

Women's Rights, Violence and the Global Challenge

examines issues affecting women and men global, transnational, human rights and conflict. The papers explore structural injustices suffered by women in different contexts. They are organized in three parts. Part one has two papers, the focus on women's rights and realities. In part two, studies concern women and exploitation. They focus on trafficking. In part three, three papers discuss issues of women and armed conflict.

The papers in this series are a moving testimony of the women who are subjected to in societies across the world. They call for a range of the responses available for women to escape from abuse or rights based violence and to facilitate access to justice and other social services. The situation becomes more complicated for feminists and women where women - due to social inequalities - choose to seek a livelihood such as when they agree to be trafficked for what they feel is their advantage.

The International Interdisciplinary Congress on Women, code named Women's Worlds, is held every three years. The main focus and nature of the congresses is feminist research and interdisciplinary scholarship. Eight Congresses have so far been held:

- o University of Haifa, Israel (December 27, 1981 - January 1, 1982) - theme: The New Scholarship
- o The University of New Groningen, Netherlands (1984) - theme: Strategies for Empowerment
- o Trinity College, Dublin, Ireland (1987) - theme: Visions and Realities
- o Hunter College, USA (1990) - theme: Realities and Choices
- o San Jose University, Costa Rica (1993) - theme: Search, Participation and Change
- o University of Adelaide, Australia (1995) - theme: Winds of Change
- o University of Tromsø, Norway (1999) - theme: Generations
- o Makerere University, Uganda (2002) - theme: Gendered Worlds: Gendered Challenges

This year's congress will be held at Ewha, Women's University, Seoul, Korea (2005) - theme: Embracing the Earth: East-West/North-South.

ISSN 9970-832-09-7



Flavia Manóvilos

Women's Rights and Violence
Global Challenges

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GENDERED WORLD SERIES

Women's Rights and Violence:
Global Challenges

Editor
Flavia Munaaba

Women and Gender Studies

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Kampala - Uganda

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First Published 2006

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ISBN 9970 832 09 7

Cataloguing -in- Publication Data

323

Women's rights and violence: Global challenges/Flavia Munaaba [ed]. - Kampala:
Department of Women and Gender Studies, 2005

-p-cm.-Women and Gender studies series

1. Human Rights I. Munaaba, Flavia II Women & Gender Studies series

Dedication

*To all the women and men who participated in the 8th International
Interdisciplinary Congress on Women, Women's Worlds 2002.*

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Customary Law Practices and Violence against Women: The Position under the Nigerian Legal System

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Oluyemisi Bamgbose

Introduction

Nigeria is a country in the west of Africa that lies east of the Republic of Benin, south of the Republic of Niger and Chad and west of the Republic of Cameroun and north of the Gulf of Guinea.

The Nigerian legal system is made up of the common law, statutory law, customary law and Islamic law. The common law is essentially an accumulated body of English case law. The statutory law comprises restatement of English Statutes, which over the years have been amended or re-enacted and written laws passed by the enabling body. The customary laws, where applicable, are the body of rules governing a particular group of people and Islamic laws are religious tenets applicable to those subject to it.

Nigeria is a multi-ethnic nation with over two hundred and fifty different ethnic groups. Three dominant groups account for nearly sixty percent of the country's total population of about one hundred and twenty million people. These are the Yoruba, who are predominantly in the southwest, the Igbo in the southeast and the Hausa in the north.

There are other smaller but important groups scattered all over the country. It is important to give this brief history for a clearer understand of the fact that there are many customary law practices existing within Nigeria.

In Nigeria, like other African countries, traditional customs, deep-rooted cultural and religious beliefs tend to compete with and in many cases overshadow the common laws and statutory laws with regard to some issues. Issues relating to women are mostly affected resulting in violence against women. The highest incidence of violence occur in the home and the bosom of the closely knitted family. This is a contradiction as the African family is noted for being closely knit.

Nigeria is a signatory to many international treaties that prohibit violence against women. There are also many regional instruments and national laws that frown at such violence. However, the violence continues. The discussion in this essay focuses on some types of violence inflicted on women as a result of customary law practices. This will be restricted to customary law practices of marriage, inheritance and widowhood basically under the three ethnic groups named above.

Customary law practices in Nigeria

Customary law is the ultimate basis of all human activities all over the world. It is dynamic rather than static providing the guiding principles of interrelationship between one generation and the next. It is described as the mirror of accepted usage, which means that it is capable of flexibility and adaptability to changing circumstances in society. The customary laws of an area encapsulate all the beliefs, social institution and religion that characterises and are unique to a given community. Customary practices differ from place to place and no one practice can be said to be inferior or superior to the other. This is why it is virtually impossible to replace one culture with another.

It is apt to state right from the onset that not all customary law practices are bad or repugnant or inflict violence on women. African countries generally have many rich cultural practices which are humane, unique and allow for true bonding in the family— with emphasis on unity which is the social fabric of the society.

However, within the different cultures are some practices that are discriminatory and lopsided against women in particular and are archaic in a modern world and are generally summarised generally as repugnant to natural justice, equity and good conscience.

The social, political and economic life in Nigeria is rapidly and radically changing therefore making the question of modification in customary law one of great importance. It is known that certain old practices and customs have disappeared and new ones appear to deal with new situations. It is therefore puzzling that cultural practices which discriminate against women refuse to change with changing situations.

The Constitution of the Federal Republic of Nigeria (1999) has changed several times to accommodate modern changes, there is no reason why customary laws which are closer to the way of life of the people cannot be subject to changes.

The discussion below is on the customary law practices of marriage, inheritance and widowhood and their effects.

Customary law of marriage

Marriage has a prestigious and foremost place in Nigerian culture like in other African cultures. Customarily, so much importance is attached to the institution of marriage and it is a normal condition for both men and women. Marriage is a longing in the heart of many girls, as an indispensable function to be fulfilled with as little delay as possible after the age of puberty. So important was this institution that an unmarried man or woman was considered as incomplete and a few satirical songs were composed about such people. In the Hausa culture, there is an adage that says, "a man without a wife is like a big tree without fruit," (Ibrahim, 1998).

Marriage can be contracted under any of the systems mentioned above. Under statutory law, it is governed by the Marriage Act (1990) and the Matrimonial Causes Act (1970). The customs of the parties govern marriage under customary law and Islamic injunctions govern an Islamic marriage.

It is common to see marriages being contracted both under statutory law and customary law. The reason is that; even in modern times marriage in Nigeria is seen as a purely family matter to which family consent is needed prior to the marriage. This has resulted in the existence of a plural law of succession of property. In modern homes, family domination during the existence of the marriage is less as couples, due to urbanisation and migration, prefer their independence and do not live with their extended family.

The notion that marriage is subconsciously or consciously regarded as a union between two different families and not only the couple is displayed during the traditional marriage ceremony, even when the parties to the marriage are matured adults. (Ibrahim, 1998; Issaka, 1998; The Perspective, 2001).

Many cultures in Nigeria are patriarchal, therefore emphasising male dominance. A few cultures in the South East of the country especially the Igbo culture in Abia State are matrilineal. The patriarchal culture is greatly portrayed during traditional marriage ceremonies performed almost to the exclusion of the mother of the bride and the bride.

Under statutory law, the procedure for a valid marriage ceremony is explicitly stated in the Marriage Act without any gender discrimination. However, male dominance is exhibited in practice by the over-zealous officials who demand the presence of the father of the bride or in his absence even where the mother is present, a male adult from the paternal side of the bride. This confirms the customary belief that any child in a family belongs to the father and his lineage.

Child marriage

Child marriage was a common form of marriage under the three cultures, which unfortunately, is still practiced in some rural communities especially in the Hausa culture in the northern states of Nigeria.

Under this practice a girl from birth was betrothed to a man to whom she will be formally married between the ages of eight and

ten. According to Sabbatou (1998) in answer to a question on the practice of child marriage her father answered thus: "This practice existed before I was born and there is no use complaining about it my daughter. Listen to me, I married your mother at the same age."

The above conversation between Sabbatou and her father was about the marriage of her ten year old sister. This practice was a cultural practice which still goes on in rural parts of the country. The issue of choice of partner for the girl-child is the duty of the family members or the father who take into consideration different factors in making a choice. The choice is based on such considerations as social, religious, monetary or economic reasons. Age of the prospective husband is not a factor, as in many of the cases the husband chosen is quite older than the girl.

Several reasons have been given in support of this practice. They include:

- (i) Reduction of promiscuity;
- (ii) Societal integration and well being; and
- (iii) Religious blessing

Child marriage has its effects both on the girl-child and the society.

These include:

- (i) Early widowhood with its attendant problems;
- (ii) Spread of HIV/AIDs;
- (iii) Prostitution;
- (iv) Family problems;
- (v) Medical problems; and
- (vi) Early death from suicide.

Bride price/bride wealth/dowry

The above marriage practice has existed for thousands of years. The practice, withstood European colonisation in the early 1800s and early 1900s. It survived with minimal changes to modern times (Robinson, 2001). The practice has been a matter of concern to many women and groups as it has caused many women sorrow,

frustration and unnecessary grief. It has even made young men agitated over the enormous cost. The practice under the three cultures is to a large extent similar with some difference.

Similarities

Bride price is recognized as an integral part of customary law marriage. Unlike the Indian culture where the bride's price is paid to the man's family by the woman, in Nigeria it is paid to the woman's family by the man.

Marriages had been delayed or cancelled because of the non-payment of the full bride price or because of disagreement during the negotiation process. Under the Igbo culture, the bride price was considered to be on the very high side and this caused late marriages for the women and anguish for the men.

The decision of fixing the bride price is the duty of the elderly male from the paternal side of the bride in agreement with the groom's family. The bride price is not negotiated on behalf of the bride or for the use of the bride. She does not share in the proceeds of the bride price. The proceeds are shared by the family members and the payment seals the customary marriage.

Under the traditional system, a woman whose bride price has been paid may be forcefully "abducted" by the man to whom she had been given out in marriage.

This customary practice has implications that amounts to violence on women.

- (i) Transfer of right: The nature of the practice is an indication and confirmation that a woman is viewed as a chattel with a price tag that is purchased by a person who pays the price. The "purchaser" like a purchaser of goods in law has a right to deal with the "purchased chattel" in any manner. This is the attitude of men under customary law with regard to their wives.
- (ii) Loss-of right: After the payment of the bride price, the woman becomes married to the man who paid it. If the marriage breaks

down the woman remains married until she or her family returns the bride price to the man for her to regain her freedom. Non-repayment of the bride price makes the woman remained married to the man to the extent that any child borne of the woman outside the marriage is deemed to be the child of her estranged husband. The issue is more severe where the woman is unable to refund the bride price for economic reasons.

(iii) **Exploitation:** Under customary law, the male child is valued more than the girl-child for prestigious and economic reasons and for the preservation of the man's lineage. In the issue of marriage and for selfish economic reasons, the girl-child whom was valued as and given economic significance for the purpose of contributing wealth for the family. A mother was reported to have stated that she preferred her daughter to marry a wealthy man who could help her now that her husband was dead. The mother had already chosen a man for her daughter to marry. This was regardless of the fact that the girl had made her own choice. The mother's choice had to prevail. The rich man chosen by the mother sent presents to the family and even promised to take the mother-in-law on a holy pilgrimage as soon as the marriage was performed.

Polygamy

Polygamy is another practice associated with the customary law marriage in the three cultures. It is an indication of social standing, a sign of affluence and is counted as a sound economic and social investment. The practical outcomes are for the benefit of the men. Under customary law, polygamy cements alliances with many villages from where the many women come, therefore it served to prevent wars (Bingham, 1982: 95). Economic rationalisation promoted polygamy. It increased the labour force of a man from within his own family (Bingham, 1982: 93). Social motives contributed to polygamy in the traditional society. It raised the

status of a man on the basis of the number of wives in his household (Basden, 1965: 97; Obi, 1998). In traditional societies women became the chief supporters of the practice. The reason was that an only wife was considered a jealous and intolerable woman terms considered improper and derogatory. In addition, the position of an only wife in traditional society was unenviable and humiliating and the husband was subject to ridicule and scorn. Uchendu (1965: 85) claimed that traditionally, Igbo women went to the extent of financing polygamy where the husband could not afford it because it enhanced their social status, lightened domestic chores now handled by the junior wife and gave them more leisure to do more trading (Eades 1980; Bingham 1982: 94; Obi, 1998).

With the wide spread of polygamy in traditional societies in Africa, it is interesting to note that there were proverbs that did not support polygamy. These proverbs are not new inventions but arose from the traditional societies. In the Yoruba language, the proverb goes thus "One only is the best number of women that should be in man's house. Make them two and you bring jealousy, if they become three, they throw the house in disorder (Falade, 1996). In the Kikuyu culture of East Africa, the proverb is "two wives are like two pots of poison" (Bingham, 1982: 96; Robinson, 2001).

With western contact, education and modernisation, the customary practice of polygamy has greatly reduced though it is still practiced not only in the rural societies but also in large cities.

Polygamy and its effects

Polygamy has its effects on the individuals in the marriage and the society at large. These include the under listed effects.

1. Instability in marriage (Olusanya, 1970; Bingham, 1997);
2. Unhealthy rivalry (Bingham, 1997);
3. Unhealthy competition of child bearing (Sembajwe, 1981);
4. Spread of HIV/AIDS.

Differences

With the similarities in the practices of customary marriage in the three cultures, there are also differences.

In the Hausa culture, consanguineous marriage is very widespread. This occurs when two close relatives marry one another. The bride and the groom are close cousins whose marriage is arranged by blood brothers or sisters who do not seek the consent of the parties to be married (Issaka, 1992).

The Hausa marriage under customary law is also ethnocentric. Nobody from another ethnic group was allowed to marry a Hausa girl. According to Dawoui (1998) "they marry each other in order not to have "blood mixture." With western contact, migration and urbanisation the ethnocentric practice has whittled down and many inter-ethnic marriages are taking place.

Many reasons have been given in support of consanguineous marriages. These are:

- (i) Strengthening of family relations (Ibrahim, 1992);
- (ii) Prevention of strangers "contaminating" the purity of a lineage;
- (iii) Preservation of the family lineage from extinction (Ibrahim, 1992).

This practice is not without its effects. These include:

- (i) Medical implications of congenital sicknesses of children born in such a marriage;
- (ii) Incompatibility as a result of an arranged marriage;
- (iii) Bitterness within a once united family in cases of a broken marriage (Issaka, 1998);
- (iv) Unhealthy rivalry between suitors within an extended family (Dan Lamso, 1998);
- (v) Absconding of the bride from the home (Ibrahim, 1998);
- (vi) In extreme cases it led to tragedy when a bride committed suicide (Moussa, 1998).

Children in marriages under customary law

Children play an important role in any marriage under customary law in Nigeria. They occupy the central point in the marriage. Fertility in marriage is considered of the greatest importance unlike in the western world.

The love for children is exhibited in some of the names given to children in Nigeria. Names like "Omodunbi"— it is good to have a child or "Omodunke"— it is good to have a child to care for — suggest the importance attached to children under the Yoruba culture.

In the Igbo culture, names such as "Nwabu-Uwa" literally meaning a child is priceless or most precious and "Nwaka-aku" a child out values money is an indication of the value placed on children.

A childless woman under customary law in Nigerian culture is regarded as a source of disappointment to her family and husband. In Yoruba culture, she is referred to as an "empty gourd" signifying waste, emptiness, or uselessness. In the Igbo culture the position is the same. A childless married woman is called Nwanyi-Iga (sterile woman) or "a man".

The myth is that she is a witch who had killed in a mysterious way all the children she should have given birth to in the world.

Childlessness

Childlessness in a marriage is blamed on the woman and never the man. She is blamed, abused and ridiculed while the man is pitied and in most pacified and suggestions given to him to look for an alternative way of having children.

This has caused problems in marriage and at times resulting in divorce and polygamy with the attendant problems already enumerated.

Another effect of childlessness in marriage under the Igbo culture is the recognition of "woman to woman marriage." This popular

Igbo practice under customary law is where a sterile or childless married woman tries to fulfill her obligation of producing a child through her husband and therefore strengthening her position in the husband's house. The practice is that the sterile woman pays the bride price for another woman whom she marries for her husband with a view of raising children for her through her husband (Obi, 1998; Bingham, 1982; Robinson, 2001).

Family without a male issue

Gender discrimination based on sex is common practice in Nigeria. The preference for male children to the detriment of the girl child is still common in Nigeria today. The expectation of sons is to ensure continuity of the family through generations to come (AllAfrica.com, 2001).

The woman is blamed for not bringing forth male issues in the family even though it is known that there is medical evidence to prove that the man determines the sex of the child.

In the Igbo culture, there is a customary practice to do with when a man dies without a male issue. One of his daughters is chosen to stay back in his household, selects lovers with whom she cohabits and begets children on behalf of her father so that the lineage does not perish. In Igbo culture the women are known as "Idegbe" and in Edo culture they are called "Arewa." The woman is precluded from making a choice to marry during this period so that the issue of affiliation of the children given birth to would not be a matter to be contested by the lovers.

Happily the Court of Appeal, Enugu Division in the case of *Muojekwu v. Ejikeme* (2000) found the above custom to be discriminatory and in violation of the right of the female to marry. The custom was declared unenforceable and the court held that a female child did not need the performance of the culture to inherit her father's estate.

Customary law of inheritance

The cultural practice of inheritance is not under a uniform law in Nigeria. Three systems of inheritance operate hand in hand and a person's ethnic group and religious affinity determine which law will apply. The customary practice of inheritance has an historical antecedent. Colonisation has a part to play in the inheritance practices in most African countries.

With the coming of the colonialist, African men were suspicious of them and did not expose their wives to them. The men entered the labour force to work with them and they saw African men as the breadwinners. With the introduction of privatization and exchange of land, the transaction was done between the colonialist and the men. This helped to ensure male dominance of the economic, social and political sphere and the further decline of women's economic and social status. According to Pearce (2001:95) the colonial government and the private corporations because of their interest in the acquisition of land ensured that women generally were allotted smaller or less fertile land or land was sold without their knowledge (Saito, 1994: 50-51).

The post-colonial state has perpetuated this bias. The superiority of men permeates the social system in the way values are instituted, roles are ascribed, resources are divided and the division of labour is organised for men and women. Women generally are not entitled to control lineage land although it was allotted for use. These user rights were easily ignored when privatisation and purchase of land, which hitherto was unknown, began with western contact.

Historically, women had influence or personal rights within their clan or kin based group but always under the tutelage of male elders in the patrilineal descent groups and were mostly responsible for bringing forth children and domestic work. This resulted in women not owning land (Arigbede, 1997).

There are differences in the inheritance practice when a woman is within her lineage and when she intends to claim property by virtue of marriage. There are also differences in inheritance practices

within a patrilineal and matrilineal group. The different practices will be examined briefly.

Inheritance within the lineage

In the Yoruba and Hausa customary law, a woman can inherit land within her own patrilineage. However, her brothers easily contest her claims to such land once she moves away from the lineage to get married. A woman is seen as a "source of further people for men's households" and not as "a magnet attracting people into household of their own" (Barber, 1995:77).

The Hausa customary law allows women to own property. A woman can inherit from either of her parents though they seldom do. The female is entitled to half of the share of what the sons get. In practice where the only surviving child is a female, her uncle occupies the land as of right, but the female child is entitled to the proceeds of the farmland (Holmes and Holmes, 1995). However, with increasing pressure on land, females tend to receive movable and more liquid assets, as inheritance while land remains close in the hands of men (Palmer, 1991). Under the Maliki or Islamic law, there are fixed shares of inheritance, which are gender based.

This same practice is found in the Yoruba culture. A woman can inherit from her parents or from her brothers or sisters (Adedoyin v. Simeon, 1928). The case of *Victoria Bola (F) v. Sam Ojo (M)* further buttresses the fact that women can inherit from their parents. In the 1944 case, Victoria Bola sued her husband for divorce and for the refund of a sum of money she kept with him. According to her, the sum of money was from the proceeds of the cocoa products she sold from the land she inherited from her late father. She proved and won the case (Ojo, 2001).

In a similar case, her brother who objected sued Mrs Kolade to her inheriting their late fathers land because according to him a woman cannot inherit land. The native court overruled his claims and held that the sister could inherit land. (Ojo, 2001).

The Igbo customary law is different from the Yoruba and Hausa customary law on inheritance from the lineage. In the Igbo culture the system of inheritance is either patrilineal or in certain areas of Abia State of Nigeria, matrilineal. Under the Igbo customary law, a woman cannot inherit land from her lineage. In all areas of land holding, women are excluded as land passes from the father to the male children. An unmarried daughter has a right to live in her father's house, but she is not allowed to cultivate the land as her own. As Korieh stated: "Why should a woman be allotted land? She married away from this village and can only have access to land where she marries. Her access to land will be through her husband and children" (Korieh, 2001).

To further buttress the fact that Igbo customary law does not allow female inheritance, a female is not allowed to inherit the property from the father's estate even where there is no male issue to inherit the property. In such cases, the property passes on to the eldest adult male in the family.

Inheritance through marriage

In a statutory marriage, the inheritance law is governed by the Marriage Act (1990) that provides that a woman can inherit part of her husband's property and estate including land (Section 26). Where there is a will, the property will be administered in accordance with the wishes of the deceased. However, this is a theoretical aspect of the law. The reality is a different thing. The multiplicity of the laws on inheritance leaves a gap that permits the courts and self styled traditionalists who include the unscrupulous relatives to choose the laws that are beneficial to their self-interest and to the disadvantage of the woman. Under the Igbo customary law, a woman cannot inherit land from her husband's estate. The relatives of the deceased usually regard such property as family property and a birthright. Acquisitions of property with a spouse are not recognised under the custom to give the woman any right to any part of the property even when it is proven.

The only means of inheritance by a woman of her husband's estate is through her male child if such child agrees to give the mother any part of it. A childless woman is a loser through out, as she does not inherit anything. The courts have also compounded the issue by upholding such discriminatory customary practices. In a customary court decision, the traditional ruler had this to say on the custom:

"The Eze, (king) who is the custodian of the customs and traditions of this town in no equivocal manner condemns the practice of purported purchase of landed property from women or housewives. Such practice is disallowed by the customary laws of the town particularly in a case such as this where the woman, a widow for that matter has a grown up son who is the automatic heir to the estate of the deceased father (Palace Records, 1988).

In an appeal in the above case to the customary court in Ahiazu, Mbaise in 1989, the court held that:

"It is unheard of, that a woman with a grown up son can sell her husband's land in the absence of the son. It would be uncustomary if this court were to find for the defendant claiming that he bought a piece of land of a man with a son from his wife" (Suit No. CCC H/59189).

The rationale for the decision above becomes clearer in another decided case on this customary law practice of inheritance.

"The native law and customs alleged here is that property cannot be allotted and descended through a wife. If such native law and custom exists, it would mean that on the death of a childless wife, not of the same family as her husband, property vested in her would pass away from the husbands family from whom the wife became entitled to it to the wife's family" (Omiyi, 1980).

The formal courts appear to have given judicial notice to this customary practice in Igbo land. In *Iboma v. Ibeneme* (1963) the Supreme Court of Nigeria, the highest court in the land held inter alia: "...of course it would be absolute nonsense in the

circumstances for a widow who is herself regarded as property to turn around to claim property from her late husband."

In the Yoruba culture, a married woman does not have any inheritance right in her husband's property. She is regarded as part of her husband's property to be inherited along with other properties. In the case of *Suberu v. Sunmonu* (1957), the supreme court held that, "a wife could not inherit her husband's property since she herself is like a chattel to be inherited by a relative of her husband." In an earlier case of *Sogunro Davis v. Sogunro Davis* (1929), Beckley J said, "Yoruba native law and customs deprived the wife of inheritance rights in her deceased husband's estate because devolution of property follows the blood." The same practice is found among the Ijaws in mid-western state of Nigeria.

The position of the Hausa woman is different from the other groups discussed above. Under the Hausa customary law, a woman has a right to inherit from her husband's estate even where she is childless (www.law.emory). Under the custom, the woman has ensured support for herself and her children and it enhances patrilineal inheritance of cattle (Stenning, 1959). In Adamawa State of Nigeria, among the Hausa/Fulani groups, the inheritance practice is that the parent of the deceased and the widow share the property equally (Okoye, 19).

Generally women either married, unmarried or widowed are being tossed up and down. Within their lineage, they are deemed to have no right because they are expected to marry and benefit from their husbands property. As married women they are considered to be strangers who have no part in the inheritance.

Another practice closely linked with inheritance is the customary practice of leverite. This is the practice where a family member inherits a married woman whose husband is dead. This customary practice is found in the three groups and still practiced in rural communities. The practice is degrading and harmful. The woman is deemed to be a chattel that should be inherited with other properties since a bride price was paid on her. In the Yoruba and

Igbo cultures, a brother or son of the deceased, but not the son of the woman, were allowed to inherit the woman as a wife. Young widows continue with child rearing with the new husband. The influence of education and urbanisation has reduced the practice of this culture.

Widowhood under customary law

Widowhood is a multifaceted tragedy. It is overwhelmingly a woman's problem, which reveals atrocious social injustice. It joins a woman into the category of the marginalised defenseless and invisible beings. Under the Igbo culture, widowhood is used as slang for being defenseless. As Afigbo notes (1989), when a person is assaulted and such a person effectively fights back, it is common to hear the person attacked taunt the surprised attacker as follows, "Perhaps you thought you were dealing with a widow." Supporting the aforementioned assertion, Koriech cited an Igbo saying which states: "Why should a man who goes to his widow concubine be in a hurry to depart. Is it that he does not know where her husband had gone" (Koriech, Chapter 2: 2). This is the general plight of a widow who is seen as weak and defenseless.

There are many widows among the adult female population in Nigeria. This problem is compounded by the rampant cases of war and confusion in the country. In such confusion and riots, men are more among the casualties and women suffer. The number of widows increased dramatically in eastern Nigeria between 1967 and 1970 after the Biafran civil war, in western Nigeria after the Modakeke life disturbance and the numerous religious upheavals in northern Nigeria.

Traditional practices deeply embedded in the customs of many societies now constitute the greatest threat to the human rights of millions of widows. These customary law practices vary from culture to culture, however, generally they can be described as cruel and inhuman and expressly forbidden under several International Conventions and Treaties.

Widows are subjected to humiliating and degrading burial rites and mourning practices in the name of custom. It is pathetic to note that the traditional custodians of cultural practices in widowhood are almost exclusively female who rigorously enforce these practices leaving the widow isolated, impoverished and damaged.

Generally, there are some myths associated with widowhood. They are as follows:

- (i) The widow is the first suspect in the death of her husband. For this reason, she is made to undergo rigorous, unhealthy and demoralising rites with the belief that she would die if she were a party to the death.
- (ii) Widowhood is regarded as a taboo that should not be discussed openly for fear of evil happenings on the discussants. This explains the dearth of literature on the issue.

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. According to Nawadinobi (2001) at the death of a spouse a widow is dethroned, defaced and disinherited. According to her, 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 when the widow is expected to look unattractive, dirty, unkempt with her hair shaved and denied of washing. The "disinheritance" comes in when the widow is dispossessed of all the property she had acquired with her husband.

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.

Customary law practices of widowhood

The practices of widowhood vary from culture to culture. However, there are similarities in the practices, the differences being in the intensity. These will be highlighted below under the following headings.

- i. Sets of expectations as to actions and behaviour of the widow;
- ii. Actions of others towards the widow; and
- iii. Rituals and burial rites performed by the widow.

The outburst of intense wailing, weeping and hysteria, full vent of grief by beating the chest, rolling on the floor and aimless hours of crying are common expectations as to the actions and behaviour of a widow. In some cultures in Igbo land, the widow is fined when she does not cry or the crying is judged insufficient (Korieh, 19: 46). On the contrary, men are not expected to cry in public or to show outward grief.

Amongst the Igbo the shaving of the hair of the widow is a common feature. However, the effect of Christianity has whittled down this practice but it is still observed in the rural communities. Widows who refuse to observe this practice on the grounds of religion are usually punished by excommunication.

The mourning rites are also a customary practice still observed. This is a period of seclusion from common activities by the widow and it is usually during this period that the oppressive and dehumanising acts are inflicted. The duration and intensity of the mourning rites vary from culture to culture. Among the Hausa, the periods are shorter (Trimmingham, 1959). With the increase in the number of working women due to education, urbanisation and migration the periods are shorter though still observed.

The influence of Christianity has influenced these customary law practices and a change is being observed. The mourning dress, which used to be black, has now changed to white or some other colour. There are elements of exploitation in the practices mentioned above in widowhood. Other women exploit the assumed defenseless position. This is particularly true of the "Umuada's"

under the Igbo culture. These are the patrilineal daughters in the family who retain intense influence over what happens within the family in which they are born, though some are married. The practices are engineered and are meted out by these groups of people onto the widow. This is done either out of vengeance for what they suffer in their matrimonial homes or out of spite on the widow or to generate funds. Leith-Ross (1963) gave an example of such exploitive motive behind the injustice inflicted on the widow. She stated that under a regulation issued in 1930 in Owerri, a city in East Nigeria, customs stipulated that the fee for the shaving of the hair of the widow should be one shilling and the shaving was done by one of the relatives of the deceased husband. However, if the women in their judgment felt that the deceased should have married more than one wife, the widow would be made to pay the total amount of money the shaver would have collected had the deceased married the expected number of wives.

All these practices are against religious tenets and instructions as widows were in particularly mentioned in the Bible as a category of people to be cared for (The New King James Bible; Omar Tarhuni, 2001).

The effects of widowhood practices

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

- (i) Physical harm as a result of crying and rolling on the ground;
- (ii) Medical effects—viruses, scabies, diarrhoea, typhoid, malaria, pneumonia, hypertension and stroke.
- (iii) Psychological effects—stress, depress and fear (Nwadinobi, 2001).

The Nigerian legal system: The position

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.

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 (Section 41). 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 law (Eastern State, 1956).

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 their decisions in issues of marriage, inheritance or widowhood, disregarding the provisions of the statutes and their decision resulted in inflicting violence on the woman. The roles played by the regular courts have not been consistent. However many judges are now on the progressive path and have taken the bull by the horns in upholding justice. See *Okonkwo v. Okagbwe* (1994), *Mojekwu v. Mojekwu* (1997), *Ukeje v. Ukeje and Anor* (February 26, 2001). In all the three cases above, the judges denounced such repugnant and discriminatory practices. 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.

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. An example is the native courts or the "Umuadas" in Igbo land. 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.

It is known that in the enforcement of customary law, it is a rule that the native law, tradition and custom are not to be enforced if they are distasteful, offensive and opposed to natural justice or contrary to any written or official law (Proclamation No. 6 of 1900). 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.

Agenda for Change

The evils associated with the customary practices of marriage, inheritance and widowhood cannot go away if left unattended to. Action needs to be taken to ensure that the gradual changes, which appear to have started, continue until all discriminatory practices are eliminated. The strategies for all forms of practices are the same and they are highlighted below.

- (i) Education: It plays an important role in causing societal change of value in land and property right. Without this societal change of value, social action efforts end up being isolated and do not cause structural transformation. Education is an instrument of change. The emphasis is on educating and gender sensitisation of both men and women. This is an effective way of transforming popular beliefs and attitudes. This can be done through awareness programmes in the local languages, the distribution of booklets

- and posters in local languages for the educated group and drama for all, stressing the dangers and the need for change.
- (ii) Alternatives to school curriculum: The set cultural values which have been introduced in text books and the school curriculum must change to accommodate the view that women's rights are human rights.
- (iii) Training and empowerment programmes: This will include the formal and informal education to enable women to come out of their shells and be productive and not just child bearers.
- (iv) Participation of women in key positions of decision-making: The voice of women must be heard in issues that pertain to them. Women must be represented in key positions to contribute to issues about their well-being.
- (v) Mobilizing support groups at the grassroot level
- (vi) Efficient networking among women groups: The individualist attitude of most women groups will not bring about the change being advocated here. There must be local, national, and international bodies to address the issues.
- (vii) Support capacity for the building of network groups: Funding has been a major problem of many groups. Funding and donor agencies have to assist in funding and monitoring these groups for effective action.
- (viii) Lobbying of the Government by Women Groups: This can be achieved by building a link with the media. Where there is failures to implement international treaties to which the country is a signatory publicity should be given to such acts. Many civil society organisations have utilised this method effectively leading to changes and amendments in national laws.
- (ix) Reforms in the present national laws: Legislation is good. However, reforms alone cannot help. Other social institutions must be put into place to achieve the desired results.
- (x) Governmental effort: There is the need for the government in Nigeria to start a social security scheme on a low scale to assist its citizens.

- (xi) Involvement of religious and traditional leaders: The custodians of culture must be carried along in the move for a change. However, with education and sensitisation, new ideas may take over the archaic ideas.
- (xii) Involvement of the non-governmental organisations: The involvement of NGOs is an invaluable action in the move for change. Being non-partisan, they have the ability of presenting the true facts and confronting the government. In Nigeria NGOs have been helpful in issuing an updated and correct report on the activities of the government with regard to the implementation of international treaties.
- (xiii) Consultative status at the United Nations: NGOs should have a consultative status at the United Nations. Especially with such an organisation like the economic and social council that promotes issues relating to living standards, employment, economic and social progress as well as promotion of universal respect for human rights. The framework for pushing forward the problems of women on an international agenda is already in place.

Time for a change

Cultural diversity in a multiethnic society makes each group unique in its cultural practices. The destruction of a culture is to destroy the root from which human society sprung. However retaining a culture that is oppressive is destroying the oppressed. Culture is constantly being modified and it is not expected to change overnight. The change must be in motion and it should be progressive. All efforts must be made to preserve the positive aspects in all cultures but at the same time global changes must not be ignored. It is conceded that not all global changes are ideal, however notable changes that do not destroy the fabric of the Nigerian culture, but are for the well-being and development of the general population should be embraced.

Culture is not resilient. It is dynamic. It is notable that culture has been dynamic in the areas of fashion, technology and the effect

of western contacts is manifested in these areas. In the same way, human consciousness is needed for a cultural change in practices that are discriminatory, oppressive and dehumanising, especially where they affects women.

The process may be slow, but the change should start now. It is not an individual task. It is a collective one approached from a multifaceted perspective. The three tiers of government in Nigeria, the federal, state and local governments, the custodians of culture and traditions, the agents of the criminal justice system, non-governmental organisations, the men folk and women are all agents that will be needed in this move for a change against the wide spread of customary law abuses and in eliminating discriminatory practices against women. The time is now.

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