherit.
- The African Union should encourage all its Member States to amend laws and acts to ensure that women's inheritance rights are adequately protected, not just on paper, but in practice. Member States should be urged to adequately address issues of customary law that breed patriarchy and denial of women's rights. The aim should be to ensure that women gain substantive equality with men in all areas, especially inheritance rights.
- The African Union should mandate that Member States integrate issues of equal inheritance as vital elements in all other programmes, including HIV/AIDS work and education initiatives. Education and sensitization programmes around women's rights, especially the right to inherit equally, should be encouraged.
- As women's empowerment and equality is part of the mandate of the African Union, it should actually work to fulfill this mandate, and maximize the role of the Women, Gender and Development Directorate, giving it its full support and making it a priority directorate.
- The African Commission on Human and Peoples' Rights should take an active role in promoting and protecting women's rights. It should solicit cases related to women's rights, including women's inheritance rights, in order to create a body of jurisprudence upholding women's rights in Africa.
- The African Commission should ensure that full support is given to the Special Rapporteur on Women to the African Commission, including financing and human resources, to enable her to effectively fulfill her mandate to promote and protect the rights of women in Africa.
- The African Commission should undertake a comprehensive review of customs and traditions, law and practice in all countries within its jurisdiction, and encourage States to do the same in their local situations. The aim should be to address the concerns of the region's women by repealing and reforming all discriminatory laws and practices.
- All African States should ensure that international human rights law and standards are domesticated into their national and local legislation.
- All African States who have not yet signed and ratified the Optional Protocol on Women to the African Charter on Human and Peoples' Rights should do so without delay, and integrate the rights contained therein into their domestic legislation and policies.
- States should review their existing law in a comprehensive and participatory manner to ensure that all laws adequately protect women's equality and housing and land rights,

including inheritance rights, and, where necessary, should adopt new legislation and policies to ensure the complete fulfillment of these rights.

- States should design and implement extensive popular education and sensitization programmes to raise awareness of women's rights to equality and non-discrimination. States should ensure that such programmes address laws and standards related to human rights, especially the rights to adequate housing, land and inheritance. The programmes should target individual communities and the general populace, as well as members of the executive, legislative, judicial and law enforcement branches.
- States should also design and implement legal education programmes specially targeted at women in all segments of society and geographical areas, especially rural areas, where rights awareness is usually minimal. All these women should be made aware not only of their rights but also how to claim and enforce them.

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