

A CRITIQUE OF DISCRIMINATORY INHERITANCE PRACTICES AND WIDOWHOOD RIGHTS UNDER ITSEKIRI CUSTOMARY LAW IN SOUTH-SOUTH NIGERIA*

Abstract

This paper applies the doctrinal research method to identify and appraise multi-faceted and multi-dimensional discriminatory succession practices against widows under Itsekiri customary laws of South-South Nigeria. It highlights key inhuman and degrading discriminatory practices under Itsekiri customary law such as exclusion of widows from inheritance of their deceased husband's property and construing wives as properties and part of the deceased husbands estate to be shared. This paper concludes that Inhuman and uncivilized Customary practices which saw widows as chattels to be inherited, have been abolished by the Supreme Court of Nigeria and declared repugnant to natural justice, equity and good conscience. It is recommended that the National Assembly and States Houses of Assembly should urgently pass legislations making it a criminal offence to discriminate against widows/females in any form especially with regards to inheritance rights, and providing stiff punishment for such discrimination. This paper also recommends mass advocacy and lawful protests to effect changes in Itsekiri and similar customs that denies widows of their rights of inheritance.

Keywords: Discrimination, Widow, Inheritance Rights, Itsekiri, Customary law

1. Introduction

The issue of gender imbalance, disparity and discrimination against women within most ethnic groups in Nigeria as well as other parts of Africa has been, still is, and will continue to be an issue of discourse, controversy and research in Nigeria and indeed in most parts of the world.¹ This situation which has prevailed for several decades and centuries has become so pervasive that they had even been legitimized by the Supreme courts in several judicial decisions in Nigeria.² However, with the enactment of section 42 of the 1999 Nigerian Constitution,³ which outlaws all forms of discrimination against women in Nigeria it was the expectation of several lawyers, public affairs analysts, human rights activist and social workers that the issue of discriminatory succession practices against women would have been laid to rest especially with respect to intestate succession under customary law.⁴ It is factual that for several decades both women and girls in Nigeria have been beset with dehumanizing, oppressive and very discriminatory customary law practices especially as it relates to inheritance rights which has remained pervasive and deeply entrenched even in the face of the constitutional fundamental freedom against discrimination.⁵ Whereas strict and full application of this constitutional provision would have laid to rest the issue of discrimination against women in all facets of Nigeria life including customary law, this apparently straightforward situation is complicated by the fact that Nigeria currently operates a system of 'legal pluralism' where statutes, common law and customary laws are applied simultaneously in our legal jurisprudence⁶

These degrading and offensive discriminatory cultural inheritance practices against women in Nigeria are mainly due to the pervasive existence of customary laws that encourage discriminatory and harmful cultural succession practices against women especially in rural areas, as well as the lack of commitment and will by government to domesticate and implement international laws that prohibit all forms of discrimination against women as well as enforce applicable provisions of the Nigerian constitution.⁷ It

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¹K B Atsenuwa, 'A Comparative Analysis of Female Succession Rights under Itsekiri Customary Law and Selected Tribes' (Unpublished LLM Dissertation DELSU Abraka 2018).

²*Onwuchekwa v Onwuchekwa* [1991] 5 NWLR (pt. 194) 739 (SC); *Akinnubi v Akinnubi* (1997) 2 NWLR (Pt. 486) 144.

³CFRN 1999 (as amended) s42.

⁴Paul Okhaidetua, 'Legitimacy Legitimation and Succession in Nigeria: An Appraisal of Section 42 (2) of Constitution of the Federal Republic of Nigeria 1999 as amended on the Rights of Inheritance' [2012] (4)(3) *Journal of Law and Conflict Resolution*, 31-44.

⁵Ifemeje Sylvia Chika and Umejiaku Nneka. 'Discriminatory Cultural Practices and Women's Rights among the Igbos of South East Nigeria: A Critique' [2015] (25) *Journal of Law, Policy and Globalization* 18-27

⁶Itua (n4)Ibid

⁷J A M Agbonika, 'The Impact of Domestic and International Instruments on Customary Law Widowhood Practices in Nigeria' [2015] (5)(2) *AJLC*, 1-33.

is in the face of these practices that various gender rights activist, non-governmental organizations and public commentators have in recent times added their voice and resources in advocating that since the world is a global village, Nigeria should as a minimum imbibe the international best practice of gender equality or on a minimum basis gender equity as a starting point so as to ensure that women are politically and economically empowered to drive the campaign against discrimination.⁸

This paper applies the doctrinal research method to examine customary law succession under Itsekiri Customary Law with emphasis on discriminatory inheritance practices against widows, and widowhood rights violation under the system. It also analyzes the implications/impacts of International and National statutory instruments as well as recent transformative judicial intervention by the Supreme Court of Nigeria with a view to determining how these can be harnessed and applied in enhancing succession rights of women under Itsekiri Customary Laws.

2. Historical Antecedents/ Background

The Itsekiri Nation is a race that is predominantly domiciled in Warri South, Warri North and Warri South West Local Government Areas of Delta State. They however have large settlements and huge population in Uvwie, Okpe, Sapele, Ethiope West and Ethiope East Local Government areas of Delta States as well as in Ikpoba-Okha Local Government Area of Edo State in South-South Nigeria.⁹ The headquarters of the Itsekiri nation is Warri town while their ancestral home is Ode-Itsekiri both in Delta State Nigeria; they are predominantly farmers and fishermen by occupation.¹⁰ Stating the historical source of the name as well as the geographical location of the Itsekiri people, Williams A. Moore,¹¹ stated thus: 'The Itsekiri Live in the Westernmost part of the Niger Delta bounded by the Bight of Benin on the west and latitude 6°N. The Itsekiri have boundaries with Ilaje (a Yoruba sub tribe) and the ApoiIjaws to the North West; the Edos (Bini) to the North; the Urhobos (mainly Uvwie, Okpe and Oghara clans) to the East and the Ijaws to the South'¹² The Itsekiri language is very similar to the Ekiti, Igalla or Mahim language although the people did not originate from any of these tribes. The fact is however obvious that the Itsekiri language is a dialect of the Yoruba language¹³.

Itsekiri Marriage System as Foundation for Discrimination

Marriages in Itsekiri land are contracted mainly under the native law and custom and the system of marriage is predominantly polygamous as it is common for men to marry several wives who are then placed in the disadvantaged position of competing for love and attention of their husbands as is practised amongst most other tribes in South-South and South Eastern Nigeria¹⁴. The Itsekiri marriage system under its customary law is not a union of the man and his wife alone, but is a union of the families of wife and husband as the man is usually made to pay the traditional bride price on the wife to signify customary concretization of the marriage in addition to fulfilling other requirements.¹⁵ The polygamous system of marriage is a key underlying fact for discriminatory practices against women under Itsekiri customary law as the idea of the principle of one man, one wife enunciated in the English *Locus Classicus of Hyde v Hyde*¹⁶ is hardly embraced in the Itsekiri system of marriage. Ogbobine,¹⁷ stated this principle of Itsekiri marriage thus:

⁸Atsenuwa (n 1) 2. See Ikenga Oraegbunam, 'Equity, not equality as sameness', in N. Ezenwa-Ohaeto (Ed), *Power, Gender Relations, Character and Nation Building*, Awka, Fab Anieh Nig. Ltd., 2015, pp. 63-79. See also Ikenga K.E. Oraegbunam, 'A Jurisprudence of Affirmative Action as a Platform for Women Empowerment in Nigeria Today', *Legislative Practice Review: Nigerian Journal of Law, Practice and Procedure of Legislature*, Vol. 2 No. 2, 2010, pp.76-109.

⁹J O S Ayomike, *A History of Warri*. (Ambic Press Ltd. Benin City 2008)

¹⁰Ibid 13

¹¹W A Moore, *History of the Itsekiris* (Frank Cass and Co. Ltd. California 1970)

¹²Ibid 29

¹³R A I Ogbobine, *The Iwere Warri Kingdom and the Olu's Overlordship Rights in Itsekiri Land* (Rufbine Books Warri 1980) 10.

¹⁴Ifemeje (n5) Ibid.

¹⁵T Y Pessu, *Temotsi Marriage in Itsekiri Custom* (Island Press Warri 2012).

¹⁶*Hyde v Hyde* [1886] LR IPD 130

¹⁷R A I Ogbobine, *The Foundation of Itsekiri Culture; the Benin Influence* (Rufbine Publisher Benin 1984 68). Compare with Ikenga K.E. Oraegbunam, 'Women's Rights in Some Aspects of Matrimonial Jurisprudence under Islamic Family Law in Nigeria: Need for Reform', *Kogi State University Confluence Journal of Jurisprudence and International Law*, Vol. 5. No. 1, 2012, pp.40-47. Also with B. O.S. Udezo, published with modification as 'Women's Rights in Matrimonial Jurisprudence under Islamic Family Law in Nigeria: A Need for Reform', *Journal of Religion & Human Relations*, pp. 101-110; Ikenga K.E.

The age-long European or Christian theory of the Union of man and woman into one and indivisible body (which makes one plus one equals to one) at marriage is inconceivable both in Benin and Itsekiri customary systems of marriage. It is a mere piece of religious superstition which has never impressed the Bini and Itsekiri. Under a system that encourages polygamy on a large scale and in which the people are pathologically, spiritually and traditionally polygamous, it would be difficult if any husband were to be spiritually joined to one wife without consideration for the other wives.

The polygamous nature of Itsekiri marriages makes the women to be in a disadvantaged position as they do not have equal rights to polyandry and are therefore forced to compete for the attention of their husbands who is construed as their owner, lord and master.¹⁸ In addition to its polygamous nature, the fact that under Itsekiri customary law men are made to pay bride price on the women to symbolize concretization of the marriage rites is another major issue underlying the treatment of women as properties and chattels of their husband under Itsekiri customary law.¹⁹ Kenneth Bawo Atsenuwa' Another component of the Itsekiri marriage system which create a feeling of ownership over women by the men is the fact that it is mandatory for the husband's family to pay bride price for the wife before the marriage can be celebrated.²⁰ The inequalities and indignities meted out to women in Nigeria especially in terms of inheritance rights has been linked to the payment of bride price or brides wealth by the men on the women during traditional marriage which perhaps gives the men a 'sense of entitlement to control the women as their property which has to a large extent precipitated wife inheritance and other discriminatory practices.²¹ It is argued that this practice further lays the foundation for discriminatory succession practice as it situates the wife within the context of her husband's larger family thus giving further verve to the belief that she can be shared to other members of the family upon his death.

This inhuman proprietary claim that wives are owned by men which is accentuated by payment of Bride Price on women during marriages was unfortunately given judicial recognition by the court in the case of *Onwuchekwa v Onwuchekwa*,²² when it held that the Isikwato customary law which construed a wife as well as her money and property to be owned by her husband was not repugnant to natural justice, equity and good conscience.

3. International and National Instruments Prohibiting Discrimination against Women

Discriminatory succession practices and other forms of discrimination against widows and women under Itsekiri customary laws have continued to endure and remain pervasive even in the face of existing international and Nigerian Statutory instruments which prohibit all forms of discrimination against women.

Convention for Elimination of all forms of Discrimination against Women. (CEDAW)

The Convention for Elimination of all forms of Discrimination against Women²³ is a key international instrument adopted by the UN General Assembly and covers all aspects relating to protection of the rights of women all over the world. Article 1 CEDAW defines discrimination against women thus:

The term discrimination against women shall mean '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 mental state or 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.'²⁴

Oraegbunam, 'Some Critical Considerations on Women's Rights under the Sharia Law: The Nigerian Perspective', *EBSU Journal of International Law & Juridical Review*, Vol. 1, 2010, pp.357-37; Ikenga K.E. Oraegbunam, 'Nigerian Divorce Laws: Implications for the Indissolubility of Christian Marriage under Canonical Jurisprudence', *Journal of Women and Minority Rights*, Vol. 2, 2011, pp.85-109.

¹⁸Ogbobore (n17) 71.

¹⁹Atsenuwa (n1) 61-62.

²⁰G Akperi, *Birth Marriage and Death Ceremonies in Iwere Land*. (Remanths Creative Concept Warri 2003 14).

²¹Ifemeje (n5) Ibid

²²*Onwuchekwa v Onwuchekwa* [1991] 5 NWLR (pt. 194) 739

²³CEDAW 1979.

²⁴Ibid Art. 1.

In addition to condemning and outlawing discrimination against women all over the world, Article 2²⁵ obligates state parties to condemn all forms of discrimination against women and to pursue appropriate policy, and other frameworks with a view to eliminating all forms of discrimination against women in their respective countries. It is however, the present position that CEDAW has no force of law in Nigeria as it has not been reenacted as an Act of the National Assembly. The Supreme Court of Nigeria as held that any person seeking to apply international law in Nigerian courts must prove that it has been reenacted by the National Assembly and has thereby become a domestic law.²⁶ Also, by virtue of section 12 of the 1999 Nigeria Constitution, CEDAW does not have the force of law in Nigeria as it has not become domestic or municipal law by reason that it has not been enacted as an Act of the National Assembly to make it consistent with the constitution.²⁷

Universal Declaration of Human Rights

The Universal Declaration of Human Rights which was adopted by the UN General Assembly on 10th December 1948²⁸ provides a robust International Framework for protecting the rights of humans all over the world on the basis of equality of humans irrespective of gender and other distinctions. Article 1²⁹ of the Declaration is to the effect that all persons are born equal and are entitled to enjoy equal rights and dignity. The declaration also provides³⁰ that all persons are entitled to enjoyment of the rights and freedoms contained in the declaration without any form of discrimination whatsoever. In addition, Article 7 further provides for equal protection of all as it stipulates that all persons are equal before the law and are entitled to equal protection of the law without any discrimination and entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.³¹ Also, other international instruments such as the United Nations Charter and the Universal Declaration on Human Rights being Charters or Conventions that were in force prior to Independence of Nigeria. In 1960 are deemed to be existing laws of and deemed to be Acts of the National Assembly by virtue of the savings provisions in section 315 (1999 as amended)³²

African Charter on Human and People Rights 1979

The African Charter on Human and Peoples' Rights³³ is another International Instrument domesticated in Nigeria which has extensive provisions protecting the rights of women in Africa. The Charter which is intended to protect the rights of all Africans irrespective of their gender or status is predicated upon the principles of the African Charter which are: 'freedom, equality, justice and dignity'. The Charter provides for equality between men and women and prohibits discrimination based on sex, religion or status.³⁴ In addition to the foregoing, the African Charter on Human and Peoples Rights as well as all its protocols have the force of law in Nigeria and can be fully enforced by Nigerian Courts by virtue of its domestication through the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act³⁵ in so far as it is consistent with the constitution³⁶

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The National Legal framework on protection of Nigerian Citizens including women against all forms of discrimination is anchored principally on the Constitution of the Federal Republic of Nigeria, 1999.³⁷ Specifically section 42 (2)³⁸ of the constitution provides that no citizen of Nigeria shall be subject ever to any form of discrimination on account of his/her place of origin, sex, religion or political

²⁵CEDAW Art. 2.

²⁶*Registered Trustees v MHWUN* [2008] 34 NSCQR 321 (SC).

²⁷*JES v Brawal Line* [2010] 44 NSCQR 243 (SC).

²⁸UDHR 1948.

²⁹Ibid Art. 1.

³⁰UDHR Art. 2.

³¹Ibid Art. 7.

³²JES (n27) 243

³³ACHPR 1979

³⁴Ibid Art. 2

³⁵African Charter on Human and Peoples Rights (Ratification and Enforcement) Act LFN 2004

³⁶CFRN 1999 s1 (3).

³⁷CFRN 1999 (as amended)

³⁸CFRN 1999 s42(2)

opinions. In addition, section 34 of the same constitution,³⁹ guarantees the dignity of human person as a fundamental right and prohibits any body from subjecting any Nigerian including women to inhuman treatment, forced labour or servitude. It is argued that forced inheritance of a widow by male members of her deceased husband's family under Itsekiri Customary law is a form of slavery or servitude which has been outlawed by this constitutional provision.

4. Succession under Itsekiri Customary Law

Succession rights under customary laws (inclusive of Itsekiri Customary law) is applicable to the estate of a deceased person who was subject to customary laws during his lifetime and dies without leaving behind a spouse or a child of a statutory or Christian marriage.⁴⁰ It is the norm rather than the exception that most marriages among itsekiri people are contracted under customary laws thereby making it imperative for the estate of a deceased Itsekiri man to be distributed in accordance with the native law and custom of Itsekiri Nation upon his demise.⁴¹ The current system of customary laws of inheritance /succession under Itsekiri Culture is heavily skewed in favour of male folk and to the detriment of women folk with the widow of a deceased Itsekiri man being at the receiving end of the most dehumanizing and discriminatory violations of human rights.

Widowhood Inheritance Rights Under Itsekiri Customary Laws

Under the current system of customary laws practiced by the Itsekiri, the widow of a deceased man is placed in so lowly a position that she is bereft of any rights of inheritance to her deceased husband's properties save for those given to her to the knowledge of her husband's family during his lifetime. The practice is of such alarming properties that a widow is not only excluded from any share in her deceased husband's estate, but is in fact construed as an integral part of her deceased husband's property to be shared and inherited by his relatives. Explaining this system, Ogbobine,⁴² stated the position thus:

Traditionally, among the Itsekiri, the widow ... if she had children was inherited by her husband's male kin except his father... First choice is /her step son failing which she goes to her brother-in-law, and when none is available, other members of the husband's patrilineal are considered. This happens if the husband's family did not want to lose the woman either because she was industrious or productive.

The rationale behind the exclusion of itsekiri women from inheritance of their deceased husband's property was further stated by Ogbobine as follows: 'in theory among the Itsekiris, she is part of the property to be shared or inherited on the death of her husband and she cannot therefore share in the estate of the deceased'⁴³ This unfortunate Inhuman practice which runs contrary to the entrenched rights guaranteed by the spirit, letters and interdiment of the Nigerian Constitution,⁴⁴ has nonetheless been given judicial recognition by the courts with respect to similar customary practices by the Yoruba people who are one of the neighbours to the Itsekiris. In the case of *Akinnubi v Akinnubi*⁴⁵ the Supreme Court of Nigeria held, inter alia thus:

It is a well settled rule of Native Law Custom of the Yoruba that a wife could not inherit her husband's property. Indeed under Yoruba customary law, a widow under an intestacy is regarded as part of the estate of the deceased husband to be administered or inherited by the deceased's family... there are no disputes over the Yoruba Native law and customs that a widow could not inherit her deceased husband's property.

³⁹CFRN s34

⁴⁰Itse E Sagay, *Nigerian Law of Succession: Principles, Cases, Statutes and Commentaries* (Malthouse Press Ltd. Lagos 2004 257)

⁴¹Pessu, (n15) 11.

⁴²Ogbobine (n17) 83

⁴³Ibid 17

⁴⁴CFRN 1999 ss. 34, 42

⁴⁵*Akinnubi v Akinnubi* [1997] 2 NWLR (Pt. 486) 144

Providing further insight on the practice of widowhood inheritance under Itsekiri Customary Laws Omoneukarm quoted in Sagay,⁴⁶ stated that ‘the eldest son who was generally the next of kin by custom had the largest claim. The house, most of the furniture and wives passed to him and he could already use the family lands held in trust’. It is evident from the above that under itsekiri customary law widows of a deceased man are categorized as properties of their husband to be inherited by his son or family members after the death of her husband. A question that arises herein is, what is the effect, under Itsekiri Custom where a woman rejects or refuses to marry her deceased husband’s relative to whom she is shared? Ogbobine,⁴⁷ stated the position under Itsekiri custom thus:

it is not uncommon for widows to reject any offer to remarry from her dead husband’s family should a situation like that arise, she would be allowed to go away... she would not be allowed to remove the husbands property except those specifically given to her by the husband while he was alive.

These practices under Itsekiri custom obviously violate the provisions of the Protocol to African Charter on Human and Peoples Rights on the Rights of Women in Africa.⁴⁸ Specifically, article 21 of the Protocol provides as follows: ‘A widow shall have the right to an equitable share in the inheritance of the property of husband. A widow shall have the right to continue to live in the matrimonial house. In the case of remarriage, she shall retain this right if the house belong to her or she has inherited it for her lifetime alone’⁴⁹

Laudable as this protocol is, it however limits the inheritance right of a widow in respect of her husband’s property to her lifetime alone. It is argued from the foregoing that this protocol has shortcomings in resolving discriminatory succession/ inheritance practices against women under Itsekiri Customary Laws.

Inheritance of the Matrimonial Home

It is not unusual under Itsekiri custom and several other customs in Nigeria for a man and wife to live together in their matrimonial home, and for the woman or her family to even contribute towards building the house. In spite of this, a widow is precluded from inheriting her matrimonial home upon the death of her husband irrespective of whether or not she contributed personally or was assisted by her own family in providing land or funds for building the matrimonial home. In the case of *Oke v Oke*,⁵⁰ the Plaintiff sued claiming to inherit their father’s residence as against the Defendant who is the eldest son of the deceased. The Plaintiff contended that the land on which the house was built was allocated to his mother by her father who in turn gave it to her husband to erect a building. It was further contended by Plaintiff that their deceased father had by will bequeathed the house to him. In its decision on who was entitled to inherit their deceased father’s residence under Itsekiri/Urhobo customary law, it was held by the Supreme Court of Nigeria that under Itsekiri /Urhobo Customary Law, the residence of a deceased man devolved upon his death to his eldest son and that the testamentary disposition of a deceased Itsekiri man was subject to the customary law under which he lived and died⁵¹

Widower’s Inheritance Rights over Deceased Wife’s Property

In the past and even in modern times, women married to Itsekiri men have, through their own efforts or with the support of their husband, owned real properties in their own name at the time of their death. It is also not unusual for wives to sometimes predecease their husband leaving behind properties. Just as it is with widows, under Itsekiri Customary Laws, a deceased woman’s husband is barred from inheriting any of his deceased wife’s property. Under the custom, it is the children of the deceased wife that have exclusive right of inheritance over their mother’s property to the exclusion of the husband. Where the woman had no issue for the man, her property goes to her biological siblings or relatives irrespective of whether the husband contributed substantially to building or acquiring the real property or whether he even built it for his deceased wife. Apart from the husband, no member of his family can

⁴⁶Sagay (n40) 269.

⁴⁷Ogbobine (n17)

⁴⁸2000 {www.au.org} accessed June 18 2020

⁴⁹Protocol to African Charter (n48) Art. 21.

⁵⁰*Oke v Oke* [1974] ANLR 401 (SC).

⁵¹Wills Law Delta State 2008 s3(1)

partake in sharing of the property and even the deceased woman's step children are excluded. RAI Ogbobine,⁵² stated this old rule of Itsekiri Customary Law as follows:

In the case of a deceased woman, her children inherit her property but until the property is shared, the eldest child whether male or female takes absolute control of their mothers estate. Nobody in the husband's family is allowed to participate in the sharing of the property. Neither a wife nor the husband can inherit the property of the other spouse on the death of either of them; such property is for the children and never for the surviving spouse. Some share may also be given to her younger brothers and sisters.

From the foregoing, it is evident that the men appear to also suffer discrimination with regard to their deceased wife's property by being excluded under Itsekiri Customary Law from sharing in same even where they substantially contribute to acquisition of the property. However, it is argued that unlike the widows, widowers are not on the death of their wives construed as part of the estate of the deceased woman to be shared and inherited by members of her family. It has been posited by A. Tedeye,⁵³ that this custom is predicated upon the assumption that the husband would predecease his wife and as such would not usually be present to inherit his deceased wife's property. He notes that this inheritance practice against husbands where their wife predecease them is being challenged in several quarters in Itsekiri land especially in instances where the deceased woman has no child for her husband and the man either substantially contributed to or acquired the property for his wife during the marriage.⁵⁴ He further remarked that in contemporary times, some men have resorted to self-help in enforcing their rights to their deceased wife's property either for themselves or the step children of the deceased who cared for her during her life time.⁵⁵ It is argued that beyond the legal route, women should be mobilized to collectively advocate for their rights of inheritance to their deceased husband's property as custom is not static but dynamic and the courts will usually give effect to the current living custom of a particular people inclusive of the Itsekiris.⁵⁶ Since exclusion of men from inheriting their deceased wife's property is being resisted in certain instances, same should apply in an even larger scale to the women who also contribute their own quota in assisting their husbands to acquire and retain such properties. It is also argued that since the present generation are opposed to customary inheritance practices under Itsekiri Custom relating to widows and widowers inheritance, it should be reformed so as to ensure its validity as it has been held by the Supreme Court that courts will only enforce a custom when it is not outdated custom with which present generations cannot be linked⁵⁷

Children's Inheritance Rights over Deceased Fathers Property

One notable feature of Itsekiri customary law of inheritance is that both male and female children have rights of inheritance over their deceased father's property in equitable shares, although the eldest son is usually given preference as he has the exclusive right to inherit the deceased father's residence.⁵⁸ Another feature of the system is that all children of the deceased are entitled to inherit irrespective of whether they were born by the wives of the deceased or by his concubines. In providing further insight into this custom I.E Sagay,⁵⁹ quoting Omoneukarin stated that 'both the children born in wedlock and in concubinage in theory had equal rights, but the former were, want to insist on a better consideration. The eldest son who was generally the next of kin had the largest claim'. With regards to children to the deceased man in concubinage, the Itsekiri customary laws provides for methods of ascertaining whether a child is the legitimate child of the deceased upon his death. These tests as stated by Ogbobine,⁶⁰ that the deceased man introduced the child's mother to some important members of his family before his death as having a child or children for him.

- a. He paid the hospital bills during the period of pregnancy and at the birth of the child.
- b. He was fully or largely responsible for education of the child.

⁵²Ogbobine (n17) 109.

⁵³A Tedeye 'Widow's and Widower's Inheritance Rights in Itsekiri Custom' (Unpublished Paper presented at Seminar for selected Itsekiri Youths (DAELI Sapele 2010 4)

⁵⁴Ibid 6

⁵⁵Tedeye (n53) 7.

⁵⁶*Oyewunmi v Ogunesan* [1990] 3 NWLR (Pt 137) 182 (SC).

⁵⁷*Agu v Ikewibe* [1991] 3 NWLR (pt. 180) 385 (SC).

⁵⁸Oke (n50)

⁵⁹Sagay (n40) 269.

⁶⁰Ogbobine (n17) 111.

- c. The man introduced the child to some of his relatives and friends.
- d. After birth of the child, he allowed the mother to participate in functions organized by members of the family such as marriages, burials etc.
- e. It was known that the woman had prepared food for him or he had eaten in the woman's residence.
- f. He had allowed his mother or female relations to assist the woman after delivery of the child
- g. He gave the child a name.
- h. He made other significant utterances that were sufficient to infer that he is the father of the child.

It is argued that since Itsekiri Custom is embracing with respect to inheritance rights of children, it should be reformed to embrace widowhood inheritance rights.

Transformative Case Law on Widowhood Inheritance Rights

In the recent judgment of the Supreme Court of Nigeria in the case of *Anekwe v Nweke*⁶¹ the apex court appears to have come to the rescue in terms of discriminatory inhuman inheritance practices against women especially widows and daughters under customary laws. The court reversed itself and departed from its earlier judgment in a plethora of cases,⁶² and held that the Igbo customary law practice, and indeed all customs in Nigeria, which barred a daughter and wife from inheriting the property of their deceased father/husband was unacceptable in a civilized society and repugnant to natural justice, equity and good conscience. The facts of this case were that the respondent as plaintiff at the High Court of Anambra State in her amended statement of claim filed on the 30th day of May 2000 sought the following reliefs:

Wherefore the plaintiff claims against the defendants jointly and severally, as follows:

- (a) A declaration that the plaintiff is the person entitled to Statutory
- (b) Right of Occupancy of the piece or parcel of land which is situate at Amikwo Village Awka and Verged Red in her plan no: TLD/AND/92 and filed with this statement or claim.
- (c) An injunction restraining the defendants, their servants or agents from further trespass on the said piece or parcel of land
- (d) An order of court compelling the 2nd defendant to remove part of his building constructed into the plaintiff's land
- (e) An order of court compelling the defendants to share the Nwogbo Okonkwo Eli family lands averred in Paragraph 16 of this statement of claim.⁶³

In its decision, the trial high court found in favour of the plaintiff/respondent and granted the declaration/injunction while at the same time dismissing the counter-claim of the defendants. Dissatisfied, the defendants/appellants appealed to the Court of Appeal which dismissed their appeal. Being further dissatisfied, the appellants appealed to the Supreme Court. In determining the appellant's appeal, one of the questions determined by the Supreme Court was whether the custom of Awka people of Anambra State which denies a woman of her right to her deceased husband or father's property is repugnant to natural justice, equity and good conscience. Delivering its landmark judgment on this issue, the Supreme Court per Ogunbiyi JSC held:

My noble Lords, the custom pleaded herein, and is a similar custom in some communities wherein a widow is reduced to a chattel and part of the husband's estate, constitute, in my humble view, the height of man's inhumanity to woman, his own mother, the mother of nations, the hand that rocks the cradle. The respondent is not responsible for having only female children. The craze for male children for which a woman could be denied her right to her deceased husband or father's property is repugnant to natural justice, equity and good conscience.⁶⁴

⁶¹*Anekwe v Nweke* [2014]: 234 LRCN 34 (SC); [2014] LPELR 22697 (SC).

⁶²*Mojekwu v Iwuchukwu*[2004] 18 NSCQR 184 (SC).

⁶³*Anekwe* (n61)

⁶⁴*Ibid*

In his own concurring judgment in this case which roundly condemned the Awka custom and other similar customs that disinherited a woman from inheriting her deceased husband or father's property, Ngwuta, JSC held thus:

My Noble Lords... the craze for male children for which a woman could be denied her rights to her deceased husband or father's property is not justified by practical realities of today's world. Children, male or female, are gifts from the creator for which parents should be grateful. The custom of Akwa people is barbaric and takes the Awka communities to the era of cave man. It is repugnant to natural justice, equity and good conscience and ought to be abolished.⁶⁵

The Supreme Court not only declared the Awka custom that denies a woman the right to inherit her husband or father's property as 'the height of man's inhumanity to woman', 'uncivilized' 'and return to the era of the cave man', it emphatically stated its distaste for this discriminatory custom by declaring it repugnant to natural justice, equity and good conscience. The apex court went further to state that those practicing such a custom in any community in Nigeria should be decisively and punitively dealt with to serve as a deterrent to others. The court roundly stated its position in this regard thus:

Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God's instituted gender differential should be punitively and decisively dealt with. The punishment should serve as a deterrent measure and ought to be meted out against the perpetrators of the culture and custom.

It is submitted that by its far-reaching pronouncement on the subject matter of discrimination against widows and daughters in most cultures of Nigeria, this judgement of the Supreme Court appears to be a judgement *in rem* which is applicable to both parties and non parties to the suit,⁶⁶ as it can be generally applied with respect to any culture or customary law in Nigeria (inclusive of Itsekiri Customary Law) that disinherited a widow from inheritance rights over her deceased husband's property or estate.

The above decision of the Supreme Court in the Anekwe's case has revolutionized the law on widowhood/female inheritance/succession rights under the various customary laws in Nigeria and introduced a new vista and judicial basis for equitable rights of women to inherit their deceased husband or father's property. The Supreme Court went further to give legal teeth to its decision abolishing such discriminatory customary law practices against widow's and daughters by holding that the perpetrators of such uncivilized practices should be decisively punished to serve as a deterrent to others.

5. Conclusion and Recommendations

This paper concludes as follows: The judgment of the Supreme Court of Nigeria in the case of *Anekwe v Nweke* has revolutionized the customary law landscape of Nigeria and has reinforced the constitutional and natural rights of widows of a deceased man to inherit their husband's property. Inhuman and uncivilized Customary practices which saw widows as chattels to be inherited, have been abolished and declared repugnant to natural justice, equity and good conscience. This paper makes the following recommendations: The customary marriage practice of paying bride price on women which provides a cultural foundation for discrimination and gives the men a wrong feeling of proprietary rights and ownership of their wives should be abolished. In the alternative a system where the husband provides gifts for his wife and her family at marriage should be encouraged. The National Assembly and States Houses of Assembly should urgently pass legislations making it a criminal offence to discriminate against widows/females in any form, and providing stiff punishment for such discrimination. Courts in Nigeria should fully invoke the provisions of Section 42 of the constitution as well as other laws and domesticated international conventions to protect women and ensure that their inheritance rights under customary laws are fully enforced. Human rights groups and women advocate should lead the struggle to ensure that governments at all levels are alive to their constitutional duties of protecting the fundamental rights of citizens, especially women and girls. Women should be mobilized to carry out advocacy and peacefully protest and seek changes in widowhood inheritance rights and other discriminatory customary law practices against women under Itsekiri Customary Law. Immediate steps should be taken to domesticate CEDAW in Nigeria so as to ensure its full applicability.

⁶⁵Anekwe (n61)

⁶⁶*Adeniran v HRH Oba Ibrahim* [2018] 76 NSCQR 111