

APPRAISAL OF WIDOWS' RIGHTS OF INHERITANCE UNDER THE NIGERIAN LEGAL SYSTEM

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Abstract

Basically, inheritance is the inalienable right of all members of the human family. It is linked to the enjoyment of all categories of rights because the wealth acquired by members of one generation usually assists the incoming generation to lay a solid foundation, build and improve upon it before handing over the baton to another set of people. Denial of inheritance rights impoverishes widows and make widows less economically secured. This paper examines widows' right of inheritance under the various laws, that is, customary, Islamic and general laws. The paper discusses different rights of widows and how those rights are exercised.

Keywords:

Appraisal; Inheritance; Nigeria; Legal System; Widows' Right

1 INTRODUCTION

Widows' right are those inalienable and fundamental rights that widows have and should enjoy for being part of the human family, notwithstanding the death of their husbands. According to a study carried out by the authors of this paper 'widow's rights are all about the fundamental rights of a woman in terms of burial rites and the manner of subjection to the most cruel, nebulous and

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anachronistic aspects of rites that ought to be jettisoned into the oblivion.¹ The determination of these rights however is based on the type of marriage contracted. In Nigeria, there are three recognized marriages under inheritance laws. Under statutory marriage, the widow inherits half of the whole estate if there are no children, while under Islamic law, the widow will only be entitled to one quarter of the husband's estate. Under customary law, a widow is not entitled to inherit her late husband's estate.² Under Yoruba native law and custom, women are disadvantaged under the patriarchal setting. Women, including widows, are discriminated against in many ways. The paper however considers whether legal frame works hold much hope for widows to be free from discrimination. Investigation is thus made on property right such as the right to own, control, transfer and inherit properties,³ just as the paper seeks to confirm if the law as such protects the property right of women.

2 WIDOWS' INHERITANCE RIGHT UNDER CUSTOMARY LAW

In Nigeria, the customary law system is such that there is no single customary law applicable to its entire people. Each ethnic locality has its own different customary laws. Generally, widows have no right of inheritance over their deceased husband's property.⁴

The disposition of property under customary law can be a way of writing a will or otherwise. Where a valid will is written just as under law, nobody can change it. The intent of the writer of the will must be followed except in relation to family properties in which case no one can bequeath such except the whole family. A widow who marries under customary law can inherit her husband's estate if he writes a will and she has full right to whatever she is given under the will. However, a widow marries under the customary law and whose husband died intestate cannot inherit her husband's property even though her children can. Although under Yoruba custom, a widow cannot inherit directly from her husband, she can inherit from any of her parents. There are two forms of distribution under Yoruba custom, they are the *Idi-Igi*⁵ and *Ori-O-Jori*.⁶

¹Immigration and Refugee Board of Canada, 'Nigeria: Right of Widows to Inherit Property in a Civil Marriage where there was neither Will nor Children', (Immigration and Refugee Board, Canada, 2004) 4-5.

<<https://www.google.com>> (accessed 10 May, 2019).

² *ibid.*

³ Evidence Act 2011 S. 2(1).

⁴ *ibid.* 5.

⁵*ibid.* 6. *Idi – Igi* is the prevalent custom of the Yoruba law of succession. Under this sharing formula, all the properties of the deceased are shared equally into the number of wives that the late husband had.

⁶*ibid.* Under this system, all the children of the deceased share their late father's estate equally...

In the case of Yoruba customary law, the wife is often regarded as property and she is generally not expected to entertain any expectations vis-à-vis her late husband's property.⁷ Many Customary law systems still deny widows the opportunity of inheritance, particularly land to which women have only a right of usufruct.⁸ Thus, in *Ogunkoya v. Ogunkoya*,⁹ the Court of Appeal, Lagos Division, held that wives are regarded as chattels who are inheritable by other members of the family of the deceased under certain conditions. This position is not peculiar to Africa; the system applied in England up till 1870.

In the Eighteenth century, Blackstone submits 'by marriage, the husband and the wife are one person in the, that's is, the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband.'¹⁰ At Common Law, most of the wife's property, even her earned income, became vested in her husband. A married woman therefore could not enter into a legally binding contract and her power to leave property by will was extremely limited. Such rules became mitigated by equity. Later, statutory reforms, in particular, the Married Women's Property Act of 1882, brought separation of the property of spouses, though this turned out, in practice, to be very far from the same thing as equality. Thus, it is surely substantially true to say that marriage transferred the property of a wife to her husband. This state of things was possible in England up till 1870.¹¹

Generally, under the Yoruba customary law, spouses have no right in each other's property whether during or after marriage. Neither spouse had the right to control the other's enjoyment or disposal of his or her property acquired before, during or after marriage. The husband's blood relations inherit the property of the husband if he dies without any issue and the property of the wife is inherited by her family if she has no issue.

In *Aileru v. Anibi*,¹² Jibowu J noted as follows:

Marriage according to native law and custom is recognized by our law and the issue of such marriage is legitimate. There is no question (but) that the plaintiffs are legitimate Children of their deceased fathers, but their mothers have not the

⁷ See, SO Akintola, 'A focus on female Discrimination and Seclusion in Nigeria', (2004) *Ife Juris Review* 1 (2) 315-317.

⁸ OA Fatula, 'Children's and Women's Rights in Nigeria: A Wake Up Call', (Afric Law Centre, 2015) 240.

⁹ Suit No. CA/L/46/88, 56 (unreported).

¹⁰ W Blackstone, *Commentaries on Laws of England (1765-1769)* (1st University of Chicago Press, 2008) 441.

¹¹ See, E Ellis, *Sex Discrimination Law*, (Gower, 1988) 3-4.

¹² (1939) 15 NLR 31.

same status under native law and custom as wives of marriage under the marriage ordinance.

Under the Yoruba custom, a wife cannot inherit her husband's property. This is because where a man dies intestate under customary law, devolution of his property is by blood. Therefore, a man or a widow not being a blood relation of the husband has no claim to any share.¹³ In *Ogunbowale v. Layiwola*,¹⁴ three wives and three children survived the deceased such that one child came from each wife. He also left two houses at the time of his death. The 2nd defendant who was the mother of one of the children sold and conveyed in fee simple one of the two houses left by the deceased, claiming that she sold the property under the authority of a paper signed by the two daughters of the deceased and another relation.

In *Osilaja v. Osilaja*,¹⁵ the Supreme Court held that the rule that a widow cannot inherit her deceased husband's property has become so notorious by frequent proof in court that it has become judicially noticed. Similarly, in *Oloko v. Giwa*,¹⁶ it was held that on the death of the husband, the room allotted to a wife becomes part of the deceased's real estate and not vested in the wife. The wife is privileged to use the property not as a member of the family but with the acknowledgement of her husband's membership of the family if and only if she does not re-marry outside her deceased husband's family.

In *Bolaji v. Akapo*¹⁷ Sowemimo J. (as he then was) held as follows:

The only person entitled to a grant of a letter of administration under Yoruba native law and custom which would be applicable by virtue of S. 27 of High Court of Lagos Act, were the plaintiffs, four of the children of the deceased, but not the wives who are regarded as part of his estate.

In the same vein, under the Yoruba native law and custom, a husband cannot inherit his deceased wife's property nor her share in her family property. Thus, in *Caulcrick v. Harding*,¹⁸ where a man left property to his three daughters, one of the two was the plaintiff's deceased wife. The plaintiff husband claimed a one-third share of the property by the virtue of his deceased wife's right to such one third share. It was held that the plaintiff had no such right as the family property was, under

¹³ See *Davies v. Sogunru & Ors.* 8 NLR 79.

¹⁴ (1975)3 CCHCJ/HC 327 of 19th March, 1975.

¹⁵ (1972) 10 SC 126.

¹⁶ (1939) 15 NLR 31.

¹⁷ (1968) NMLR 203, see also, *Akinnubi v. Akinnubi* (1997) 2 NWRL (Pt. 486) 144; (1997) 1 SCNJ 202.

¹⁸ 7 NLR 48.

the native law and custom, inalienable. It was not an English tenancy in common relationship.¹⁹ The rule therefore is that when a man dies in - testate without an issue but left property which he had himself inherited, the property will devolve on the members of the family from which he came. If the deceased inherited it from his maternal relatives, it goes back to his maternal relatives, and if he inherited it from a paternal ancestor, it goes back to his paternal relatives.²⁰

Similarly, in *Sogunro v. Davies*,²¹ Beckley J. held that a wife was deprived of inheritance rights in her deceased husband's estate because:

In an intestacy under native law and custom, the devolution of property follow blood. Therefore, wife or widow not being of the same blood, has no claim to any cause! But there are instances where slaves or even strangers who performed the burial rites are allowed to inherit under customary law.

In *Seberu v. Summonu*,²² Jibowu F.J also held that it is a well settled rule of native law and custom of the Yoruba people that a wife could not inherit her husband's property since she herself is like chattel to be inherited by a relative of her husband.

It is unfortunate that the current position of the Supreme Court in Nigeria on Yoruba succession in *Akinnubi v. Akinnubi* is that a Yoruba woman cannot administer her husband's estate on behalf of her children.²³ This appears as an unfortunate decision made by the Supreme Court in this judgement.²⁴ Many people disagree with the position of the Supreme Court in this case. The origin of the Yoruba custom that the judgment rested upon is the belief that women are inferior to men and that they have to be guided and assisted to think like men. It is no gainsaying that widows in some cases die as a result of drastic change in their financial status which has made it absolutely impossible for them to have access to adequate medical care, simply because the wife cannot inherit her husband's estate. The question to ask in the circumstances is who will take care of the children of the deceased and particularly their education? Even though the brothers in *Akinnubi's*

¹⁹See also, *Johnson v. Macaulay* (1961) 13 NLR 96.

²⁰ *Seberu v. Summonu* (1957) 12 FSC 33 (1929) 2 NLR 79.

²¹ (1929) 2 NLR 79, 80.

²² (1957) 2 FSC 31.

²³ *ibid.* 7. See the case of *Akinnubi v. Akinnubi* (1997) 2 NWLR 144. A man died without writing a will and at the letter of administration was granted to his brothers. The wife applied to the Court against the action of probate Registrar. The Supreme Court held that a widow could not inherit her deceased husband's property nor could the woman be appointed administratrix of her husband's estate.

²⁴*ibid.*

case were suppose to administer the property for and on behalf of the deceased's children, things do not always work out that way. However, it is only under Yoruba customary law of inheritance that we still have this exclusion of widows.

The position is gradually changing in other part of the country. In the case of *Mojekwu v. Mojekwu*,²⁵ a case decided a few months after *Akinnubi v. Akinnubi*, the Court of Appeal had to decide whether a custom of the Ibo known as *Oli-ekpe* was a fair custom. Under that custom, a woman, whether a daughter or a wife cannot inherit. A distant male relation would inherit a man's estate in place of a daughter. In *Mojekwu's* case, the eldest son (*Oli-ekpe*) of a brother to the deceased sought to inherit the estate of the deceased to the exclusion of the daughter of the deceased. Justice Niki Tobi held that the *Oli-ekpe* custom of Nnewi was repugnant to natural justice, equality and good conscience.

Niki Tobi J.C.A. in the lead judgment held thus:²⁶

Any form of social discrimination on ground of sex, apart from being unconstitutional, is antithesis to a society built on the tenets of democracy which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including the Nnewi "Oli-ekpe" custom relied upon by the appellant, are not consistent with our civilized world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents.²⁷

2.1 Widows' Inheritance Right under the Matrimonial Causes Act

Marriage under the act is derived from the English common law system and it is monogamous in nature (one man, one wife). This form of marriage is defined as the voluntary union for life of man and one woman to the exclusion of all others. Either of the spouses can inherit from each other even where no will is made.

Widows, who are married under the Act, are entitled to all the advantages offered by the English Law. They are treated equally like their English counterparts, that is, English women married under English Act. Irrespective of the culture or tradition of a woman's husband, so far as they were

²⁵ (1997) 7 NWLR 283.

²⁶ See JN Ezeilo, *Women and Children's in Nigeria, Women's Aids collective* (WACOL, 2001) 28-33.

²⁷ *ibid.* 28-33.

married under the Act, it is taken that the man has decided that his affairs should be governed by the statutory laws. A widow who is married under the Act who is therefore subjected to any discriminatory treatment has a right to seek protection of the court against such acts and to apply for a declaration that such acts are illegal.

The law relating to intestate succession, which is death without making a will, in respect of a person married under the Act are somehow complex and they vary from state to state. In Ogun, Ondo, Oyo and the Old Bendel States, the administration of Estates' Law, 1959 is applicable:

- i. Where a man dies leaving a wife without children, parent, brothers or sisters, his property will be inherited by the wife absolutely. The same is the situation where a woman dies leaving a husband, without an issue and other relations.
- ii. Where a man dies leaving a wife and children without parents, brothers or sisters, the wife will take all his personal belongings absolutely. A fee would be charged on all his other assets by the probate after the cost of burial and debts have been settled. The remaining assets will be shared between the wife and the children in the ratio of 1:3. That is the wife will take 1/3 and the children will take 2/3. The 1/3 of the wife is only up until the time she dies. She does not inherit absolutely. When she dies her interest in the property goes to the children.
- iii. Where a man dies leaving a wife, parents, brothers, and sisters but no children, the wife inherits one half of the man's estate absolutely. The other half is for the parents or brothers and sisters.
- iv. If a man dies leaving children but no wife, the children take everything absolutely after charges, debts, and expenses must have been settled.

Under the 1987 Administration and Succession (Estate of Deceased Persons) Law operational in states like Enugu, Ebonyi and Anambra States, the following rules apply:

- i. If a man dies leaving a wife without children, parents, brothers or sisters, such a wife inherits his estate after all debts, funeral expenses as well as all the charges have been settled. Where the deceased person leaves brothers or sisters of half-blood, the wife's interest in the estate only last until her sisters and brothers take over the estate.

- ii. Where wife and children are left, the wife takes one-third and the children take two-thirds of the estate. However, the wife's interest in the estate only last until her death or when she remarries, whichever comes first. Thereafter the children take over the wife's share.
- iii. Where the deceased left a wife and parent, parents, brothers and sisters, the wife takes two-thirds of the estate while other dependants take one-third. The wife's interest in the estate lasts until her death or when she remarries, whichever comes first. Thereafter the other dependants take over wife's shares.

One very clear thing is that there are discriminatory provisions in some of the laws. A very good example is section 51(a) of the Anambra State Edict to the effect that where a husband survives a wife, he inherits the wife's estate absolutely but where the surviving spouse is the wife, she inherits only up until the time she dies or when she remarries. The implication of this provision is that she cannot transfer her interest in whatever she inherits to another.²⁸

2.3 Widows' Inheritance Rights under Islamic Law

Under Nigeria law, Islamic law or sharia forms a part of customary law in Nigeria.²⁹ Sharia embodies the rule ordained by Allah and by which all Muslims are to be governed in their relationship with fellow human beings and with him. There are four recognized source of the Sharia and its Divine Attributes.

- i The primary source of the Sharia is the Holy Qur'an and as a direct revelation, it is sacrosanct and divinely ordained. Its Arabic text has remained consistent throughout the history of Islam, and is therefore not doubtful, or doubted. Many of these verses were revealed in responses in contrast with other verses that conveyed universal principle for all time.
- ii. The second source of the sharia is the Hadith which comprises of the sayings, practices, and actions of the Holy Prophet (SAW). It includes even those actions that he did not openly disapprove of by remaining silent in the face of their commission or omission.
- Iii The third source of the sharia is the Ijma which is the consensus of opinion of the knowledge in the community on any given question.

²⁸*ibid.* 4.

²⁹*Ibid.* Holy Quran: Sura Nissa, 5: 11-12.

Iv The fourth source is the Qiyas, meaning individual analogical deduction or legal discretion (istihsan) and taking into account the public good (istihsan) are also secondary sources utilized in developing the Sharia over the year.

Accordingly, there are four main schools of interpretation or authority named after their founder: Malik bin Anas, Abu Hanifa, Al-Shafi'i and Ahmad bin Hanbal. The findings and opinions of the four schools, though sincerely derived and well founded, are not homogenous. Not only do they not always say the same things, some of them contradict one another and even in a few cases, the primary source, itself.

Each school of interpretation leans heavily upon the perception of piety and true worship as practised or advocated by its founder. In this wise some of the school allows for a lot of latitude on some issues while they bear strict understanding or application on others. To the extent that the interpretations are in many cases mired by human weakness and bias, they remain a source of manipulation, misrepresentation and confusion thereby creating an image for Islam far from what it is.³⁰

As for Muslims, Islamic law lays down its own formula for the distribution of the estate of a deceased person and a wife can inherit as well as female children. The only discriminatory aspect is that a woman always takes half of what a male counterpart takes under Islamic law of succession. The wife of a Muslim man who dies without making a will is entitled to one quarter of his estate after all debt, funeral expenses and other charges have been settled. If there are children or grandchildren, her share is reduced to one-eighth and where more than one wife survive the deceased, they all together share the one-quarter or one-eighth where there are children or grandchildren. However, where a woman dies interstate, her husband takes half of the estate after all expenses and debts have been settled. A woman who has changed her religion may be disinherited. Under Islamic law, the property is distributed per person and not into the number of wives the deceased had prior to his death. Under Islamic law, which is *the Maliki School*, a person making a will can only dispose of one-third of his estate by will to persons other than his real heir³¹

³⁰ JM Nair, 'Woman's Rights and Islam in the Contemporary World', (2006) 3 Journal and Law and Religion 33-34.

³¹ Al-Bardist, 'Islamic Law of Inheritance and Wills', 13. The following are the primary heirs and their shares: (a) Father, one-sixth ($\frac{1}{6}$), (b) Grandfather, one-sixth ($\frac{1}{6}$), (c) mother, one-sixth ($\frac{1}{6}$) with a child and one-third ($\frac{1}{3}$) without a child, (d) Grandmother, one-sixth ($\frac{1}{6}$) with a child and one-third ($\frac{1}{3}$) without a child, (e) Husband, one fourth ($\frac{1}{4}$)

3 OVERVIEW OF THE WIDOWS' RIGHTS

The widows as part of human family and as citizens of Nigeria are entitled to the following rights:

3.1 Right to Inheritance

By virtue of being citizens of Nigeria and members of the human family, widows are entitled to inherit their husbands' properties. In *Timothy v Oforika*,³² the court held that any custom which forbids a woman or widow from inheritance or having anything to do with land is not only discriminatory but a bad custom which offends section 43 of the CFRN, 1999. This position was made clear in the case of *Motoh v. Motoh*.³³ The court stated that where a man who married under the Act dies intestate, his estate is only inheritable by the wife legally married under the marriage Ordinance or Marriage Act. A widow whose marriage was under the Act is entitled to the letter of administration which will entitle her to her husband's estate unless there is a valid will to the contrary.

Similarly, under the English rule of intestacy, it was submitted in case of *Makein v Makein*³⁴ and held that:

The estate of the deceased is inheritable by his wife and children (if any). This right to inheritance is also recognized by the international instruments. For instance, Article 21 of the protocol to the African Charter on Human and peoples' Rights of Women in Africa specifically recognized widows' rights to inheritance. It provides that 'a widow shall have the right to an equitable share in the inheritance of the property of her husband'. Also, Article 16 of CEDAW reiterates the equality of rights of both spouses in marriage with respect to ownership of their properties and inheritance rights.

3.2 Right to Matrimonial Property

with a child and one-half ($\frac{1}{4}$) without a child, (f) Wife or wives, one-eight ($\frac{1}{8}$) with a child and fourth ($\frac{1}{4}$) without a child.

³²(2008) All FWLR (413) 35.

³³(2001) All FWLR (587) 73.

³⁴(1955) All ER 57.

Right to matrimonial property forms part of the rights of the Nigeria Widow, especially where the widow has contributed to the acquisition of the property. This is provided in section 72 of the MCA, 2004 and section 42 of the CFRN, 1999. In the case of *Mueller v. Muller*,³⁵ the court stated that there is nothing wrong in buying a property in the name of one of the spouses and where such is the case, the property remain a matrimonial property which belong to the parties jointly; even where one of the parties is dead, the surviving party is still entitled to the matrimonial property. In the case of *Igwemoh v. Igwemoh*,³⁶ though outside the Yoruba states, the Plaintiff/Appellant filed a petition for the court to dissolve his 13years old marriage with the respondent (his wife). The trial court held among others that section 72 of the MCA, 1970, require the court to make orders as to settlement of properties in a manner that is just and equitable for the benefit of all the parties. According to per Eko JCA:

The onus is on the respondent who is claiming joint ownership to show by her evidence in what respect she is a joint owner of the properties as claimed... the onus is not discharged by the petitioner's weak evidences or the sentiment or speculation latent in the judgment. Where this onus is discharged, she remains a joint owner, even as a widow.

It follows therefore that where a woman contributed equitably to the acquisition of the properties, she cannot be denied of her right to the property. This right remains unfettered even as a widow. The protocol to the African Charter on human and peoples right on the rights of women in Africa also provides in Article 20 that a widow shall have the right to live in her matrimonial house.

3.3 Right to Maintenance

Widows, as a product of marriage, are entitled to maintenance notwithstanding the death of their husbands. Section 70 of the MCA empowers the court to make this maintenance order as it thinks proper and just having regards to the means, capacity and conduct of the party to the marriage. This provision is also applicable to the widow who is still the product of the marriage notwithstanding the death of her husband. The widow is legally entitled to maintenance from the estate of her deceased husband as the property belongs to both spouses jointly. In *Mueller v.*

³⁵(2006) 6 NWRL (Pt. 977) 627, 632.

³⁶(2015) All FWRL (Pt. 801) 1554, 1561.

Mueller,³⁷ it was held that where husband and wife acquire property that such property belong to them jointly even where one of the parties is no more.

3.4 Right to Remarry

Widows as citizen of Nigeria are entitled to their personal liberty. Section 35 of the CFRN, 1999, is to the effect that every person shall be entitled to his personal liberty. And none shall be deprived of such liberty save in accordance with the procedure permitted by law. It follows therefore, that right to personal liberty also includes the right to remarry by the widow without restrictions having lost her husband through death. *Section 18* of marriage Act also gives the widows the right to remarry. The Marriage Act (MA) describes them as 'consent widows'. The MA further provides to the effect that anyone who, without a written consent, marries a minor under the age of 21 year who is not a widower or widow shall be liable to 2year imprisonment.³⁸ This provision also reiterates the right of the widows to remarry. The Matrimonial Causes Act³⁹ provides to the effect that 'where a decree of dissolution of marriage under this Act has become absolute, a party to the marriage may marry again as if the marriage has been dissolved by death. This right to remarry is also an issue of international concern. Article 20 of the PACHPRRWA provides that 'a widow shall have the right to remarry, and in that event, to marry the person of her choice.

3.5 Right to Custody of Children

A widow is also entitled to the custody of the children of a marriage even after the death of their husbands provided there is nothing that impairs or inhibits their capacity to take custody of the children. Section 71 (3) and (4) of the MCA gives the court the power to make an order regarding the custody of the children of a marriage as it thinks fit. By the section, the court can order for the custody for a marriage placing the children in the custody of the widow as their guardian unless such order will militate against the interest or welfare of the children. Similarly, the PACHPRRWA⁴⁰ reiterates to the effect that a widow shall automatically become the guardian of

³⁷(2006) 6 NWLR (Pt. 977) 627, 632.

³⁸Marriage Act, s. 48.

³⁹Matrimonial Causes Act, 2004 s. 48.

⁴⁰PACHPRRWA, Article 20.

her children after the death of her husband, unless this is contrary to the interest and welfare of the children.

4 FUNDAMENTAL RIGHTS UNDER CHAPTER IV OF THE CFRN, 1999

Chapter IV of the Constitution provides a bundle of rights which available for the enjoyment of persons by virtue of their existence as humans. These rights include: right to life;⁴¹ right to dignity of human person;⁴² right to personal liberty;⁴³ right to private and family life;⁴⁴ right to peaceful assembly and freedom of association;⁴⁵ right to freedom of movement;⁴⁶ right to freedom from discrimination;⁴⁷ and right to acquire and own immovable property anywhere in Nigeria.⁴⁸ It must be pointed out that these rights are not absolute in their application. The same constitution provides circumstances, where they may be restricted. However, in the instances of derogation from these right laid down procedure provided for must be complied with.

4.1 Domestic Legal Framework Protecting the Widows

The following legal frameworks make provision for the protection of widows and their right:

4.1.1 Constitution of the Federal Republic of Nigeria, 1999

Constitution of the Federal Republic of Nigeria, 1999, provides for equality of all Nigeria Citizens. In keeping to this tenet, the CFRN, 1999, seeks to protect what is called the Fundamental rights of all citizens. These right: right to life,⁴⁹ right to dignity of human person,⁵⁰ right of personal liberty,⁵¹ right to fair hearing,⁵² right to private and family life,⁵³ right to freedom of thought,

⁴¹CFRN, 1999 s31(1)

⁴²*ibid.* s. 34 (1).

⁴³*ibid.* s. 35.

⁴⁴*ibid.* s. 37 Right to peaceful.

⁴⁵*ibid.* s. 40.

⁴⁶*ibid.* s. 41.

⁴⁷*ibid.* s. 42.

⁴⁸*ibid.* s. 43.

⁴⁹*ibid.* 1999 s. 33.

⁵⁰*ibid.* s. 34.

⁵¹*ibid.* s. 35.

⁵²*ibid.* s. 36.

⁵³*ibid.* s. 37.

conscience and religion,⁵⁴ right to religion of expression,⁵⁵ right to peaceful assembly and association,⁵⁶ right to freedom of movement,⁵⁷ right to freedom from discrimination⁵⁸ right to acquire and own property anywhere in Nigeria.⁵⁹ Similarly, section 15(2) reiterates that no one should be discriminated against on the bases of sex, status or origin. This protection and security of equality of rights, no doubt, also include the widows. The widow's right are well entrenched and protected by the CFRN, 1999 and such, they should not be discriminated or subject to inhuman treatments because of their widowhood status.⁶⁰

The CFRN 1999, also recognizes and protects the customary Law but subject to the caveat that such customary law must enhance human dignity and must comply with the objective of the constitution which includes equality of rights.⁶¹ By the provisions, cultural/widowhood practices cannot be used as tools to discriminate and subject the widows to inhuman treatment in Nigeria. Even though the constitution did not specifically mention or describe them as widows, by virtue of being citizens of Nigeria and human being, the widows are entitled to these rights notwithstanding their position or widowhood status.

The court, in a plethora of cases, have interpreted and applied these constitutional provisions, especially *section 42* and *43*, in favour of widows and have declared repugnant customary practices that are prejudicial and detrimental to women and widows. In *Timothy v Oforka*⁶² it was held that any customary law which forbids women from having anything to do with land is invalid as it offends *section 42* of the CFRN, 1999. Similarly, in *Anakwe v. Anakwe*⁶³ the court held that any customary law that does not allow a daughter to inherit from her father's property or wife to inherit from her husband's estate should be highly prohibited and rejected. It further stated that for the brothers of a late man to eject his widow that he left behind out of their matrimonial house they

⁵⁴*ibid.* s. 38.

⁵⁵*ibid.* s. 39.

⁵⁶*ibid.* s. 40.

⁵⁷*ibid.* s. 41.

⁵⁸*ibid.* s. 42.

⁵⁹*ibid.* s. 43.

⁶⁰*ibid.* ss. 15 (2), 17 (a).

⁶¹*ibid.* s. 21.

⁶²(2002) All NWRL (Pt. 413) 35.

⁶³(2010) 3 NWRL (Pt. 138) 8643.

had lived together with their children throughout their marital life on ground that the widow had no male child is worrisome and skin lacerating.

4.1.2 The National Human Rights Commission Act 1995

The NHRC Act is that created and established by the National Human Rights Commission by virtue of section 1(1) which aim is to protect the rights, dignity and freedom of all citizens. The functions of the Commission provided in section 5 of the NHRC Act among others things, are:

- a. To deal with all issues that have to do with protection of human rights as provided in the constitution and other international instruments to which Nigeria is signatory;
- b. To investigate all cases that touch on abuse of human right and make recommendation to the presidents for necessary actions and
- c. To assist those whose rights have been violated and take legal action on behalf.

By the provision of this NHRC Act, the widow and their rights are covered by the powers and functions of this Commission as citizens of Nigeria. If the commission should rise on top of its responsibility by implementing the provisions of this NHRC Act focusing on widows' rights, violations will be drastically reduced.

4.1.3 African Charter on Human and Peoples' (Ratification and Enforcement)

The Charter, in article 2, provides to the effect that everyone shall be entitled to enjoy his rights and freedoms recognized in the Charter without distinction as to race, sex, ethnic group, political, birth or any status. The African Charter clearly abhors discrimination on whatever ground. The position is provided in Article 8(3) to the effect that all state shall ensure women are not eliminated and also protect their rights and that of the child. The Charter was adopted in 1948. However, the Charter has been domesticated in Nigeria and has become part of Nigeria's municipal law⁶⁴ pursuant to section 12 of the CFRN, 1999 and by virtue of its domestication, all customary practices which are in contradiction with the provisions of the Charter have been made illegal and as such should not be upheld under any guise of custom and native law.

⁶⁴ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A8 LFN, 2004. Articles 5, 6 and 12.

4.1.4 The Prohibition of Infringement of a Widow's and Widower's Fundamental Right Law No. 3 2001 of Enugu State

In recent times, effort is geared towards protecting woman and widows from inhuman treatment and violence inflicted on them as a result of customary practices. Some states have started legislating on certain obnoxious customary widowhood practices in order to regulate such practices and to protect the fundamental rights of women and widows. In the South East, Enugu State has come up with a law targeted at harsh and obnoxious widowhood rituals; hence the prohibition of Infringement of a Widow's and Widower's Fundamental rights Law No.3 2001 of Enugu State.

The house of Assembly of Enugu state enacted PIWWFRL on March 8, 2001, which prohibits violations of the widows' and widowers' rights in Enugu State. The law in section 4 provides that no widow or widower shall be compelled for whatever reason to do all or any of the following:

Shaves the hairs either on the head or any part of the body; Sleep in the same room with the corpse of the widow's husband; Prevented from receiving sympathizers during the mourning period; Forced to be married or inherited by the husband's brother or relative; Sit on the floor or made to eat with broken plate during the mourning period; Drink the water that was used in bathing the corpse; Wail except at one's own involuntary action; Remain in seclusion; Forced to vacate the matrimonial home and Forced to do any other thing that will amount to infringement of any of the fundamental rights of the person.

The law is a good step in the right direction. Other states should suit and ensure that a law which specially provides for the protection of the widows is passed into law in their respective states.

4.2 International Legal Framework

4.2.1 The Protocol to the African Charter on Human and Peoples' Right on the Rights of Woman in African 2005

The Protocol was adopted in July, 2003 and came into force in 2005. The aim is to raise women's status, including widows. The protocol provides for the elimination of harmful practices in article 5. It enjoins all parties to prohibit all customary practices that are harmful and degrading to the rights and status of women, including the widows. In achieving this, it enjoins all parties to take

all necessary measure through legislation, public awareness creation, information, outreach and education on harmful practices which will aim at eliminating all harmful cultural practices in all sector of the society.

Article 20 of the protocol specifically enjoins all state parties to take all legal measure to enable the widows enjoy their rights by implementing the provisions of the protocol. In Articles 16, the protocol provides for the rights to adequate housing and good living condition for women.⁶⁵ To achieve this, the protocol enjoins state parties to ensure that women have access to adequate housing. It directs all parties to ensure that women are not discriminated against no matter their status.⁶⁶ The protocol also recognized women's right to inherit their husband's property or have equitable share of same. It also reiterates that a widows shall not be forced out of her matrimonial house and shall continue to live in her matrimonial house. In article 21, both women and men shall inherit, in equitable shares, their parents' properties.

4.2.2 Universal Declaration of Human Rights (UDHR) 1984

The UDHR is the most celebrated international instrument on human rights covering women's rights. It provides in Articles 2 to the effect that:

Everyone is entitled to all right and freedoms set forth in this declaration. These right include rights in marriage, equal rights to own property and that of standard of living. The emphasis on the equality irrespective of sex goes to show that there should not be disparity or distinction in the treatment of both men and women, including widows and widowers.

Article 27(1) lays emphasis on the rights of individual to the culture of the community. It provides to the effect that everyone should have the right to take part in the cultural practices of his community. It therefore follows that no one should be compelled to take part in such cultural/ widowhood practices except out of his or her volition. This further means that the harsh widowhood/cultural practices widows are subjected to amounts to violation of their rights according to this declaration.

4.2.3 Convention on the Elimination of all Forms of Discrimination against Women 1979

⁶⁵ PACHPRRWA, 2005 art. 116.

⁶⁶*ibid.*

CEDAW was adopted in 1979 but came into force in 1981. CEDAW articulates issues of discrimination against women in both public (state) and private (non-state) organizations. CEDAW takes the equality of rights of women as its paramount objective. The instruments contain classes of human rights that are non-gender based. It enjoins all states to ensure that women are not discriminated against in any way both in social, civil, political, public and private organization, including the economic sector. It provides for the protection of the cultural rights of women. CEDAW is explicitly clear on what discrimination is all about. Article 1 provides that discrimination against women is any exclusion or restriction targeted against woman based on sex which has the capacity of impairing the enjoyment of their rights irrespective of their social, economic, political, cultural, and marital status.

Under Article 2 of CEDAW, state parties agree to take series of measures to combat discrimination against women by incorporating in their respective constitutions the principle of equality of rights of men and women and to ensure that these principles are realised.

By Article 5, the CEDAW also enjoins all parties to check the extent to which men and women participate in the social and cultural practices through their cultural conduct and to pattern same in order to eliminate or reduce discrimination in their respective state. With respect to the issue of inheritance rights, the CEDAW further provides to the effect that all state parties should take practical steps on all issues touching on marriage and family to endure that discrimination against women is eliminated. It also advocates for the equality of rights for both spouses in marriage with respect to their property and inheritance rights.⁶⁷

5 ATTITUDE OF COURTS TO VIOLATION OF WIDOWS' RIGHTS THROUGH WIDOWHOOD PRACTICES

Previously, the courts had upheld some customary practice that discriminated and denied widows certain inheritance rights. The court took this path in the case of *Chinweze v. Mazi*⁶⁸ where it held that under Onitsha customary law, the interest of a man's wife in the property terminates or ends as soon as the man dies. However, the court, having come to the present reality, have consistently protected the rights of widows, especially the property and inheritance rights and have in many

⁶⁷CEDAW, Article 16.

⁶⁸(1989) 1 NWLR (Pt.9) 254, 270.

decisions declared certain customary practices which tend to perpetuate discriminations against women as repugnant. The courts have held in a plethora of cases that a custom cannot derogate from the clear provision of the constitution dealing with the rights to own moveable or immovable properties as women can own or inherit landed properties. In *Mojekwu v Mojekwu* the court held thus:⁶⁹

Day after day, month after month and year after year, we hear of and read about custom which discriminate against the woman folk in this country. They are regarded as inferior to the men folk. Why should it be so? All human beings, male and female are born into the world and expected to participate freely without any inhibition on grounds of sex and that is constitutional. Any form of society built on the tenets of democracy which we have freely chosen as a people.... On my part, I have no difficult in holding that 'Oli-ekpe' custom of Nnewi is repugnant to natural justice, equity and good conscience.

In *Anekwe v. Anekwe*,⁷⁰ the deceased's brothers and relations went to court to challenge the right of his wife (widow) and her six (6) female children from inheriting the property of their late husband and father on the ground that the widow had six female children without a male child. The court of appeal in its decision condemned in strong terms, the custom of Awka people on which the appellant relied. The court held that any customary law that does not allow a daughter to inherit from her father's property or wife to inherit from her husband's estate should be highly prohibited and rejected. It further stated that for the brothers of a late man to eject his widow that he left behind out of their matrimonial house they had lived together with their children throughout their marital life on ground that the widow had no male child is worrisome and skin lacerating.

In *Motoh v Motoh*,⁷¹ the plaintiff/respondent claimed to be the only son of the deceased (Jeremiah Motoh) who died intestate but that he was excluded from the estate of his father by his father's first wife (the defendant/appellant) who had six female children without a son. He therefore prayed the High Court of Anambra State for declaratory and injunctive reliefs that as the Okpala, the only male issues of the deceased and by custom of Omuanage Village, he is entitled to the management and control of the deceased estate. The court however granted him the reliefs as sought. On further appeal by the defendant/appellant, the court of Appeal, in allowing the appeal, held that such

⁶⁹(1997) 7 NWLR (Pt. 512) 283.

⁷⁰(2010) 3 NWLR (Pt. 138) 8643.

⁷¹(2011) All FWRL (Pt. 584) 73.

customary law which discriminate against female children and their mother in terms of inheritance is repugnant and should be prohibited and completely avoided. With these cases, one can say that the courts are presently committed to protecting widows' rights in Nigeria and amongst the Yorubas in particular, especially their inheritance rights.

5.1 Widowhood Practices and the Nigerian Legal System

This aspect will examine the rights of widows under the customary laws of Nigeria. The Nigerian legislation in this regard and its obligations with respect to these cultural practices under international law was examined together with how Nigeria set forth to respect, protect and fulfill them. Nigeria is a Federal state and consists of 36 states. It also is a multi-ethnic nation made up of over 200 various people with the Yoruba predominant in the South-West, the Igbos in the South-East, Ijaw and others in South-South along with the Hausas in the North. Nigerians subscribe to Islam, Christianity and forms of indigenous worship like Indigenous Faith of Africa. The Nigerian legal system consists of the Statutory Law which include Received English Law which was received into Nigeria on January 1st, 1900 and English Statutes which were written, amended and re-enacted over the years. The Common Law is a significantly accrued body of English case law. Islamic Law are religious creeds applicable to those subject to it. Sharia operates in Northern Nigeria while Customary Law in Southern Nigeria. Above all, the Constitution of the Federal Republic of Nigeria 1999 (as altered) is the "supreme law⁷²" and all other laws are subordinate to it. It attempts to protect the equal rights of all citizens before the law as well as the rights which guard against discriminatory practices either expressly or by necessary implication the applicability of any law which include customary law or Islamic law.

In Nigeria, like other ethnic groups, the Yoruba people believed in customary practices, culture and religious beliefs. The Yoruba culture and religion are interwoven. In Yoruba land, culture is a "means of expressing religion, whereas religion is a part of culture⁷³". This implies that the cultural values of the Yorubas are reflected in other areas of human experiences; while religion also figure through every aspect of the Yoruba people. This tends to make cultural practices or rites and religious beliefs go hand-in-hand and in many situations overtake the laws of the land with regard

⁷² Constitution of the Federal Republic of Nigeria 1999 (as amended) Section 1(1)

⁷³O Olajubu, 'A Socio-Cultural Analysis of Yoruba Women and the Reimagining of Christianity', (2008) 16 (3) Feminist Theology 312, 323.

to issues such as dangerous traditional practices. Widows are mostly affected resulting in discrimination and work against Yoruba women. The highest occurrence of these discriminatory practices happen in the marriage sphere and even in the presence of closely knitted families.

Admittedly, the 1999 Constitution of the Federal Republic of Nigeria⁷⁴ clearly prohibits discrimination on grounds of sex or ethnic groups, place of origin, religion or political opinion or by virtue of circumstance of one's birth. However, there are few items in the Exclusive Legislative list of the 1999 Constitution which precludes the Federal Government from legislating issues relating to women under Islamic and customary law. Hence, it is important to know that the cultural and religious beliefs as well as the pluralistic nature of our legal system compound the discriminatory widowhood practices in Yoruba land. And by extension, it leaves important issues that have enormous implications for the legal status of women in Nigeria to the various states that make up the federation to decide individually.

5.2 Nigerian Customary Law and Traditional Practices

Customary law is the bedrock of activities in all human endeavours across the globe providing vibrant guiding norms, beliefs, social institutions and religion and transmitted from one sphere of life to another. This uniquely characterizes a particular community or society. It continues to be recognised in Nigeria as a branch of the Nigeria legal system. Not all customary laws are repugnant to natural justice, equity and good conscience or result in discrimination. Yoruba culture has a "common trend of influence running through them"⁷⁵. It means that Yoruba people always have many rich traditional practices which are satisfying, dynamic and give room for true social bonding with emphasis on harmony which is the social foundation of the Yoruba society.

Nonetheless, within the Yoruba culture there are some cultural practices that are discriminatory in nature, especially against widows. It is within this purview that those traditional practices are generally regarded as being repugnant to natural justice, equity and good conscience. Irrespective of this, the socio-economic and political life in Nigeria today is changing swiftly and incredibly. Some particular ancient practices and customs have vanished and new ones are emerging to deal with the new areas of life. However, it is mystifying to know that cultural practices such as

⁷⁴ Constitution of Federal Republic of Nigeria 1999, Section 42.

⁷⁵ Olajubu, *op. cit.*

widowhood ritual which infringe on widows' rights decline to change. If the 1999 Constitution of the Federal Republic of Nigeria has changed quite a few parts to accommodate global changes, there is no reason why customary laws which are considered closer to the pattern of life of the Yoruba people should not change.⁷⁶

To set the context of inheritance under customary law, it is appropriate to know that traditional practice of inheritance is not under a uniform law in Nigeria. Individual ethnic group and religious beliefs determine the law that would be applied. Colonization in this regard plays part in the inheritance procedures in Nigeria. With the advent of colonization, men were apprehensive of those who colonized us and did not expose their wives to them. Men entered the labour force to work with them and Nigerian men were seen as the sustainers of the family. The introduction of exchange and privatization of land turned around the transaction which was only done between men and the colonizer.⁷⁷ In case of a statutory marriage, inheritance processes are governed by the Marriage Act in Section 36(1). It makes provision for a widow to inherit part of her husband's property and estate including land. Admittedly, when there is a will, the property will be administered according to the wishes of the deceased husband. This is the theoretical aspect of law but the reality is a different thing entirely.

To this extent, widowhood practices tend to be moving towards a rather complete legal system where no clear guidelines are available on the said practices. During my interview with the people, I noticed that even the traditional practice suffered from a lack of clear formal definition in terms of what and how the widowhood ritual should be done across some Yoruba states I visited (that is, Lagos, Ondo, Oyo and Ogun). Some widows that I discussed with in Ogun State also confirmed this. Coupled with the multiplicity of the laws on inheritance (including statutory, Islamic and customary laws), the multi-layered legal system in Nigeria leaves gap that allows the courts of law and self-serving societies, including the unscrupulous relatives, to choose the laws that are beneficial to their own interest and to the disadvantage of the widows. Having discussed the multi-faceted shapes of the Nigerian legal system, the next section attempts to deal with how widowhood practices violate the Nigerian Constitution and the prevailing international human rights law.

⁷⁶*ibid.*

⁷⁷K Saito, 'Raising the Productivity of Women Farmers in Sub-Saharan Africa', (Discussion Paper World Bank, Washington, DC).

6 WIDOWHOOD PRACTICES IN VIOLATION OF NATIONAL LAWS IN NIGERIA

The Constitution of the Federal Republic of Nigeria 1999 (as altered) is supreme over all other laws. In as much as the rights of all Nigerians are clearly codified in the national laws, irrespective of sex, women and widows should also be protected as it is spelt out in the Nigerian Constitution. However, there is no particular law that guard against the rights of widows in Nigeria against discriminatory laws and practices. Even if relevant law exists, it may be limited in scope by virtue of the potency of customary laws and diabolical powers associated with the rituals which eventually place undue advantage on the victims. In some situations, some of the laws directly related to the plight of widows are written in provisions that are not favourable to widows and sometimes the widows are not aware of the existence of such laws.

It is important to note at this juncture that under the 1999 Constitution of the Federal Republic of Nigeria which Nigeria is still using, in Chapter IV titled "Fundamental Rights", every Nigerian has fundamental rights. The right to life, dignity of the human person, personal liberty, a fair trial, privacy and family life, freedom of thought, conscience and religion, freedom of expression, and the press, peaceful assembly, freedom of movement, freedom from discrimination and freedom to acquire immovable property anywhere in Nigeria. In the same vein, Chapter II, section 15 of the Constitution provides that discrimination on the ground of sex and others shall be prohibited, whilst section 17 states that "the social order is funded on the ideals of freedom, equality and justice. The sanctity of human persons shall be guaranteed and enhanced". Relevant to the plight of women in this context is the protection provided by section 42 of the Nigerian Constitution which clearly protects women against any form of discriminatory practices on the ground of sex.

From the foregoing, as contained in Section 42(1) of 1999 Constitution of the Federal Republic of Nigeria, widowhood practices in the first place violate the "right to life" of widows as stated in Section 33(I) of the same 1999 Constitution. Since the right to life is among the fundamental human rights as stated in Nigerian Constitution, it is my submission that widowhood practices violate this law. Many women are exposed to evils that can easily cut short their lives in the course of the death of their husbands because of the socio-economic and spiritual elements of Yoruba widowhood rites or practices. The physical and psychological impacts of the gender oppression

and economic hardship the widows suffer more often than not causes the widows' untimely death⁷⁸ though record of widows who have died as a result of these practice have not been clearly stated due to lack of statistical data to that effect. Moving from the right to life to the dignity of a human person, one can show that these same forms of violence have severe effect on widows' health. Also, considering the inhuman treatment of widows: isolation, confinement, dethronement (losing status), defacement (looking unattractive and unkempt) and disinheritance (denial of inheritance rights), which widows are subjected to, this violates the right to dignity of a human person and as well as infringement on the right to personal liberty that women should enjoy as enshrined in the Sections 34 (ii) and 35 (iii) of the 1999 Constitution respectively. Importantly, widowhood practices also infringe on the right to freedom from discrimination as contained in Section 42(2) of the same 1999 Constitution and protection against any form of discriminatory practices on the ground of sex. In her contribution, Ewelukwa⁷⁹ noted that widowhood practices vary across Nigeria but the common elements include "varying degrees of isolation and confinement, restricted freedom of movement and association and hair shaving." As for gender relations, we could spend volumes describing ways in which widowhood rituals and their impact cripple the enjoyment of freedom from the discrimination.

Generally, in the pre-colonial Yoruba society, there was a place for gender identity and social cohesion through Yoruba culture and religion. Every aspect of the Yoruba life alive then did not lie outside the scope of culture and religion. These holistic Yoruba paradigms in relation to gender relations provided 'avenues of empowerment for both male and female alike. As a result of this, women play leadership roles in Yoruba religion especially as concerns rituals⁸⁰. There is an assumption that the archaic nature of widowhood practices in Yoruba cities and villages then might not be as discriminatory as the one that is practiced in the post-colonial period but this assumption may be incorrect because there are no empirical facts due to the invisibility of the rituals in the private realm. Also, women had equal membership with men and were part of the sustaining forces of the Yoruba society that were creating alternative spaces and axes of power relations.

⁷⁸M Owen, *A World of Widows* (Zed Book, 1996).

⁷⁹U Ewelukwa, 'Post-Colonial, Gender, Customary Injustice: Widows in African Societies', (2002) 24 (2) Human Rights Quarterly 424, 468.

⁸⁰Olajubu, *op. cit.*

The alternative social space for equal membership and power relations in the time past needed for peaceful co-existence of the people, both men and women in the region were present and this reduced social exclusion to the barest minimum.⁸¹ Although it is good to note that not all our cultures are beneficial to women, this might have resulted in a few largely unseen discriminatory cultural practices and injustices during the pre-colonial period. Widowhood practices existed during this time though the way and manner the practices were shaped is not well-documented because they were not made visible in most of the Yoruba ethnic societies. This picture reflects that widowhood practices as one of Yoruba cultural practices are in private than in public domains. Nevertheless, civilization has changed the gender roles and relations in most of the developing countries, including Nigeria.⁸² These changes made new approaches to customary law which polarized the social and legal systems of most African countries till today. The impacts of these development affected the gender differences in several local practices. For instance, in Nigeria, the ideology of colonization attacked the local power with its “new hegemonic forces.”⁸³

Right from the outset, British Government strategically and effectively made use of all the legal systems to accommodate their intended preferences. Shadle⁸⁴ submits that the British Administration ‘hoped to twist gender relations into forms more to their liking and the legal arena served as a particularly useful to do this.’ While family patterns have changed, customary laws of the past still continue to affect the gender roles and relations in Yoruba societies. Despite the fact that these practices infringe on a number of fundamental rights set out in the 1999 Constitution, the discrimination grows and widowhood practices are still perpetrated.

7 CONCLUSION

Nigeria is a signatory to international and regional Conventions and treaties, it is bound to respect, protect and fulfill these international provisions. Widowhood practices nonetheless violate the fundamental rights of widows under the 1999 Constitution of the Federal Republic of Nigeria

⁸¹S Afonja, ‘Women, Power and Authority in Traditional Yoruba Society’, in L Dude, E Leacock, & Ardener, S (eds.) *Visibility and Power: Essays on Women in Society and Development* (Oxford University Press, 1986).

⁸²CT Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses* (Duke University Press, 1991) 333, 358.

⁸³MO Okome, ‘Domestic, Regional and International Protection of Nigerian Women against Discrimination: Constraints and Possibilities’, (2002) 6 (3) *African Studies Quarterly*.

⁸⁴BL Shadle, ‘Changing Traditions to Meet Altering Conditions: Customary Law, African Courts and the Rejection of Codification in Kenya’, (1999) 40 (3) *The Journal of African History* 411.

Colonization and legal pluralization and contribute to discriminatory practices. Widowhood practices violate international human right norms. These rites tend to threaten the international human rights of widows under several conventions and treaties. Everybody has the right to freely engage in the cultural process of the community without being coerced or forced.

Nevertheless, the unnecessary tensions arising from the conflicting approaches to the rights of women under customary and international laws have made it easier for the rights of the widows to be threatened rather than achieved. This is because this patriarchal society still remains strong in the Nigerian legal context and in view of that, a lot of Yoruba customary laws and traditions are being interpreted to favour men even though it is contrary to what section 42⁸⁵ of the Nigerian Constitution provides for both sexes. Most especially, customary laws and rules of each Yoruba states which determine the rights of inheritance of assets and property left behind by the dead husbands have positioned the widows in a not-so-helpful situation.

Given this existing challenge to strike a balance between human rights frameworks and cultural norms, we humbly suggest that appropriating human rights ideas to the Yoruba social context might offer a relief for Yoruba widows if the relevant agencies have the political will to give it what it takes in South-Western Nigeria.

⁸⁵ Section 42 of the 1999 Constitution provides protection for all citizens from discrimination based on community, place of origin, ethnic group, sex, religion or political opinion.