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THE IMPACT OF DOMESTIC AND INTERNATIONAL INSTRUMENTS ON CUSTOMARY LAW WIDOWHOOD PRACTICES IN NIGERIA

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ABSTRACT

The widowhood practice in Nigeria is characterized by discrimination against women. This is a common phenomenon in the country especially among the rural dwellers that constitute the majority of the Nigerian women in spite of the various international and national instruments on elimination of all forms of discrimination against women. This is mainly due to the existence of customary laws that encourage application of harmful and obnoxious cultural practices and archaic laws on the one hand, and the lack of commitment by government to domesticate and/or implement these instruments on the other hand. Nigeria is a multifarious, multi ethnic and multi cultural nation where gender equality between men and women is honored more in breach than in observance. The discrimination is perpetuated conspicuously by the males against the females whereby the former which claims superiority treat the latter with levity and disdain in all spheres of human endeavors. The hardships occasioned on women by men through the instrumentality of unwholesome cultural practices are better imagined than witnessed. This paper attempts to examine those discriminatory cultural practices under our laws with particular reference to succession and inheritance. It argues that some of those laws particularly the customary laws that are repugnant to natural justice, equity and good conscience should be declared invalid, and those found to be incompatible with both local legislation and international convention, or contrary to public policy should, ipso facto, be abolished. The paper concludes that with domestication and implementation of the international instruments, together with relevant national legislation on elimination of all forms of discrimination against women, the hardships and inhuman treatment suffered by some Nigerian women occasioned by the application of archaic and barbaric native law and custom, particularly in the area of succession and inheritance would be reduced drastically if not totally eliminated. It is further submitted that restatement of customary law through codification, unification and harmonization of the various native law and customs of ethnic groups especially those of the major tribes (Hausa, Igbo and Yoruba) in Nigeria would go a long way in bringing about that much needed uniformity, certainty and predictability in customary law. These would sharpen the customary law and raise its status from being an instrument of male chauvinism to that of a civilized law that respects gender equality and the rule of law.

Keywords: Customary Law, Women Rights, Social Justice, Nigeria.

1. INTRODUCTION

It is a fact, that most Nigerian tribes apply obnoxious harmful cultural practices (and actively protect them as inviolable traditions) which can best be described as barbaric attitudes and treatment towards widows who ordinarily should be treated with care and affection. They are often accused of being responsible for their husbands' death. These practices persist despite the presence of statutory laws which provide, at least, limited protection from inhuman and

degrading treatment. Widows are denied rights to succeed and/or inherit the property of their deceased husbands. Consequently, this has brought about pauperization of many widows and their children. Poverty is one of the greatest obstacles to fundamental human rights and the Nigerian widow is in a worse position.

Under some Nigerian customary laws, such as the Igbo native law and custom, when a man dies, the surviving wife (the widow) is subjected to dehumanizing funeral rites. Every hair on her head is cleanly shaven; she is allowed a minimum of clothing just enough to cover her nakedness; she is made to sleep on the bare floor and to eat with broken plates. She is confined to the recesses of an inner chamber forbidden to see the light of day for some period prescribed by custom. The woman dare not complain. She would rather count herself lucky that she was not buried along with her husband¹. Similarly, throughout most of Southern Nigeria, widows undergo harrowing and humiliating treatment following the death of their husbands.

Nigerian women who lose their husbands are not given the chance to grieve privately but are routinely subjected to painful and dehumanizing public treatment as a result of the continued application of patently discriminatory laws and practices. Men who lose their wives are usually not subjected to similar practice. In the limited cases where certain rules are prescribed for men, choice of observance is often left to their discretion. By contrast, recalcitrant widows face punishments ranging from fines to excommunication and even banishment.

Despite the obvious injustice which the Nigerian widows suffer, there is no conscious and serious effort aimed at changing the customary legal rules relating to widows, or on the larger question of the proper place of customary law in the changing Nigerian society, yet practices which hitherto have been taken as settled and widely accepted are now unraveling in the face of the changing socio-economic conditions in Nigeria. Rather than offer protection to widows, some received common laws, and statutory laws in the country perpetuate discrimination against them by failing to prescribe positive laws to protect their interests and prescribing rules which reinforce the traditional notions of women as inferior objects. Moreover, inconsistencies, contradictions, and confusions inherent in the Nigerian legal system, a product of Nigerian's colonial past, jeopardize the positive contributions of women generally and prevent a meaningful resolution to the problem of widowhood.

Sadly, Nigerian widows are not alone in this situation. In other parts of Africa, widows are accorded second class status and are generally denied adequate legal protection. African customary law generally does not recognize the right of a widow to inherit her husband's property and most often, views a widow as her husband's property. Recent decisions in Kenya and Zimbabwe are classical examples. In *Murisa v. Murisa*², the Supreme Court of Zimbabwe unanimously overruled a decision of the Magistrate Court that a widow could inherit her deceased husband's estate. According to the Supreme Court "The question of law that arises can be formulated fairly and simply in these terms: Does our customary law recognize the right of a widow to be appointed heir to her deceased husband's estate and intestate"? The verdict was an emphatic "No". Similarly in *Otieno v. Ougo & Anor*³, the Kenyan Court of Appeal denied a widow the right to bury her husband holding that under the "luo law" to which the deceased was subject, a wife has no right to bury her husband. The simplistic approach adopted by courts in Africa when interpreting and analyzing questions of women's rights and entitlements unfortunately denies and/or ignores the deep multi-faceted cultural, economic, and social changes that have been taking place in the African Continent since the onset of colonialism. These changes make formal resort to customary law always unrealistic.

¹ Oputa, Chukwudifu; "Women and Children as Disempowered Groups"; Women and Children under Nigerian Law, 1, 9, Awa U, Kalu and Yemi Osibanjo (eds.), 1989, p.101

² (1992) 1 ZLR 167

³ (1987) K.L.R 407 (C.A.K) 385, Civil Appeal no. 31 of 1987

The social and legal structures of many African countries today are the result of, at least, three superimposed cultural stratifications: the traditional and pre-industrial phase, the colonial experience, and the post-colonial economic, social and political structure. Thus, a continued wholesale application of pre-colonial cultural practices is unrealistic, and works great injustice against the majority of the African women, whose voices are not usually represented in national policy debates. Though family patterns have changed, customary laws of the past are still applied. The problem lies in the blind idealization of the past.

Studying the position of widows in Africa, very potently highlights the tensions and contradictions in the newly emerging States in Africa. There are tensions in the varied and often conflicting circumstances for the justification for continued application of customary law and practice in this modern globalised world. The fact that the rights and interests of a widow often conflict sharply with those of other family members such as the wives and other children and relatives of a deceased husband, casts doubt on the rights paradigm as the easy solution to the problem of women in Nigeria in particular and Africa in general. The study of widows reveals the painful position of women as both the defenders and the victims of culture. Unfortunately, knowingly and unknowingly, women are sometimes used as agents for perpetuating practices which are dehumanizing to widows as well as overturning the entrenched customary and religious practices. Paradoxically, the position of women in Africa calls for a deep introspection into how we perceive, understand, and ultimately assure value to the harmful practices embedded in our cultures. The plight of widows in some parts of Nigeria shows how actions, omissions, and decisions in certain communities could impact negatively on the lives of rural women despite the equal opportunities created by the present global economic order.

This paper examines the position of widows under Nigerian law, focusing particularly on customary laws and practices on the one hand, against the background of emerging rights of women on the other. It argues that the existence of some customary laws and practices in Nigeria can no longer be justified in the changing face of Africa today.

Contrary to the assertion by Betty Potash that “African widows in most societies have choices and exercise them”⁴, this work is of the view that African widows have no real choices to exercise. What are offered as choices have often had the effect of perpetuating the domination of widows by men and by subjecting their interests to the decisions of some male relatives. Thus, options such as accepting her husband’s brother as a husband, returning to her natal group, or residing with married children do not significantly advance the cause of widows, but rather serve to numb or exacerbate societal sensitivity to their plight. This article calls for change in the traditional treatment of widows by abolishing all discriminatory customary laws and practices in accordance with the evolving international human rights standards on equality and non-discrimination. Given the number of women affected, their age, and their relative importance to the economy of African states, there is an urgent need for meaningful reform.

Even though the position of a woman in the family under customary law is that of a member, her rights in terms of sharing of family property vary from culture to culture. The exogamous system of marriage removes daughters from their parents into the husband’s families. The result is that daughters are not regarded as permanent members of their father’s family and are for that reason denied rights of succession. In the case of an unmarried daughter, the possibility of a future marriage subjects her to the same treatment. In her husband’s family the possibility of a divorce and the fact that she is not a blood descendant deprives her of rights in that family too. The situation is a vicious cycle.

In most cultures in Nigeria, particularly, among the Igbos, Yorubas, Edos and Urhobos, the wife or widow of a deceased does not come within the definition of family member so as to enable her acquire the rights and privileges accruing to the children of the family. She is regarded as a ‘stranger’ and so cannot inherit any property from her husband, and in some cases even from her father. A few examples would buttress these assertions.

⁴ See Goldman, S. and Lord B; *Widowhood* (Cambridge, M.A. Schenckman, 1993)

2. AN OVERVIEW OF SOME OF NIGERIA'S CUSTOMARY LAWS

2.1 Yoruba Customary Law

Under the Yoruba native law and custom, a wife cannot take part in the sharing of her husband's property, but she can, at least, enjoy some rights of inheritance from her father's side. In *Suberu & Ors. v. Sunmonu & ors*⁵, and *Yusuf v. Dada*⁶ the Supreme Court held that "it is a well settled rule of Yoruba native law and custom that a wife cannot inherit her husband's property". The Yoruba people derogatively refer to widows as the "Akakowes" meaning those who had lived or are still living secluded lives and thus out of tune with the realities of life.

2.2 Igbo Customary Law

In Igbo land "umuokpu" or daughters of the lineage constitute a formidable group in shaping the fate of the widow. This group of women aggravates the dismal position of widows. Indeed, they are betrayals to widowhood. All the married daughters of a particular place are qualified to be members of this group. Tradition demands that on getting married, the young women present some drinks, food and money, to the members of "umuokpu" for initiation and registration as bona fide members of the group. Igbo customary law regards the group as a 'fully-fledged government' on its own. And with regard to widowhood practices, the notoriety of this group is said to be proverbial or legendary.

Of all the indignities suffered by the Nigerian widows, the spiteful treatment often meted out by the "umuokpu" to the widow is the most painful part of widowhood. Ordinarily in such a time of trials and tribulations, one would expect a reasonable measure of sympathy from people of the same sex. Unfortunately, in the context of widowhood practices in some parts of Igbo land, the reverse is the case and the world witnesses what could be termed as woman's inhumanity to woman.⁷

The "umuokpu" are indeed sadists, and if a widow has the misfortune of falling into their trap, they punish her with incredible relish. For example, in order to humiliate the widow, the "umuokpu" will insist that a widow sit on a bare floor, or at best, on a mat instead of allowing her to sit on a chair or even a mattress. Widows were usually ordered by the umuokpu to take her small kitchen chair to "banana bush" behind the family house. During the mourning period which lasts between six months and one year, a widow is expected to dress in complete black with her hair cut to the skin. This forlorn and naturally dismal place was to be the poor widow's abode for the first twenty-eight days after the death of her husband. Whether death occurred during the cold hamattan season, during deliberating sunny summer season, weather conditions are immaterial or irrelevant to the verdict of the "umuokpu". Their decision is unquestionably final. It should be noted that a widower is not subjected to any of the foregoing ordeals.

Where a woman is allotted a portion of land by her father that portion remains her father's family land and not that of her husband. She cannot transfer that to her husband. Therefore, her husband cannot dispose of such portion of land because "nemodat quo non habet", (he who has not, cannot give). In *Oke & Anor v. Oke & Anor*⁸, the court held that a woman cannot devise her un-partitioned portion of family land to her son and neither could she dispose of it in any other way even though the son might ultimately inherit the property on her death. The land, however, still remains his mother's family land.

Although a wife has a right to reside in her husband's house as long as she remains the wife, such right terminates as soon as her husband dies and her only saving grace becomes

⁵ (1957) 1 NSCC 4

⁶ (1990) 4 NWLR (pt. 146) 657, at p. 669

⁷ Adekanmbi, Dotun; "Nigeria: Tears for the Living"; The News, (Lagos NEXIS) 30 November, 1999.

⁸ (1974) 9 NSCC 148

her children's right to reside in their father's house. The Supreme Court in the case of *Chinweze V. Masi*⁹, held that under customary law, a wife has only a life interest in the property of her husband and if he dies, her interest ceases. One may, therefore, imagine that a woman without an issue would technically become homeless on the death of her husband. Among the Igbo, a widow is usually "inherited" by her husband's eldest brother who in turn becomes her new husband and she, therefore, retains her rights by cohabiting with him. A widow without a son may be expelled from her late husband's house by her husband's relations unless she agrees to be 'inherited'.

In the case of *Nezianya v. Okagbue & Ors*¹⁰, the Supreme Court, while nullifying as repugnant to natural justice, equity and good conscience, the Onitsha custom which postulates that an Okpalla has the right to alienate the property of a deceased person in the lifetime of his widow, held that, such widow may only deal with her late husband's property with the concurrence of her husband's family but she cannot assume ownership of or alienate the property. She cannot by effluxion of time, claim the property as her own but she can occupy the building subject to good behaviour. She can also let part of the house to tenants and use the rent obtained thereby to maintain herself if her husband's family fail to maintain her. In *Mojekwu & Others v. Ejikeme & Others*¹¹, the two great grandsons and the granddaughter of Reuben Mojekwu, who died intestate, appealed the ruling of a lower court in favour of five male members of Reuben's brother's family with regard to the inheritance of Reuben's property. The litigation began with the appellants' request for restraining order against the respondents, who had trespassed by entering Reuben's compound where the appellants were living. This case involved the practice of "Nnewi", where a man dies without sons but has daughters. A daughter must remain unmarried and bear children who effectively became her dead father's heirs to inherit and carry on the male lineage. The appellants claimed that Nnewi had been performed for Virginia, Reuben's daughter and the appellants' mother and grandmother, which entitled her and her children to inherit Reuben's property. The respondents, on the other hand, claimed that the custom of "Nnewi" had been performed for Reuben's other daughter, Comfort, entitling her and her children to inherit the property, but since Comfort had died childless, Reuben is considered under customary law as having died without a surviving male heir, thereby causing the property to pass to Reuben's brother or the brother's male issue. On appeal, none of these arguments, all of which were based on Nigerian customs, prevailed. Finding that these customs were discriminatory against women and "repugnant to the principals of natural justice, equity and good consiense," the court concluded that the appellants, as Reuben's blood relations, were entitled to inherit his estate and that it would be inequitable to throw them out of their home. While not explicitly stated, the Court based its ruling on fundamental rights guaranteed under the Nigerian Constitution¹². This custom also applies to widows.

In the case of *Uka v. Ukama*¹³ the Court upheld the matrilineal Igbo custom which maintains that the property of a man who dies without a male issue devolves on his family while his surviving female issue is precluded from succeeding to her late father's property. Also, in *Ugboma v. Ibineme*,¹⁴ the court held that in accordance with the general Igbo custom and that of Awkuzu (Anambra State), in particular to which the deceased belonged, women are not entitled to inherit land from their father. Consequently, the court held that the female plaintiffs had no locus standi in an action seeking a declaration that the property in question, (being that of all the children of the deceased in principle), could not be sold and conveyed by the first defendant (the eldest son and head of the family alone. This principle of primogeniture is prevalent in most parts of Eastern Nigeria. A female cannot be a family head no matter her

⁹ (1989) 1 NWLR (pt.97) 254, at p. 270

¹⁰ (1963) 3 NSCC 277

¹¹ (1999) 5 NWLR 402

¹² See the Constitution of the Federal Republic of Nigeria 1999, S. 42

¹³ (1963) FSC 184

¹⁴ (1967) FNLR 251

seniority and affluence in the family. Even where the intestate left behind is money, it is inherited by all deceased's sons to the exclusion of his daughters. If the deceased had no son then his property would be inherited by his eldest full brother. The only known exception appears to be that which exists in parts of Idemili Local Government of Anambra State. To inherit her father's estate, the deceased's daughter is persuaded not to marry but to remain in the family with the hope of bearing a male heir.

2.3 Igala Customary Law

Under the Igala native law and custom, if a man dies, his wife becomes part of his estate to be inherited by any of the deceased husband's brothers or relatives, thereby making it impossible for women to succeed to the estate of their late husbands. Where a man dies without any male child, his wife may be driven out of the husband's house, if the husband's relatives are hostile to her, by alleging she was responsible for the husband's death. She may be allowed to stay in the family house only to take care of her children.

Traditionally the main role of a woman is to cook and give birth. She is never a member of her husband's family. She cannot inherit her husband's assets except those given to her absolutely by her husband before his death. The only people to succeed to the deceased's property are, generally, his children before his brothers or relatives. A woman can only enjoy the properties of her late husband mainly through her children. Although Igala customary law does not discriminate against females, it is male preference.

On the death of a man, his widow may become the wife of his brother or any other close relative. The new relationship becomes effective without the need for a fresh bride price or dowry as required in a formal marriage. This is to ensure continuity in marital relations with the late husband's family and to look after her children within the family house. It should be noted, however, that with acquisition of education and changes in modern society, most of the discriminatory harmful cultural practices against women are fading away.

The Nigerian position is, however, not the worst in Africa. In Ghana, widows from traditional polygamous families are reported to experience violence, allegations of witchcraft, coercive and harmful cultural rituals when their husbands die. Widows of Chiefs in the Dagbong area of Ghana are treated as suspects for their husbands' deaths, considered as witches, captured, and banished; sometimes forced to confess misdeeds and sent to live in special camps. The Ministry for Widows in Northern Ghana looks after widows in the villages where there are reported cases of widows being evicted, beaten, raped and/or robbed.

The Ghanaian Criminal Code (Amendment Law), 1984 tried to mitigate the hardships and inhuman treatment experienced by widows by criminalizing the act of any person who compels a bereaved spouse or a relative of such spouse to undergo any custom or practice that is cruel in nature. It also makes it criminal to compel a bereaved spouse or a relative of such spouse to undergo any customary or practice that is immoral or grossly indecent in nature.

In February 1998, Malawi attempted to pass the Bill to amend the Wills and Inheritance Act with a view to criminalizing "property-grabbing" and "chasing-off" which was rejected for the third time. Some women's group suggested the Bill was thrown out because the male majority in parliament believed that such a law would encourage wives to murder their husbands for financial gain. In 1997, a widow was beaten to death on the allegations that she killed her husband through witchcraft and that she had also refused to participate in a sexual orgy with relatives of her husband as part of funeral rites.

Similarly in Tanzania, in *Ndewaosiad v. Odeamtzo Immanue*¹⁵ a liberal judge frowned at these barbaric discriminatory cultural practices against women and gave judgment in favour of the daughter who challenged some customary inheritance laws that were discriminatory against women. Judge Agostino commented thus;

¹⁵ (1968).

“...Lazy clansmen anxiously await the death of their prosperous clansmen who happened to have no male issue, and as soon as death occurs they immediately grab the estate...putting the widow and her daughters into terrible confusion”.

An estimated 500 women, accused of witchcraft, are murdered every year. The majority of these are widows, many of them are elderly. Many widows are driven from their homes and communities to face destitution, homelessness and hunger, according to a recent report by Help Age International to mark International Year of old persons and Older widows. Widows are often accused of witchcraft, resulting in their isolation and marginalization. Families and in-laws sometimes use these accusations to prevent widows from inheriting their late husbands' estates.

3. LEGAL INSTRUMENTS FOR PROTECTION OF THE RIGHTS OF WIDOWS

3.1 *The Constitution of Federal Republic of Nigeria*

In Nigeria today the grundnorm¹⁶ is the 1999 Constitution (as amended). It is the supreme law in the country and its provisions have binding force on all authorities and persons throughout Nigeria.¹⁷ If any other law is inconsistent with its provisions, the Constitution shall prevail and that other law shall, to the extent of the inconsistency, be void¹⁸. The Nigerian Constitution frowns at inequality and discrimination. S. 42(1) of the Constitution states that:

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

S. 42(2) of the Constitution further provides that: “No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of circumstances of his birth.” Section 43 also reads: “Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria”. The combined effect of Ss. 42(1) (a-b), 42 (2) and 43 is that no one should be discriminated against on the grounds of sex or gender, religion or political opinion, among others. The Nigerian Constitution also guarantees women's right to acquire, own, inherit, dispose of or alienate property whether movable or immovable. Women, including widows, have the legal right to property by lawful means in any part of the country. The only qualification to this constitutional right is that the right of a woman (as a widow) and of the man (as the widower) are to the extent of their community, ethnic group, place of origin, sex or religion would allow.

¹⁶ The ultimate or basic norm from which every legal norm deduces its validity is the *Grundnorm*, the highest basic norm.

¹⁷ See 1(1),(3) 1999 Constitution of Federal Republic of Nigeria (As Amended)

¹⁸ CFRN Ibid S1.(3)

It follows that even though the Constitution guarantees general right to property, the nature and extent of enjoyment of such rights are determined by other laws, customs, and traditions applicable in that part of the country or tribe from which the man or woman comes. Notwithstanding the above constitutionally guaranteed right to freedom from discrimination, Nigerian women, especially the widows are still subjected to abuse, marginalization and/or discriminatory laws and practices, particularly where harmful customary or traditional practices are deep-rooted. But men who are widowers are not subjected to the same cultural prejudices and practices as widows.

Under most indigenous customs of Nigeria, widows are usually not entitled to inheritance especially with regards to immovable property. As pointed out in the preceding discussions, they are regarded as “chattels”, or “properties” which cannot inherit, but can be inherited. This, therefore, obstructs a woman from enjoying her rights to acquire and own property both movable and immovable as enshrined in the Constitution. Similarly, harsh and dehumanizing treatments such as torture and appropriation of assets meted out on widows by their late husband’s relatives, for their selfish motives are a clear contravention of S.34 the Constitution which states that: “Every individual is entitled to respect for the dignity of his person, and accordingly-

- (a) no person shall be subjected to torture or to inhuman or degrading treatment;
- (b) no person shall be held in slavery or servitude; and
- (c) no person shall be required to perform forced or compulsory labour.”¹⁹

Therefore, all inhuman treatments and injuries inflicted on widows are manifestly illegal, unconstitutional, and unjustifiable in the court of law.

3.2 The Land Use Act, 1978

The Land Use Act²⁰ is an Act which vests all land composed in the territory of each state (except the land vested in the Federal Government or its agencies) solely in the Governor of the state, who holds such land in trust for the people. He is responsible for allocation of land in all urban areas to individuals who are resident in the state for residential, agricultural, commercial and other purposes, while similar powers conferred on Local Government with respect to rural areas²¹.

The Act, vests the control over land in the Governors of the States for urban land, and in the Local Governments for non-urban land²², thereby conferring upon them legal ownership of the land, whilst the individual allottee/occupies are vested with beneficial interests, with either a statutory right of occupancy, in the case of urban land²³, or a customary right of occupancy in the case of a non-urban land²⁴. It is noteworthy that women’s low representation in political and public offices always denies access to governance and capacity to challenge the current barriers to their ownership of land and other properties. Furthermore widows are also denied the opportunity of projecting their issues and concerns in the public arena with a view to seeking redress collectively by certain cultural practices that encourage male chauvinism. Like those of the Constitutional provisions earlier referred to, the Land Use Act also confers general powers to own real property upon both men and women. The only restriction under the LUA is that which forbids a Governor from granting a statutory right of occupancy, or consent to an assignment or subletting of a statutory right of occupancy to a minor under the age of

¹⁹ See the 1999 Constitution of Federal Republic of Nigeria 1999, S. 34(1) (a) (b)

²⁰ No 6 of 1978 Cap. L5, Volume 8, Laws of the Federation of Nigeria, 2004.

²¹ Ibid, section 2(1)

²² Ibid; section 5

²³ Ibid section 6

²⁴ Ibid section 9

twenty one years²⁵, except through or her guardian or trustee duly appointed for the purpose²⁶, or through inheritance²⁷. The act also provides that the devolution of the rights of an occupier upon death shall:

- (a) in the case of a customary right of occupancy, (unless non-customary law or any other law applies) be regulated by the customary law existing in the locality in which the land is situated; and
- (b) in the case of a statutory right of occupancy (unless any non-customary law applies) be regulated by the customary law of the deceased occupier at the time of his death relating to the distribution of property of like nature to a right of occupancy: provided that-
 - i. no customary law prohibiting, restricting or regulating the devolution on death to any particular class of persons or the right to occupy any land shall operate to deprive any person of any beneficial interests in such land (other than the right to occupy the same) or in the proceeds of the sale thereof to which he may be entitled under the rules of inheritance of any other customary law;
 - ii. a statutory right of occupancy shall not be divided into two or more parts on devolution by the death of the occupier, except with the consent of the Governor²⁸.

The above provision preserves the applicability of the rules of customary law of the locality of the land in respect of the customary right of occupancy of a non-urban land²⁹. In the case of statutory right of occupancy of the deceased occupier, his customary law governing the devolution of his property is his personal customary law prevailing at the time of his death unless any non-customary law or some other customary law applies³⁰. This recourse to customary negates gender equality that women including widows seek because customary law is produce of harmful cultural practices which often aggravates discrimination against women. In most cases, it prevents them from having access to land transferable by inheritance which could have enhanced women's capacity to pursue productive activities such as farming, real estate, development etc. Research on gender disparities in the ownership of properties and other tangible assets has revealed the degree to which such customary laws have excluded widows from participating in healthy competition and the development of efficient free market systems³¹. The laudable objective of the Land Use Act to provide equal access to land irrespective of gender or sex appears to have been defeated by this apparent contradictory provision. But it must be added, the Act also prohibits the applicability of any customary law which prohibits, restricts or regulates the devolution on death to any particular class of persons or the right to occupy land for purposes of depriving such person of any beneficial interest in the such land other than the right to occupy same; or depriving any person of the right to the proceeds of sale thereof to which he or she may be entitled under the rules of inheritance of any other customary law³². This means that, in the event of two or more competing or conflicting customary laws governing inheritance, the one which is more or most favourable to a successor, on inheritance, will be applied. This provision, therefore, makes it possible for a woman to inherit beneficial interests, rather than the land itself, on the demise of her husband. If the

²⁵ Ibid, S.7

²⁶ Ibid, S.7(a)

²⁷ Ibid, S.7(6)

²⁸ Ibid; section 24

²⁹ Section 24 *ibid*

³⁰ Section 24

³¹ See "A compilation of the Constitution, National and State Statutes and Regulations, Local Government Bye

Laws, Customary Laws and Religious Laws, Policies and practices, and court decisions the Status of Women and Children, in Nigeria", (published by the National Centre for Women Development, Abuja 2005, p.36.

³² Section 24 (a)

deceased was subject to a customary law, is it his personal law or that of the locality in which the land is situated, which is favourable for inheritance? It appears that the Act has a higher potential to promote compounded discrimination against widows. Otherwise, the general rules of customary law in many parts of Nigeria, (except in the South-West and in the Northern Emirates) forbidding inheritance of land by widows, will continue to apply until such practice is changed by legislation or by judicial decisions.

3.3 *Universal Declaration on Human Right, 1948*

Nigeria has acceded to a number of the international and regional treaties and conventions aimed at guaranteeing human rights to her its citizens and all persons within its territory. One of such treaties is the United Nations Universal Declaration on Human Rights adopted on December 10, 1948. It emphasizes, particularly, on women equality with men³³. Articles 1 and 2 of the Declaration³⁴, proclaim equal rights for men and women. The United Nations enjoins all countries of the world to maintain equal human rights and fundamental freedoms for all persons; Nigeria acceded to this proclamation upon becoming a member.

Whilst the United Nations Universal Declaration on Human Rights was adopted on December 10 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on December 16 1966. Nigeria ratified the two protocols in 1993, in furtherance of the principles and commitment emaciated in the declarations. It may be argued that Nigeria thereafter aligned herself with the ideas and aspirations of these International Bills of Rights as reflected in its constitutional provisions on human rights and fundamental freedoms³⁵. Since Nigeria is a signatory to the United Nation Declarations, it means that she is bound by all its provisions.

Article 7 prohibits discriminations in any form. What this means is that, there should be no discrimination between men and women and that equal rights and treatments should be given to both male and female. The section also provides for equality before the law. Article 17 provides for equal right to property ownership. It stipulates that every person has the right to own property either personally or in association with others. This means that under native law and custom a woman and her husband can own property. Therefore, she should be accorded the right to inherit her deceased husband's property. Under the Declarations a woman can own property either alone or in association with any other person(s). Article 8 provides for effective remedy whenever there is violation of fundamental rights granted by UN Declarations. Thus, Remedy or damage can be granted by any competent tribunal. It therefore, means that a widow is free to go to court if any of her rights is infringed or violated.

3.4 *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*

In 1979, the women's Convention was adopted by the United Nations General Assembly. It is the most comprehensive document³⁶, on discrimination. Convention set out the basic international standards of equality in law. As an international instrument, it creates a treaty obligation on governments of state-parties to implement its provisions at national level and requires accountability from them. For women therefore, it is a powerful instrument for the delivery of equality justice and attainment of development and empowerment.

³³ Okagbu Isabello, "Women Rights are Human Rights" (Lagos: Nigeria Institute of Advanced Legal Studies, 1996).

³⁴ Universal Declaration on Human Rights by (New York: United Nations Department of Public Information, November, 1948)

³⁵ See Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

³⁶ See Articles, 1, 2, 7, 8 and 17 of the UN Declaration of Human Rights 1948

The history of the United Nations efforts toward enhancement of the status of women and promotion of their well-being is well documented. By adopting the Convention, the international community, particularly, the member States have expressed their determination to work for the elimination of all forms of discrimination against women in all its ramifications.

In 1986, Nigeria ratified the instrument without any reservation. Article 2 of CEDAW stipulates that all state parties to the Convention shall put in place measures, including the review of legislative, judicial, and policy provisions to guarantee equality and reduce discrimination against women.

A similar provision in Article 16 of the CEDAW provides that: “both spouses should enjoy equality of rights in respect of ownership, acquisition, management, administration, enjoyment and disposition of property”. In the Latin maxim, both spouses are in “*aequali jure*” (i.e. have equal right). The said Article 16 also provides that all the state parties should to take all measures to modify or put an end to all customary laws and practices, which adversely affect the rights of women.

3.5 The Nigerian Constitution

For the first time in the legal and political history of Nigeria, the country’s Constitution of 1979, and subsequently the 1999 Constitution (as amended), clearly and unambiguously recognized equality of men and women and prohibited any discrimination on grounds of sex, origin, religion or political opinion.³⁷ S. 43 also provide that every citizen of Nigeria shall have the right to acquire and own immovable property. By virtue of Section 1 of the Constitution, the Constitution is supreme and no other legislation or customary law could derogate from the right of a woman to equality. Any other legislation abridging the right of women is automatically null and void.³⁸

It must, however, be pointed out that notwithstanding these constitutional provisions, some public authorities and institutions in Nigeria as well as some individuals have continued to apply donoxious cultural practices and enforce administrative polices which are discriminatory against women, especially, widows.

Government should initiate policies and programmes that could enhance the status of widows. There should be institutional machinery for the pursuit of the widow’s interest in compliance with tenets of the aforementioned Declarations and Treaties. A monitoring body should be established for the implementation of such policies and programmes that are widow-friendly.

The Convention on the Elimination of all forms of Discrimination Against Women believes that a change in the traditional role of men and women in the society and in the family is necessary for achieving equality between men and women. Inequality shown mostly in the area of inheritance where males usually inherit more than females and in some, women are not even entitled to anything at all even where the widow had contributed to the acquisition of the property in question during the life time of her late husband. Discrimination against women is:

“... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women; of human rights and fundamental freedoms, in the political, economic, social, cultural, civil or any other field.”³⁹

³⁷ Section 42(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

³⁸ See S. 1 (3) of the Constitution.

³⁹ Article 1 of CEDAW

For the simple fact that men are recognized as superior beings over and above their female counterpart, means that there is a high rate of discrimination against women in Nigeria. Article 2 of CEDAW enjoins member nations to:

- (a) adopt appropriate legislative and other measures including sanctions where appropriate, to prohibit discrimination against women;
- (b) embody the principle of the equality of men and women in their national Constitutions or any other appropriate legislation.
- (c) establish legal protection of the right of women on equal basis with men and to ensure this through competent national tribunal.
- (d) take all appropriate measure to eliminate discrimination against women by any person, organization or enterprise.
- (e) repeal tall national penal provisions which constitutes discrimination against women.
- (f) take appropriate measures including legislation to modify or abolish existing law, regulations, customs and practices which constitutes discrimination against women.

From the foregoing provisions, the general belief that men are superior to women based on our traditional and customary laws or beliefs should be discarded with appropriate legislation backed with sanctions.

3.6 The African Charter on Human Rights and Peoples Rights

The organization of African Unity (OAU), adopted the African Charter in the year 1981, which is a set of founding principles recognizing, protecting and maintaining the rights of individuals and citizens of member States. It is a regional instrument with treaty status. Even in Nigeria, the African Charter is a national isolation, a part of Nigeria's municipal law enforceable in courts by virtue of the African Charter on Human Rights and People's Rights (Ratification and Enforcement) Act. The preamble of the enabling legislation for the Charter declares that Nigeria, being desirous of adhering to the said character, considers necessary and expedient to make legislative provision for its enforcement in Nigeria. Article 1 of the Charter (Ratification and Enforcement) provides that the Charter shall have force of law in Nigeria and shall have full recognition and effect and be applied by all authorities and persons as well as executive officers⁴⁰.

Article 5 of the Charter seeks to remove all forms of harmful practices which negatively affect the human rights of women that fall short of international standards⁴¹. With this provision, one begins to wonder the reason why our native laws and customs still discriminate against women in terms of succession and inheritance. Women are still seen as being inferior to men and so, are denied of many rights today. It was held in the case of *David Drisu v. Olugoma Ojoh*⁴² that men have more responsibilities to handle than women. But looking at it critically, women are part and parcel of the family setup and their contributions to the community in particular and the nation in general, are immeasurable.

In accordance with Article 8 of the African Charter, every citizen shall have access to justice and equal protection and benefit before the law. With this, State parties are required to make sure that public awareness of all the harmful practices was created, and Legislation against such practices with punishment for violators be enacted with the aim of making sure that men and women are treated equally. With such enactment women would be given the right of succession to property, ownership, and inheritance. Similarly, Article 20 also makes

⁴⁰ Protocol to the African Charter on Human and People's Rights, by Women's Right Advancement and Protection Alternative (WRAPA), August 2004

⁴¹ Ibid.

⁴² (Unreported) case No. Cv 17/2001 delivered on 17th June, 2001 by an upper Area Court

provision for widows to enjoy all human rights. Widows should not be subjected to inhuman, humiliating or degrading treatment; and that widows shall automatically become guardians of their children after the death of their husbands unless, this is contrary to the interest and welfare of the children.

As shown at the beginning of this paper, under native laws and customs, whenever a man dies leaving his wife and children, the widow can only be allowed to remain in her deceased husband's house only if she has children. The wife might even be driven out if she has no male issue. This is contrary to the provisions of the African Charter on Human Rights and People's Rights which states that a widow shall be entitled to the enjoyment of all human rights. The provisions of the Charter are commendable, for a widow who is ill-treated may beget wayward children who might be involved in prostitution, armed robbery, or might become objects of ridicule, or unruly.

Article 21 of the Charter also gives right of inheritance to women. A widow shall have the right to an equitable share in the properties of her deceased husband. She shall continue to live in the matrimonial house, retain the house if it belongs to her or if she has inherited same. Thus, women and men shall have equal rights to succession and inheritance over their parents' properties. It is, therefore, very surprising that most of our native laws and customs have continued to ignore these provisions with impunity. In *Sogunro v. Sogunro & Ors*⁴³, a man died leaving his wife without any child. After his death, his family proceeded to distribute the family property to the exclusion of the wife. She then brought an action against her husband's family claiming her own share of the property as she was the legally married wife of the deceased. It was held, unfortunately, that the deceased left behind no separate property that would have devolved on his wife. This is contrary to the spirit and letter of the African Charter on Human and Peoples' Rights. The widow was denied the right of inheritance. The decision in this case is an affirmation of the native laws and customs that discriminate against women. The widow was denied the right to inherit, because she is not recognized as a full member of the family. She could enjoy the late husband's property, only if she agreed to remain single or re-married any of her late husband's brothers. It has been argued that if a widow is allowed to take over her husband's estate, it means the estate will move automatically out of the family to a new strange family.

3.7 Nigeria's Pension Act 2004

Section 5 of the Pension Act 2004⁴⁴ provides for the wife of a deceased who made a will or married under the Matrimonial Causes Act 2004 or Shariah Law, to share his pension according to the level of his wife's entitlement, while the customary law wife, who is not mentioned in the will, would receive nothing. If the husband died by accident in the course of his work, his widow would be entitled to a third of his pension entitlement for life or until she re-marries. But, if the widows are more than one, the Minister of Finance may decree that they share equally. However, if the pension right is very small, the statutory widow takes absolutely.

3.8 The Fourth World Conference on Women, Beijing 1995

People all over the world have heard of Beijing because of the massive publicity given to the conference not only by its organizers but also by the media. Besides, the conference took place at the threshold of the 21st century. It was a watershed in the continued global effort to eliminate discrimination against women. The conference created greater awareness in the fight against gender, discrimination. There has been a reduction of discriminatory practices against women.

⁴³ Supra

⁴⁴ Laws of the Federation of Nigeria (LFN), 2004

What then were the issues discussed at Beijing? The main objective of the conference was for the world to appreciate the complementary roles played by both men and women in the society. Although men and women are different biologically, they are not necessarily inferior or superior to each other. The Beijing conference focused its attention on poverty eradication, woman advancement education, economic resources, etc.

(i) *Poverty*

The world is moving beyond the success of mediocrity, and the people who are not armed with the necessary instruments for survival will live in abject poverty. Women who are economically dependent on men generally experience poverty. There is the intergenerational transmission of poverty. In agriculture, for example, statistics have shown that at least 80% of agricultural products are produced by men. Men own most of the land because of Nigeria's predominant patriarchal rule of succession which maintains that women cannot inherit land. Thus, widows cannot inherit the estate of their deceased husbands as earlier indicated.

(ii) *Human Rights*

There are so many recognized human rights. These rights are listed in the Constitution⁴⁵. In spite of the struggles by human rights activists, many women do not really know what these rights are and when they know, they have no idea on how to actualize them. Several factors are responsible for this ignorance and/or failure to on the part of women to actualize their dreams. They include; culture, religion, and lack of access to economic resources. In the first, in the African society (even at family level), a woman is expected to be seen and not heard. If she tries or insists on being assertive, her attitude might be considered as an abomination which could incur the 'wrath of the god'. In most tribes, women cannot inherit property, even the right to property is provided for in section 43 of the Constitution of the Federal Republic of Nigeria 1999⁴⁶.

(iii) *Advancement of Women*

The world is a global village. In this technological age with greater population of women than men, it will be unwise to keep on discriminating against women. Where husbands discourage their wives from advancement opportunities, they have no moral justification to expect their daughters and sisters to aspire to greater heights than they have conceded to their wives. There is an erroneous belief among the men population that women have advanced enough. Their misconception is based on the few females in the cities whom they consider are doing well. It is a right of woman to aspire to wherever her natural capability can reach without any hindrance.

(vi) *Education*

It is very pertinent to examine why women are denied or have limited access to education in the first place. The educational system in Nigeria creates a disproportionate access to education in favour of the male child as against the girl child. Discrimination against women's education persists in many places in Nigeria today. This discrimination may be founded on customary attitudes towards girl-child education. In Northern Nigeria, few girls are sent to school, and some of these are

⁴⁵ See, generally Chapter 4

⁴⁶ See Centre for Women studies and Intervention (CWSI) newspaper vol. 2 pp. 40-44, September, 2005

withdrawn from school for marriage even before completion of their secondary school education. Girls should be encouraged to attain higher education before marriage; otherwise they will be laying a foundation for generations of illiterates or 'half-baked' educated women. 'Train a woman, train the nation' is the general adage. Why can we not have flexible working hours for women, education, recognizing the fact that they have to nurture the children even after the death of their husband? Another issue that was discussed at Beijing was lack of gender sensitivity. The attitude of most media organizations in Africa are characterized by gender-based stereotypes against women. The media should refrain from presenting women as inferior beings and exploiting them as objects or commodities. The media in Nigeria should stop portraying negative and degrading images of women. The world is a community of men and women and both genders can make the world a better place.

4. DISCUSSIONS

In spite of the huge amount of rights and protection provided for widows by both domestic and international instruments, there seem to be no significant improvement in their plight. There is, therefore, the need for a re-think about the kind of widowhood practices and conditions of widows generally in Africa, and Nigeria in particular. It should be noted that we are potentially widows or widowers and either directly or indirectly we are related to widows by affinity or consanguinity.

In the first place the Nigerian judiciary has a lot of roles to play in salvaging the widows from their current predicament by using its inherent powers in ensuring that widows, and indeed all women, are fairly and equitably treated in all manners of cases brought before the courts in Nigeria.

The position of this paper seems to buttress the submission that socio-cultural factors do influence a widow's opportunities and challenges⁴⁷, especially in a multi-cultural society like Nigeria. This is logical because of the predominant influence of such factors as the widow's marital and parental ethnic background, the land deprivation in widowhood, her environment and traditional beliefs, and the kind of support systems received to alleviate her sufferings or combat the threat of such hardship to a large extent, determine the kind of life a widow would lead. The views we express in this paper also support the findings of McGlosen and O'Byrant that widow's adjustment to bereavement is a function of her personality trait, socio-economic status and socio-cultural opportunity⁴⁸.

A typical Nigerian widow by tradition is expected to undergo certain mourning rites and widowhood practices, which invariably constitute elements of deprivation. Widows who are a highly deprived people are often lost in the ocean of life without a clear picture of what the future holds for them⁴⁹.

Widows, whenever they are confronted with litigations from in-laws and relations of their late husbands, must be assisted to obtain legal aid as majority of them belong to the low income group. They are eligible under the Legal Aid Scheme in Nigeria.⁵⁰ The widows should avail themselves of this opportunity.

The International Association of Women Lawyers (FIDA) should also come in forcefully, to assist their fellow women by rendering to widows free humanitarian legal (Pro bono) services. Some pertinent questions that come to mind are: what are the roles reserved for

⁴⁷ See Wiebe, K; *Alone through Widowhood Beyond: A search for Joy*; (London: Kindred Press, 1987).

⁴⁸ McGlosan, T.H. & O'Bryant, S.L; 'The Psychological Well Being of Older, Recent Widows'; *Journal of Psychology of Women Quarterly* Volume 12, No. 1, (1988), pp. 109-116

⁴⁹ Babangida, M; *The Home Front: Nigerian Army Officers and Their Wives*; (Ibadan: Foundation Publication, 1988)

⁵⁰ See S.7 of the Legal Aid Act, Cap. 205, Laws of the Federation of Nigeria, 2004.

the widows in the scheme of things in Nigeria? What scheme could be worked out for these largely illiterate groups since the bulk of these unfortunate widows are mostly in the rural areas of the country? First of all, widows should be made aware of their rights and duties under the law. The Governments at the federal, state, and local levels should join hands with the individuals and Non-Governmental Organizations (NGOs) to assist widows both morally and financially. In Nigeria, the existing Federal Ministry of Women Affairs and Youth Development should be charged with responsibility of caring for the special needs of widows. It can entertain complaints and treat them accordingly or forward some to the appropriate authority for necessary action.

Women organizations and NGOs should appoint coordinators for widow affairs in every local government in the federation look after the welfare of widows in each state and local Government and move from village to village to take census of widows also give advice when called. While talking about assisting widows, we should also consider the crumbling educational system in the country. A literate woman would not bow to intimidation by the male folk culture or tradition especially where her fundamental human rights and the rights to succession inheritance are concerned. She would be able to keep the receipts of the valuables she contributed to the home while her husband was alive and such receipts could be produced when wicked relations of the deceased husband are becoming too hot to handle. A literate widow rightly guided would forcefully press for her rights.

Our statutory laws and some customary laws make adequate provision for the care and maintenance of widows as Islamic law does especially with respect to succession and inheritance as stipulated in the Holy Quran. Thus, the case of *Alhaja Saar v. Ayinla Yoyinsoye*⁵¹, the plaintiff appealed against the decision of an Ilorin Area Court No 1 that she should hand-over the keys of the room allocated to her by the deceased husband to the husband's brother.

Culturally, the Nigerian woman is dependent on the man for life. As an unmarried girl she is dependent on her father; as a married woman, she is dependent on her husband and as a widow and an old woman, she is dependent on her own sons and daughters. This is the how a typical illiterate Nigerian widow suddenly finds herself, belonging to the most downtrodden group of women and occupying the lowest status in typical traditional African society.

As we earlier pointed out, the widow's situation in Nigeria is compounded by illiteracy-her own illiteracy and mass illiteracy of society at large. Ignorance, poverty and superstition predispose people to strong adherence to ancient rituals that make up the widowhood rites. In some cases the widow is reduced to nothing through incredible embarrassment as she is stripped naked, but for a narrow strip of cloth or loin round her pelvis and forced to lie with her husband's corpse in a final embrace, as a mark of severing all sexual relationship with the dead husband. It is pertinent to note that this could be a corpse which had been in the hospital mortuary for months. The last sexual 'intercourse' with the dead husband is certainly humiliating and dehumanizing. The illiterate community believes that this act of love-making between the widow and her late husband's corpse will soothe the spirit of the dead man, which otherwise will smite dead any man who had sexual intercourse with his widow. The wife's body is the exclusive property of her husband, dead or alive. Men insist on the performance of this ritual to protect the life of any man who may later have an affair with the widow. On the part of the scared woman, who invariably has no choice, other than sleeping with her dead husband in this last morbid embrace of love, the final act of love or tribute is still better than the misery the rest of her life if she dares refuse this revolting ritual. A recalcitrant widow will not only become an 'untouchable' in every ramification of the word, non-performance of this aesthetically nauseating widowhood rite could mark an abrupt cessation of the woman's love life for committing a sacrilege. Furthermore, the future of her offspring is blighted, because nobody does any transaction with the offspring such a widow. No member of

⁵¹ KW/SCA/15/86 Fed unreported case of the Kwara Shariah Court of Appeal in 1986

her community buys from or sells to such a woman. The stigma of non-conformity extends to her children⁵².

The illiteracy of some women has hindered their progress. The average Nigerian woman has remained a passive victim of Nigerian culture. The prevailing socio-cultural norms are difficult to break because they are deeply rooted in tradition. Thus, the rhetoric of an egalitarian society with bright future and full opportunities for all becomes a myth considering the educational marginalization of Nigerian women. Women are accorded a very low status in the Nigeria society. This poor perception of women is a result of multiple factors. Tradition, culture, values, societal norms, history, religion, ideologies etc all interplay to produce the very low image of women. Traditionally, women are perceived as the weaker, the inferior and the subordinate sex. This low concept of women is one of the strongest factors that influence widowhood practices. The concept of women is the axis around which revolve atrocities against women: - mass female illiteracy, violation of women's human rights, women's economic invisibility, superstition religious beliefs. infantile legal standing of women, gender discrimination; sexual harassment, sexual inequality, and obnoxious constrained by these widowhood practices among others. Women have been constrained by these existing social and cultural norms which perceive them as inferior or second class citizens.

Female passivity is women's greatest enemy in an effort to uplift their status, as well as reforming widowhood practices. Female pessimism is an inept acceptance and silent submission to the oppression, social, cultural, and traditional status ascribed to women. This is quite irritating. Who can drag women out of the cultural quagmire in which they find themselves? Are women themselves ready to change their status? The women who are victims of cultural bondage must take positive action to liberate themselves.

Women of Africa must as a first step, shake off the social construct which has conditioned them to believe that humility, passivity, submissiveness, etc. are true marks of femininity. Women must wake up from their age long cultural slumber. They must emerge from their sickening low self-esteem. Admittedly, one may say that customs and traditions are seen as sacrosanct in Africa and, therefore, inhibit interference. But the cultural change being advocated is not aimed at obliterating a particular people's identity. It is important for women to recognize the interface between the traditional and modern societies, and make hay while the sun shines. Women must grab their opportunity of the current world sympathy and understanding, to cry out against the low status accorded them in the society before it is too late.

As earlier said, female passivity is the most dangerous obstacle to a successful cultural change. Their blind tacit acceptance of culture and tradition without conscious evaluation and critical examination of those cultures and traditions, and their effect on human rights and widowhood, to a large extent, is responsible for the sorrowful state of Nigerian widows.

In some parts of the country particularly in Igbo land, widows are subjected to drinking water obtained from washing their dead husband's corpses as a ritual to prove whether or not they had a hand in the man's death. Such atrocity is meant to create room for vengeance.

Yet passively, women submit themselves to such cultural practices. Yet, some women consciously accept slavish obedience to traditional widowhood practices. Women have everything to gain if their status quo can be changed. Unfortunately, women's sense of self-worth is very poor, and this has reduced them to suspense self-negation. Female passivity is the manifestation of women's inability to shake off the mesmerism of male power vis-à-vis female powerlessness.

In the final analysis, it is for the good of every woman that there is the goal of desired change in some aspects of our cultural widowhood practices. The individual widow is the ultimate beneficiary. Women themselves must push for change and insist on equality and justice. The traditional Nigerian inheritance system discriminates against women by the

⁵² Okoye, Pat U.; *Widowhood: A Natural or Cultural Tragedy*; (Enugu: Nucik Publishers, 2005)

exclusion of daughters as heirs to the property of their natal families. As widows too, Nigerian women are precluded from inheriting their husband's property. The widow's only claim comes indirectly through the inheritance rights of her male children. A childless woman is said to have merely escorted the other women to late husband's home. A woman whose children are all females is no better either. According to the inheritance laws, devolution of a man's property, both realty and personality, is determined by the testamentary status of the deceased.⁵³ In *Alake v. Pratt*⁵⁴, *Taylor v. Taylor*⁵⁵, *Lawal v. Younan*⁵⁶ the court held that:

“...Igbo...if an unmarried father of the acknowledged child dies intestate leaving real inherent property, as to the class of children who enjoy such right of inheritance, the rule unfortunately is that only the male children inherit. Female children have no right of inheritance over the real property of their intestate biological father.”

The 1999 Constitution of the Federal Republic of Nigeria, established a solid legal framework assuring non discriminatory laws against women. But it is one thing to enact laws, and another thing to enforce them. A legal system which claims protect women should simply stand face to face with making a choice between upholding culture and tradition as contained in Nigeria's various customary laws and the administration of justice as instituted by 'the world community' through the instrumentality or various international and regional conventions, treaties and protocols as well as national legislation.

Despite the existence of the right to freedom from discrimination in the Constitution of the Federal Republic of Nigeria, 2004, and the rule of law, no court of law has ever prosecuted members of Nigerian society who treat women like chattels under native laws and customs.

It is common knowledge that most women opt out of paid jobs to have children and take care of the homes. The opportunity cost of housewifery certainly becomes unbearable when a woman realizes that her labour is in vein. Women support their husbands by using their own incomes for the upkeep of the house, in order that the man's earnings can be employed in capital projects, such as buildings, for the 'good' of the family. Property, thus, acquired jointly by the couple may be handed over to a male relation of the deceased husband on the platform of custom and tradition.

Most women generally are ignorant of the law as to their rights. Besides, there is the general unwillingness to resort to court action for fear of being accused of waging war against the husband's family. There is the general belief that settlement of any kind of dispute in court should not be encouraged. Where a widow does this, it often leads to very bitter feelings towards her which would be difficult to heal. She would, for the sake of her children, at least try to maintain a peaceful relationship with her late husband's family. Another reason why many do not seek redress in courts is that our court processes are time-consuming, cumbersome and expensive. Most widows may not be able to bear the financial burden as well as the psychological trauma that would invariably follow. She may be adjudged by most people as culturally rebellious.

⁵³ See Ilegbune, Theresa "Property Rights of Nigerian Women, with Particular Reference to the Igbo Women of Southern Nigeria."

⁵⁴ (1955) W.A.C.A. 20

⁵⁵ (1960) L.L.R. 268.

⁵⁶ (1961) I.A.U.N.L.R. 245.

5. CONCLUSION

The death of a husband is a devastating natural tragedy. Societies must refrain from turning this natural phenomenon into an agonizingly dehumanizing cultural tragedy for the widow. The seeds of change have already been sown in different aspects of widowhood practices in various parts of the world through implementation of domestic and international instruments for elimination of all forms of discrimination against women including widows. These seeds of change within and outside Nigeria must be watered, and nurtured. Above all, these seas of cultural change must be globally tended, so that they flourish and grow to fruition for the sake of widows the upliftment of womanhood and the dignity of mankind. Even the Almighty God forbids ill-treatment of and discrimination against widows, for according to the Holy Bible.

“Do not ill-treat any widow or orphan. If you do, I the Lord, will answer them when they cry out to me for help, and I will be angry and kill you in war. Your wives will become widows, and your children will become fatherless⁵⁷”

The above biblical injunction serves as a warning to the general public and members of the family of a deceased husband in particular. We are enjoined to treat widows with fairness, sympathy, love, compassion and generosity. Socio-cultural factors have influenced widow's opportunities and challenges, especially in the multi-cultural Nigeria society. This paper has shown that in Nigeria, a widow's adjustment to bereavement is a function of her personality trait, socio-economic status and socio-cultural opportunity.⁵⁸ A typical Nigerian widow by tradition is expected to undergo certain mourning rites and widowhood practices, which invariably constitute elements of deprivation which makes widowhood pathetic. Nigeria widows suffer from a lot deprivations and are invariably are lost in the ocean of life without a clear picture of what the future holds for them.⁵⁹

Widowhood practice in Nigeria is generally pathetic, degrading and dehumanizing to the widow. Thus, the challenge to government, parents, and opinion leaders is appreciate the right of widow's arising from the negative impact of negative cultural practices and combat those ills if widows are to be truly integrated into the main stream of affairs in the society. The imperativeness of achieving this 'near ideal' situation poses a great challenge to counselors whose duty it is to engender in the citizenry a sense so participatory development. This, cannot be achieved if a section of the same society is deprived, abused and maltreated by omission or commission simply because it was their fate to lose their beloved husband.

Widow, wherever they are, must be assisted to obtain legal assistance since those who are largely affected in this respect belong to the lower income group who rightly fall within the Legal Aid Scheme. The Association of Nigerian Women Lawyers should also come in forcefully to assist their kinds in rendering free humanitarian legal services since advocacy, after all, should not be all for money, but also for the down-todden widows. Widows should be made aware of their rights under the law.

Information on widowhood should be disseminated by the various state Ministries of information. Women organizations should appoint coordinators for widow affairs in every Local Government. The coordinators should see it as a call to service and should move from village to village to take census of widows, give advice when needed and assist the widows to obtain legal assistance whenever necessary.

⁵⁷ Holy Bible; Exodus 22:22-24 (Today's English Version),

⁵⁸ Wiebe, K.; *Alone Through Widowhood and Beyond: A Search for Joy*; (London: Kindred Press, 1987)

⁵⁹ McGlosan, T.H. & O'Bryant, S.L. "The Psychological Well Being of Older, Recent Widows", *Journal and Psychology of Women Quarterly*; Volume 12, 1998, p.16

The problem of widowhood in Nigeria is compounded by its literary Ignorance and superstition predispose people to strong adherence to barbaric rituals that make up Nigeria widowhood rites. Women should be given full access to educational opportunities. A literate woman would not bow to intimidation especially where her fundamental human rights and succession rights are concerned. A literate woman would be able to keep the receipts of the assets she contributed to the matrimonial home because they can become handy when wicked relations of a deceased husband attempt to push out of the deceased husband estate. A literate widow rightly guided, would forcefully press for her rights.

Discriminatory harmful cultural practices against women in general and widows in particular under our customary laws should be abolished like Islamic law, other Nigerian laws should provide for widows' rights to succession inheritance and the reason for these recommendations in order to protect widows is that the Holy Bible says:

“Do not ill-treat any widow or orphan. If you do, I the Lord, will answer them when they cry out to me for help, and I will be angry and kill you in war. Your wives will become widows, and your children will become fatherless”⁶⁰

This serves as a warning to members of the family of the deceased husband to handle the cases widows humanely and godly. Death is a natural tragedy. The widow is subjected to untold atrocities. Often rather than fall into the comforting arms of relations and friends, she is traumatized by cultural, burial or widowhood rites which dehumanize her.

6. RECOMMENDATIONS

Having examined both customary and non-customary laws in relation to widow's rights to inheritance vis-à-vis the impact of domestic and international instruments, the following recommendations are put forward.

- (a) Nigerian lawmakers should legislate against all forms of oppressive, injurious and degrading widowhood practices.
- (b) Government at the three tiers should endeavour to provide functional basic education to the citizens to adequately prepare them for meeting challenges of bereavement.
- (c) Government should establish a National Commission for widow affairs with a view to integrating widows into the Nigerian society.
- (d) Younger widows (i.e. those bereaved before the age of 35years) should be encouraged to remarry as a way of further integrating them properly into the main stream of affairs in a socially-inclined society like Nigeria.
- (e) Qualified Counselors should be employed to look after the widows especially during the period of bereavement as a means of fortifying them for survival.
- (f) There is no doubt that a widow's inheritance rights and the quality or quantity of such rights depends largely on the type of marriage she contracted. Marriage can be either customary law marriage or marriage under the Matrimonial Causes Act. Marriage under the Act is valid if it is contracted in accordance with the Act at a Marriage Registry or in a church that has a legal license to wed. It is possible for a person to wed in the church, without contracting a valid marriage under the Act, if the church has no license to wed. In that case the wedding is regarded as customary law marriage. Note, however, that customary law marriage is also valid as it is recognized by our laws. A statutory marriage under the Matrimonial Causes Act is not subject to native laws and customs and as such

⁶⁰ Holy Bible; Exodus 22:22- 24, St. James' English Version.

any woman who wishes to escape the application of unfair customs has the opportunity to choose the type of marriage she enters into.

- (g) In Islamic law and Yoruba customs, the rights of women to property through succession and inheritance should be enhanced in the light of modern social and economic realities and the current global trend of women and empowerment. These improved customs should be adopted and faithfully implemented. Treatment of women as “chattels” or “properties” or “objects” which cannot inherit, but can be inherited must be done away with. The practice of a deceased man’s brother inheriting the deceased person’s wife is out-dated. So also are customs which prohibits women from any measure of control over their late husband’s properties. As much as possible, women as widows must be treated with respect and given the opportunity to live their lives with dignity, without unnecessary restrictions by the so-called relations of their husbands.
- (h) With respect to non-customary laws, women to whom such laws apply (especially those who contract marriages under the Marriage Act), have better and enhanced property rights. The only problem for such women is that sometimes, such women do not know their rights, let alone enforcing them. Indeed if women who contracted non-customary marriages could know and hold on to their property rights under the laws, they would have no reason to complain.
- (i) For the benefit of all classes of women, especially the widows, whom customary law does not favour, and are very vulnerable, the various restrictions now existing in most wills and other laws should be expunged. This will enable a man, for instance, to give out properties to his wife without being subjected to what his customary law allows. This also will make it possible for a man who ordinarily is subject to customary law, to make that law inapplicable by complete freedom to make will.
- (j) The Government should look into the possibility of amending Section 36 of the Marriage Act to reflect the reality of our time.
- (k) The court fired the first salvo in the case of *Mojekwu v. Mojekwu*⁶¹ by declaring the barbaric custom of Nnewi (Oli-ekpe) repugnant to natural justice, equity and good conscience. Other courts should follow suit by using the repugnancy doctrine to declare other barbaric customs affecting widows, null and void.
- (l) An aggressive enlightenment campaign on the rights of women should be vigorously pursued.
- (m) Women should acquire education, for that is the only vital tool with which they can fight the evils of culture and tradition.
- (n) Where a customary law fails to recognize the need for the consent of the widows before taking decisions on matters that affect them, the widows are advised to seek the assistance of the law courts through legal aid scheme.
- (o) Customary rituals of burial that affect women should be discouraged, where their effect is adverse on the woman. This could be done through vigorous enlightenment campaign.
- (p) The Ministry of Women Affairs and Social Development should organize programmes for widows, aimed at helping them to adjust to the new predicament under which they find themselves.
- (q) Under customary law, a widow should be given the right of inheritance in her husband’s estate. This can be achieved by educating men themselves, as only education and sensitization can be used as instruments for liberating men in their thoughts and ways of life, to see women as human beings and not as beasts of burden or chattels, in order to accord them their rights.
- (r) Men should be enlightened on the importance of making will soon after marriage, to reduce the incidence of intestacy, and the embarrassment it consequently causes to their widows.

⁶¹ (1993) 7 .N.W.L.R. (pt. 512)

- (s) Above all, the Nigerian courts should give liberal interpretations to laws affecting widow's rights to property, thereby contributing to the development of the Nigerian Legal System.

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