

MITIGATING THE IMPLICATIONS OF CUSTOMARY LAW ON THE RIGHTS OF WOMEN TO ACQUISITION OF LAND IN NIGERIA AND GHANA THROUGH LEGISLATION: A COMPARATIVE STUDY*

Abstract

There would be no human existence without land. This is true because it is from land that man gets items very essential for his survival. Section 43 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right of every Nigerian to acquire and own immovable property; irrespective of sex. It is however doubtful if the current Nigerian legal regime has been able to guarantee the right of women to acquire and own land especially when cognizance is taken of the various customary practices obtainable in Nigeria. The importance of land to man and the constitutional guarantees highlighted above notwithstanding, the right of women to land rights has been seriously hampered by the various derogatory and obnoxious customary rules and practices that are prevalent in Nigeria which limit the rights of women to acquire and own land. It is against the following background that this work undertakes a critical evaluation of the role of legislation in mitigating the implications of customary law on the rights of women to land in Nigeria vis-à-vis Ghana. The study found that Ghana has a more progressive regime for dealing with customary law implications on the rights of women to land. The work therefore recommended an adoption of those practices that would enhance the rights of women to property.

Keywords: Women's right to land, Customary Law, Legislation, Nigeria, Ghana, Comparison

1. Introduction

The relevance of land as a gift of nature to mankind cannot be over-emphasized. This assertion is true predominantly because it is from land that man gets items very essential for his survival such as food, fuel, clothing, shelter, medication and other necessities of life.¹ In the light of the foregoing, it is crystal clear that the life of man and that of the society revolve around land and its resources.² In Nigeria, the right of every citizen to acquire land anywhere in the country is sacrosanct³ and acquisition of land is foremost in the mind of an average Nigerian as it is seen as an investment that appreciates over time. It would be right to say that there would be no human existence without land and this is true because it is from land that man gets items very essential for his survival. In light of the foregoing, it is clear that the life of man and that of the society revolves around land and its resources.⁴ The issue of women's right to land under customary law especially in Africa has, over the years, generated a lot of controversies.⁵ The participants in these controversies highlight questions of cultural bias and discrimination against women in accessing land for development across Africa and especially Nigeria.⁶ Some of these questions relate to whether or not the legal regime in Nigeria is adequately positioned to tackle the issue of discrimination faced by women, as it relates to their right to own land.

It is not in doubt that over time, women are still being excluded from the benefits of land ownership which precludes them from full participation in economic life. This has grave implications for women as land is an economic tool which would ordinarily equip them with the means to create stable and sustainable livelihoods for themselves. This economic disability has left a lot of women impoverished. The implication is that they can only have access to land through their husbands or fathers; an access they usually stand to lose in the event of

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¹ P Z Datong 'The Role of the State Government in the Implementation of the Land Use Act' in O Adigun (ed) *The Land Use Act Administration and Policy Implementation* (Lagos: University of Lagos Press, 1991) 64

² CA Onah, 'Nature of Land Ownership under the Land Use Act: A Retrospective Examination' (2022) *African Journal of Criminal Law and Jurisprudence (AFJCLJ)* 7, pp 132-139 at 133.

³S. 43 of the 1999 Constitution of the Federal Republic of Nigeria (1999), Cap. C.23, Laws of the Federation of Nigeria (2010), Section 43, hereinafter called "the Constitution". See also Universal Declaration of Human Rights, Article 17 and African Charter on Human Rights, Article 14.

⁴A C Onah, 'The Land Use Act and Abolition of Private Ownership of Land in Nigeria: Law and Practice' being the text of a thesis submitted to the Faculty of Law, Nnamdi Azikiwe University Awka for the award of LLM degree, August 2017.

⁵S Tavuyanago, 'Is Customary Law a Hindrance to Womens Rights in Democratic South Africa?' (2015) *Global Journal of HUMAN-SOCIAL SCIENCE: Sociology & Culture Volume 1 5 Issue 7* pp. 15-31; R Mordi, 'An Appraisal of Inheritance Rights of Women in Nigeria' https://www.academia.edu/7187814/AN_APPRAISAL_OF_INHERITANCE_RIGHTS_OF_WOMEN_IN_NIGERIA, last accessed on 10/10/2022.

⁶H J Abdulllah & I Hamza, 'Women and land in Northern Nigeria, the Rights' in L M Wanyeki, (ed), *Women and Land in Africa* (London: Zeds Book Ltd, 2003) pp 133-175 at 158.

divorce from their husband or death of their father.⁷ This happens because customary law in Nigeria propagates the notion that women are not capable of effectively managing land on their own without male interference.

A critical look at the prevailing state of development in Nigeria today reveals there is a plethora of land related problems as it affects women. The issue of the right of women to acquire, inherit and own land in Nigeria is exigent and a matter of public concern and giving the rising spate of poverty amongst women, inheritance has been the major mode of land acquisition for women but they have however suffered a great deficit due to discriminatory customary practices in Nigeria. According to certain cultural norms,⁸ women are only given occupational rights to land subject to certain conditions, a breach of which such rights would be revoked. The idea behind this is to subjugate the women to fulfil their traditional roles and leave them economically disabled in the society in juxtaposition to the men folk which is the mark of most patriarchal societies in Nigeria. Factors such as illiteracy, lack of exposure have inundated the ability of women to understand and demand for better safeguards of their rights to land. The complex and poorly structured land tenure system in Nigeria deprives women who are already bedevilled by the aforementioned limiting factors to fully take benefits of land ownership. Therefore, the call for a better protection was delayed and it was not until recently that the issue witnessed judicial activism on constitutional provisions that have always been extant.⁹ In the Eastern part of Nigeria for instance, the cultural norms dictate that the right to inheritance of land is the exclusive preserve of males while in other parts of Nigeria where the females are entitled to inherit, they are only allowed to inherit a fraction of what the men are entitled to inherit.¹⁰ It is against this background that this paper sets out to critically examine the implications of customary law on the rights of women to acquire and own land in Nigeria *vis-à-vis* Ghana.

2. Legal Framework for Women's Land in Nigeria

Land right is the inalienable capacity of persons to freely obtain, possess and make use of land at their discretion provided their activities on the land do not infringe the rights of others.¹¹ Such rights may include right to ownership, possession, alienation, collection of rent.

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

Sections 43 and 44 of the Constitution of the Federal Republic of Nigeria,¹² make provision for the right of every Nigerian irrespective of gender to acquire and own immovable properties in any part of the country. The said sections of the Constitution provides as follows:

43. Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.
44. (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things -
 - (a) requires the prompt payment of compensation therefore and
 - (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

By the combined reading of the provision of Section 42 of the Constitution which prohibits discrimination of any form including on ground of sex and sections 43 and 44 of the Constitution, every Nigerian has the fundamental right to acquire and own properties which includes land in any part of the country, irrespective of their gender. Thus there is nothing in the Constitution precluding a woman from acquiring, inheriting or

⁷W H Alazmi, 'Women's Right to Accessing and Owning Land in the United States, Saudi Arabia, Brazil and South Africa', being the text of a research paper submitted to the Graduate School of Ball State University Muncie, Indiana in partial fulfillment of the requirements for the Degree of Masters of Arts, July, 2016. p.2

⁸ Especially in the Eastern part of Nigeria.

⁹*Ukeje v Ukeje* (2014) 11 NWLR (Pt. 1418) 384; *Uke v Iro* (2001)11NWLR (Pt.723)196; *Mojekwu v Ejikime* (2000) 5 NWLR Pt. 65 7 P.402; *Anekwe v Anekwe* (2014) 9 NWLR (Pt. 1412) 393

¹⁰ B Callaway, *Muslim Hausa Women: Tradition and Change* (Syracuse NY: Syracuse University Press, 1987) p. 27

¹¹D Nadi, 'Critical Mass Representation in Uganda' (2009), 1-38; available at < https://www.google.com/url?sa=t&source=web&cd=17&ved=0ahUKEwj7puHp_IPVAhUHmbQKHRxvBw0QFgh9MBA&url=http%3A%2F%2Fdigitalcollections.sit.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1674%26context%3Ddisp_collection&usg=AFQjCNH6yvAX-xdk7L2Tig_1uPqt_WUdNQ> last accessed on 12/07/2017

¹² Constitution of the Federal Republic of Nigeria Cap C23 LFN, 2004.

retaining an interest in land in Nigeria. The implication being that land rights are protected by the Constitution irrespective of sex.¹³

Land Use Act¹⁴

The Land Use Act was promulgated to find a lasting solution to the problems associated with the pre-existing land tenure system. The preamble to the Act describes it in the following terms:

An Act to vest all land comprised in the territory of each state (except land vested in the Federal Government or its agencies) solely in the Governor of the state, who would hold such land in trust for the people and would henceforth be responsible for allocation of land in all urban areas of individuals resident in the state and organisations for residential, agricultural, commercial and other purposes while similar power with respect to non-urban areas are conferred on local government.

By virtue of section 1 of the Act, the general effect of the Act on title to land is to vest abstract title and control title over land within the territory of each state upon the Governor of the state whilst preserving the title of the Federal Government and its agencies¹⁵ over limited areas of land belonging to the Federal Government.¹⁶ The import of Section 1 of the Act with respect to the relationship between the state and an individual land owner is that of landlord and tenant; the individual interest being in the nature of a 'right of occupancy' while ownership now resides in the state. Therefore, as far as an individual's right over land is concerned, ownership is designed, under the Act, to take the form of a right of occupancy which is evidenced by a certificate of occupancy being the sole medium through which the government certifies that an individual 'owns' a land.¹⁷ The Governor may revoke a right of occupancy by virtue of powers conferred by Section 28 of the Land Use Act for overriding public interest. Section 28(2) defines overriding public interest in the case of a statutory right of occupancy to mean unlawful alienation, requirement of land by the Local, State or Federal Government¹⁸ for public purpose¹⁹ or the requirement of the land for mining purpose or oil pipelines or any purpose connected therewith. In the case of a customary right of occupancy, overriding public interest is defined almost the same way as in the case of statutory right of occupancy, the only difference being the addition of the requirement of the land for extraction of building materials.²⁰ The legal regime for compensation and for revocation of right of occupancy is contained under Section 29 of the Land Use Act. Under the Act, there is no compensation payable by the state where a right of occupancy is revoked because of the holder's breach of the prohibition of alienation without prior consent or for breach of other terms and conditions of the grant.²¹ No compensation is also payable for the value of the land *per se* or for disturbance thereof; compensation is only payable for the 'unexhausted improvement' on the land.²²

It must be observed that the legal regime for land use and administration under the Land Use Act affords equal opportunity to the men and women to acquire and own land anywhere in Nigeria. Apart from the General problems associated with the Act, it seems not to draw any distinction between a man's right to acquire and own land and a woman's right to do so.

Administration of Estates Laws of various States of the Federation

Generally, intestate inheritance in Nigeria is governed by the Administration of Estates Laws of various states of the federation.²³ By virtue of Section 120 (1) (b) of the Administration of Estates Law of Enugu State, if a person who dies intestate leaves a husband or wife but no children, parents or brothers or sisters of the whole blood, the residuary estate shall be held on trust for the

¹³ C. A. Onah; H. U. Obi-Obiora, 'Women and Right to Acquire and Own Land in Nigeria: Examining the Conflicts Between Statutory and Customary Law' (2022) *UNIZIK Journal of Public and Private Law* Vol. 12, pp 1-15 at 5

¹⁴ Cap L5, LFN, 2004.

¹⁵ Land Use Act s. 48.

¹⁶ I O Smith "Title to Land in the Former Federal Capital Territory of Lagos upon Creation of Lagos State: Matters Arising" (2004) *Vol. 25 JPPL*, 21.

¹⁷ D C Williams, 'Measuring the Impact of Land Reform Policy in Nigeria' (1992) *Journal of African Studies* Vol. 30 No. 4, p. 587-608.

¹⁸ It is pertinent to note that the Federal or Local Government have no right to revoke a right of occupancy. The power is exclusively reserved for the Governor which he exercises personally or through his delegate - Land Use Act s. 28(6).

¹⁹ Land Use Act s. 51.

²⁰ Land Use Act s. 28(3).

²¹ Land Use Act s. 29 (1).

²² *Upper Benue River Basin Development Authority v Alka & ors* [1998] 2 NWLR (Pt. 357) 329; *Osho v Foreign Finance Corporation (Supra)* at 197.

²³ Administration of Estates Law Cap 5 Laws of Enugu State of Nigeria 2004. See also Administration and Succession (Estates of Deceased Persons) Law Cap 4, Revised Laws of Anambra State 1991.

surviving spouse absolutely. However, where the surviving spouse is the wife and the intestate leaves brothers or sisters of the half blood, the wife's interest will be for her life or until she remarries; whichever first occurs. Thereafter, the residue of her interest shall go to the intestate's brothers and sisters absolutely in equal shares. The children of a deceased brother or sister will take the share to which their parent would have been entitled if alive. By virtue of the provisions of Section 120 (1) (b) where the intestate leaves a husband or wife as well as children's children (whether or not he also leaves parents or brothers or children of brothers and sisters), the residuary estate shall be held on trust as to the value of one third thereof for the surviving spouse. The interest of such spouse shall be absolute in the case of a husband and in respect of a wife, for her life or until remarriage, whichever first occurs. The remainder of the estate together with any residue on the cesser of the wife's interest shall be held on trust for the children in equal shares absolutely. By Section 120 (1) (c) if the intestate leaves a husband or wife as well as one or more of the following – a parent, brother or sister of the whole blood or children of a brother or sister of the whole blood, but does not leave a child, two third of the residuary estate shall be held on trust for the surviving spouse. In the case of a husband, the interest shall be absolute while for a wife, it will last for her life or until her re-marriage, whichever first occurs. The remaining one-third of the estate together with any residue on cesser of the wife's interest shall be held on trust for the brothers of the whole blood in equal shares absolutely. In the absence of brothers of the whole blood or their children, the portion will be for parents absolutely. By virtue of the foregoing provisions which are *in pari material* with the provisions of the Administration of Estates Laws of various other states, it is patent that while the surviving husband is meant to inherit absolutely, the surviving wife's title is only meant to last for her life or until she re-marries, whichever first occurs. The implication of this is that a woman can neither transfer her interest in the property to another person nor transfer it by will or intestate devolution upon her death. It is the opinion of the researcher that the above provision is a manifestation of the cultural and customary inclinations of the people which is usually unduly detrimental to the women. Thus, it would be right for one to conclude that the legal regimes in Nigeria have not fully addressed the implication of customary law on the right of women to inherit land.

3. Legal Framework for Women's Land in Ghana

As has been mentioned earlier in this study, one feature of customary law in Nigeria, which also mirrors predominant practice in some African states and indeed most countries that apply customary law in the determination of land rights, is its inclination to deprive women of right to land especially as it relates to their right to inherit same. The preliminary enquiry conducted before the commencement of this study found that Ghana have undertaken practical progressive steps towards the enhancement of women's right within their jurisdiction and towards guaranteeing the right of women to property and abolition of barbaric customary practices that inhibit the right of women to property. This they have done by involving traditional rulers in the process of making laws that affect women in their countries or through the instrumentality of the courts towards a progressive interpretation of existing laws or through the outright promulgation of laws that abolish discriminatory customary practices that militate the right of women. It is against the foregoing background that this work sets out to identify the practices that have been adopted by Ghana in trying to improve the right of women to land rights with a view to finding a way of introducing such practices in Nigeria. Ghana is widely seen as a leader in the struggle for inheritance rights in Africa. In addition to having ratified numerous international human rights treaties, including CEDAW and the African Charter on Human and Peoples' Rights, Ghana passed in 1985, the Intestate Succession Law.²⁴

Three legal land regimes are recognised in Ghana comprising the customary, statutory, and common practice.²⁵ Despite the existence of plural systems governing land administration, traditional authority and customary rules play the most significant influence in land ownership and use arrangements.²⁶ In Ghana, the operation of customary law is validated by the Ghanaian Constitution.²⁷ The said Constitution in Article 11 provides that the laws of Ghana shall comprise among other things, the common law which includes the rules of customary law. Article 11(3) of the 1992 Constitution then proceeded to define customary law as 'the rules of law which by custom are applicable to particular communities.' To ascertain the validity of a customary law, witnesses such as chiefs, linguists and other elders learned in custom are called into court to testify on elements of the particular

²⁴ (the Provisional National Defense Council, or PNDC, Law 111)

²⁵O Alhassan, 'Land Access and Security of Tenure in Ghana: some Considerations for Improvement' the outcome report of the thematic dialogue held on 24 January 2006 Accra, Ghana and presented at the International Conference on Agrarian Reform and Rural Development (ICARRD) Porto Alegre, Brazil on 7-10 March 2006

²⁶G A Sarpong, (2006). *Improving tenure security for the rural poor Ghana – Country case study*. LEP Working Paper No. 2. Workshop for Sub-Saharan Africa. <<http://www.fao.org/3/a-k0783e.pdf>> accessed on 10/05/2019

²⁷A Davis and D N Dagbanja, 'The Role and future of Customary Tort Law in Ghana: A cross-Cultural Perspective' (2009) *Arizona Journal of International and Comparative Law*, Vol.26, No. 2, 303.

custom subject at issue.²⁸ Local customs, which are related to natural justice, equity, and good conscience, are considered part of the customary law.²⁹ In Ghana, Customary law is now a question of law to be determined by the courts.³⁰ The Ghanaian Constitution, functioning as a mechanism for including the appropriate customary laws of the country, has however, additionally involved the National House of Chiefs³¹ in the development of customary law. The National House of Chiefs by virtue of Article 272 (b) & (c) undertakes the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin. They also undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful. Articles 49, 50, 51 and 52 of the Chieftaincy Act empower the National House of Chiefs to undertake progressive study of the various Traditional Councils through the respective Regional Houses of Chiefs in order to interpret and codify customary laws with a view to better understanding the appropriate cases for a unified system of rules of customary laws in Ghana.³² The National House of Chiefs through the Research Committee has over the years consulted key stakeholders to undertake this constitutional mandate.

Constitution of Ghana

The Constitution of Ghana, makes sufficient provision for the protection of land rights. Articles 18 and 20 of the Ghanaian Constitution make provision for the right of every person; whether a man or a woman to acquire and own immovable properties in any part of the country. Article 18 provides that every person has the right to own property either alone or in association with others and that

no person shall be subjected to interference with the privacy of his...property...except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.’

Article 20 of the said Constitution on the other hand provides that no property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired unless there is, among other things, the payment of prompt and adequate compensation. It is clear from the tenure of the above provision that in Ghana, just as it is obtainable in Nigeria, everyone has the fundamental right to acquire and own properties which includes land in any part of the country, irrespective of their sex. Article 17 of the Ghanaian Constitution also provides for equality and freedom from discrimination, among other things, as follows:

- (1) All persons shall be equal before the law.
- (2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.
- (3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by law, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.

Furthermore, under Article 22, the Constitution guarantees all spouses a reasonable portion of each other's estate regardless of whether or not the spouse executed a will before death. Under the same Article, Parliament is required to enact legislation to regulate the property rights of spouses to remove potential injustices inherent in the current system of property distribution at death intestate and dissolution of marriage. The said Article 22 provides as follows;

- (1) A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.
- (2) Parliament shall, as soon as practicable after the coming into force of this Constitution, enact legislation regulating the property rights of spouses.

²⁸N A Ollenu and G R Woodman. *Ollenu's Principles of Customary Land Law in Ghana* (Birmingham: Carl Press, 1985) p. xxv.

²⁹C Ogwurike, 'The Sources and Authority of African Customary Law' (1966) *University of Ghana Law Journal III, No. 1*, 11-20.

³⁰V Essien, 'Researching Ghanaian Law' <<https://www.nyulawglobal.org/globalex/Ghana.html>> accessed on 2/4/2019

³¹Article 270 of the Ghanaian Constitution guarantees the institution of chieftaincy, together with its traditional councils as established by customary law and usage. Article 271 also established the National House of Chiefs comprising of five paramount chiefs from each region elected by the House of Chiefs of the region. Article 274 also established the Regional House of Chiefs which consists of such members as Parliament may, by law, determine.

³²I O Mensah, 'Politics, Chieftaincy and Customary Law in Ghana' (2013) *Kas International Reports* 31-48.

- (3) With a view to achieving the full realization of the rights referred to in clause (2) of this article—
- (a) spouses shall have equal access to property jointly acquired during marriage;
 - (b) assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.

In view of the foregoing provisions of the Ghanaian Constitution, it would be safe to conclude that under the Constitution, both the men and women are constitutionally guaranteed of the right to own properties which include land and from the foregoing provisions, it is clear that there is nothing in the Ghanaian Constitution precluding a woman from acquiring, inheriting or retaining an interest in land in Ghana.

Intestate Succession Law

The Intestate Succession Law is a path-breaking departure from customary law and has been described as an important landmark of existing legislation on inheritance rights in Ghana.³³ It is hailed as the most progressive inheritance and succession law on the continent.³⁴ It is the first legal framework that provides equal rights of inheritance between spouses and increased rights for children. Accompanying the law is a memorandum that fully explains the rationale behind its promulgation. In brief, it states that the law seeks to provide a uniform intestate succession system applicable throughout the country irrespective of the class, marriage type and lineage and focuses on estates that have not been covered by a will. It further stresses the increased need for recognition of the growing importance of the nuclear family. The law aims at giving a large portion of the estate of the deceased to his/her spouse and children in a manner that was previously denied under traditional law. The law in Sections 4, 5, 6 and 7 provide for the devolution of property to a child and spouse of a deceased person, whether male or female, who dies intestate as follows;

4. Notwithstanding the provisions of this Law:—

- (a) where the estate includes only one house, the surviving spouse or child or both of them, as the case may be, shall be entitled to that house and where it devolves to both spouse and child, they shall hold it as tenants-in-common;
- (b) where the estate includes more than one house, the surviving spouse or child or both of them, as the case may be, shall determine which of those houses shall devolve to such spouse or child or both of them and where it devolves to both spouse and child they shall hold such house as tenants in common:

Provided that where there is disagreement as to which of the houses shall devolve to the surviving spouse or child or to both of them, as the case may be, the surviving spouse or child or both of them shall have the exclusive right to choose any one of those houses; except that if for any reason the surviving spouse or child or both of them are unwilling or unable to make such choice, the High Court shall upon application made to it by the administrator of the estate, determine which of those houses shall devolve to the surviving spouse or child or both of them.

5. (1) Where the intestate is survived by a spouse and child, the residue of the estate shall devolve in the following manner:

- (a) three-sixteenth to the surviving spouse;
- (b) nine-sixteenth to the surviving child;
- (c) one-eighth to the surviving parent;
- (d) one-eighth in accordance with customary law:

Provided that where there is a child who is a minor undergoing educational training, reasonable provision shall be made for the child before distribution.

(2) Where there is no surviving parent, one-fourth of the residue of the estate shall devolve in accordance with customary law.

6. Where the intestate is survived by a spouse and not a child, the residue of the estate shall devolve in the following manner:

- (a) one-half to the surviving spouse;
- (b) one-fourth to the surviving parent;
- (c) one-fourth in accordance with customary law:

Provided that where there is no surviving parent, one-half of the residue of the estate shall devolve in accordance with customary law.

³³B A Duncan & C Brants, 'Access to and Control over Land from a Gender Perspective: a Study Conducted in the Volta Region of Ghana' available at <http://www.fao.org/3/ae501e/ae501e05.htm#bm05> accessed on 5/2/2019

³⁴S Tivuyanago 'Is Customary Law a Hindrance to Women's Right in Democratic South Africa?' (2015) *Global Journal of Human Social Science: Sociology & Culture Vol XV issue viii*, p. 14-32

7. Where the intestate is survived by a child and not by a spouse, the surviving child shall be entitled to three-fourths of the residue and of the remaining one-fourth, one eighth to the surviving parent and one-eighth shall devolve in accordance with customary law:

Provided that where there is no surviving parent, the whole of the one-fourth shall devolve in accordance with customary law.

The Law further makes provisions prohibiting and criminalizing any act of interference with the right of a child or spouse to inherit in the following words;

16(1) No person shall before the distribution of the estate of a deceased person, whether testate or intestate eject a surviving spouse or child from the matrimonial home—

- (a) where the matrimonial home is the self-acquired property of the deceased;
- (b) where the matrimonial home is rented property, unless the ejection is pursuant to a court order;
- (c) where the matrimonial home is the family house of the deceased, unless a period of six months has expired from the date of the death of the deceased; or
- (d) where the matrimonial home is public property unless a period of three months has expired from the date of the death of the deceased.

(2) For the purposes of this section "matrimonial house" means—

- (a) the house or premises occupied by the deceased and the surviving spouse, or the deceased and a surviving child or all as the case may be, at the time of the death of the deceased; or
- (b) any other self-acquired house of the deceased occupied by the surviving spouse or child or both at the time of the death of the deceased.³⁵

17 Any person who before the distribution of the estate of a deceased person whether testate or intestate—

- (a) unlawfully ejects a surviving spouse or child from the matrimonial home contrary to the section 16A of this Law
- (b) unlawfully deprives the entitled person of the use of—
 - (i) any part of the property of the entitled person;
 - (ii) any property shared by the entitled person with the deceased to which the provisions of this Law apply; or
 - (iii) removes, destroys or otherwise unlawfully interferes with the property of the deceased person, commits an offence and is liable on summary conviction to a minimum fine of ₦50,000.00 and not exceeding ₦500,000.00 or to a term of imprisonment not exceeding one year and the court or tribunal shall make such other orders as it considers necessary for the re-instatement of or reimbursement to the person thus ejected or deprived.³⁶

It is obvious from the foregoing provisions that the Intestate Succession Law 1985 makes adequate provisions for the protection of women's right especially as it relates to intestate succession. Unlike the Nigerian provisions which favour the men, the Ghanaian law does not discriminate on the basis of sex. This is a commendable provision that should be made to be operative in Nigeria. The Ghanaian Law also went further to criminalize any act which seeks to interfere with the right of a child or spouse to inherit his deceased parent or spouse's property. Furthermore, legal aid is available to the needy in any civil case relating to inheritance with particular reference to the PNDCL 111 under the Legal Aid Scheme Law 1987, PNDCL 184.³⁷

Head of Family Accountability Act³⁸

The Head of Family Accountability Law safeguards family property by obliging heads of family, who remain in custody of such property to account for all financial dealings associated with it and to file an inventory.³⁹ Any member of the family whether male or female who has a beneficial right to such property may file a claim in the High Court against a head of family who mismanages the property and who fails to render an account or file an

³⁵ As inserted by the Intestate Succession (Amendment) Law, 1991 (PNDCL 264), s.1

³⁶ As substituted by the Intestate Succession (Amendment) Law, 1991 (PNDCL 264), s. 2

³⁷ L Oware-Gyekye, A Arthur & E V O Dankwa, 'Family Law and Customary Practices for Child Maintenance and Inheritance in Ghana in E Ardayfio-Schandorf (ed) *The Changing Family in Ghana: Proceedings of the National Research conference held at the Golden Tulip Hotel Accra Ghana from 25th – 27th January 1995*' (Ghana: Ghana University Press, 1996) pp 86-111 at 88

³⁸ 1985 (PNDCL 114)

³⁹ Section 1

inventory. Before this is done however, claimants are required to seek redress at the family level. The High Court has the power to compel the family head to render account or file an inventory in respect of all properties in his possession, control or custody.

Administration of Estates (Amendment) Law

The Administration of Estates (Amendment) Law provides added protection to women and children through state intervention in the administration of estates with a value of up to Ten Million Cedis. The law is applied in cases where agreements cannot be reached on the administration of such estates or where an administrator has not been appointed. Property of a person who dies intestate without a will is thus administered by the Administrator-General according to the process of law to protect the needs of beneficiaries.

4. Conclusion and Recommendations

This study examined the legislations put in place for the protection of women's land rights in Nigeria vis-a-vis Ghana on a comparative basis with a view to highlighting how such legislations have impacted on women's access to land in Nigeria and making appropriate recommendations that will foster a better land right regime for women in Nigeria. It was observed that Nigeria has tried to make a lot of laws for the protection of women's right including the constitutional provisions relating to right to acquire and own immovable properties and protection from compulsory acquisition which is available to both men and women. However, it is also found that the laws are not satisfactory because they have not been able to effectively protect the right of women to land rights. The above position is manifest especially when the legal regime for the protection of Women's right in Nigeria is compared to that of Ghana. As we saw from the discourse so far,⁴⁰ some of the provisions contained in the Constitution of Ghana and other statutory enactments in Ghana are lacking in Nigeria's constitutional and statutory regimes. Such provisions include the provisions relating to the establishment of the National House of Chiefs and the Regional House of Chiefs who have been vested with the responsibility of either altering a customary law as it thinks desirable or drafting their declaration of customary law for approval and publication as a legislative instrument through the Minister responsible for Chieftaincy and Culture acting after consultation with the Attorney General. It is however recommended that the Nigerian Constitution be amended to provide for a House of Chiefs who shall be vested with the powers to review customary laws and improve them to enhance equality.

Another provision of the Ghanaian Constitution which is not in the Nigerian Constitution is the provision of Article 22 of the Ghanaian Constitution that guarantees all spouses a reasonable portion of each other's estate regardless of whether or not the spouse executed a will before death. It is recommended that the Nigerian Constitution be amended to guarantee all spouses a reasonable portion of each other's estate irrespective of the sex. Statutorily, the Head of Family Accountability Law safeguards family property by obliging heads of family who remain in custody of such property to account for all financial dealings associated with it and to file an inventory. Such law helps to prevent arbitrariness on the part of the family members who may want to appropriate the properties that ought to accrue to women for their private use. Promulgation of such law in Nigeria is recommended as it will enhance the right of women. The Intestate succession Law of Ghana provides equal rights of inheritance between spouses and increased rights for children. It further criminalizes any act of interference with a spouse's and child's right of inheritance. This is unlike the provisions of the Administration of Estates Laws of various states of Nigeria where the men are favoured as against the women and it is therefore recommended that the Administration of Estates Laws of various states of Nigeria be amended to provide for equal rights of women. One of the reasons for the persistent occurrence of these obnoxious customary practices is the fact that there are no laws criminalizing these practices. The criminalization of certain customary practices contrary to the right of women to inherit as contained in the provisions of Sections 16 and 17 of the Intestate Succession Law of Ghana will help ensure compliance thereto.

⁴⁰Particularly Chapters 4 and 5.