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9. Eze v. Okwo Unprinted (1959) Obovo District Court, suit no. 29159 and
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CHAPTER 1

Introduction

Discrimination against women is defined by Article 1 of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women 1979 (referred to as the 1979 Convention) as “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 a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹ Discrimination then is symptomatic of any situation where patterns of structural inequality are maintained by rules, norms and procedures which dictate a subordinate role for women in all spheres of society. The movements calling for an end to all forms of discrimination against women emphasize the need for a radical re-definition of the process and content of economic, social and political development and stress the need for a holistic orientation which acknowledges the vital role of women in development and engineers their integration into development planning and process as equal partners with men. For this purpose, it is argued that legal and substantive protection at the domestic, regional and international levels must be coordinated for more meaningful enhancement of both the status and situation of women.²

¹ ‘Accountability to Gender Equality’ (2008), [http://www.boellnigeria.org/CEDAW_Accountability to Gender Equality.pdf](http://www.boellnigeria.org/CEDAW_Accountability%20to%20Gender%20Equality.pdf). accessed 17 September, 2010.

² Ibid.

Discrimination against women in particular societies takes different forms, and thus requires the utilization of differential strategies in different historical epochs and societies.

Discrimination against women will continue to be a problem until all the factors responsible for its existence, maintenance and institutionalization are understood and eradicated.

Widowhood has also been defined as the state of mourning the loss of one's husband or wife through death³. The stress of this phenomenon is as real as those of loneliness and divorce. Widowhood is thus seen as a life event with wide range of consequences. For instance, widowhood is known to be responsible for the poor health status of widows and widowers, with minimal long-term consequences and is also associated with intense grief and angry expressions, especially among more widows than the divorced (when) compared.⁴ This is possibly because of deprivation following loss of spousal intimacy through death. It can thus be concluded that widowhood by implication is a stressful life event demanding practicable support systems.

³ E E Abolarin, 'A Cross-ethnic comparison of support network in widowhood in Nigeria' (1997), Unpublished Ph.D. thesis. Department of Guidance and Counselling, University of Ilorin, Ilorin.

⁴ G C Kitson, and S O Zynganki, 'Grief in Widowhood and divorce' (1987), *Journal of psychiatric clinic, North America* 20 (3), 69-86.

Some scholars contend that ideological reinforcement for structural inequality was provided by customs, practices and norms, which while relevant within the context of the societies, in which they emerged, are now questionable given the evolution of society in radically different directions.⁵ However, one must be wary of making arguments such as this which are not based on a rigorous examination and comparative analysis of the diverse Nigerian societies.

In the first place, the contention assumes that the customs, practices and norms in question arise from traditional practices. Most of the administrative practices which prevent the equal treatment of men and women in Nigeria are products of colonial laws and government. Second, when these societies are examined with more rigors, it becomes obvious that there are clear distinctions among them as to the customary treatment of men and women. In some cases, women were disadvantaged more by the imposition of colonial rule and the code of law that accompanied that imposition.⁶

In feminist literature, discrimination is taken to manifest itself in the forms of gender, class and personal discrimination that arises from women being discriminated against as women.

⁵ Africa For Women's Rights. (2008). <http://wildaf-ao.org>. accessed 17 September, 2010.

⁶Ibid 1.

In some perspectives, discrimination is caused by structural factors. Some scholars contend that the most important structural sources of discrimination are social formations such as the family, which conditions its members to conform to socially acceptable norms in terms of male and female roles in the division of labour from childhood. Although the traditional division of labour in Nigeria was one within which there were distinctions made between men's and women's work, social expectations on what constituted men's or women's work by community/society.⁷

Chapter IV of the Constitution of Nigeria 1999, contains provisions for the defence of the fundamental human rights of all Nigerians. Express provisions for the protection of individuals from discrimination are to be found in subsection 42 which provides that:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or

⁷ Ibid.

restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions⁸.

However, customary and religious discrimination against women persists, occasional religious violence persists, social discrimination on the basis of both religion and ethnicity remains widespread. This section in effect, provides for equal treatment of men and women under the law.

⁸ The Constitution of the Federal Republic of Nigeria, 1999.

Nigeria is Africa's most populous country and has as such a great ethnical, cultural and religious diversity. The 1999 Constitution also provides for diversity in legislation, letting some northern states practice Sharia law. The general picture, however, is of a country struck by poverty, misadministration and increasing internal conflict. Although some federal legislation are in favour of women's rights, the trend rather goes towards a strengthening of traditional values, less favourable to Nigeria's over 60 million women. Thus, recent local Sharia practices are known to violate basic human rights. Women's rights groups are active, mostly in the south.

Spousal abuse is common in Nigeria, especially wife beating in polygamous families. The Penal Code permits husbands to use physical means to chastise their wives. Polygamy is practiced widely.

Rape, prostitution and sexual harassment are a significant problem in Nigeria. Many customary practices do not recognize a women's right to inherit her husband's property. Female Genital Mutilation is practiced extensively in all parts of the country⁹.

According to the report of the Nigerian government to the Committee on the Elimination of All Forms of Discrimination against Women¹⁰, there is no need to create enforcement mechanisms for the Convention because its provisions

⁹ *Addressing Violence Against Women and Girls*. <http://www.wlum1.org/node/5447>. accessed 18 September, 2010.

¹⁰ *Gender Inequality and Social Institutions in Nigeria*. <http://genderindex.org/country/nigeria>. accessed 18 September, 2010.

could be used as the basis of any argument against derogations in any court of law within Nigeria. The problem with this argument is underlined by the same report which states that while protections exist, there may be no progress toward the elimination of discrimination if women do not actively pursue the realization of this goal. However, the argument that it is up to women to seek legal redress may be a "straw man" because without the right tools and considerable institutional support provided by the government for the majority of women, such active pursuit of their rights may be impossible.

This call for an end to all forms of discrimination against women emphasizes the need for a radical re-definition of the process and content of economic, social and political development. It stresses the need for a holistic orientation which acknowledges the vital role of women in development and engineers their integration into development processes as equal partners with men. For this purpose, it is argued that legal and substantive protection at the domestic, regional and international levels must be coordinated, for more meaningful enhancement of both the status and situation of women.

Millions of girls and women throughout the world suffer from discrimination, deprivation, and the denial of their human rights based on their gender. Throughout the world, women and girls often face systematic discrimination in legal, political, social, economic and cultural settings.

Discriminatory laws and cultural norms in Pakistan render women unequal before the law. In cases of rape for example, the Hudood Ordinance¹¹ requires a confession or the testimony of witnesses other than the victim to secure a conviction for rape, and rape victims can find themselves being punished for fornication if rape is not proved.

In India and throughout many poverty-stricken areas, male children often receive food, education and healthcare before female children.¹²

Throughout Europe and North America, women are grossly under- represented in decision-making and continue to face discrimination at home and in the workplace.¹³

Women experience considerable discrimination as well as physical abuse. There are no laws barring women from particular fields of employment, but women often experience discrimination because the Government tolerates customary and religious practices that adversely affect them. The Nigerian NGO's Coalition (NNC) expressed concern about continued discrimination against women in the private sector, particularly in access to employment, promotion to higher professional positions, and in salary inequality. There are credible reports that several businesses operate with a "get pregnant, get fired" policy. Women

¹¹ A Law in Pakistan that was enacted in 1979 as part of then military ruler Zia's Islamization Process, and replaced/revised in 2006 by the Women's Protection Bill.

¹² Ibid.

¹³ A K Salma, *Nigeria Failing to End Discrimination Against Women* (2009). <http://ipsnews.net.asp?idnews>. accessed 18 September, 2010.

remain underrepresented in the formal sector but play an active and vital role in the country's important informal economy.

While the number of women employed in the business sector increase every year, women do not receive equal pay for equal work and often find it extremely difficult to acquire commercial credit or to obtain tax deductions or rebates as heads of households. Unmarried women in particular endure many forms of discrimination.¹⁴

Abuses against women are relentless, systematic, and widely tolerated, if not explicitly condoned. Violence and discrimination against women are global social epidemics. We live in a world in which women do not have basic control over what happens to their bodies. Millions of women and girls are forced to marry and have sex with men they do not desire. Husbands and other male family members obstruct or dictate women's access to reproductive health care. Doctors and government officials disproportionately target women from disadvantaged or marginalized communities for coercive family planning policies.¹⁵

There are different forms of discrimination against women in Nigeria ranging from Female Genital Mutilation(FGM), domestic violence, inaccessibility to education for social and economic reasons, inheritance rights, polygamy, early

¹⁴ 'Women, The State and Reproduction Health Issues in Nigeria'
<http://www.jendajournal.com/jend/vol1.1/pearce.html>. accessed 18 September,2010

¹⁵ Ibid.

and forced marriage, widowhood practices, female infanticide and prenatal sex selection, dowry related violence, acid attacks, women in the work places etc.

Earlier attention within the United Nations to these forms of violence focused on their effects on the health of women and children, and on the importance of marriage based on the full and free consent of the intending spouse. In the 1990s, they became clearly acknowledged as forms of violence against women constituting gender-based discrimination and a violation of women's human rights.

States are obligated under a comprehensive international legal and policy framework to enact, implement and monitor legislation on all forms of violence against women, including "harmful cultural or traditional practices" (hereinafter "harmful practices")¹⁶. The international human rights treaty bodies, in particular the Committee on the Elimination of Discrimination against Women, regularly call on States parties to adopt legislation to eliminate "harmful practices". Article 16(2) of the Convention on the Elimination of All Forms of Discrimination against Women specifies that the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

¹⁶ Ibid.

The 1993 General Assembly Declaration on the Elimination of Violence against Women states that “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.” The General Assembly and other inter-governmental bodies of the United Nations have called on governments to develop and fully implement laws and other measures to eradicate harmful customary or traditional practices, including female genital mutilation, early and forced marriage and so-called honour crimes. The General Assembly has called on Member States to “review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations, commitments and principles.”¹⁷

In view of the above, this paper will focus on widowhood practices in Nigeria in line with the six regional demarcations; consider the health implications and economic effects of widowhood practices, various rights of widows as against treatment of widowers, and a review of legislative interventions.

¹⁷ <http://www.unhchr.ch/huridocda/huridoca.nsf>. accessed 5 January, 2011

CHAPTER 2

2.0 OVERVIEW OF WIDOWHOOD PRACTICES IN NIGERIA

The process of widowhood is believed to represent a life phase, which depicts one of the fundamental problems or losses which the aged and by extension, the young people experience.¹⁸ A widow from the perspective of her plight is viewed as a person who, by certain circumstances, is in distress. One who finds herself in the middle of the ocean of life, struggling to survive. Technically, a widow is a woman who survives her husband and has not remarried¹⁹.

In the opinion of Goldman and Lord²⁰, mourning and widowhood are opposite sides of the same coin with wide range of implications for those affected. Gbenda²¹ has observed that widowhood is an issue that affects more women than men. Evidence, he noted, indicates that over the long-term, women are affected more severely than men financially, psychologically, sexually and socially. For instance issue of mourning and widowhood process in Nigeria is surrounded by a number of cultural expectations. It has been observed that widowhood in Nigeria is a sordid situation which merely allocates to the widow a position of societal scorn, disdain and permanent membership of the wretched of the earth.

¹⁸ J Porcino, *Psychological aspects of aging in women: Women Health* ', (1985).

¹⁹ A O Oniye, *A cross-ethnic study of stress levels support systems and adjustment strategies among widows in Nigeria*, Department of Guidance and Counselling, University of Ilorin, Ilorin. (2000).

²⁰ S Goldman, B Lord, *Widowhood.*, Cambridge M. A. Schenckman, (1983).

²¹ B Gbenda, *The double standard widowhood. The Counsellor* '(1997), 173-179.

In certain parts of Nigeria, the maltreatment of widows is common. In-laws and the community subject them to physical and emotional abuses such as being made to sit on the floor; being confined for a month to one year; having their hair literally scraped off with razors or broken bottles; not being allowed to bath; being made to routinely weep in public; being forced to drink the water used to wash their husband's corpse; crowned by the loss of inheritance rights and eviction²².

2.1 SOUTH-SOUTH – RIVERS/EDO STATES

In Rivers State South-South Nigeria, practically every community subjects the widow to various rites at the demise of her husband. The general practice though is to swath the widow in black from head to toe, irrespective of the fact that society knows that “black” is a bad conductor of heat. The widow is expected to be in black for at least one year, and in some communities she is kept indoors from the date of her husband's death till his burial, irrespective of the fact that she may have very young children to take care of or that she may be claustrophobic.²³ Common in Rivers state is the practice of a widow having to prove that she is innocent of her husband's death. To do this, various rites have to be conducted. These include bathing the anus of the corpse and giving the water to the widow to drink, as practiced by the Emohua people; submerging

²² K N Alphonsus, *The Heart of a Black Woman* , (Peacewise Systems, Owerri, 2009) pp 19-28.

²³ Effah, J. et al 1995. Unequal Rights Discriminatory Laws & Practices Against Women in Nigeria Constitutional Rights Project, P.44.

the widow in a river as done in Opobo area; and making the widow swim across the bottom of a boat as done by the Kalabari people. In Ndoni area of the state, throwing the widow across the deceased's coffin several times, without her leg striking the coffin, proves her innocence.²⁴

In Bini land, widowhood rights are in two stages. First, the widow is confined to a room outside the family house for seven days immediately after the interment of the deceased husband. She is dressed in black with her hair left unkempt and, she is not allowed to take her bath. She must look mournful and sober and must cry, morning and evening. On the seventh day, a wake-keep ceremony is held and the widow is forbidden (by custom) to sleep because, the spirit of the dead man will come around and kill her if she is found sleeping. On the same day, she performs the semi-purification rites by taking her bath at a road junction all alone. Her safe return proves her innocence.

The Second stage of mourning begins at the end of the seventh day. The widow smears herself and her clothing with black charcoal and remains so for three months. At the end of the third month, the final purification, which admits her into the society, is performed. On inheritance, both the widow and property are inheritable objects.

²⁴ Ibid.

Among the Esan, the practice is almost the same but for some little differences. During the seven days of mourning, the widow carries an Ikhmin - a many sided plant which is used to wade off evil spirit. She is also forbidden to sleep on the night preceding the seventh day because, it is believed that, the husband will visit and carry her away if she sleeps. A widow in Esan however, takes her bath in the night at a burial ground or at some obscure or isolated spot, and she shoots an arrow into the bush afterwards, to deter the late husband from coming near her again²⁵.

Throughout the three months mourning period, a pot containing some leaves believed to wade off evil, is left burning on the stove. The widow performs the purification rites after three months, which includes her hair being shaved. On inheritance, a wife cannot inherit, rather she is part of the "objects" to be inherited.

In Agenebode, a woman is either Amoya, a title that is highly respected and cherished because in marriage, she is given out totally or, she is Adegbe, a title that allows the woman to stay in her father's house even after marriage. Nothing is done in her father's house without consulting her. As a result of these differences, varying degree of rights and privileges are given to them.

When an Amoya is widowed, one of her sisters-in-law who is an Adegbe will

²⁵ Ibid.

assist her to wear a white hand woven pant. This she wears for one whole year without washing or changing. She stays indoors and cannot even go to the market or church. Her hair is scraped and, she is in total seclusion wearing only black. By virtue of her birth, she remains in her husband's house for life. If she accepts to be inherited, she performs the purification rite to legitimize the transfer. If she does not want to be inherited, she performs another rite to appease the family's ancestors. Her son inherits the property of the deceased if she happens to have the first son, this does not however transfer ownership of the property to her.

The situation is different, when an Adegbe is widowed. She does not go through all the rites an Amoya goes through. Her hair and that of her children are scraped on the fifth day after the death. Wearing of black is her choice and her movement is not restricted for one day, she goes about her normal business. The issue of inheritance does not arise for her because, she goes back to her father's house as soon as the man dies, though she is free to stay (if she so desires), without any obligation to the family of the late husband. If she is the mother of the first son, he inherits all his father's property.²⁶

²⁶ K Okonjo, 'Aspects of Continuity and Change in Mate Selection among the Igbo West of Niger River. *Journal of Comparative Family Studies*', (1992). 229 – 360.

In old Bendel State, the wives of the deceased are subjected to swearing that they did nothing that could possibly lead to the death of the man such as poisoning him or committing adultery in his lifetime. In the process of this oath administration, a wife is compelled, to drink from the water already used in washing the corpse. In some societies, women are compelled to sleep on bare floor for several weeks and they are expected to wake up their neighbours early in the morning with mournful and moaning cries to show how much they miss their husbands. Needless to say that men are not subjected to such indignities when their wives die.²⁷

2.2 SOUTH EAST - ANAMBRA/IMO STATES

In Ogidi town, in Idemili L.G.A., the mourning period is one year during which time, the widow is restricted to the house where she sits on the bare floor for four weeks and her hair is scraped. She is not allowed to talk, laugh, shake hands or greet people, bake or cook. Her attire is called "Ogodo-upa, that is, "mud cloth". After seven weeks, she removes the "mud cloth" and wears "the ikpim, that is, a pitch black mourning dress" for the rest of the year. Peculiar to this people is the "etum-afa, that is "praise naming" which the widow performs (mandatory) three times a day.

In Nanka town, Orumba Local Government Area the only peculiarity of this

²⁷ Ibid.

people is that the widow is forbidden to see the corpse of her husband. Christianity or not, any widow who contravenes this customs literally ceases to exist, She neither buys from nor sell to any other member of the community. All men run away from her, she is avoided like death. In Ogbunka town, still in Orumba South L.G.A., a widow is secluded behind the house immediately the husband dies. The Umuada force her to observe the routine wailing from morning till night for many days. This widow is in turn expected to provide the oku-awa i.e. yam meal with a chicken, for the Umuada (on daily basis).

In Ezira and Nawfija in Njikoka Local Government Area, the widow is put in a "cage" She is allowed to sit on a mat or mattress inside her "cage" though she does not sleep there. According to these people, the widow is ", most vulnerable to physical pains inflicted on her by vicious mourners, who are in the habit of throwing their whole weight on the victim, in the guise of deep sympathy." The widow wears either black or white for seven months at the end of which, she wears another dress for the remaining five months that is neither black nor white.

In Akili-Ogidi town, in Ogbaru L.G.A., widowhood practice is the same as in Ogidi town except that, the widow does her evening crying shift through the onu ntapá, that is, a chink in the wall. She must also be facing the west, throughout the first twenty eight days after the burial. Because of

civilization however, the working class widow is allowed to return to work after the short bereavement leave granted her. However, no widow is allowed to step out of her husband's compound on her own feet. She must be carried by a man out of the compound to the road, to take transport to her destination.²⁸

2.2 SOUTH WEST - ONDO STATE

When a husband dies, the widow goes into confinement for seven days. During this period she is not allowed to go out, even to the toilet or, take her bath. On the seventh day, her head is shaved to sever the bond between her and the dead husband. She also keeps a vigil and appears very sorrowful by wailing and crying profusely. If she fails to mourn, it is believed that "she may become mentally deranged, or forfeit the right to any benefit." After this, she goes into mourning proper, which is for a period of three months. During mourning, she is to be of impeccable behaviour so that her late husband's spirit may gain quick entry into the community of his ancestral spirits. The widow is not expected to leave the family, go away with the children, or look in the mirror for fear of seeing the deceased. Until recently, she was not allowed to sit on the bed.

This period is also used to ascertain whether the widow is pregnant or not. At the end of three months, she performs the outing ceremony. She is then free to remarry into the family. A widow may however, refuse to be inherited even if

²⁸ Ibid.

her late husband's family want it so. Likewise a man may equally refuse to inherit his late brother's wife. In Ondo, as in other Yoruba land, property belongs to the wife/wives and the children of the deceased. It is shared as Ori o ju ori i.e. equally among the children (including girls), or as Idi'ig i.e. equally among the wives (where the man has more than one wife), though, the eventual beneficiaries are the children. Where the widow has no child, she may not get anything from her husband's property. It reverts to his family.²⁹

2.3 NORTH CENTRAL NIGERIA – BENUE STATE

The burial practice here is that, the man is buried almost immediately he dies. The widow is restricted to one place; however, if she is still within child bearing age, she is restricted to one room. She cannot go to the toilet unaccompanied; neither can she go to the farm to get food, even for her children.

Among the Etulo people, a widow is confined in mourning for three months during which it would be confirmed if she is pregnant or not. Her only attire is a piece of cloth called bento, which has a ritual object ascribed to it. This cloth is tied round the waist of the deceased man, and the widow now wears it as a symbol of her sexual relationship with the late husband. It is also believed that, this bento deters the widow from any act of flirtation or promiscuity before she

²⁹ Gender & Behaviour, <http://www.faqs.org/periodicals/201012/21877713301.html>. accessed 19 December, 2010.

is culturally freed from widowhood." After the three months of mourning, she prepares for the outing ceremony. Her hair is shaved during this period and, she exchanges the bento for a white dress, which, she also stops wearing after outing ceremony. On the issue of inheritance, the Etulo are a matrilineal society. A barren widow has no rights to any of her late husband's property. Even where the widows have children, the property still goes to the maternal relationships who may out of good will and pity give part of it to his children³⁰.

Among the Idomas, the widow mourns for at least one year wearing sackcloth. She performs the cleansing/outing ceremony with the help of her age grade (peers) at the end of the mourning period. This done, she is free to remarry either within or outside of the family. In Idoma land, the late man's property belongs to his relations.³¹

2.4 NORTH WEST NIGERIA – KANO STATE

In this part of the country, inheritance issue are according to Islamic injunctions. The widow observes the Takaba i.e. a four-month, ten-day mourning period in seclusion talking to no one and sitting in a place. However, there are accounts of widows who are barred From: leaving the room where the corpse was laid; sleeping on a comfortable bed; taking a normal route to the toilet; observing personal hygiene; wearing long hair; moving about; taking normal bath; seeing

³⁰ Ibid

³¹ Ibid

the inside of the grave eating pounded yam; and fowl, goat meat.

After the mourning, a widow is free to remarry within or outside the family. On the issue of inheritance, the manner in which the property of the deceased is shared is explicitly stated in the Qur'an. However, human factors, especially the relationship of the widow to her in-laws, education of the apportioning parties and cultural leanings have brought about injustices in property sharing.³²

2.5 NORTH EAST

In the Northern Region of Nigeria, attribution of death is to God and the widow traditionally is expected to mourn her late husband (tabaka) for a specified period of time. The mourning period is four lunar months plus ten day and till the day of delivery or weaning of her new baby for a widow not pregnant before the death of her husband and the pregnant widow respectively.

The widow after the mandatory mourning period could stay and remarry in the same family or go elsewhere for the same purpose. However, except that most widows are often neglected during and after mourning together with their children there is no any other practice of mourning that is physically injurious or degrading to the widow. In order to survive the harsh financial situation faced

³² Ibid

thereafter most widows are known to take to petty trading, begging for alms or other survival strategies to keep body and soul together³³.

All these practices are against religious tenets and instructions as widows were particularly mentioned in the bible as a category of people to be cared for.

³³ *Widowhood Practices in Nigeria and Support Systems: Challenge to Counselling For National Integration.* <http://www.unilorin.edu.ng/publications/Oniye>. Accessed 19 December, 2010.

CHAPTER 3

3.0 HEALTH IMPLICATIONS OF WIDOWHOOD PRACTICES

Apart from the degrading and dehumanizing effects of the customary law practices of widowhood, there are other effects that include:

1.) Physical harm

Enforced persistent wailing. This practice is physically debilitating and disruptive. As a result of crying and rolling on the ground, many suffer physical symptoms like insomnia, shortness of breath and loss of appetite. Physical health problems associated with widowhood practices are quintessence of untidiness, hunger and starvation, brutality, physical pain or physical appearance.

2.) Medical effects

The loss of a loved one is a source of intense emotional stress, yet the bereaved need to express and deal with their feelings of loss before they can reorganize their lives. A woman's ordeal begins with the customs she must observe in the weeks following her husband's death, which, coupled with the shock of bereavement, can undermine her health. Normal grief often follows a fairly

predictable pattern. Social health problems such as neglect, abandonment, humiliation and marginalization were suffered by the widows. They are likely to have negative effects on the widows, for example when the widow is abandoned, she may not be able to provide basic human needs for herself and her children. This condition can lead to malnutrition and disease. During the three months following bereavement, a new widow may not leave the house for any reason, and the resources remaining to her are seriously depleted resulting to poor nutrition. Where mourning practices stipulate neglect of bathing and other personal care (including hand washing before meals), the widow's health is at risk. She may have to be fed by another woman with unclean hands, and may use only broken pots and plates, which may be unhygienic. Studies are needed to ascertain the risk of skin diseases, lice infestation, gastro-intestinal infections, and typhoid. They also develop viruses, scabies, diarrhea, typhoid, malaria, pneumonia, hypertension and stroke. The widow is to sit in her seclusion room without movement at all times. This could make the widow to gain weight and be prone to overweight and subsequently face the risk of cancer.

Deprivation of husband's property, and maltreatment by his relatives. In these circumstances, the widow is left without the economic resources to meet either her or her children's basic needs. Women of low skills and literacy may be compelled to turn to commercialized sex as a means of financial support; this

exposes them to, and makes them a channel for, sexually transmitted diseases, including HIV.

3.) Psychological effects

A few weeks after the death of a spouse, survivors react with shock and disbelief. As the fact of the loss sinks in, this initial numbness gives way to overwhelming sadness. Some are stressed, depressed and fearful. Some people cry almost constantly. Loneliness and lack of any social interaction are likely to have adverse psychological effects.

Some fear that they will have an emotional break-down, some drink too much or sedate themselves with tranquilizers. Beginning about 3 weeks after the loss, continuing for about 1 year, survivors often relive the death in their minds, in an obsessive search for its meaning. They may conjure the presence of the dead person seeing the face hearing the voice. At the start of the second year after the loss, survivors become more active socially, getting out more, seeing people, resuming their interest. At this point, survivors feel stronger, knowing that they have come through an ordeal. However, there are other cases in which the survivors find it very difficult to cope and adjust to their new status in life.

A typical Nigerian widow is by tradition expected to undergo certain mourning rites and widowhood practice, which invariably constitute elements of deprivation to her. This situation thus makes widowhood a pathetic situation, and widows being highly deprived people are lost in the ocean of life without a clear picture of what the future holds for them. Some areas do not allow the widow to bath for one month, others for three months and yet another for one full year. Despite the obvious lack of personal hygiene, the widow is expected to have only one set of mourning dress (usually black clothes). Widowhood is also associated with intense grief and anger expression. This is possibly because of deprivation following loss of spousal intimacy through death. The practice of enforced persistent wailing is physically and psychologically debilitating and disruptive. Some traditional cultures demand that a widow sits in the same room with her husband's body until he is buried. Most women fear the dead and this practices is liable to have adverse psychological reactions.³⁴

Forced to sit beside husband's corpse. Some traditional cultures demand that a widow sits in the same room with her husband's body until he is buried. Most women fear the dead and this practice is liable to have adverse psychological reactions.³⁵

³⁴ Ibid.

³⁵ 'Women and Widowhood Practices in Imo State, Nigeria.' (1993).

https://apps.who.int/environmental_information/women.womhouse.htm, accessed 19 December,2010

3.1 ECONOMIC EFFECTS OF WIDOWHOOD

A major problem for both sexes is economic hardship. When the husband dies, his widow is deprived of his income and the nucleus family is destroyed. The freedom and independence of the nucleus family is suddenly lost as a result of the death of the husband. A widower on the other hand, now has to buy many of the services his wife had previously provided. Where both had been employed, the loss of one income is often major.

Specifically, economic support is given to most widows mainly by their siblings, female friends and friends of the husband. Service support is provided by widow's siblings, children and female friends. The same support network provides the widow with social and emotional support systems. It can thus be said that at least five main factors usually determine the type and amount of support system received or given to the widow. These are the marital or parental ethnic background of the widow, her age at bereavement (whether she could still give birth or not), duration of widowhood marital status and childlessness.

Younger widows were mostly supported by their husband's relations, while older widows got their own support mainly from their siblings and children. As for the childless widows, they are mostly supported by their relations.

However, as the length of widowhood increases the amount and/or frequency of economic support given decreases.³⁶

³⁶ Ibid.

CHAPTER FOUR

WIDOWS RIGHTS AND INHERITANCE

4.1 Customary Law

It is trite law that on the death intestate of a husband, whether his widow can inherit his property will depend on the customary law of her intestate husband's locality.³⁷ Thus, where a person dies intestate leaving many heirs behind, his property will devolve on the heirs and will become a communal or family property of all the members of the family.³⁸

The major means through which individuals are differentiated and placed into a system of inheritance is through the form of marriage that they choose to adopt, be it a civil marriage, or under a customary or sharia system. It is of brief note that the form of marriage should have such a major impact on both the rights of the couple and of their children, given that marriage may not be viewed as a contract between two individuals within Nigerian societies. As will be described below, marriage should not be understood as an absolute marker of rights entitlement, but a prima face signal to the courts of the intended system of inheritance.

³⁷ *Labinjoh v. Abake* (1024) 5 N L R 33, Onokah M. C. Family Law, ed. Spectrum Books Ltd, Ibadan, P. 355.

³⁸ *Mohammed v. Klargestter (Nig) Ltd* (2002) 14 N W L R (Pt. 787) 335 S C

Individuals must make the choice to contract either a statutory, monogamous civil marriage, or a marriage under a customary or sharia system which is permissive of polygamy.³⁹ Polygamy remains common in Nigeria, with approximately 42.6% of women having such marriages, and 56.7% having some form of monogamous marriage.⁴⁰

Ordinarily, under Igbo customary marriage law a widow has no right to inherit her deceased husband's estate but she can be granted the use of his land if she remains in the family after his death. Thus, it was held in *Madu v. Madu*⁴¹ that under a customary law marriage which is polygamous by nature and not monogamous, there cannot be an implied gift by the husband to the wife. Such grant is subject to her good behaviour, it cannot vest the estate in her. In *Nezianya & Azika v. Okagbue*,⁴² it was held that a married woman had no right to succeed to the estate of her later husband under Onitsha customary law. It was immaterial that she had been in possession of the property without the prior consent of any member of her deceased husband's family. The fact that she has been in possession for a long time without interference from the family members does not constitute a bar to the family's right of ownership of the property.⁴³

³⁹ *Marriage Act*, Cap. 218, Laws of the Federation of Nigeria 1990, at s.35.

⁴⁰ Centre for Reproductive Rights, "*Women of the World*": Laws and Policies Affecting Their Reproductive Lives: Nigeria (2003) pt 75. <http://www.nigerianlawguru.com/articles/customary>. accessed 22nd January 2011

⁴¹ [2007] 14 N W L R (pt. 784) 335 S C

⁴² (1963) All N L R 352

⁴³ *Ibid.*

In this latter situation, her long possession was not adverse to the family nor did it give her any right to alienate the property. This decision of the court finds support in the Manual of Customary Law⁴⁴ which states:

A widow has no right of ownership over any property of her deceased husband. It is immaterial whether she has surviving sons or not. The only property of her husband which she has right to keep after the husband's death are outright gifts made by the husband in his lifetime.

In *Eze v. Okwo*⁴⁵ the husband was survived by three customary law widows but no issue. Before his death the deceased instructed his senior wife to administer his property and use the income there from to maintain herself and the other wives, and to continue staying in his compound with the hope that they might have issues for him. The senior wife attempted to carry out the wishes of her husband but was challenged by his nephew, the plaintiff in this case. He claimed not only that he was the rightful administrator of his uncle's estate but also that the defendant should be expelled from her late husband's compound. It was held that a widow can neither inherit her husband's compound nor administer it. A widow reserves some rights in her husband's estates. She has the legal right to retain the use and possession of the matrimonial home subject to good behaviours. She is also entitled to farm in her deceased husband's farmland even if she has no surviving children.⁴⁶

⁴⁴ (1977) P.313.

⁴⁵ Unprinted (1959) Obovo District Court, suit no. 29159 and Nsukka country court of Appeal.

⁴⁶ S. Omiyi, *Women and Children under Nigerian Law*. "A Critical Appraisal of the Legal Status of Widow under the Nigeria Law" p.75.

Coincidentally, under Yoruba customary law, separate houses or rooms allotted to the wives by their polygamist husband do not vest in the wives; as such allotments are not outright gifts. This is very similar to Igbo customary law. Thus, upon the death of the intestate husband, such houses or rooms become part of the real property of the deceased which will devolve on his family.

Moreover, where a husband in his will purports to vest his share of unpartitioned family property in his wife, it is not capable of devolving upon the widow and such property consists of rights which are purely communal and inalienable. And where such property is being distributed by the family members, the widow cannot successfully claim that she is entitled to the share which would have been her husband's had he been alive. This is because the devolution of family property under customary law "follows the blood".⁴⁷ The rationale behind this rule is that family land must be kept intact and also the fact that the deceased intestate's customary law wife is not regarded as a member of the "family" for this purpose. This is evidenced in the statement by Coker⁴⁸ that: "...among the Yorubas of Nigeria the wives of a man also constitute part of his...property".

In *Suberu v Sunmonu*,⁴⁹ the question was which of the two parties – the material or paternal relation – should inherit the real estate. The court held that as the deceased's son died intestate without issue, his share of the family house

⁴⁷ *Sogunro Davies v. Sogunro & Ors* (1992) N L R 79.

⁴⁸ G. B. Coker, (1958) *Family Property Among the Yorubas*, p.39.

⁴⁹ (1957) 12 FSC 33

devolved upon his uterine brothers children. The court also declared thus: “it is a well settled ruled of native law and custom of the Yoruba people that a wife could not inherit her husband’s property.”

In *Oshilaja v. Oshilaja*⁵⁰ the court held that in accordance with the decision of the Supreme Court in the *Suberu*’s case, the widow in the instant case could not inherit her deceased husband’s estate. And as the deceased intestate died without a child, the court held that the sons of his uterine sister (there being no surviving full blood or uterine brother) were entitled to share in the estate to the exclusion of his widow. The disintegration of the family property could not therefore be avoided if some part of the family land were inheritable by a widow as she could not possibly leave the land in her deceased husband’s family in the event of her remarriage.⁵¹

One common rule of customary law which is synonymous with all the traditional African societies is that in customary law if intestate succession, the widow has no place in the sense that she can never inherit from her husband on intestacy. It is remarkable to find such uniformity in the customary laws of so many people with different origin, histories and customs⁵². This rule appears irrespective of the services the widow may have rendered to her deceased

⁵⁰ (1973) CCHCJ 30/10/73

⁵¹ M. C. Onokah P.356

⁵² Ibid.

husband, or of her contributions, financially or otherwise to the accumulation of his property.

This inconsiderable attitude towards the right to inheritance by the widow extends to the administration of the intestate estate. In the Igbo case of *Ejiamaike v. Ejiamaike*,⁵³ Oputa J. held that a widow of a deceased person had no right under Onitsha customary law to administer the estate of her late husband especially where there is an “okpala” (first male issue) of the deceased who was not a minor. There is an application of the Igbo law in the decision in the Yoruba case of *Aileru Kors v. Anibi*⁵⁴ where Jibowu J. held: “under native law and customs, widows cannot administer the estate of their husbands”.

It is interesting to note that in recent times, the courts have departed from the rule of customary law that a widow cannot inherit the estate of her deceased husband. Thus in *Loye v Loye*,⁵⁵ the court drew attention to modern socio-economic changes in the relationship of husband and wife and held that:

...a widow has no right of inheritance to the estate of her deceased husband. However, this aspect of our customary law needs urgent reform because it is capable of working great hardship in modern times when wives make significant contributions to the wealth and properties of their husbands. Customary law bases the right of inheritance on “blood relationship”, for example, sons, daughters, brothers, sisters, or even

⁵³ (1972) 2 ECNSLR, p.11

⁵⁴ (1952) 20 NLR 46

⁵⁵ (1981) OYSHC, 140

*parents of the deceased. But this principle of our customary law should be reformed so that “a widow” or “widower” on grounds of marriage or marital ties could claim a share in the estate of the deceased spouse.*⁵⁶

This obiter dicta surely portrays the courts as being on the verge of evolving another element of the “Lawyers’ Customary Law” to give the widow the right to share in the estate of her deceased intestate husband. This calls to mind the statement of Kingdon CJ in *Balogun v Oshodi*,⁵⁷ that: “Native law and custom is a live thing and may change as condition changes”.

The convention on the Elimination of all Forms of Discrimination Against Women is an international instrument which has gone far in re-establishing the status of women and invariably widows. The Convention provides for equality of both men and women in all its respect. The main goal of the Convention is to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.

4.2 Common Law (Marriage Act)

In order to have a valid civil marriage under the *Marriage Act*, it is necessary to both complete a formal registration process and to get married within a licensed facility. Thus, while many Christian marriages will also be civil marriages, given that Churches can be licensed to perform these services, a Christian

⁵⁶ Ibid.

⁵⁷ (1931) 10 N L R 36 at P 57.

marriage alone does not mean that an individual will have rights under the civil system.

A civil marriage establishes the presumption that the couple intend to subscribe to the British inheritance system. This presumption is established on two primary bases. First, *Cole v. Cole*⁵⁸ established that individuals being married in the Christian form had the right to succession on Christian principles. This principle was later varied in *Smith v. Smith*⁵⁹ to establish a mere presumption. The manner in which the couple lived would provide the ultimate determination of whether or not the couple intended to have bound themselves to the British system. No particular indications are provided as to the meaning of living in a customary mode of life, but presumably at the time these cases were decided it was considered obvious, and would likely look at factors such as urban versus rural life, and whether or not a man took further polygamous wives in contravention of the *Marriage Act*. Since this early case law, the principle of a Christian marriage has been converted into that of a civil marriage, with a Christian marriage itself not attaching civil rights. Second, this principle was codified in *The Marriage Act of 1915 (Marriage Ordinance)*, and continues to be cited as good authority.⁶⁰ The proposition is aptly laid out in *Salubi v*

⁵⁸(1898) 1 NLR 15

⁵⁹(1924) 5 NLR. 105

⁶⁰ Note that s.55 of the Marriage Act specifically repeals the Marriage Ordinance provided that “said enactments shall continue to apply to every marriage contracted there under or validated thereby as if this Act had not been made. <http://www.nigerianlawguru.com/articles/customary>. accessed 22nd January 2011

*Nwariaku*⁶¹: Where a person, subject to native law or custom marries under the Marriage Act and dies intestate, the applicable law for the distribution of his estate would be the Marriage Act and not the Administration of Estates Law or Customary Law. This is because his intestacy is governed and regulated by English Law.

The estate of a deceased person is not governed by customary law but by the general law where he had gone through Christian marriage.

Section 36 of the Nigerian Marriage Act provides that:

“Where any person who is subject to native law or custom contracts a marriage in accordance with the provisions of this ordinance leaving a widow or a husband or any issue of such marriage as aforesaid dies intestate subsequently to the commencement of this ordinance the personal property of such intestate and also any real property of which the said intestate might have disposed by will shall be distributed in accordance with the provisions of the law of England relating to the distribution of estates of intestates, any native law or custom to the contrary notwithstanding provided that”:

Under section 36 of the Act, where a man who is married the Marriage Act dies intestate leaving:

- i. A widow of the said marriage and his children the wife is entitle to one-third of the while estate;
- ii. Issue of the said marriage and a widow however married the widow is entitled to one-third of the whole estate, and
- iii. A widow of the said marriage but no child, the widow is entitled to half of the whole estate.

⁶¹ (1997) 1 NWLR (pt. 505) 442.

Where a man who is the issue of a marriage under either Act dies intestate survived by:

- i. A widow however married and children, the widow is entitled to one-third of the whole estate;
- ii. A widow however married but no child, the widow is entitled to half of the whole estate.

English Law of intestate succession was introduced into the former Eastern Region by Ames J in *Administrator-General v. Onwu Egbuna*.⁶² The result of this is that the entire body of English Law of intestate succession as it stood on January 1, 1900, was introduced into the former Eastern region. Unlike the provisions of section 36⁶³ of the Nigerian Marriage Act where realty and personality are dumped together, in these states realty and personality are treated differently. Here the personal estate of the intestate is governed by the rules of the Statutes of Distribution.⁶⁴

The question as to who is a “widow” for the purpose of the statutes would be governed by the law of the domicile irrespective of whether the marriage upon which the claim was founded is monogamous or polygamous. In *Re Adadevoh ors v. In the estate of Herbert Macaulay*⁶⁵, Verity CJ declared that the statute could not be limited in its local application to wives of monogamous marriages in a polygamous society like Nigeria. The view was affirmed by the privy

⁶² (1945) 18 N L R 1; *Obusez v Obusez* [2007] 10 N W L R (pt 1043) C A 430

⁶³ Applies to “the colony” only. Which was in actual fact the then newly amalgamated colonies of Lagos and the “Gold Coast colony”.

⁶⁴ Statutes of Distribution 1670, car 2. (10 16) iii-vi

⁶⁵ (1951) 13 W A C A 304

council in *Coleman v Shana*⁶⁶, where the council held that the words “wife” and “widow” was referred to persons regarded as lawful wives and widows to relevant Lex domicile, in this case, Ghana.

Section 49 (1)(i)(2)A.E.L 1959 provides that if an intestate leaves a surviving spouse and issue, the spouse takes the personal chattels absolutely together with a sum equal to one-third of the residual estate free of costs, charged on the residuary estate with interest at two and one half percent per annum from the date of death until the date of payment. In addition, the surviving spouse takes a life interest in one third of the residuary estate.

Under Section 49(1)(i)(3) if the deceased left no issue but a surviving spouse subject to what he or she received under sub-section (i)(3) is entitled to a sum equal to two-thirds of the residuary estate and in addition half of the residuary estate is held on trust for him or her.

In *Obusez v Obusez*⁶⁷, the court of appeal held that by virtue of Section 49(5) of Administration of Estates Law of Lagos State, where any person who is subject to customary law contracts a marriage in accordance with the provisions of the marriage Act and such person dies leaving a widow or husband or any issue of such marriage, any property which the intestate might have disposed of by Will

⁶⁶ (1981) A C 481

⁶⁷ Ibid.

shall be distributed in accordance with the provisions of the law, notwithstanding any customary law to the contrary. The clear intention of the law maker that customary law should be excluded in relation to the estates of persons to which the provision applies. Here, the Agbor native law and custom was not applied in the estate of the deceased who died in Lagos State. Thus, with respect to succession to the real and personal estate of a person married under the Marriage Act and who dies intestate in Lagos State, Section 49(5) of Administration of Estate Law of Lagos State is the applicable law and it does not matter whether Section 36(1) of Marriage Act, Cap. 115 LFN 1958 which was applicable to the former Colony of Lagos had been repealed or not.

However, both Administration of Estate Law and the Marriage Act enact in the event of a spouse married under the Act dying intestate and being survived by his spouse shall succeed to two-thirds thereof and this makes the spouse a beneficiary of the estate and a qualified person to apply for letters of administration of the estate of the deceased spouse⁶⁸.

The only difference between the two is that while Section 36(1) of the Marriage Act incorporates the English Law, fixed at the date of commencement, into Nigerian Law of Intestate Succession by reference, the latter statute has directly and not by reference substantially incorporated the contents by the current

⁶⁸ Ibid.

English Law on the subject in its provision with the consequence that it was not necessary to search for what English Law on the matter was⁶⁹.

No such protection exists under customary law; a widow is not entitled to inherit her husband's estate on his death intestate. Women are adequately provided for but one must add that the non-customary law of intestate succession in Nigeria is in a state of utter confusion. In many cases, the applicable rules are difficult to understand, and even where they are known, the provisions as we have seen are not readily subject to precise interpretation.

The law primarily seeks to reverse the situation to customary law under which the widow had no rights of inheritance in the husband's estate by prescribing that specific portions of the estate should devolve on the widow and children. This approach, however does not seem to achieve the declared purpose, and in some cases only results in litigation and the ultimate sale of the inherited property, leaving the widow in an unattractive position. The implementation of the law has revealed that in more cases, it fails to ensure adequate provision for the surviving widow and dependent children of the intestate before the distribution of the rest of the estate among the customary family and parents of the intestate⁷⁰.

⁶⁹ Salubi v Nwariaku (2003) 7 N W L R (Pt. 879) 426.

⁷⁰ Ibid.

In certain situations, the application of the provisions of the law does not secure for the widow sufficient means of support for herself and the children of the deceased as intended. In polygamous situations where there is more than one lawful wife, all of them being entitled to one house and the household chattels as co-owners as required by the law, this invariably results in protracted conflicts which in most cases can only be resolved by selling the house and the chattels and sharing the proceeds. In polygamous situation where the deceased left more than one house which could be conveniently allocated along the widows and children of the deceased to inherit only one of the houses and hold it as co-owners, creating a situation which is patently unworkable in practice.⁷¹

The outcome of the implementation of the provisions of the law is even more absurd where the deceased left behind more than one house, and the widow and all the children of the deceased (including those not born to the widow who may have been residing elsewhere) are nevertheless required to select only one of them and hold it as tenants in common. The case of *Coleman v. Agyare* illustrates this defect in the mode of distribution adopted by the law and the need for more flexibility in the approach of the law in order to improve the lot of the surviving widow. In that case, the deceased died leaving a widow with whom he had five children. The deceased had two other children by another woman who were born before his marriage to the surviving widow. Until his

⁷¹ Ibid.

death, the deceased lived with the widow and their five children in one of his houses, while the two children lived elsewhere. The deceased left behind three houses. One of the children of the deceased applied to the court for a declaration that she was entitled to one of the houses absolutely because it has been gifted to her by her deceased father in his lifetime. In addition, she asked for a declaration that she was entitled to a share of the estate. The trial judge dismissed the claim of the appellant and, in finding that the estate had not yet been distributed, ordered, inter alia, that the widow was entitled to choose one of the houses and enjoy it absolutely, while the children of the deceased held the other houses as tenants in common. On appeal to the court of Appeal, it was held that the trial judge misapplied P.N.D.C Law III. The Court of Appeal stated that P.N.D.C Law III does not confer any right on any of the children or a widow left behind by an intestate, to choose any of the provisions in section 49(b) of P.N.D.C Law III, stating that the law makes no such allowance as referred to by the trial judge in favour of the widow.

Incidentally, there is nothing like widow's inheritance under the English law. The English laws tend to be more favourable to women.

One particular widow practice is that of levirate marriage, or marriage typically to a sibling of the deceased husband. Levirate practice recognizes that an individual is not so much married to a spouse, as to a particular lineage. As a consequence, it can even be possible to marry a female relative in order to

maintain paternity for a widow's children after her husband's birth. For example, in *Okonkwo v. Okagbue and 2 Others*⁷², two sisters claimed under Onitsha (Igbo) native law and custom that they could marry their deceased brother's wife, even if there were surviving male issue. While this argument was accepted by the Court of Appeal, the Supreme Court held the practice to be repugnant, as it is unsustainable in contemporary Igbo society. Interestingly, by allowing for a levirate practice amongst female as well as male kin, there may have been greater flexibility to ensure that the widow was provided for by the family. In fact, this case was brought by a son of the deceased who wanted to ensure the six children of the widow could not inherit.

While levirate marriage traditionally provided protection for the widow, in that she remained a member of her husband's family and retained access to his property, studies repeatedly report a decline in this practice.⁷³ According to Michael C. Kirwen, as Christianity does not condone levirate practice, there has been serious discord for Christian women who feel they have no option but to choose between a levirate practice, which will maintain her husband's lineage and provide for her care, and respect for Christian teachings and the ability to receive the sacraments.⁷⁴ As a result, Christianity is a key factor in the decline in the practice. However, as Korieh suggests, other factors have a role in the

⁷² Ibid.

⁷³ M C Kirwen, *African Widows*. Mcmillan, London (1980), pp.60 -62

⁷⁴ Ibid.

reduction in levirate marriage, and it is not possible to identify a uniform trend. Levirate marriage is also only typically with women of child-bearing age. Post-menopausal widows with children may reside with their children without requiring a levirate, but those who are childless may have no option but to return to their family for support.

Forms of marriage also have an impact upon the vulnerability or resiliency of women faced with limited inheritance rights. Polygamous marriages mean that even if women had rights to inherit property, there may be an insufficient land base to provide for all women and children. Furthermore, polygamous marriage means that even before HIV, widows at all stages of the life cycle were common, with junior wives being relatively young women on the death of their husbands. For example, in Korieh's study of census data of four villages in Mbaise, she found that 24% of the 600 adult women were widows due to high age disparity between spouses as well as the Nigeria-Biafra civil war. Another factor that should be recognized is the fluidity of marriage within certain cultures. Abdullah found such fluidity present in her study of Northern Nigerian both amongst the Muslim Hausa and Maguzawa. Upon divorce, the Hausa women would lose their inheritance rights to their ex-spouse.⁷⁵

⁷⁵ J A Hussaina, Ibrahim, H. "*Women and Land in Northern Nigeria*". The need for independent ownership of rights" in Wanyeki, Muthoni, ed., *Women and Land in Africa: Culture, Religion and Realising Women's Rights* (Zed Books Ltd, New York, (2003) 133 at 147.

Suspicion targeted at widows also plays a primary role in preventing women from encouraging their husband to write wills. The same suspicion around witchcraft that in part motivates widow rites also means that if a woman encourages her husband to write a will, she is accused of plotting his death and liable to be accused of his death.⁷⁶ This reluctance is further supported by the impediment that the majority of rural women in Nigeria are illiterate, and have neither the capacity to themselves write wills, read wills, or read popular literature targeted at educating them about such rights.

At the death of a woman's husband in Igbo land, she would be expected to surrender all the man's properties, including bank account to the relations for appropriation. She would, in some communities, be expected to take an oath that she had not concealed anything from the family members. In some communities, the woman would be accused of masterminding the husband's death even where it is very apparent that he died a natural or accidental death. Hence, the widowhood rites would begin by making the woman to pass through "acid" test such as "drinking bitter water", swearing in a shrine, drinking the water used to birth the husband's corpse or going to a "T junction" to bath, returning home naked by 2.00am. It is believed that if she survives any or a

combination of these, then she is free from the guilt of causing her husband's death.⁷⁷

The above notwithstanding, the property of a dead man among the Igbos passes to his siblings rather than to his wife and children who are left un-regarded or are often ejected from those properties. It has been suggested that the humiliating and almost inhuman ordeal to which the Igbo woman is subjected during widowhood rites are to subjugate her and deter her from ever laying claims to her husband's properties.

In some cases a widow could be asked to marry the junior brother of the late husband and in case a widow refused such an offer, she was disowned by the late husband's family and banned from inheriting any of the dead man's property while all the household properties would be carted away by the family members especially where the widow does not come from the same town as the deceased husband. Such women have had to rely on the help and assistance from friends and social organizations to which they belonged in order to cater for themselves and children or to fend for themselves or be taken care of by their family of origin.⁷⁸

⁷⁷ C J Korieh, Thesis submitted for the degree of master of philosophy in history. University of Bergen, Norway Bergen Spring. <http://www.ub.uib.no/elpub/1996/h/506001/korieh/chima.html>. accessed 23rd January 2011

⁷⁸ Ibid.

The Yorubas on the other hand, after the death of the husband, his wife or wives would be expected to observe the community based widowhood rites. Thereafter, the leaders of the extended family would constitute themselves into a committee to share the man's properties among his children and close kits and kin where he had only one wife. This is called "Olori ko kori"- i.e. an individual basis. However, where he had more than one wife, the properties are shared on the basis of "onidi judi", that is, on the basis of the group of children each wife has. Clearly, in Yoruba land, a dead man's properties belong primarily to his children and can be extended to his close kin but the wife/wives have access to their late husband's properties only through their children.

As earlier mentioned, among the Yorubas, the issue of widow inheritance was common up to three or four decades ago in which case a close kin of the dead was expected to take his widow to wife after the normal widowhood rites. This custom has however almost completely frizzled out except in very remote rural areas.

Among the Igbos also, widow inheritance is no more popular as it was about three decades ago. Indeed, most widows who are of child-bearing age prefer to

remain un-married and to stay in the family of their husband, taking care of their children⁷⁹.

4.3 Sharia Law

The fourth dominant form of law in Nigeria is Sharia law. The particular form of sharia recognized in Nigeria is the Maliki form, which predominates throughout Western Africa. While much ink has been spilled about the recent resurgence of sharia law within Nigeria, it actually had legal standing as a form of customary law active at the time of colonization, and has continued through the doctrine of continuity like other customary law systems. While sharia criminal jurisdiction has recently been revitalized, jurisdiction over “personal law”, including marriage, property and inheritance, has been constant.⁸⁰

In fact, there is an active debate over whether or not sharia law should be considered a form of customary law, given that it based upon written sources, is the revealed will of God, and is therefore fixed and immutable.

In Muslim communities, widows do not typically perform widow rites, but do go through a period of ritual mourning followed by a period of purification. For example, in Plateau state and Bauchi, Muslim women have 40 days of mourning, and 30 days of seclusion. In Kano, there is a four month period of

⁷⁹ Ibid.

⁸⁰ A Ob, “*Islamic Law as Customary Law: The Changing Perspective in Nigeria* 51 ICLQ 817 at 826

mourning followed by two days of takaba or seclusion by the sharia system in the case of a sharia marriage.

When a Muslim dies there are four duties which need to be performed. These are:

1. payment of funeral expenses
2. payment of his/ her debts
3. execution his/ her will
4. distribution of remaining estate amongst the heirs according to Sharia

The laws of inheritance take on an even greater prominence in Islam because of the restriction placed by Sharia on the testamentary power of the testator.

For Testate Succession amongst the Hausa of Northern Nigeria, sharia law is the dominant form of “customary law”. Under sharia law, only up to one third of property is devisable by written document, or oral will (*wasiyya*).⁸¹ This one-third testamentary disposition may be more accurately described as a gift,⁸² or as an exception to the general principles of succession under sharia law.⁸⁴ However, it is a matter of some debate as to the ability of a Muslim to make a valid will under the *Wills Act* that disposes of more than one-third of his property. In *Yanusa v. Adesubokun*,⁸³ it was held by the Sharia Court of Appeal that disposition under the *Wills Act* was limited to a one-third portion in keeping

⁸¹ *Yanusa v Adesubokun* (1968), Suite No. J23/67, Reported 1968 N.N.L.R. 97. Full text as compiled by Yahaya Mahmood, *Sharia Law Reports of Nigeria (1961-1989)* (Ibadan: Spectrum Books Limited, 1993).

⁸² According to *Rabiu v Fatima* (1963), SCA.CV.40/63, Sharia Court of Appeal of Northern Nigeria, “In Islamic Law instructions do not serve to divide an inheritance. If the instructions are followed, it is not a question of inheritance but of gift. If instructions give property to one person out of a family, then he could not receive more than a third of the whole property, without the consent or authority of the other persons inheriting the properties [heirs]. Full text of case as compiled by Yahaya Mahmood, *Sharia Law Reports of Nigeria (1961-1989)* (Ibadan: Spectrum Books Limited, 1993).

⁸³ *Ibid.*

with the principles of Islamic law. However, this was over-ruled by the Supreme Court which held that under the provisions of the Supreme Court Ordinance, it cannot enforce a custom in so far as it is incompatible with a law in force. The court therefore held that the “provisions of Maliki Islamic Law is undoubtedly incompatible with section 3 of the Wills Act, 1837”, and therefore a disposition in excess of one-third of the property would be permissible.

Unlike the English system of intestate succession, the sharia system is clear and simple, as it is specified within the Qu’ran. The basic principle under the Maliki system is:

that if a Muslim dies intestate his estate must be shared between his heirs entitled to share under Islamic Law, and that his male children must have equal shares and his female children half share each of a male child.⁸⁴ Only children who are non-Muslims or commit patricide to inherit these rights.⁸⁵

The general division is that if there are children, widows are entitled to one eighth of the property, including realty, and they are entitled to one quarter of the property if there are no children. Daughters take half the share of their brothers, and if they are the sole survivor, will take half of the net estate. In total, woman can inherit under six of the nine categories as “Qu’ranic sharers”: as wives, mothers, daughters, and germane, consanguine, and uterine sisters.⁸⁶

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ P U Okoye, *Widowhood: A Natural or Cultural Tragedy* (Enugu: Nucik Publishers, 1995) at 164.

Women can also inherit from slaves and by gift or purchase.⁸⁷ Finally, a non-Muslim cannot share in the intestate succession of a Muslim, although a Muslim is not precluded from taking under the personal law system of a non-Muslim.⁸⁸

It is important to know that there is a history of non-enforcement of women's rights to inheritance under the sharia system amongst the Hausa people.⁸⁹ When Kano was first made into an Islamic state in 1804, similar to the doctrine of continuity, those laws consistent with sharia were maintained, and all others abolished. However, women's rights to inheritance under sharia were not consistently applied. In 1923, Emir Addullahi issued an edict saying women were not entitled to inheritance. On March 7th, 1924, Emir Abdullahi partially remedied his position by issuing an edict that recognized widow's right to inherit the deceased's house on his death if there were no male heirs. However, this edict also recognized women's non-inheritance of farmland, and did not recognize inheritance of the house if there was a male next of kin. It was not until April 1st, 1954 that Sarki Sanusi annulled this practice to ensure that Hausa women could inherit under sharia principles.

The necessary adjunct to recognizing women's ability to hold land and receive land through inheritance is the caveat that male family members retain control over the property. In Abdullah and Hamza's study of inheritance practice in

⁸⁷ Ibid.

⁸⁸ I Olu Agbede, "Legal Pluralism: The Symbiosis of Imported Customary and Religious Laws: Problems and Prospects" in *Fundamentals* at 239.

⁸⁹ Ibid.

Northern Nigeria, this practice was attributed to the perspective of male family members that women did not need independent legal rights to the land, and that they would be catered to by their husbands and male relatives.⁹⁰ It is of additional note that many Hausa women practice purdah and therefore may be limited in their ability to independently administer their land.⁹¹

4.4 Widows' Inheritance

Under customary law, marriage extends beyond the life of the husband. The death of her husband does not dissolve the marriage. She is inherited by her husband's heir. This unjust and barbaric law was applied by the courts in *Omo Ogunkoya v Omo Ogunkoya*.⁹² Thus the Court of Appeal held that "...The wives left are also regarded as chattels that are inheritable by other members of the family (in Yoruba sense) of the deceased under certain conditions". In some ethnic groups such as the Esan in Edo State, the consent of the widow is not required before she's remarried into her deceased husband's family. Among the Yorubas of Nigeria, her consent is required. Upon her refusal to accept the new husband she may obtain divorce and repay the dowry. But it is mandatory that she dissolves the marriage or else she is still bound to her deceased husband's family in terms of her legal obligations to the deceased's family and this

⁹⁰ Ibid.

⁹¹ Ibid.

⁹²

automatically disqualifies her from remarriage outside her deceased husband's family.⁹³

In some societies that still reserve some respect for the widows, such as Afikpo in Ebonyi State, widows cannot be inherited or allowed to remarry within the lineage or clan of their husbands or remarry a relation of the deceased older than the latter.⁹⁴

Under the concept of widow inheritance, the heir succeeds to the wives of the deceased and takes over maintenance of such wives. This duty to maintain lasts as long as the widows remain with the family but is discontinued once they leave their deceased husband's family and remarry. In practice, very little may be spent on them as regards maintenance for not only that most women are engaged in farming activities but they also play a great part in petty trading and there are also many cases of women richer than their husbands.

In traditional African society, this custom of widow inheritance, where by the heir or successor steps into the shoes of the deceased kin as regards the deceased's rights and obligation to his wives, was perhaps one of the most effective ways of providing for her in an intact traditional society. This was well and good for the bygone days. This is no longer tenable today where traditional obligations are regarded as very burdensome and easily evaded and where most

⁹³ "Women and Children under the Law, p. 76.

⁹⁴ Ibid.

people are no longer interested in “second hand” wife and husband arrangements have become monstrous and deplorable, for many modern women find it convenient to rely either on their deceased husband’s family. Traditional system is being phased out under the development of new roles and is being replaced by family influences on occupational choice. All these indicate that the present family provision for widows under customary law of intestate succession is inadequate and something must be done to safe guard the rights and interests of a customary widow.⁹⁵ It is known that in the enforcement of customary law, it is a rule that the native law tradition and custom is not to be enforced if it is distasteful, offensive and opposed to natural justice or contrary to any written or official law.⁹⁶ This proclamation remains a part of the Nigerian legal system under common law applicable in Nigeria. There is no way to describe some of the customary practices of marriage, inheritance or widowhood than to call it distasteful, offensive and opposed to natural justice.⁹⁷

4.5 TREATMENT OF WIDOWERS

Widowhood affects more women than men financially, psychologically, sexually and socially.

⁹⁵ Ibid.

⁹⁶ Proclamation No. 6 of 1900

⁹⁷ “*The Nigerian Legal System.*” <http://www.africanmarket.com/front/product.asp?product=3917>. accessed 20th January,2011

In the case of the loss of the husband, the wife becomes the primary suspect as the cause of the husband's death and is thus treated accordingly. On the other hand, where a man loses his wife, the man is almost immediately offered a substitution to comfort him and douse the impact of the grief of bereavement. The cause of this is not farfetched. It has been rightfully observed that "The differentiation between men's and women's role in Nigeria as with other societies is one of complementary and superior relationship in favour of men. It involves a hierarchy in which men are given greater leverage over decision making and resources than women. The result is a cultural setting that invariably promotes male domination and female subordination".⁹⁸ As it relates to certain societies in Nigeria therefore, it can be observed that some of the customs relegate women to the background and clearly rob women of their rights and privileges.

Some reasons have been adduced in support of widowhood practices for women across different societies especially in Africa. These include the necessity to prove her innocence in her husband's death and supposedly sever the link between the living (herself) and the dead (her husband) so as not to be harmed by the spirit of the dead among others. At this junction, it becomes imperative to ask. If these are truly the reasons for widowhood practices, why is it not important for men to also prove their innocence of the death of their wives

⁹⁸ I A Connidis, *Family ties and Aging*. (SAGE Publications, Toronto, 2009)

especially when such women also die prematurely? Why will the society always pity men and seek to offer succour for them when they lose their spouse and the same society suspects women for the death of their husbands? Also, many societies pretend to protect women with many rituals they are made to pass through in form of widowhood practices when they lose their husbands while the same societies spare men when they lose their wives. Is it not also expedient to protect a man by severing the link between him and his dead wife so as not to be harmed by her spirit? The answers to these questions are not farfetched. Since most societies are dominated by men, the customary laws of the societies are also skewed favourably towards men and women have been disadvantaged from time immemorial.⁹⁹

It is the widow who suffers for the death of a spouse. A widower on the other hand does not suffer the same fate as the widow even though both had lost a partner. In some cultures in Igbo land, the widow is fined when she does not cry or the crying is judged insufficient.¹⁰⁰ On the contrary, men are not expected to cry in public or to show outward grief. At the death of a spouse a widow is dethroned, defaced and disinherited. A widow herself, while talking about the widowhood in Igbo land, a widow on the death of her spouse, is dethroned because she loses the status conferred on her by her husband by being made to sit on the bare earth, straw mat or palm leaves. The “defacement” comes in

⁹⁹ G C Ojiako, ‘*Discriminatory Practices from time immemorial.*’ (1995) Your Task Health Magazine, pp: 46-48

¹⁰⁰ Ibid.

when the widow is expected to look unattractive, dirty, and unkempt with her hair shaved and denied of washing. The “disinheritance” comes in when the widow is disposed of all the property she had acquired with her husband.

For a widower, restrictions on mobility, dress and behaviour are substantially less, and the required mourning period much shorter, so that normal life patterns are resumed fairly soon after bereavement.¹⁰¹

The widower on the other hand at this time is pitied because of loneliness caused by the loss of his partner, pampered as he will be fussed over and pacified usually with different suggestions of taking a new wife. From many reported cases, the cultural practice does not distinguish the social class of the widow.

The death of a spouse and its consequences are not the same for males and females. Typically, the widow faces a lot of problem after the death of her husband¹⁰². The problems faced by the widows include the fact that recent socioeconomic change and family system have aggravated the widow’s loneliness. It is my opinion that widows are not well treated by the Nigerian society compared to widowers.

¹⁰¹ http://apps.who.int/environmental_information/women/womhouse.htm. accessed 23rd January 2011

¹⁰² Ibid.

Becoming a widow can create uncertainties that have to be carefully negotiated, often resulting in them having to fight for access to key resources such as land. No such adverse practices are reported to be suffered by widowers and the tendency of men to marry helps to ensure that their long-term livelihood security is not adversely impacted. Conversely, relatively few widows remarry.

Widowers with good health and financial resources generally remarry and leave the pool of widowers dominated by men with poor health and little money.

These discriminatory practices are not applied to men at all. In fact men have it very easy. They have a field-day. Some men have actually confessed of spotting their subsequent wives from among the girls who came to sympathize with them on their bereavement of their wives. The men also have a choice as to what to do to mourn their wives, if any. They are even comforted for losing their wives and are pampered by the same Umuada (for the Ibos) who punish the widows. I know that the retort to this statement would be that it is the Umuada who perpetrate those atrocities on their fellow women. But that is not altogether true, because men are behind them. After all, the Umuada are the kindred-sisters of the men – dead and living. Therefore, the kindred brothers use their kindred sisters as willing tools to carry out their nefarious acts of violence on their wives and Besides, the silence of men in these circumstances mean connivance. After all, it is men who are being mourned. If the living men do not like what was happening to the wives of their dead relations and friends, they should have

protested and spoken out, loud and clear. The local and cultural legislative bodies should call the perpetrators to order. They can do it. To say that they cannot is, again, a ruse, a deception and the passing of the buck! I am not looking forward only to the State Governments or Nigeria as a nation to enact the laws prohibiting Punitive Widowhood Practices, but I lay the onus for the practices on the men, and the responsibility to persuade the perpetrators to obey the existing laws and to have new and progressive ones enacted.¹⁰³

4.6 A REVIEW OF LEGISLATIVE INTERVENTIONS

There are several actions and steps taken by governmental agencies, religious organizations, and non-governmental organizations, among others to protect the rights of widows. State governments in some of the south east states have passed laws to protect the rights of widows. Taking initiative from the government, non-governmental organizations have also taken steps aimed at ensuring the implementation of the widowhood laws. Some of the activities include community outreach programmes, advocacy visits to traditional rulers, simplification of the law for easy reading, campaigns on the implementation among others.

Religious organizations like the Churches have also cut down on the duration of mourning, in time past; a widow is expected to mourn for one year without getting involved in activities. Recently, Churches have initiated the shortening

¹⁰³ <http://www.nairaland.com/nigeria/topic-187778.html>.accessed 23rd January 2011

of the mourning period. In most communities, the mourning period is now for six months and the widow not restricted by certain laws and rules.

Despite the passage of these laws, there are still instances of denial and disinheritance of widows.¹⁰⁴

Legal pluralism operates in Nigeria causing confusion and generating controversy. It has left a gap that permits choice of laws. The interests of the woman are particularly affected by the operation of multiple legal systems governing family law in Nigeria. Depending on the place of residence, type of marriage, ethnic group, or religion, a woman's right and responsibility to marriage, inheritance, ownership and widowhood practices may be governed by one of the systems under discussion. Boundaries of the three family law systems are complex and the customary laws are not unified. The multiplicity of the applicable legal system has been a problem for the courts that are faced with determining not only the problem of law that is applicable, but which of the several customary laws is applicable. There are further complications because the federal system of government that operates in Nigeria places customary law with the legislative competence of the states but retain federal jurisdiction over statutory marriage.

¹⁰⁴ 'Widows and the violations of their rights in South East Nigeria': <http://www.brighthub.com/society/cultures-customs/articles/73317.aspx>. accessed 20 December, 2010.

The 1999 Constitution of the Federal Republic of Nigeria is the supreme law of the land with various provisions that protect the rights of all citizens from discrimination and provides citizens with rights to freedom from discrimination based on community, place or origin, ethnic group, sex, religion or political opinion.¹⁰⁵ However, these rights in the Constitution are more declarative than actual mostly due to the underdevelopment and inefficiency of the implementation measures. The existing legal system and the criminal justice system have not been too helpful or lived up to expectation in solving this problem. It should however be noted that in recent times, efforts are geared towards protecting women against the violence inflicted as a result of customary law practices but more effective action has to be taken. Some states in Nigeria have instituted legislation regulating customary law practices in some of the areas discussed. In Eastern Nigeria for example, there is a legislation creating a merger between customary law of marriage and statutory law¹⁰⁶.

The court system where justice is dispensed and the advocates of equity and justice, and equality before the law have not in all cases portrayed themselves to mean this. There are occasions when the courts shifted to the side of customs in its decisions in issues of marriage, inheritance or widowhood disregarding the provisions of the statutes and its decision resulted in inflicting violence on the woman. The roles played by the regular courts have not been consistent.

¹⁰⁵ S. 41 of the 1999 Constitution of the Federal Republic of Nigeria

¹⁰⁶ Laws of Eastern State (1956)

However many judges are now on the progressive path and have taken the bull by the horn in upholding justice.¹⁰⁷

Nigeria is a signatory to many International Treaties that guarantee women's freedoms from discriminatory practices and equal fundamental rights as men.

These include:

- i. International Covenant on Economic, Social and Cultural Rights;
- ii. International Convention on the Elimination of All Forms of Racial Discrimination;
- iii. Convention on the Elimination of All Forms of Discrimination Against Women;
- iv. Convention of Political Rights of Women;
- v. Slavery Convention of 1926 as amended; and
- vi. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

Many of the practices under customary law are against these Covenants, they are discriminatory and are similar to slavery practices which the government has guaranteed freedom for all. The enabling environment and cultural values for implementing such Treaties are absent.

¹⁰⁷ *Okonkwo v. Okagbue* (1994) 12 SCNJ 89

In summary, inheritance is possible under the British system if the marriage is itself a civil marriage, the couple does not live in a customary marriage, and the land is not subject to customary prohibitions. As will be discussed below, in the alternative, a couple that does not have a civil marriage can also opt into this system through using a British will. Inheritance will occur under a customary law if the couple marries under a customary system, marries under a sharia system but is not aware of their rights under the sharia system of inheritance, had a Christian marriage which was not registered in compliance with the *Marriage Act* and, potentially, in the case the couple lives a “traditional lifestyle” but had a civil marriage. Alternatively, inheritance will be governed

Nigeria is a Federal Republic composed of 36 states¹⁶ made up of over 250 diverse peoples with the Yorubas predominant in the South-West, the Igbo in the South-East, along with the Efik, Ibibio and Ijaw, and the Hausa-Fulani, along with the Nupe, Tiv and Kanuri, dominant in the North. Nigerians subscribe in the main to Islam, Christianity and forms of indigenous worship.¹⁰⁸

On May 29, 1999, Nigeria’s most recent constitution was enacted. While Nigeria has struggled with sustained periods of civil war and military leadership, this constitution represents an attempt to recognize the rule of the law and the dignity of all of the Nigerian peoples. The Constitution is the supreme law of Nigeria, with all other laws, be they common law, statute, or

¹⁰⁸ I N Paden, ‘ *Ahmadu Bello of Sokoto*’ (1988) Values and Leadership in Nigeria.

customary, being subordinate. The Constitution protects the equal rights of all citizens before the law, as well as the right not to be discriminated against either expressly or through practical application of any law.¹⁰⁹

Customary law is also recognized and protected within the Constitution under section 74 subject to the caveat that it enhances human dignity and is consistent with fundamental objectives of the Constitution, which would significantly include equality rights. The Constitutional framework is clear in establishing that women and men are equal whatever legal system they subscribe to, and cannot be treated inequitably under the law due to their membership within a particular cultural community.

The Constitutional obligations for the promotion and protection of the rights of women are basically found in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria. The rights of women can be categorized into those rights that are personal to women, such as the right to safe maternity, to adequate health-care etc., those rights that women have by nature of being human beings, and those rights that are written down in legal instruments that may or may not be specific to women.

¹⁰⁹ S. 42 (1) of the 1999 Constitution

The natural laws that women derive by their human nature are found in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria. Strictly speaking, a woman who has reason to believe that her right has been violated can sue for the violation of that right. For example, if a widow is subjected to inhuman treatment, she can sue for the violation of her human dignity or in cases of disinheritance, violation of the right to freedom from discrimination. The facts however do not support this position of law as other issues of access such as access to courts, access to finances, access to services arise which rob women of enjoyment of these rights.

The International obligations for the promotion and protection of the rights of women arise from Nigeria's commitment to various instruments. The most important of these instrument today for Nigerian women are the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which Nigeria signed in 1985, ratified in 1989 and its Optional Protocol adopted in 1999, the Beijing Platform for Action, the African Plan of Action and the Beijing +5 Outcome Documents¹¹⁰.

Nigeria has four other main sources of law: common law, statutory law, customary law, and sharia law. The English common law, as well as statute law, remains an integral part of the Nigerian legal landscape, defining the default position in the absence of domestically enacted law or adherence to customary

law. English law entered Nigeria through the Doctrine of Reception. Generally, reception is dated as of January 1, 1900, concomitant with the British government gaining control over the territory of the Royal Niger Company. This position is reinforced by the federal *Interpretation Act*, which confirms the default date of reception, is January 1, 1900 for Federal legislation. Any statutes of general application enacted in England prior to this date, and not subsequently replaced by domestic Nigerian law, will continue in force, regardless of repeal within England itself, as binding Nigerian law. Therefore, Nigeria does not have the benefit of the increased provision made for women's rights throughout British twentieth century law. Conversely, while common law and equity were also received in 1900, they continue to evolve with the law in England.¹¹¹

At the state level, there are also reception statutes through which English inheritance laws, as matters of state jurisdiction, become applicable. It is important to note that at independence in October 1960, there were three regions, Northern, Western, and Eastern, and the reception of English law, as well as particular acts of these states, has continued within states of those former regions.¹¹²

While the majority of states continue to recognize the 1900 date, there is some

¹¹¹ A B Kasunma & J W Salacuse, *Nigerian Family Law* (London: Butterworths, 1966) at 14.

¹¹² <http://www.state.gov/r/pa/ei/bgn/2836.htm>, accessed 24th January 2011.

variation. First, probate law has its own particular reception statute, which provides that probate law continues to be the British law presently in force. According to *Taylor v. Taylor*,¹¹³ the dominant position on the interpretation of the statute is that “it is clear that in probate causes and proceedings the law and practice in Nigeria change as the law and practice in England change.” However, *Godwin v. Crowther*¹¹⁴ interprets this to mean that there was reception of the law and practice in England at the time of the statute. Second, those states in the former region of Western Nigeria no longer recognize British statutory law, but they have maintained common law and equitable jurisdiction. In the place of British statutes, they have enacted their own laws modelled on those of the British, which will be discussed below under particular inheritance legislation.

In contrast to the law of reception, this originally provided laws predominantly for colonialists and Christian Nigerians who chose to live under the British system, the British had a policy throughout first the protectorate, and then the colony, of respecting the laws of the people indigenous to Nigeria. As Lord Lugard aptly described, the doctrine of continuity required that:

The British courts shall in all cases affecting natives (and even non-natives in their contractual relations with natives) recognize native law and custom when not repugnant to natural justice, and humanity or incompatible with any

¹¹³ (1935) 2 WACA 348, at p.349

¹¹⁴ (1934) 2 WACA 109.

ordinance, *especially in matters relating to marriage, land, and inheritance*.¹¹⁵

Customary law continues to be recognized in Nigeria as a branch of the law, subject to the repugnancy doctrine. While it is not clear what is prohibited as being repugnant, historically, the position has been that repugnancy is not measured against the standard of British conduct, but against standards internal to Nigeria. While there is no clearly articulated test for repugnancy, it is clear it will depend upon dominant views of the time and, given that those traditionally exercising the power to hold laws to be repugnant were British or British-trained judges, the repugnancy clause may have in part been a means to enforce English morality. For example, *Meribe v. Egwu*¹¹⁶ is commonly cited as an example of a repugnancy case. In this case, it was held that if there was proof that a custom permitted a woman to marry another woman, such a custom would be repugnant. However, it was found that the practice of a barren woman marrying another woman for her husband, whose issue would then be hers for the purposes of inheritance, was not repugnant as it was actually an act of procurement, with the actual marriage being between the woman and man. Given that the Constitution now provides a clear set of values with which all laws must conform, the repugnancy doctrine may now in part be sublimated to the question of constitutionality.¹¹⁷

¹¹⁵ <http://www.nigerianlawguru.com>, accessed 24th January 2011

¹¹⁶ (1876). 1 ALL NLR. (pt 1) SC

¹¹⁷ Ibid.

Questions of repugnancy aside, customary law is meant to be the living law of the peoples, which gains strength through its acceptance by community members as obligatory. As recognized in *Owonyin v Omotosho*¹¹⁸, “Customary law is a mirror of accepted usage. In other words, a particular customary law must be in existence at the relevant time and it must be recognized and adhered to by the community. As such lived law, customary law must be proven as a matter of fact rather than as law within the formal court system. However, the *Evidence Act* does not apply to area or customary courts, and customs need not be proven before these lower courts which are assumed to have competence over such matters. Additionally, judicial notice can be taken of customs frequently acted upon or of “notoriety”. While courts of inferior jurisdiction can therefore rely upon such customs as proven, they should do so with caution on the basis a single, older judgement given the dynamism and variance of customary law.¹¹⁹

Generally, customary law has not been captured within codified form, although provision has been made to codify such laws as will be useful. A notable modern exception is the publication by the Anambra State Ministry of Justice of a manual of customary law for use in Anambra and Imo states. While this

¹¹⁸ (1961) ALL N.L.R. 304 at 309

¹¹⁹ E C Adah, *The Nigerian Law of Evidence*. (Ikeja, Lagos State, Oxford, 2000), p. 56

manual has no official legal status and is therefore not binding, it is meant to be authoritative, but displaceable by other evidence.¹²⁰

A complete exposition of the judicial system is not necessary. However, it is important to recognize that the Supreme Court is the court of supreme jurisdiction for all three systems of law, but that there is a Sharia Court of Appeal and Customary Court of Appeal for each state. While the jurisdiction of the Customary Court of Appeal is merely described as supervision and review of customary law, the jurisdiction of the Sharia Court of Appeal is spelled out in detail, and limited to matters exclusively or primarily involving Muslims. There are also a series of lower level area and customary courts that apply customary law, as well as indigenous systems of justice which are outside of the formal court system.

This problem is compounded in Nigeria as a result of legal pluralism which is causing confusion and generating controversy. In Nigeria, there are multiple legal systems governing family law. While the Nigerian constitution protect the rights of all citizens from discrimination and provides citizens with rights to freedom from discrimination based on community, place or origin, ethnic group, sex, religion or political opinion¹²¹, the customary law permits and perpetuates discrimination on the basis of gender especially in family relations. This

¹²⁰ Ibid.

¹²¹ S. 41 of the 1999 Constitution.

contradiction has left a gap that permits the choice of laws and this has a negative effect on the interest of women. Although, the Nigerian constitution is supreme, the rights in the constitution are more declarative than actual, mostly due to the underdevelopment and inefficiency of the implementation measures.¹²² Hence widowhood practices for women continue across different culture in Nigeria and the constitution that should provide protection for women has not been so helpful. While there is need for the review and enforcement of the constitution especially in relation to family laws, there is also the need to look for other subtle means of improving the condition of widows in Nigeria. Under the Beijing platform for action and human rights treaties, such as the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. However, it is clear that at the local level, discriminatory customary rules on inheritance still apply whatever constitutional guarantees or modern laws exist. In rare cases where courageous women have defied threats of violence and taken their cases to court, some independent and creative judges have decreed that International law is laid down under the Convention on the Elimination Against Women takes precedence over custom and religion.

In many non-codified legal systems, the law of the CEDAW and the convention and Rights of the child both identify a group of human rights that, if fully

¹²² “Widowhood practices among the yorubas of south west Nigeria”
<http://www.faqsg.org/periodicals/201012/21877713301.html>, accessed 24th January 2011

realised, should protect widows and their children from abuse, and also empower widows to be recognised and represented as full members of society.

Guarantees in other Conventions such as the 1966 International Covenant on Economic and Social Rights, the 1966 International Covenant on Civil and Political Rights, the 1984 Convention Against Torture and other Cruel, inhuman or Degrading Treatment or Punishment and the 1993 Declaration on the Elimination of Violence Against Women, should be used as legal tools to ensure that widows human rights are respected and upheld.

All of the core United Nations Human Rights bodies are now committed to incorporating greater issues in their work. The coming into force of the optional Protocol to the CEDAW in December 2000 could also greatly advance the course of widows to influence judiciaries to determine cases with regards to international law.

The outcome that governments have to work towards under the CEDAW Convention is to ensure that women will enjoy and be able to exercise all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other sphere on the basis of equality with men. This means

that there must be both de jure and de facto equality rights for women (Articles 1, 2a, and 3).¹²³

The norm of equality that the Convention imposes is that of substantive equality. This is a broad approach to equality that requires equality in the substance of the law, equal protection of the law and equal benefit of the law. A related norm is that of non-discrimination that requires the elimination of direct and indirect discrimination. The latter means the elimination of laws and practices that have a discriminatory effect though no discrimination was intended. All efforts to bring about equality between women and men need to be based on these understandings of equality and non-discrimination.

The means by which this is to be accomplished is given in Articles 1-5. Obligations under these articles include the following:¹²⁴

to incorporate the principle of equality and non discrimination of men and women in the legal system, abolish all discriminatory laws and practices, and adopt appropriate ones prohibiting discrimination against women (Articles 2a, b, f, g)

to establish tribunals and other public institutions to ensure the effective protection of women against discrimination: mechanisms for enforcement (Article 2c)

¹²³ http://www.iwraw-ap.org/aboutus/paper_cedaw_achievements.htm, accessed March 10, 2011

¹²⁴ Ibid.

to ensure elimination of all acts of discrimination against women by the public sector as well as by the private sector including persons, organisations or enterprises (Articles 2d and e)

to implement programmes, make relevant institutional arrangements and any other laws necessary that will enable women to exercise the equality rights given in the law (Article 3)

to accelerate the achievement of de facto rights by implementing temporary special measures such as affirmative action (Article 4)

to eliminate cultural and traditional practices and attitudes including stereotypical roles for women and men (Article 5).¹²⁵

The *Better Life for Rural Women Programme*, founded in 1987 by the then Nigeria's First Lady, Maryam Babangida acknowledged that over 70% of the country's population lived in rural areas in which women were subject to harmful widowhood practices. Efforts were made to broaden public awareness of the humiliating and degrading nature of these practices, and to prevent the marginalization of widows within their communities. It was hoped that these would lead to a national policy on widowhood. This has not yet occurred, although awareness of the plight of widows has been greatly increased.

¹²⁵ Ibid.

Schemes have been launched in various states, including scholarships for the children of indigent widows, and housing schemes for widows.

More, however, is needed. Discrimination between statutory and customary wives regarding inheritance of husband's property should be eliminated as both are valid forms of marriage. With or without children, widows should share in their husbands' property, including land. Legislation to establish joint ownership of land would ensure that widows are not evicted from land they have long cultivated. Improved literacy levels for all are important so that the social and economic empowerment of women can occur. Above all, it is important that harmful practices such as the inheritance of a widow as a chattel by a member of her husband's family, and often against her own wishes, should cease. Studies are needed to identify and document the nature and extent of harmful widowhood practices throughout the world, and to establish the relationship of these to physical and mental health.¹²⁶

Legislations exist which aim to protect and promote the rights of women. Most of these protections are found in the Penal Laws - the Criminal Code and the Penal Code. The penalties however, most times trivialize the gravity of the offences.

The dangers inherent in most legislation however are that more often than not they are double-edged swords cutting those they seek to protect. For instance,

¹²⁶ Ibid.

the practice not supported in the language of the laws is the refusal to grant women their children allowances off their taxable income¹²⁷. However, there is paucity of laws in respect of widowhood practices in Nigeria.

The Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa is a unique piece of legislation because it takes into consideration the provisions of other international instruments on human rights that touch on women's rights, the need for equality and freedom from discrimination. It also takes into consideration the peculiar circumstances of women in Africa and their vital role in development. The protocol certainly could have been the key to a new dawn for Nigerian women, but the sad thing is that the reality seems a far cry away. You can only stare and wonder if some hearts thought before they signed.¹²⁸

The protocol was adopted on 11 July 2003 by the AU to strengthen the promotion and protection of women's rights. The preamble highlights several considerations necessitating the protocol. These considerations include a recognition of Article 2 of the African Charter on Human and Peoples' Rights, which enshrines the principle of non-discrimination. It includes Article 18, which calls on all states to eliminate discrimination against women. It also includes provisions which recognise women's essential role in development, the

¹²⁷ Ibid.

¹²⁸ “*Assessing Women’s Rights in Nigeria*”(Washington, DC: Foreign Policy in Focus, 1 December, 2010) http://fpif.org/articles/assessing_womens_rights_in_nigeria. accessed 10 March 2011.

principle of promoting gender equality as enshrined in the Consultative Act of the AU as well as the New Partnership for Africa's Development. The considerations also take into account other relevant declarations, resolutions and decisions which underline the commitment of African states to ensure the full participation of African women as equal partners in Africa's development.

By virtue of the protocol, Nigerian women are guaranteed the right to dignity; the right to life, integrity and security of persons; freedom from harmful practices which negatively affect the human rights of women; equal rights in marriage; equal rights in cases of separation, divorce and annulment; the right to equal protection and benefit of the law; the right to participate in political and decision making process; the right to a peaceful existence and participation in the promotion and maintenance of peace; the right to education and training; equal opportunity in work and career advancement; the right to health, including sexual and reproductive rights; the right to food security; the right to adequate housing; the right to a positive cultural context; the right to a healthy and sustainable environment; the right to sustainable development; widow's rights; the right to equitable share in inheritance; the right of elderly women to special protection and freedom from violence; the right of women with disabilities to special protection and freedom from violence; the right of women in distress to

special protection; and a right of remedy to any woman whose right or freedom has been violated.¹²⁹

The obligation of the Nigerian government under the protocol includes ensuring that women enjoy the rights mentioned above through the following actions:

- (a) Enactment of appropriate legislation to combat all forms of discrimination, and specifically to prohibit all forms of violence against women; to ensure prevention, punishment and eradication of violence against women; to prohibit and punish all forms of genital mutilation; to guarantee that no marriage takes place without free will and between consenting adults; to ensure that men and women have the same right during separation, divorce and annulment of marriage; and to guarantee equal opportunity in work and career advancement.
- (b) Appropriate and effective education, administration, prohibition, protection, promotion, institutional, implementation and regulatory measures.
- (c) Integrating a gender perspective in policy decision.

¹²⁹ Ibid.

- (d) Modifying social and cultural patterns of conduct of women and men through public education, information and communication.
- (e) Positive action to promote participation of women in politics and decision-making.
- (f) Provision of effective remedies.
- (g) Ensuring full implementation at the national level.
- (h) Providing budgetary and other resources necessary for full and effective implementation.

So far, some of the positive actions taken by the Nigeria government are:

- 1) Adoption of a gender policy in 2007;
- 2) Establishment of science schools for girls;
- 3) Establishment of women development centres in 36 states;
- 4) Adoption of the Trafficking in Person's (Prohibition) Law Enforcement and Administration Act;
- 5) Establishment of a national agency for the prohibition of trafficking in persons;

- 6) Adoption of a national policy on HIV/AIDS, reproductive health and female genital mutilation.¹³⁰

Aspects hindering the rights of women include:

- 1) The patriarchal structure of Nigerian society;
- 2) Failure of the National Assembly to pass the Abolition Of All Forms Of Discrimination Against Women In Nigeria And Other Related Matters Bill and failure to pass a national bill prohibiting violence against women.
- 3) Failure of the government to domesticate the protocol or enact appropriate legislation necessary for bringing to pass its obligations and undertakings under the protocol is worrying.

The questions that come to mind are: Why did the Nigerian government sign the protocol? Did the government sign as a mere formality, knowing that the protocol could be frustrated by non-domestication by virtue of Section 12 of the Constitution? Or is there just a divorce between the arm of government that signs international instrument and the arm that domesticates these agreements? Or do we align our thinking with Richard Falk, who says: 'For various reasons associated with public opinion and prides, governments are quite ready to endorse (even formerly) standards of human rights despite their unwillingness to uphold these standards in practice.'

Despite the provisions of the protocol recognizing and guaranteeing rights and the obligation of the Nigeria government, the lives of Nigerian women is yet to

¹³⁰ Ibid.

attain a commensurate level of improvement. Women rank lower than men in all indices of development in the country.¹³¹

¹³¹ Ibid.

CHAPTER FIVE

5.1 The way forward

This paper recommends among other things that:

1. Nigeria lawmakers should legislate against all oppressive, injurious and degrading widowhood practices.
2. Government at the three tiers should endeavour to provide functional basic education to the citizens to adequately prepare them for meeting the challenges of bereavement.
3. Government should establish a national commission for widow affairs as a way of fostering widows' integration into the society.
4. Younger widows i.e. those bereaved before the age of 35 years should be encouraged to remarry as a way of integrating them properly into the main stream of affairs in a socially-inclined society like Nigeria.
5. Counsellors in training should be made to take bereavement and widowhood counselling in their training programme as a way of adequately fortifying them to provide the necessary integrative counselling to the marginalized groups in the society like the widows.¹³²

¹³² Ibid.

APPLICATION OF THE REPUGNANCY TEST CLAUSE

The British colonials saw the oppressive ways of the Customary and Traditional Practices, and instituted the Repugnancy Test Clause, as part of the Nigerian Legal System in 1900. It provides for the overriding of any Customary and Traditional Law and Practice in the Courts if it is in conflict with natural justice and equity. Also Customary and Traditional Law should be overridden if they were in conflict with the written and official law, and the rights of women and children. Unfortunately, the Test Clause was left by the Law Courts and Law Enforcement Agencies to lie dormant for one whole century until Justice Niki Tobi's landmark Decision in 1997¹³³, and just before it was re-introduced in the 1999 Constitution. The Repugnancy Test Clause, of course, applies only to cases appealed from the lower Courts to the higher Courts.

Women should learn to take the matters that concern them to the Courts, and refuse any kind of pressure to withdraw the matter from the Court for adjudication at home. This is because any kind of adjudication out of Court would be according to tradition. Women should seek for bloodless and discrimination-free revolution in decisions in matters concerning them. The

¹³³ *Mojekwu v Mojekwu* (1997) 7 NWLR (pt 512) 283.

spirit of the new bloodless revolutionary initiatives for women emancipation always should be for women to take matters concerning them to the Courts of Justice everywhere in Nigeria. Many more of such favourable decisions by Justice Niki Tobi have followed and, in all of the cases, the judges denounced such obnoxious practices as repugnant to natural justice, equity and good conscience.¹³⁴

The rich provisions of the protocol recognizing and guaranteeing women's human rights in Nigeria promise a beautiful future for women - if the government fulfils its obligations.

In light of the current realities, government should redeem its image and show its commitment by:

- Application of the domesticated protocol;
- Passing the bill on violence against women;
- Reviewing laws on women's property rights and all other laws discriminating against women;
- Adequate budgetary allocations to issues that promote women's rights and bridge gender gaps;

¹³⁴ <http://www.nairaland.com/Nigeria/topic-18777.288.html>. Accessed March 8, 2011

- Integrating women's right issues and gender education into the school curriculum.¹³⁵
- There is need to enforce the provisions of the Constitution as it relates to Chapter IV by making it justiciable.
- Special efforts must be made to train judges and lawyers to apply international human rights jurisprudence with special reference to CEDAW jurisprudence in court cases in Nigeria¹³⁶.
- Capacity building for all branches of government in Nigeria as well as for women's groups must focus on the creation of clarity on the meaning of substantive equality and indirect discrimination as embedded in the CEDAW.
- The capacity of women must be built to form constituencies for advocacy and to claim their rights and to draw accountability from governments.
- Data collection must be consistent, sustained and refined to include indicators that will surface de facto situation of widows and to identify obstacles to de facto equality.¹³⁷

¹³⁵ Ibid.

¹³⁶ <http://www.iwraw.ap.org>. accessed 8 March 2011

¹³⁷ Ibid.

- The federal and state governments, public and private agencies, NGOs, and religious organisations in the country should campaign against all obnoxious traditional widowhood practices.
- Educated women such as Women Right Advancement protection Alternative (WRAPA) and others should be actively involved in the campaign and enlightenment of most of these harmful practices in churches, mosques and other social organisation.
- Women should be more empowered, encouraged in education and self development to know their rights especially as it relates to marital practices.¹³⁸

¹³⁸ <http://docsdrive.com/pdfs/medwelljournals/pjssci/2010/101-105.pdf>. accessed 10th March 2011

5.2 CONCLUSION

In many countries, while there is ad-hoc reform of laws and creation of interventions for the advancement of women and obnoxious widowhood practices, there does not seem to be a conscious application of CEDAW at the domestic level. CEDAW is not the basis of law or policy reform. There is also a lack of clarity on CEDAW as a human rights instrument. Nigeria has domesticated CEDAW principles but they are not directly applicable in the courts. There is a lack of a comprehensive and holistic plan to implement CEDAW and whatever reform is put in place suffers from weak implementation due to lack of monitoring, inadequacy of resource allocation, lack of capability and weaknesses of the institutions concerned. Hence widowhood practices therefore persist. Obligations must be fulfilled evenly for all including minorities, overseas territories and even where there is devolution of powers. Hence there is a need for a unified strategy and policy for implementation of all provisions of CEDAW. Finally state obligation also includes ensuring a gender dimension in the development assistance that a State Party may render.¹³⁹

The latent consequence of the forgoing is that society places limit on the extent to which the women can aspire. Concomitantly, the women do not think they are being 'oppressed' by social structure. It seems to them that whatever roles they perform in the society have been naturally ordained. Indeed it is ironical to

¹³⁹ Ibid.

note that those who are perpetuating the practice of these traditional harmful practices to widows are the victims themselves. The small volume of their economic activities further makes them (women) totally dependent on their husbands for all their needs. This also has an effect on the family especially when the husband dies and the widow does not have sufficient money with which to take care of the family.

Nations are passing laws to protect the rights of women. Imo and Enugu States have signed into law the abrogation of all widowhood practices in the states. But laws alone cannot change hearts, unless cultural and social values change, legislation against widowhood practices will not work where the roots of injustice and prejudice are in existence.¹⁴⁰

It can be surmised that discriminatory widowhood practices exist in many African countries and other parts of the developing world, and continue because they have never been seriously addressed and challenged. Yet these issues must be addressed on a global level as part of the overall development effort, since sustainable development cannot take place within a discriminatory setting. To achieve such changes, the strong and organized support of world bodies committed to opposing oppression is necessary.¹⁴¹

¹⁴⁰ “*Apartheid of Gender in rural Africa*”. <http://womanmagng.com>. Accessed 10th March, 2011

¹⁴¹ Ibid.

A particular feature in the Nigerian legal system is the attitude of the people. Most disputes involving family law are regarded as private. When contested in public, such disputes are usually taken outside the formal court system, and decided at the village or local administrative level. At such level, precedence is given to the customary law of the people. However, recent decisions have shown the progressive changes in the higher courts in evoking the principles of natural justice. There are many reasons why family issues are taken before the village administration in preference to the formal courts. These include:

- i. High cost of filing papers;
- ii. Bureaucracy in the formal courts;
- iii. High legal fees for counsel; and
- iv. Long and complex procedure of formal courts.

Schedule

A LAW TO MAKE IT UNLAWFUL TO INFRINGE THE FUNDAMENTAL RIGHTS OF WIDOWS AND WIDOWERS, AND FOR OTHER RELATED MATTERS

**ENACTED BY THE ENUGU STATE HOUSE OF
ASSEMBLY, THIS 8TH MARCH, 2001**

PROHIBITION

- 1) "No person for whatever purpose or reason shall
compel a widow/widower as follows:
 - (a) to permit the hairs on the head or any other part of the
body to be shaved;
 - (b) to sleep either alone or on the some bed or be locked in a
room with corpse of the husband;
 - c) not to receive condolence visits from sympathisers during
the period of mourning;
 - (d) to be re-married by a relative of the late husband;
 - (e) to sit on the floor or be unclothed during any period of
the husband's/ burial rite;
 - (f) to drink the water used in washing the corpse of the
husband;

(g) to weep and wail loudly at intervals at any time after the death of the husband/ except at one's own volition or

In voluntary action;

(i) to remain in confinement after the death of the husband for any given period;

(j) to vacate the matrimonial home;

(k) to do any other thing which contravenes the fundamental rights entrenched in the Constitution or is degrading the person.

(2) A widow shall not be dispossessed upon the death of the husband of any property acquired by the deceased husband/wife (during the deceased husband's/wife's life time) without his/her consent.

PENALTY: It shall be unlawful for any widow/widower or any person to falsely allege that the rights guaranteed under this law have been violated

JURISDICTION: Anybody who contravenes, conspires, aids, counsels, procures, or assists another person to contravene the provisions of this Law shall be guilty of an

offence and liable on conviction to a fine N5,000 (Five thousand naira) or two years imprisonment or both

APPEAL: The Magistrate Court shall have jurisdiction to try summarily any offence under this law.