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# **A LEGAL APPRAISAL OF THE INHERITANCE RIGHTS OF WOMEN IN NIGERIA**

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## **ABSTRACT**

The distribution of the estate of a deceased person is one topic that frequently sparks a great deal of discussion and controversy due to the various interests involved in the distribution of a deceased person's inheritance. It is common knowledge that many people in Nigeria do not have a valid will, if one dies without a valid will then such person is said to have died intestate. Where a deceased dies intestate, the deceased loses his/her right to distribute the estate according to his/her wishes. In Nigeria, the kind of marriage the deceased entered into determines how their fortune is divided when they pass away intestate. The disposal of the estate, however, is governed by customary law in cases where the deceased was married in accordance with it. Despite the Federal Republic of Nigeria 1999 (as amended) Constitution's provisions and other national and international regulations, customary law often seems to discriminate against women with regard to inheritance rights. This article discovered that, with regard to inheritance rights, discrimination against women is a highly relevant issue in the majority of Nigerian societies. It was also discovered that the right to own property as well as freedom from discrimination were some the rights of women which some of these local customs ran afoul of. This article also considered the position of the law in the United Kingdom and South Africa which disclosed that, in order for traditional marriages in South Africa to be recognized and grant the partners an inheritance claim, the registration of such marriages is a prerequisite.

## **INTRODUCTION**

Death is an inevitable aspect of human existence. There are many difficulties facing the family of the deceased after they pass away; in addition to the funeral rituals and ceremonies, the most pressing issue is what to do with the deceased's belongings. In Nigeria, an individual's estate is bequeathed to another person or individuals as an inheritance after they pass away. There are

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various ways to decide who will inherit this property. One approach is for the individual to select before they pass away who will receive their property, and under English law, this is recorded and signed in a Will. In the event that a will is absent, several laws control who inherits the property.

## **CONCEPTUAL FRAMEWORK**

Several concepts are employed during the study. As a result, the conceptual framework will be used to examine inheritance, custom, customary law, rights, human rights, culture, and property.

## **INHERITANCE**

To inherit is to acquire property through a transfer from ancestors or, specifically, to obtain as a matter of legal entitlement. "To inherit; to succeed as heir upon the passing of one's ancestor," according to Black's Law Dictionary.<sup>2</sup> Legally speaking, inheritance is the passing of property from a deceased individual to a living individual or the taking of a living individual's property from a deceased individual.<sup>3</sup>

## **CUSTOM**

In general, custom refers to a routine that individuals follow voluntarily and consistently. Likewise, the term "customary" is derived from "custom" and designates anything having to do with a custom, tradition, way of life, or accepted behavior.<sup>4</sup> According to the Evidence Act, a custom is a rule that has become established over time in a particular territory and has legal status.<sup>5</sup>

## **CUSTOMARY LAW**

Customary law is the name given to laws that are enforceable against a particular group of people and that have received official legitimacy via the use of legislation or judicial intervention. The Supreme Court, in *Nwaigwe & Ors v Okere & Anor*,<sup>6</sup> maintained that customary law is the part of the legal system that stems from the long-standing customs of a community's members, which

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<sup>2</sup>B A Garner (Edn), *Black's Law Dictionary* (11<sup>th</sup>edn, Minnesota: West Group 2004) 1302.

<sup>3</sup>Chambers Dictionary (20<sup>th</sup>edn, 1981) 2423.

<sup>4</sup>Graner (n1) 299.

<sup>5</sup>Evidence Act 2011 s. 258.

<sup>6</sup>(2008) LPELR-2095(SC).

have, through mutual adoption, acquiescence, and habit, gained some degree of force and element of compulsion as a community's laws.

## RIGHTS

According to Black's Law Dictionary, a person's rights are those that are owed to them by virtue of a legitimate claim, a court order, or a moral precept.<sup>7</sup> According to Dada, rights are entitlements whose parameters are set by the law.<sup>8</sup> A definition of rights by the courts was provided in the case of *Sakati v Bako & Anor*<sup>9</sup> as a legitimate title that gives the bearer the freedom to litigate or dispose of the item as they like. However, this notion might not apply to human rights because certain rights like the right to life might not be taken away at will. Thus, it seems that this definition better fits the concept of property rights. Izzi and Fab-Eme point out that rights are assertions that are supported, safeguarded, and acknowledged by a certain legal framework.<sup>10</sup> Because different legal systems allow for the existence of various sorts of rights, including their enforcement mechanism, rights are therefore system-based.

## HUMAN RIGHTS

Human right is a concept that is pertinent to this subject. Human rights are those fundamental and significant rights that all people hold due of their shared moral standing as fellow creatures of humanity. According to Ogbu,<sup>11</sup> One of the important facets of human political reality that verges on being claims essential to human survival is human rights. The United Nations Centre of Human Rights<sup>12</sup> characterizes human rights as those that are essential to our existence as humans and that are part of our essence. On the other hand, human rights are defined as rights arising from the inherent dignity of the human person in the 1948 Universal Declaration of Human Rights.<sup>13</sup> Human rights are therefore fundamental freedoms grounded in common ideals such as independence, fairness, equality, and dignity.

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<sup>7</sup> Garner (n1) 1348.

<sup>8</sup>J Dada, 'Impediments to Human Rights Protection in Nigeria' [2012] (18 (1) (6) *Annual Survey of International & Comparative Law* 2.

<sup>9</sup>(2015) LPELR-24739(SC).

<sup>10</sup>M O Izzi and C Fab-Eme, 'Widows and Inheritance Rights in Nigeria: Beyond the Letters of the Law' [2020] (8) (3) *International Journal of Innovative Legal & Political Studies* 3.

<sup>11</sup> O N Ogbu, *Human Rights Law & Practice in Nigeria; An Introduction* (Cidjap Publishers 1999) 1.

<sup>12</sup>United Nations Centre for Human Rights, 'What are Human Rights; <<https://www.un.org/en/sections/issues-depth/human-rights>> accessed 7 August 2023.

<sup>13</sup> Garner (n1) 1348.

## CULTURE

A group of people's collective knowledge, experience, beliefs, values, attitudes, meanings, hierarchies, religion, concepts of time, roles, space, and the universe, as well as the material goods and possessions they have accumulated over generations via both individual and collective effort, are collectively referred to as their culture.<sup>14</sup> Even while a person's culture frequently predates their birth, it is nevertheless possible for them to actively alter their current culture, as was the case with *Olowu & Ors v Olowu & Anor*.<sup>15</sup>

Numerous culturally based discriminatory behaviors against women exist in Nigeria. This implies that people may just continue an activity they have been engaging in for a long time without considering the rationale or philosophy behind it, given the emotional and psychological influence that culture has on people's lives. Smith and Bond note that culture is rooted in values that are imbibed and not necessarily learned.<sup>16</sup>

## PROPERTY

The concept of property has diverse meanings depending on the context in which it is used. In legal parlance, property refers to anything (items or attributes/tangible or intangible) that can be owned by a person or entity. Legally, property connotes the most complete right to something; the owner can possess, use, transfer, or dispose of it.<sup>17</sup> Ibekwe notes that property is often used interchangeably with ownership to signify the highest right an individual can have over something.<sup>18</sup> In another sense however, property signifies the *res*, that is the object upon which rights can be exercised.<sup>19</sup> It is in this context that the concept of property is used in this article.

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<sup>14</sup>P Smith and M Bond, 'Cultures and Persons: Characterizing National and Other Types of Cultural Difference Can Also Aid Our Understanding and Prediction of Individual Variability' [2019] (10) *Frontiers in Psychology* 22.

<sup>15</sup>(1985) LPELR-2604(SC).

<sup>16</sup>Smith and Bond (n40).

<sup>17</sup>Nwabueze (n7) 4.

<sup>18</sup>S Ibekwe, 'An Outline of Property Law and Essential Land Reforms for Nigeria' file:///C:/Users/Vincent%20Wasini/Downloads/victorakwara,+AN+OUTLINE+OF+PROPERTY+LAW+AND+ESSENTIAL+LAND+REFORMS+FOR+NIGERIA.pdf accessed October 6 2024.

<sup>19</sup>*Ibid*.

## **THEORETICAL FRAMEWORK**

Certain philosophical tenets are present throughout the analysis of women's inheritance rights in Nigeria. These are legal theories or schools of thought. The natural law theory, positivist theory, and realist theory of law are the legal theories that are pertinent to this dissertation.

### **NATURAL LAW THEORY**

Morality and the law are related, according to proponents of the natural law view. Therefore, the natural law doctrine holds that morality and ethics ought to be the foundation of law. According to Natural Law, rightfulness serves as the foundation for law. Humans employ reason to determine right from wrong and hence discover Natural Law. Therefore, the discovery of some universal moral and ethical principles is where natural law derives its authority.<sup>20</sup>

### **POSITIVIST THEORY**

Legal positivists contend that once enacted by the appropriate body, laws have no morality or emotion and become legally binding regardless of the content of their values. This implies that social norms can be regarded as laws as long as they have the right foundation and sufficient means of enforcement.<sup>21</sup>In other words, legal positivists do not recognize as law any regulation that is not enforceable. Unlike the natural law paradigm, legal positivism does not base law on human rights, reason, or divine commands.

### **REALIST THEORY**

For the realist theory of law, the emphasis is on an understanding of the political, economic, social, as well as ideological factors that influence the mind of the judge and play out in the operation of law in society. Law reform is something that the legal realists are interested in. They are curious about the purposes, goals, and implications of the law as well as its applicability in various social contexts. In order to make necessary reforms in the law, an understanding of how it operates presently is both necessary and compelling.

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<sup>20</sup>Africa Law Centre, 'Law Theories' <<https://study.com/academy/lesson/natural-law-theory-definition-ethics-examples.html>> accessed October 6 2024.

<sup>21</sup>Dias (n15) 389.

# **ANALYSIS OF WOMEN'S RIGHT TO INHERITANCE IN NIGERIA**

This article examines the idea of women's rights to inheritance in a few particular Nigerian ethnic groups. This article also addresses the issues that are common in Nigeria and work against women's inheritance rights. In order to extract lessons for Nigeria, the legal positions on women's inheritance in the UK and South Africa are also examined.

## **NATURE OF INHERITANCE AMONGST SOME ETHNIC GROUPS IN NIGERIA**

The majority of Nigeria's ethnic groups' traditional customs place a strong emphasis on the issue of discrimination against women. A number of circumstances, such as poverty, illiteracy, and cultural norms, contribute to the social marginalization of women in Nigeria and encourage the portrayal of women as objects of inheritance and subhuman beings, depriving them of inheritance rights. These problems are the root cause of Nigeria's pervasive discrimination against women. Izzi noted that although there is still prejudice against women, following years of fighting, women's rights are now recognized internationally.<sup>22</sup> Thus, the inheritance patterns of the Igbo, Yourba, Itsekiri, and Ijaw ethnic groups in Nigeria under Islamic law are covered in this section.

## **IGBO CUSTOM ON INHERITANCE**

The patrilineal concept of primogeniture serves as the foundation for the Igbo laws of inheritance. According to this law, males inherit to the exclusion of females. The rule favors other male relatives, such as brothers and uncles, over closer relatives, such as daughters, even in cases when the deceased left no male heirs. When a person passes away outside of their state of residence, their eldest son, also known as Okpala, Diokpa, or Diokpala, takes over as the head of the family and inherits the deceased's property; however, the other male offspring are still eligible to receive a portion of the deceased's fortune.<sup>23</sup>

As the eldest son has been vested with the estate of the deceased, he is considered the administrator or trustee under Igbo custom. This is consistent with the court's stance in *Alli v Ikusebiola*<sup>24</sup> that

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<sup>22</sup>M O Izzi, 'A Legal Appraisal of Property Rights of Women in Nigeria' [2022] (18) (1) *Journal of Private and Property Law* 2.

<sup>23</sup>P Azaukor, 'The Women's Place in Family Inheritance in Igboland: A Rational and Legal Critique' [2021] (1) (1) 77.

<sup>24</sup>(1985) 1 NWLR 630.

the role of the family head is similar to that of a trustee managing the deceased's assets for the benefit of the other beneficiaries. For the benefit of the entire family, the eldest son is vested with, in charge of, and managing the deceased's other holdings.<sup>25</sup> To the degree that there are male beneficiaries from the deceased's inheritance, this choice is correct. Even in the face of incompetence, the eldest son is likewise unable to be removed from the place that nature has given him. The brother or uncle of the deceased uncle inherits, to be administered for the benefit of the deceased's family, in the case that there is no male issue.<sup>26</sup>

Although women are expected to marry off and have no land interest, the oldest male sibling has a duty to give land to the other male siblings when they seek it, as stated in *Ejiamike v Ejiamike*.<sup>27</sup> It has been observed, therefore, that the departed may, by valid directive, deprive the eldest son of this right prior to his death. This directive is intended to guarantee that the family's business is effectively run by an individual who has the necessary qualifications based on intellect and education. The eldest son's privilege cannot be violated without his approval if the father has not given any such instructions.<sup>28</sup>

Because of this, women's status under Igbo tradition is extremely insecure. Women only have possessory rights, if they behave well.<sup>29</sup> When a woman, whether her daughter or wife, passes away, the land she was given becomes family property, vesting in her male heirs or offspring, unless an explicit bequest is made. Regarding the instance of *Nezianya v Okagbue*,<sup>30</sup> According to the Supreme Court's ruling:

The native law and custom of Onitsha state that a widow's ownership of her late husband's property does not make her the owner; rather, it does not make her a stranger, and she cannot deal with the property without her husband's family's approval. With time passing, she will not be able to claim the land as her own, and if the family does not agree, she will not be able to handle the property. She may, however, occupy the entire building or a portion of it, provided she behaves well.

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<sup>25</sup>*Ejiamike v Ejiamike*(1972) 2 ECSLR 11.

<sup>26</sup>*Ngwo & Nwojien Onyejana*(1964) 1 All NLR 352.

<sup>27</sup> (1n9).

<sup>28</sup>Azaukor (n5) 78.

<sup>29</sup>*Ibid*.

<sup>30</sup>[1963] All NLR 358 SC.

The Igbo habit of marginalizing women makes it more urgent for women to bear sons in order to ensure their appropriation of family property. This is due to the fact that a widow is considered a piece of property that may only be inherited by her eldest son and is only permitted to stay on the land with his consent. The Supreme Court in *Chinweze v Mas*<sup>31</sup> decided that a wife's life interest in her deceased husband's property is all that she has under customary law, and that interest expires upon his death.

Despite the above, judicial attitude has largely shifted in recent times, to redress this historical deprivation of women. In *Aneke & Anor v Nweke*,<sup>32</sup> the Appellants challenged the customary practice of male primogeniture amongst under native law and customs applicable in Awka, Anambra State. According to the Supreme Court, customs that deprive women of their inheritance especially widows are incompatible with equity, natural justice, and morality. In *Obi v Ugbor*,<sup>33</sup> according to the Court of Appeal, it was also against natural justice, equity, and good conscience for women to bring in another woman to bear children in their late husband's name in order to benefit from inheritance.

## **YORUBA CUSTOM ON INHERITANCE**

Over the years, there have been significant modifications to the Yoruba custom of inheritance. The first position of the Yoruba custom regarding inheritance is that, regardless of gender, the eldest brother of the deceased receives the estate, with spouses and children being excluded.<sup>34</sup> Later on, this role was abandoned, and the deceased's belongings were transferred to the oldest son, who is now known as *Dawodu*.<sup>35</sup> The head of the family has the same administrative responsibilities as the deceased person's estate. In terms of women's status, it is generally acknowledged that the distribution of the deceased's inheritance should be equal among all eligible parties, male or female.<sup>36</sup> Nevertheless, the deceased's widow is not entitled to the deceased's wealth, in contrast to the female offspring.

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<sup>31</sup>(1989) 1 NWLR (Pt. 97) 254.

<sup>32</sup> (2014) LPELR-22697(SC)

<sup>33</sup>(2018) LPELR-44420(CA).

<sup>34</sup> M Yakubu, 'Property Inheritance and Distribution of Estates under Customary Law: Towards a restatement of Nigerian Customary Law (Federal Ministry of Justice, Lagos, Nigeria, 1991) 137.

<sup>35</sup> *Agara & Ors v Agunbiade & Ors* (2012) LPELR-8390(CA).

<sup>36</sup> *Davies v Rahman-Davies & Anor* (2018) LPELR-46557(CA)

In *Ogunbowale v Layivola*,<sup>37</sup> three spouses and three children one from each wife survived the deceased. When he passed away, he also left two residences. One of the two houses left by the dead was sold and conveyed in fee simple by the second defendant, who also happened to be the mother of one of the children. She claimed to have done so with the help of a document signed by the deceased's two daughters and another relative. Among other things, the question to be answered in this case was: What is the wife's or children's legal standing with regard to his real estate following his testate death?

The court determined that nothing belongs to a man's wife or wives under customary law, overturning the property sale. The wives who bore the deceased's children were permitted to stay in the deceased's house with their offspring. If a widow wishes to continue living with her late husband's family, she would seem to have the sole right to her occupation. The first defendant received the property in question in fee simple from the second defendant, who had sold it as her own. The second defendant's only inheritance from her husband's real estate was the right to use the space as a widow. She could therefore convey the property since she had no interest in it. Furthermore, she was a subject of inheritance.

Women are not allowed to be the head of the household in Yoruba tradition or *Dawodu*, even when they are the first issue.<sup>38</sup> There doesn't seem to be any entity that can stop this prejudice against women in terms of family headship. Nonetheless, the court has taken further action in regards to this discrimination against women when it comes to the division of the deceased's inheritance. In *Ricardo v Abal*,<sup>39</sup> the court decided that although the male kid is typically the one in charge of the family and oversees the deceased's assets, an older female child has the right to make the final decision regarding how the inheritance is divided. However, in *Lewis v Bankole*,<sup>40</sup> it was decided that a daughter could also become the *Dawodu* if there was no male offspring or if the male kid who would have normally acquired headship of the family was still a baby.

There are two distinct methods under Yoruba custom for dividing a deceased person's estate when it comes to inheritance. The initial one is referred to as *Idi-Igi*, in which an equal portion is attributed to each wife and equally distributed amongst her children. The second mode of distribution is the *Ori-Ojori*, in which devolution is *per capita*, that is, according to the number of children.<sup>41</sup> Generally,

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<sup>37</sup> (1975) 3 CCHCJ/HC 327 of 19th March, 1975

<sup>38</sup>Yakubu (n16) 140.

<sup>39</sup>(1926) 7 NLR 58.

<sup>40</sup>[1909] 1 NLR 81.

<sup>41</sup>*Taiwo v Lawani* (1961) ANLR 733.

the *Idi-Igi* system is preferred for monogamous marriages while the *Ori-Ojori* system is preferred for polygamous marriages. However, this is not an inflexible rule and each case is often determined on its own merits. In *Dawodu v Damole*,<sup>42</sup> the ruling stated that the estate should be distributed per capita (*Idi-Igi*), or divided into four parts representing the number of wives, rather than per stripes, or according to the number of children, in the event that the deceased left behind nine children from four wives and a few grandchildren.

## INHERITANCE UNDER ISLAMIC LAW

Sharia Law has a significant influence on Islamic customs regarding inheritance. Sharia law is in effect in the majority of Nigeria's northern states. Women can possess and keep their own property, pass it on to their heirs, and inherit from deceased relatives under Sharia law, giving them similar inheritance rights to men.<sup>43</sup> On the other hand, because women receive half as much inheritance as men, inequality still continues in some manner.<sup>44</sup> However, if her late husband left no heirs, a widow is only entitled to one-fourth of the estate; if heirs exist, she is only entitled to one-eighth.<sup>45</sup> If more than one widow survives the deceased, then each of them receives one-eighth of the inheritance.<sup>46</sup> Additionally, in accordance with Sharia law, the only living daughter is entitled to half of the deceased's assets, while the only living son is entitled to the entire estate.<sup>47</sup> But women were only allowed to inherit personal property not land.<sup>48</sup>

Islamic law's discrimination against women is closely related to the faith. There is a notion known as *qawama* in Sharia law.<sup>49</sup> This means that men are regarded as protectors of women and are viewed as being superior to women.<sup>50</sup> This concept differentiates the inheritance rights of men and women between what can be inherited and the quantum of interest to be obtained. Hence, under Islamic law, discrimination exists in two ways against women. First, women may only inherit personal and not real property. Secondly, women may only get a maximum of half of the estate of the deceased.

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<sup>42</sup>(1962) 1 All NLR 702.

<sup>43</sup>*Mohammadu v Mohammed* [2002] NWLR (Pt. 708) 104.

<sup>44</sup>A Diala, 'Reform of the Customary Law of Inheritance in Nigeria: Lessons from South Africa' [2014] (14) *African Human Rights Journal* 644.

<sup>45</sup>Diala (n27).

<sup>46</sup>*Ibid.*

<sup>47</sup>*Ibid.*

<sup>48</sup>*Ibid.*

<sup>49</sup> M D Fagbongbe, 'Gender Discrimination Challenges for the Twenty-First Century' [2002] (4) (2) *Lagos State University Law Journal* 167.

<sup>50</sup>*Ibid.*

## ITSEKIRI CUSTOM ON INHERITANCE

The inheritance rights of women under Itsekiri custom can be traced to the concept of marriage itself. Ifemeje and Umejiaku observed that ‘under Itsekiri custom, the issue of marriage is majorly a polygamous affair as it is common for men to marry several wives.<sup>51</sup> Because the man is typically required to pay the traditional bride price to the wife in addition to fulfilling other requirements, the Itsekiri marriage system, as defined by its customary law, is not a union of the man and his wife alone, but rather a union of the families of wife and husband.<sup>52</sup> As a result, in Itsekiri customary law, the polygamous marriage system is a fundamental tenet of discriminatory actions against women.

According to Itsekiri custom, the first son inherits the house in which the father lived outrightly, even if all of the children are eligible to inherit from their late father's inheritance.<sup>53</sup> In terms of inheritance distribution, the male offspring receive more shares compared to the female offspring. On the other hand, when the kids are the same sex, they share equally.<sup>54</sup> The widow's status is frequently more unstable than that of a daughter, who is entitled to a portion of the deceased's wealth. The fact that spouses are property of males, which is reinforced by the bride price paid to women in marriage, is the basis of the widow's position.<sup>55</sup> According to Itsekiri custom, women's property rights are limited to the belongings that the deceased left them *inter vivos*.<sup>56</sup>

## IJAW CUSTOM ON INHERITANCE

The Ijaw custom is predominantly applicable to the Ijaw ethnic groups that are scattered in various States in Nigeria like Bayelsa, Delta, Rivers and Ondo States. The Ijaw system of inheritance is dual in nature, depending on the type of marriage that the deceased contracted. Here, two form of marriage exists: *Iya* and *Igwa*.<sup>57</sup> If a marriage is arranged under the *Iya*, the inheritance is patrilineal; the eldest son inherits the greatest portion, while the youngest son receives the lowest. This means that the estate of the deceased passes down to the deceased's sons. Conversely, in the event that

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<sup>51</sup> S C Ifemeje and N Umejiaku, ‘Discriminatory Cultural Practices and Women’s Rights among the Igbos of Southeast Nigeria: A Critique’ [2015] (25) *Journal of Law, Policy and Globalization* 19.

<sup>52</sup> Ifemeje and N Umejiaku (n34).

<sup>53</sup> *Oke v Oke*[1974] 3 SC 1.

<sup>54</sup> I E Sagay, *Nigerian Law of Succession: Principles, Cases, Statutes and Commentaries* (Malthouse Press Ltd. 2004) 257.

<sup>55</sup> R A I Ogbobine, *The Foundation of Itsekiri Culture; the Benin Influence* (Rufbine Publishers 1984) 68.

<sup>56</sup> *Ibid*.

<sup>57</sup> O K Edu, ‘A Critical Analysis of the Laws of Inheritance in the Southern States of Nigeria’ [2016] (60) (1) *Journal of African Law* 147.

the deceased entered into an Igwa marriage, the matrilineal system of succession would apply, ensuring that the deceased's nephews would inherit the deceased's possessions.<sup>58</sup>

The customary inheritance of the Ikwerres of Rivers State shares similarities with what is obtainable in most parts of Nigeria to the effect that widows are not allowed to inherit from their husband's estate. However, the winds of change have begun to favour women as demonstrated in a plethora of cases. Prominent amongst these cases is *Ordu v Elena*,<sup>59</sup> where the Court sufficiently established that not only can a woman be accorded the right of inheritance in her father's house, her children can also inherit. To further amplify this fundamental change, the Rivers State House of Assembly enacted the Rivers State Prohibition of the Curtailment of the Rights of Women to Share in Family Property Law in May 2022. This Law has paved a window of opportunity for women to inherit properties which is in line with international best practices and an affirmative measure towards the realization of Women's Property Rights.

Despite the existence of these reforms, there is still need for more result-oriented recommendations to achieve a more holistic reform.

## **CHALLENGES REGARDING WOMEN RIGHTS TO INHERITANCE IN NIGERIA**

Notwithstanding the fact that case law has mainly stepped in to rectify this disparity, there are still issues with Nigerian women's inheritance rights. The following discusses Nigeria's issues with respect to women's inheritance rights.

### **CONFLICT OF CUSTOMARY LAW WITH STATUTES**

Customary law is a recognized body of law in Nigeria that the courts can enforce. Customary courts are found throughout Nigeria, applying native law and custom to cases that are presented before them. Nonetheless, there are differences between Nigerian customs and statutory rules. For example, section 24 of the Land Use Act 1978 states that in the locality where the land is situated, customary law will govern the devolution of the estate of the deceased, if it is subject to a customary right of possession, upon their death. Moreover, the deceased's customary law will govern the

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<sup>58</sup>Edu (n40).

<sup>59</sup>(2018) 17 NWLR (pt 1649) 514.

inheritance in cases where it is subject to a statutory right of possession. This implies that customary law, which frequently discriminates against women, is given more weight under the Land Use Act.

## **DELAYS AND COST OF LITIGATION**

In Nigeria, customary law is not legally binding unless it is declared so by the courts. According to the Evidence Act of 2011, s. 16(1), customs are applicable in Nigeria if they have been duly observed or established by a court. It is nevertheless necessary for the courts to validate local custom, regardless of how customary law is created. As a result, custom is typically argued before the court to be upheld or rejected. There exist certain inherent bottlenecks in litigation, particularly given the significant role the judiciary plays in determining the applicability of customary law. As noted by Ifemeje,<sup>60</sup> Many discriminatory practices against women continue to exist in Nigeria as a result of people's reluctance to file complaints with the courts due to judicial system frustrations caused by delays and procedural issues.

## **DIFFICULTY IN OBTAINING PROBATE/LETTERS OF ADMINISTRATION**

How the deceased's inheritance is divided after death depends on whether or not they were married. In cases where the deceased entered into a statutory marriage, the disposition of the deceased's estate would be governed by either letter of administration or probate, contingent upon the existence of a valid will. As a result, each State of the Federation's High Court (Civil Procedure) Rules and the Administration of Estates Law of its several States in Nigeria govern how an inheritance is managed and distributed after death. The main goals of the High Court Rules on Probate and the Administration of Estates Law are to guarantee that the properties of a deceased person are inherited in accordance with their wishes or the law.

For example, in Rivers State, "the court's probate registry is where one can submit an application for the granting or revocation of administration or probate," according to section 17 of the Administration of Estates Law. The Probate Registry issues pertinent forms to interested parties in order to expedite the process of granting the rightful grant in relation to the deceased's estate.

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<sup>60</sup> S C Ifemeje, 'A Critique of Gender Discriminatory Practices in Igbo Customary Law Marriages' [2008] (1) (1) *Journal of Women and Minority Rights* 57.

However, as noted by Olatokun,<sup>61</sup> One of the difficulties the beneficiaries and the deceased's representatives encounter after their death is asking for and winning the necessary grant to manage the Estate. As a result, requesting letters of administration or probate is a costly procedure. Application fees, publishing fees, and other ancillary costs, such as the probate duty on the deceased's estate, are among the necessary fees that an applicant must pay. This frequently deters applicants especially women who are typically economically disadvantaged from submitting an application and getting probate. The process is so onerous that some people give up on it completely and continue with the old-fashioned way of sharing property, which comes with prejudice and exclusion.

## **MULTIPLICITY OF LOCAL CUSTOMS**

Customary law is more adaptable and typically uncodified than statute, which is codified and generally uniform. Furthermore, it might be challenging to establish a principle or norm that is generally relevant to every member of a society because different cultures and customs exist even within a State. Nigeria is a country with many different ethnic groups, languages, and cultures. While some of their habits may be similar, they are not precisely the same. Due to the disparate rights and interests protected by Nigeria's numerous customs, inheritance disputes frequently occur. For example, it is possible that the deceased's personal law differs from the local law pertaining to the property (land). Which law should apply in this case when dividing the deceased's estate is a contentious issue. Although the case of *Olowu v Olowu*<sup>62</sup> while section 24 of the Land Use Act seems to imply that the *lex situs* is the relevant law in terms of real property devolution, it really establishes the rule that a deceased person can alter his personal law prior to his death and, as a result, alter the law that governs the division of his inheritance. This is just one illustration of the difficulty Nigeria's many customs present.

## **COMPARATIVE ANALYSIS OF WOMEN'S RIGHTS TO INHERITANCE IN SELECTED JURISDICTIONS**

The rights of women to inherit under a few chosen customs in Nigeria have been examined in the earlier sections of this chapter. As a result, an examination of women's inheritance rights in South

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<sup>61</sup> T Olatokun, 'Administration of Estates and Probate: Issues and Challenges' (A Paper Delivered at the National Judicial Institute, Abuja, 2019 for Chief Registrars, Deputy Chief Registrars, Directors, and Secretaries of Judicial Service Commissions/Committee) 24.

<sup>62</sup>(1985) 3 NWLR (Pt. 13) 372.

Africa and the United Kingdom is conducted, offering Nigeria important insights in its fight against gender inequality.

## **UNITED KINGDOM**

In contrast to Nigeria and South Africa, where statutory weddings coexist with customary unions, all marriages in the United Kingdom are statutory unions that may be consummated in a civil ceremony or a religious one.<sup>63</sup> This implies that there has never been historical prejudice in the UK, which is a by-product of the prevalence of marriage. Notwithstanding the foregoing, gender discrimination persists in the UK and calls for a range of Government actions to eradicate the problem.

There is an inheritance order with regard to intestate succession. The surviving spouse and any children receive priority. As successors, the spouse, children, and other family members are eligible. The deceased's possessions may be inherited concurrently by the surviving spouse and children. However, if there are heirs of a closer order, then the rights of subsequent relatives to inherit are barred. The surviving spouse has the right to inherit a statutory legacy of 125 000 pounds, half of the estate for life, and possession of the deceased's personal belongings. Should the departed leave no surviving children but more family members, the statutory bequest is augmented to 200,000 pounds.<sup>64</sup>

The significance of marriage is highlighted by the fact that in Nigeria, a deceased person's inheritance distribution is largely based on the type of marriage the deceased person entered into. Unlike in Nigeria, there is no distinction made between official and traditional marriage in the UK. In Nigeria, eliminating the distinction between official and customary marriages seems like a good first step toward advancing women's inheritance rights.

## **SOUTH AFRICA**

Customary law is an essential component of South African law that is safeguarded by the South African Constitution. Section 39 of the Republic of South Africa's 1996 Constitution acknowledged common law and customary law as having equal standing. As per the aforementioned section, every court, tribunal, or forum shall uphold the spirit, purpose, and goals

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<sup>63</sup>Citizens Advice, 'Getting Married' <https://www.citizensadvice.org.uk/family/living-together-marriage-and-civil-partnership/getting-married/> accessed 18 October 2023.

<sup>64</sup>R Kerridge, 'Intestate Succession in England and Wales' [2015] (2) *Comparative Succession Law* 326.

of the Bill of Rights in the interpretation of any legislation as well as in the development of common law or customary law.

Inheritance and intestate succession in South Africa, like other conventions in Nigeria, favored men over women. In *Mthembu v Letsela*,<sup>65</sup> The petitioner said that the deceased had passed away intestate and that she had been married to him in accordance with customary law. The petitioner and her daughter were residing on a plot of real estate owned by the deceased at the time of his death. The deceased's father was the first respondent. He argued that the male primogeniture rule entitled him to receive the house because the deceased had no sons. The applicant argued that the intestate succession system was unfair to her and her daughter and that it violated indigenous law.

The applicant contended that the primogeniture law had become discriminatory in modern urban culture and had outlived its utility. The question of whether this succession rule unlawfully discriminates against people based on their gender or sex was brought before the court. It was decided that it was challenging to reconcile this type of distinction between men and women with the idea of unfair discrimination against women if one acknowledges the obligation to provide for nourishment, maintenance, and housing as an essential corollary of the primogeniture system. As a result, the court decided that neither natural justice nor public policies were violated by the male primogeniture norm.

However, in it was held in *L.M & Anor v J.M & Anor*<sup>66</sup> because there is an obvious constitutional conflict between the primogeniture principle and the customary law of succession. A court interpreting customary law is expressly required by Section 39(2) of the Constitution to uphold the spirit, purpose, and goals of the Bill of Rights. Similarly, the Constitution's section 39(3) declares that, so long as they are in line with the Bill of Rights, the Bill of Rights does not preclude the existence of any other freedoms or rights that are granted by customary law.

In South Africa, the attitude and philosophical shift surrounding women's inheritance rights have now been codified into law. Spouses who were married under customary law will now be entitled to a portion of the joint inheritance upon their spouse's death or divorce, per Section 2 of the Recognition of Customary Marriages Amendment Act 2021.

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<sup>65</sup>2000 (3) SA 867 (SCA).

<sup>66</sup>(63462/12) [2014] ZAGPPHC 1026.

## CONCLUSION

Death is a part and parcel of human existence and when a person dies, an issue that often arises is on how best to distribute the estate of the deceased amongst all those who are entitled to the distribution. If the deceased left a legally binding will, the distribution of the estate will follow the deceased's desires as stated in the will. Nevertheless, many people do not create wills, leaving the local customs to determine how their fortune is distributed. In light of this and the fact that many marriages in Nigeria are governed by native law and custom, it is important to examine the effects of these legal frameworks on women's inheritance rights.

A woman who marries in Nigeria under customary or Islamic law does not have the same level of legal protection when it comes to the division of assets that are scheduled to be distributed following the death of the owner as she would if she were to marry under the Marriage Act. The spouse is typically seen as having dominant/legal authority to dispose of family property under customary arrangement. In certain instances, this authority is frequently used without considering the wife's contributions because assets are typically obtained under the husband's name.

The courts have however rendered a number of significant rulings that both condemn certain discriminatory cultural practices and support women's property rights. Addressing this inequality has also garnered legislative involvement. The discriminatory practice against women persists in spite of this. For starters, the bride and her mother are not involved in the negotiation of the bride price; instead, the senior men of both families handle this negotiation in a way that is similar to bargaining over food in any open market. In addition to ignoring women's opinions, this practice tends to reinforce the idea that women are simply things that can be purchased.

Women are nevertheless at a disadvantage in societies that acknowledge their rights, such as the Yoruba culture, because they are not allowed to lead their families or share resources equally with men. For this reason, although though customary law is generally flexible, it seems to be particularly rigid when it comes to women's proprietary rights.

In conclusion, more work has to be done by the judiciary and legislative to ensure that discriminatory practices against women that impact their ability to inherit property are eradicated in Nigeria. Customary weddings should not be outlawed, but South Africa offers an example where customary marriages are legally recognized and the surviving spouse is entitled to a substantial portion of the deceased spouse's inheritance. To increase trust in the legal system, institutional changes are also required, particularly with regard to the judiciary.