

APPRAISAL OF THE IMPACT OF CUSTOMARY LAW ON THE RIGHTS OF WOMEN AND GIRL CHILDREN IN NIGERIA*

Abstract

Customary law is an important source of law in Nigeria because it regulates the lives of over half of Nigerians particularly on matters concerning marriage, property, and inheritance. While its role in maintaining social order and cultural identity within communities is undeniable, its despicable perpetuation of harmful practices against women and girls over the years and across cultures cannot be tolerated. Drawing on previous studies and analyses of relevant laws and decided cases on the subject, this paper deliberates the interplay between customary law and the rights of women and girls in Nigeria, while focusing on specific cases and citing examples of women's rights violations under different customary laws in the country. The paper found that notwithstanding its valuable role in maintaining social order and cultural identity in communities, customary law has become a discriminatory breeding ground for violations against the rights of women in all parts of Nigeria. From discriminatory inheritance practices to child marriage and lack of access to education, the shadows of tradition often obscure the light of gender equality. Although over the years Government and other stakeholders at all levels have attempted different strategies (legislative, judicial, and administrative) to eliminate harmful customary norms against women and girls; these practices still persist. Therefore, to effectively tackle the ongoing struggle for gender equality amidst the tension between tradition and human rights, the paper recommended a multifaceted approach requiring a combination of legislative reform, cultural sensitivity, community engagement, access to justice, and women empowerment.

Keywords: Customary Law, Women and Girl Children, Human Rights, Discrimination, Violations, Nigeria

1. Introduction

Nigeria is one of the most diverse countries in the world with well over 350 ethnic groups¹. Before the British Colonial Administration, several indigenous kingdoms constituted the realm and were ruled according to the native laws and customs of each respective kingdom. Despite the influence of time, religion, and modernization, many ethnic customs have endured and Nigerians remain strong adherents of these customs. Hence, customary law regulates the lives of over half of Nigerians particularly on matters concerning marriage, property, and inheritance.² While playing a vital role in resolving disputes and maintaining social order within communities, the complex relationship between customary law and women's rights remains a lingering concern. This paper explores the ways in which customary law, notwithstanding its positive functions, can become a discriminatory breeding ground for violations against the rights of Nigerian women, and explores the ongoing struggle for gender equality amidst the tension between tradition and human rights.

2. Definition of Terms

Customary Law

There is no universally accepted definition of customary law, and terms such as; 'native law', 'African traditional law' and 'local law' are often used interchangeably when referring to customary law. However, scholars and jurists have provided some working definitions. For instance, a very simple definition of *custom* is provided in the Merriam-Webster Online Dictionary as 'a usage or practice common to many or to a particular place or class or habitual with an individual'³. Elias defined customary law as, 'A body of customs accepted by members of a community as binding upon them'⁴; while Lon Fuller described customary law as a 'language of interaction'.⁵ Judicial authorities have also proffered some definitions of customary law. Thus, in the case of *Zaidan v Fatimah Khalil Mohsen*⁶ the Supreme Court defined customary law as: 'A system of law, not being the common law (of England), and not being a law enacted by a competent legislature in Nigeria, but which is enforceable and binding within Nigeria as between parties subject to its sway'. Similarly, in *Oyewunmi v Ogunesan*, Obaseki JSC Defined Customary law as: 'The organic or living law of the indigenous people of Nigeria, regulating their lives and transactions; it is organic in that it is not static, is regulatory in that it controls the lives and transactions of the community subject to its sway'.⁷ Customary court Rules (Laws) of various states in Nigeria are not left out in giving working definitions to customary law. For example, the Plateau State Customary Court of Appeal Law defines customary law as: 'The rule of conduct which governs legal relationships as established by custom and usage and

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¹ Vanguard, Full list of all 371 tribes in Nigeria, states where they originate<<https://www.vanguardngr.com/2017/05/full-list-of-all-371-tribes-in-nigeria-states-where-they-originate/>>accessed 8 December 2023

² Tobi identifies the sources of Nigerian Family Law as: the Nigerian Constitution; Customary Laws that have been in existence from ancient time; Islamic Law that is universally applicable among Muslims; and Received English Law brought into the country by the British colonialists. Other sources include International Law, Case Law, and Legislation.

³ Merriam Webster Online Dictionary<<https://www.merriam-webster.com/dictionary/custom>>accessed 14 March 2024

⁴ Lon L. Fuller, Human Interaction and The Law< <https://academic.oup.com/ajj/article-pdf/14/1/1/7289948/ajj-14-1.pdf>>accessed 11 January 2024.

⁵Ibid.

⁶ (1973) All NLR 740 at 753.

⁷ (1990) 3NWLR pt 137 p.182 at 207 SC.

not forming part of the common law of England nor formally enacted by the Plateau State House of Assembly but includes any declaration or modification of customary law but does not include Islamic personal law.⁸

From the definitions offered above, it can be discerned that Customary law is said to be the law which is derived from the customs and traditions of a particular group of people or society that accept to be regulated by such custom. Thus, the accepted customs and traditions regulate various kinds of relationships between members of such community.

Human Rights

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status; human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.⁹ International human rights law lays down the obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.¹⁰ The United Nations Declaration of Human Rights (UNDHR) sets out, for the first time, fundamental human rights to be universally protected. In Nigeria, these rights are guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as fundamental rights. Beside the fundamental rights of citizens constitutionally guaranteed in the 1999 Constitution (as amended), same has been provided for in the African Charter on Human and Peoples' Rights domesticated by Nigeria as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap. 10, Laws of the Federation of Nigeria, 1990 and it is the duty of the court to protect these Rights.¹¹

Gender and Sex

In discussing the human rights of women, certain basic concepts require explanations and clarifications; they are 'sex' and 'gender'. Sex is the category into which humans and most other living things are divided on the basis of their reproductive functions. It refers to biological attributes of men and women¹². These attributes are universal, biological, generally unchangeable and natural. Sex differences are basically the biological differences between men and women such as sperm production, pregnancy, lactation etc. Gender, on the other hand refers to social and cultural constructed roles, attributes, and responsibilities assigned to men and women in a given society¹³. The resulting relationships between men and women could be one of connection, conflict, inequality, competition, separation, support, and indifference, or a combination of all these. Both men and women are to think, act and respond to several social situations according to the dictates of their gender. Gender relations are manifested generally by unique power relation between men and women especially in social, political, economic and cultural spheres of life. No wonder, women constitute the majority at the bottom rung of the ladder of the society. In Nigeria for example, some of the clear manifestations of gender practices include but are not limited to following:

- i. Low value for women and preference for male children
- ii. Early and forced marriages
- iii. Harmful widowhood rites and practices
- iv. Female genital mutilation and other harmful traditional practices
- v. Discriminatory laws and practices in the public sphere
- vi. Domestic violence
- vii. Sexual assault/harassment/inducement
- viii. Exploitation and trafficking
- ix. Subordinate position of women
- x. Stereotyping of profession
- xi. Low participation of women in public service

Several institutions have been identified as the avenues where gender is socially constructed. These include the family, religious institutions, educational institutions, government, media and culture. Gender roles are learnt from all these sources, which emphasize 'appropriate behavior' gender stereotypes, roles and attributes.

From the foregoing, it is abundantly clear that most stereotypes associated with women as being weak, emotional, jealous, superficial, and intellectually inferior, lack any rational basis other than social constructions.

3. Characteristics of Customary Law

Customary law has several important features¹⁴ that distinguishes it from other sources of law. It is largely unwritten; It is accepted as binding in the society; It differs from tribe to tribe (it is not uniform); It must be in existence at the material

⁸ Plateau State Customary Court of Appeal Law, 1979 sec. 2

⁹United Nations, 'Peace, Dignity, and Equality on a Healthy Planet' <<https://www.un.org/>> accessed 31st January 2024.

¹⁰ibid.

¹¹ *Hassan v. EFCC* (2014)1 NWLR (pt.1389) at 607 p. 636.

¹² See Lexicon Dictionary< <https://www.lexico.com/en/definition/sex>> accessed 19 February 2024.

¹³ Collins English Dictionary < <https://www.collinsdictionary.com/dictionary/english/gender>> accessed 19 February 2024.

¹⁴ Ese Malemi, *The Nigerian Legal Method*, Princeton publishing Co, 2nd edition (2012) p.162.

time; It is not a frozen or rigid system of law i.e. it is flexible or elastic; It is derived and based on customs and usages of a particular people¹⁵.

Customary Law is Mostly Unwritten¹⁶

Customary law is mostly unwritten, although some customary laws are partly codified. Concerning the unwritten nature of customary law, Elias CJN in *Zaidan v Mohssen*¹⁷ remarked: 'Customary law is any system of law not being the common law (of England) and not being a law enacted by any competent legislature in Nigeria, but is enforceable and binding within Nigeria as between the parties subject to its sway.' There is an enduring debate as to whether customary law should remain unwritten or otherwise. Those who support the argument opine that if customary law is recorded and documented for posterity, it will be protected with certainty and this will prevent it from being vague in terms; and the application of its provisions would be uniform. The opposing view on the other hand is that documenting customary law would make it crystallize and lose its flexibility, which is a necessary dynamic that enables it to adapt to changing times and society and consequently its acceptability to members of society¹⁸. Regardless to the two views expressed, the position in Nigeria is that customary law cannot be found in statute books because they are not enacted by legislature. For this reason, customary law is only applicable in civil matters as section 36(12) of the constitution states that all criminal laws should be written and customary laws are mostly unwritten.

Customary Law Must Be Accepted as Binding in The Society

Customary law depends upon the acceptance of the custom of the particular community whose affairs is intended to be regulated. Thus, it has been described as the 'mirror of accepted usage'. It was established in the case of *Eshugbayi Eleko v. Federal Government of Nigeria*¹⁹ that: 'Barbarous or mild; a customary law must be shown or recognized by the natives before it can have the force of law. It must be recognized by the people as their part of life; it must be accepted by the people and seen in their ways of life.' In *Agbai v. Okogbe*²⁰, the Supreme Court said custom is a rule which in a particular district has, from long usage, obtained the force of law. Customary law must therefore be endorsed by members of a community subject to its sway²¹.

Customary Law is Not Uniform and it Differs from Tribe to Tribe

As a mentioned in the earlier parts of this paper, there are many tribes in Nigeria and each tribe has its distinct customary law. The Supreme Court held in *Olubodun v Lawal*²², that customary law is a set of rules of conduct applying to persons and things in a particular locality; thus, customary law varies with locality. However, it is worthy to note that in many instances, the general rules which may obtain regarding several matters within a particular tribe may be similar; but containing different specifics within the sub-tribes or communities.

Customary Law Must Be in Existence at The Material Time it is Alleged

For a custom to have the force of law, it must be in existence at the material time it is alleged, claimed, or sought to be proved as a binding custom. A custom that does not exist at a given material time is dead and cannot have force of law as a customary law. Hence in *Kimdey v Military Governor of Gongola State & ors*²³, Karibi Whyte JSC stated that one of the characteristics of customary is that it must be in existence at a material time. This implies that customs show the practices or usages that are prevailing or acceptable in a society at a given time; and for a custom to pass the test of being a law, it must be proven to be in existence, at the time of such claim.

Customary Law is Not Rigid

Customary law is flexible, and has the capacity to adjust to changing circumstances, thereby absorbing the strain of dynamism to comply with the demands of a developing society.²⁴ Thus in recognition of the flexible nature of customary law Osborne CJ in *Lewis v Bankole* observed that, 'Indeed, one of the most striking features of West African native custom to my mind is its flexibility'. Weber J. also stated that; 'the chief characteristic feature of native law is its flexibility'.²⁵ This feature of customary law is striking, and there are several illustrations of the flexibility of customary law in Nigeria. One of such is the Yoruba custom of inheritance of *ori-ojori* method of distribution (per capita) or direct distribution of the property among the children of the deceased equally; which has come to be accepted as a more equitable alternative to the earlier *idi-igi* (per stripes) custom of distribution or distribution according to the number of wives²⁶. Also, it is no longer a tradition in a Yoruba setting for a widow to marry the next relative of a deceased husband.²⁷

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ (1973)11 SC 1 at 2.

¹⁸ *Ibid.*

¹⁹ (1931) AC.

²⁰ (1999)1 NWLR (Pt 204) 391.

²¹ *Ibid.*

²² (2008)17NWLR (pt1115)1at 3.

²³ (1988) 2 NWLR pt.77, p.445 at 461 SC

²⁴ *ibid* pp 116 & 117. *Agbai v. Okogbue* [1991] 7 NWLR 391.

²⁵ *Balogun v. Oshodi* (1929)10 NLR 36 at 57

²⁶ *Re Abike & ors* (1969) 2 All NLR 123

²⁷ *Re Estate of Agboruja* (1949) 19 NLR 38

4. Application of Customary Law in Nigeria

Nigeria's legal history can be classified into pre-colonial, colonial and post-colonial phases, and customary law has always been a part of the legal system. Before the colonialization of Nigeria in 1861, customary law was the source of law in the land, with Islamic Law gradually being introduced into the Northern parts of the country with the practice of Islam. The applicable law during colonial period in Nigeria was Common Law of England, while the Constitution became the supreme law after independence as law from which all other laws gain their validity. Accordingly, Section 1(1) of the Constitution states that the Constitution is supreme and its provision shall have binding force on every authority to the extent that²⁸ any law which is inconsistent with any provision of the Constitution is deemed void to the extent of its inconsistency. This means that every customary law, even after it has been established as accepted in the community concerned, must necessarily meet statutory requirements laid down for its applicability.²⁹ Thus a custom shall not be enforced as law if it is repugnant to natural justice, equity and good conscience or incompatible, either directly or by its implication, with any law for the time being in force. The foregoing is also in line with section 16(3) of the Evidence Act 2023 which mentions that custom shall not be enforced as law if it is contrary to public policy, and not in accordance with natural justice, equity, and good conscience. Consequently, the Court held in *Asika v. Atuanya*³⁰, that customs which discriminate against women are repugnant to natural justice, equity and good conscience and must be abolished as it should not be allowed to rear its ugly head. Similarly, in *Timothy v. Oforka*³¹ it was held that no law or custom that stands in the way of the Nigerian constitution should be allowed to stand tall no matter the circumstances. Furthermore, in *Agbai v. Okogbue*³² and *Ukeje v. Ukeje*³³ respectively, customary laws were declared unlawful by the courts because they were contrary to the provisions of fundamental human rights as provided in chapter 4 of the constitution. It can be discerned from the foregoing statutory provisions that for customary law to be applicable, such a custom must not be repugnant to natural justice, equity and good conscience; the rule must not be incompatible either directly or by implication with any law for the time being in force, and the rule must not be contrary to public policy.³⁴

5. Customary Law and Women's Rights in Nigeria

The nature of Customary law makes it is key to any discourse on women's rights because it determines questions bothering on personal status such as marriage, divorce, custody, inheritance, property rights, etc; which are matters that can affect a woman's role in society and probably shape her destiny.³⁵ While it is noted that customary law may be interpreted differently depending upon the circumstances and the person whom it is applied, what remains certain however, is that in many parts of Nigeria, customary law has been used over time to disempower women and promote patriarchy in different ways.³⁶ Some key violations of women's rights under customary law practices are with regards to Inheritance, marriage, education, and harmful traditional practices.

Inheritance Discrimination

The Nigerian constitution generally protects the rights to female inheritance. However, the yardstick majorly used to ascertain what system of inheritance is to be adopted for a deceased's property is the form of marriage that the deceased chose to adopt. For one's property to be shared under extant statutory provisions, one must contract a valid civil marriage under the Marriage Act. The system of inheritance adopted for Islamic marriage is the Shariah system; while customary system of inheritance applies to customary marriages.³⁷ The patterns of inheritance under customary law in Nigeria are probably as many as the ethnic groups in the country. Regrettably, variations are discriminatory against women to the extent that in some cultures, women do not inherit property at all whether as daughters or wives.³⁸ For instance, certain ethnic communities such as Bini and Onitsha apply the primogeniture³⁹ rule of inheritance which passes all the deceased father's property to the eldest son exclusively. On the other hand, among the Markis group of the Verbe in northern Nigeria, it is the ultimogeniture rule that applies, whereby the youngest son inherits to the exclusion of all other children of the deceased. The trend is similar in many other parts of the country with male children are favoured over females for the inheritance of a father's property, including, businesses, houses, land, and other assets.⁴⁰

²⁸ section (1) (3) CFRN 1999.

²⁹ *ibid.*

³⁰ (2008)17 NWLR (PT.1117) 448 AT 515.

³¹ (2008)9 NWLR (PT.1091) CA.

³² (1991) 1 NWLR (pt 204) 391.

³³ (2014) 11 NWLR (Pt. 1418)384.

³⁴ *ibid.*

³⁵ Tamar Ezer, 'Forging a Path for Women's Rights in Customary Law' (2016) University Miami School of Law.

³⁶ *ibid.*

³⁷ Halima Doma-Kutigi, Certification of Islamic marriages in Nigeria: realities, challenges and solutions, *Electronic Journal of Islamic and Middle Eastern Law (EJIMEL)*, Vol. 6 (2018) <<http://www.ejmel.uzh.ch>> accessed 15 2 2024.

³⁸ Mujibat Oshodi, 'The inheritance Rights of Women in Nigeria' International Association of Women Judges in Nigeria <<https://www.iawj.org/>> accessed 31st January 2024.

³⁹ where the eldest son exclusively inherits the deceased father's property in order to train younger siblings.

⁴⁰ Oshodi n.36, 23.

Similarly, women face discrimination as widows. Some cultures do not allow widows to inherit their deceased husband's property, since the husband is considered as having dominant power to deal and dispose of family property.⁴¹ In many instances, this rule applies without taking cognizance of the wife's contributions as assets are usually acquired in the husband's name.⁴² However, widows may be allowed to keep the residence and a portion of land, thereby granting them possessory, rather than proprietary rights. This practice stems from the belief that inheritance follows blood, and widows are not blood relatives of their husbands. Ironically however, the same customary law recognises the right of the widower to inherit his deceased wife's property, which is a direct contravention of the principle of 'inheritance follows the blood'.

It is observed that while these customary practices are considered as long-standing tradition, they have far-reaching and often negative outcome for female children. For instance, excluding women and girls from inheriting land, or other assets will leave them powerless and vulnerable and economically dependent on male relatives. Furthermore, without ownership of land or resources, women have limited opportunities to engage in income-generating activities like farming or entrepreneurship because their dependence on male relatives weakens their negotiating and *decision-making* power.

It is worthy to note that in recent times, efforts have been made to address gender discrimination in inheritance laws, with significant legal reforms taking place in Nigerian Courts. The case of *Mojekwu v. Mojekwu*⁴³, is celebrated as the catalyst for women's right to property and inheritance in the country. In this case, the oli ekpe Igbo custom of Nnewi people which debars women from inheriting landed property was struck down by the Court of Appeal and held to be 'repugnant to natural justice, equity and good conscience'. Another celebrated case is *Ukeje v Ukeje*⁴⁴, an analogous case which was decided a few years later. Here, one Gladys Ada Ukeje sued her stepmother and half-brother over her removal from the line of inheritance based on local custom. This case was appealed in two lower courts before the Supreme Court ultimately upheld the decision of the Court of Appeal, declaring the practice as unconstitutional.⁴⁵ The Supreme Court held:

No matter the circumstances of the birth of a female child, she is entitled to an inheritance from her late father's estate. Consequently, the Igbo customary law which disentitles a female child from partaking in her deceased father's estate is in breach of section 42(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999, a fundamental rights provision guaranteed to every Nigerian. The said discriminatory customary law is void as it conflicts with section 42(1) and (2) of the Constitution.'

The Supreme Court of Nigeria again resonated its position on women's right inheritance in *Onyibor Anekwe & Anor v. Mrs. Maria Nweke*⁴⁶ where it stated that: '... to hold to the contrary that a married woman without a male issue cannot inherit landed property of her late husband is barbaric and repugnant to natural justice, equity and good conscience and ought to be abolished'.

Child Marriage

Child marriage is widely acknowledged to be a harmful customary law that is both a cause and an outcome of human rights violations.⁴⁷ It can be defined as 'any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.'⁴⁸ Generally, Child marriage is a common practice in Nigeria rooted in traditional, economic, religious, and legal conditions that disproportionately affect girls and women. Nigeria's rates of child marriage are some of the highest on the African continent.⁴⁹ According to UNICEF, 30.3% of Nigerian girls marry before 18, with 12.3% marrying before 15. This translates to approximately 22 million child brides in Nigeria, the highest number in West and Central Africa.⁵⁰ The research also revealed that the timing of marriage varies considerably by region and area of residence, and girls from the Northern part of Nigeria marry at a relatively younger age than their Southern age mates.⁵¹ Another significant finding was that rural girls were more likely to get married earlier than urban girls. While the Child Rights Act⁵² sets the minimum legal age of marriage at 18, customary practices and interpretations of religious laws continue to sanction child marriage in various parts of the country. In northern Nigeria, child marriages are justified on religious and traditional grounds; and in this context, maturity or puberty (rather than age) is the benchmark for determining when a girl is due for marriage. This probably

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ (1997) 7 NWLR (Pt. 512) 228; see also *Asikia v. Atuanya* (2008) ALL FWLR(Pt.433)1293.

⁴⁴ (2014) 11 NWLR (Pt. 1418) at 384 p. 408 paras. C-E.

⁴⁵ *ibid.*, Ogechi Obi, 'When Rights slip through the Cracks of Culture: Women's Right and Justice in Nigeria – Or Lack Thereof' *Harvard International Review* <<https://hir.harvard.edu/>> accessed 31st January 2024.

⁴⁶ (2014) 4 SC (Pt. III) 65.

⁴⁷ Belinda Maswikwa, Linda Richter, Jay Kaufman and Arijit Nandi, 'Minimum Marriage Age Laws and the Prevalence of Child Marriage and Adolescent Birth: Evidence from Sub-Saharan Africa' *International Perspectives on Sexual and Reproductive Health*, (2015) (41) (2), pp. 58-68.

⁴⁸ Nwonu, Christopher Okafor, Ifidon Oyakhiromen, 'Nigeria and Child Marriage: Legal Issues, Complications, Implications, Prospects and Solutions' *Journal of Law, Policy and Globalization* (2014) (29) <<https://www.iiste.org/>> accessed 31st January 2024.

⁴⁹ *ibid.*

⁵⁰ UNICEF, 'Child Marriage in West and Central Africa: A Statistical Overview on Ending the Practice' (2022).

⁵¹ *ibid.* The median age at marriage is lowest among girls in North West and North East regions, at 15.8 and 16.8 years respectively

⁵² Child Rights Act 2003.

explains the high incidence of child marriage in northwest and northeast.⁵³ Notably, child marriage is also a problem in other parts of the country, though on a lower scale.⁵⁴ Four southern states with the highest prevalence of child marriage are Akwa Ibom, Ogun Oyo and Delta States⁵⁵. Regardless of the region or religion, many poor families across Nigeria seek to lessen their financial burdens by marrying their daughters off.⁵⁶ Recent interviews conducted by Human Rights Watch with child brides revealed the role of families as the main drivers of such marriages; and in many cases against the will of the 'brides'.⁵⁷ Sadly, instead of finding succor in such marriages, many of these young girls end up in worse conditions due to the rippling detrimental consequences of child marriage on education, health, and overall individual development. Child marriage also encourages sexual exploitation and places a girl's health at risk because a husband and other family members expect the wife to bear children soon after marriage. Early child birth comes with increased risk of sexually transmitted diseases, cervical cancer, death during childbirth, and obstetric fistulas. Furthermore, girls' offspring are at increased risk for premature birth and death as neonates, infants or children.⁵⁸ Other harmful effects of child marriage are: high levels of violence and abuse, social isolation, and harmful power dynamics which ultimately results in increased gender inequality and vulnerability to poverty for girls, families and the society as a whole.

Denial of Education

Generally, in many parts of Africa, girl-child education was never treated as a matter of priority in the past as society was rife with gender discrimination and cultural barriers.⁵⁹ Sadly, this is still the situation among some cultural groups in Nigeria where girls are discouraged from pursuing formal education based on the belief that education makes women arrogant. This belief discourages many rural men from getting married to educated women and also discourages parents from educating female children for fear that it will inhibit their chances of getting married on time.⁶⁰ In many communities, traditional gender roles dictate that the primary responsibility of girls is to marry, raise children, and manage the household. They are rather kept at home and prepared for the role of home makers.⁶¹ Therefore, education is often seen as unnecessary or even detrimental to fulfilling this function. Studies have also shown that some religious and cultural beliefs and practices in Nigeria impact on the educational aspirations of girl-children.⁶² Certain interpretations of religious texts can be used to justify limiting girls' education or reinforcing traditional gender roles. For instance, certain Islamic practices prevent young girls from schooling in some northern parts of Nigeria, however, this is linked to misunderstanding of the position of Islam on the education of girls largely due to lack of sufficient knowledge of Islam which makes many parents think that formal education is not meant for Muslim girls.⁶³ Despite Government efforts, Nigeria faces a significant gender gap in educational attainment, with girls lagging behind boys at all levels and this disparity is deeply rooted in various socio-cultural factors, including entrenched customary practices that perpetuate gender inequality.⁶⁴ Such practices include the preference for sons, which leads families pyritizing education over girls', often due to perceived future economic returns and inheritance rights),⁶⁵ and traditional practices of child and early marriage, which disrupt girls' education and limit their life choices.⁶⁶ Low educational attainment ultimately affects an individual's earning potential, leading to negative developmental outcomes thereby perpetuating poverty and widening inequality gaps.⁶⁷ This also has a significant effect on a nation's economic growth.⁶⁸ Studies by IMF in 2018 estimates gender inequality in education costs Nigeria about 2.3% of its GDP annually.⁶⁹

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ Blessing Udeobasi, Foundation for Investigative Journalism, Special Report: Akwa Ibom Schools Losing Girls to Teen Pregnancy at an Alarming Rate < <https://fij.ng/article/special-report-akwa-ibom-schools-losing-girls-to-teen-pregnancy-at-an-alarming-rate/>> accessed 6 March 2024.

⁵⁶ Human Rights Watch, 'Nigeria: Child Marriage Violates Girls' Right' (2021) < <https://www.hrw.org/>> accessed 31 January 2024.

⁵⁷ *ibid.*

⁵⁸ E. O. Osakinle, Olufunmilayo Tayo-Olajubutu, Child Marriage and Health Consequences in Nigeria, *American Research Journal for Engineering, Technology and Sciences* < <https://asrjetsjournal.org/>> accessed 31 January 2024.

⁵⁹ Osagjobare Osamiro, Rita Orosaye, Victor Ekwukoma 'Influence of Religious and Cultural Beliefs on Girl-Child Educational Aspiration in Nigeria' *Journal of Educational and Social Research* (2015) (5) (2) pp 165-170.

⁶⁰ *ibid.*

⁶¹ Immaculata Gregory Umoh, Arit Okonobong Atakpa, 'Girl -Child Education: Changing Trends in Societal Attitudes' *Multidisciplinary Journal of Research Development*, (2014) (22) (2) pp 1-7.

⁶² Osamiro, n.57 p.55.

⁶³ *ibid.*

⁶⁴ *ibid.*

⁶⁵ Nwagwu, G. O., 'Son preference and the gender gap in educational attainment in Nigeria' (2013) *International Journal of Educational Development*, (33)(3), 253-260.

⁶⁶ UNICEF, 'Child Marriage in West and Central Africa: At a Glance' (2018) < <https://www.unicef.org/>> accessed 31st January 2024.

⁶⁷ Nonyelum A. Ujam, 'Child Marriage in Nigeria: Wedded to Poverty' *YaleGlobal online* (2019) < <https://archive-yaleglobal.yale.edu/>> accessed 31st January 2024.

⁶⁸ I. N. Igboanugo, O. Iwegbu, 'Effects of Gender Inequality on Education and Economic Growth in Nigeria' <<https://ir.unilag.edu.ng/>> accessed 31st January 2024.

⁶⁹ Ata Can Bertay, Ljubica Dordevic, Can Sever, 'IMF Working Paper: Gender Inequality in Nigeria: Macroeconomic Costs and Future Opportunities' < <https://www.elibrary.imf.org/>> accessed 31st January 2024.

Harmful Traditional Practices

Female genital mutilation (FGM) and widowhood rites are two harmful customary practices that violate women's rights in Nigeria. Female genital mutilation (FGM), or female circumcision as it is sometimes erroneously referred to, involves surgical removal of parts or all of the most sensitive female genital organs.⁷⁰ It is an age-old practice which is practiced in many communities around the world including Nigeria simply because it is customary.⁷¹ According to UNICEF, Nigeria one of the highest prevalence of FGM in the world, with an estimated 25% of women and girls aged 15-49 having undergone the procedure⁷². Disparities in the practice exist across the country. State prevalence ranges from 62 per cent in Imo to less than 1 per cent in Adamawa and Gombe. The prevalence of FGM is highest in the South East (35 per cent) and South West (30 per cent) and lowest in the North East (6 per cent).⁷³ FGM forms an important part of the rites of passage ceremony for some communities, marking the coming of age of the female child. It is believed that, by mutilating the female's genital organs, her sexuality will be controlled; but above all, it is to ensure a woman's virginity before marriage and chastity thereafter.⁷⁴ Paradoxically, medical evidence indicates that FGM imposes on women and the girl child a catalogue of health complications and untold psychological problems. Another blatant abuse of women's rights under customary law is harmful widowhood rites practiced in many Nigerian communities. Widowhood rites are traditional practices that are carried out after the death of a husband. These rites can vary depending on the ethnic group, but they often involve the widow being made to undergo specific mourning rituals which may include public displays of grief or being subjected to different forms of physical and emotional abuse.⁷⁵ Culturally, widowhood burial rites involve different degrees of physical hardship, deprivation, ritual contamination, emotional instability, and socioeconomic and psychological trauma.⁷⁶ For many women, widowhood is often the beginning of life-long oppression and misery.⁷⁷ In some cultures across Nigeria, widows are simply blamed for the husband's death, and are expected to undergo specific mourning rituals like complete body shaving, loud wailing and other agonizing rituals to prove their innocence. In extreme situations they are forced to drink the water used to wash the husband's corpse or be confined with the corpse.⁷⁸ Evidently, these obnoxious widowhood customs are contrary to human rights norms and should not be allowed to continue in any decent society. Notable factors influencing such practices include: male dominance and patriarchal influences, poverty, lack of adequate education, and inferior social status because women tend to lose their social status with widowhood.⁷⁹

6. Laws Protecting Women's Rights in Nigeria

Despite the gloomy picture of women's rights in Nigeria, it would somewhat be unfair to say that the country is completely insensitive to the plight of its womenfolk. Besides the human rights provisions already enshrined in the constitution, Nigeria has over time adopted international and local legislation towards addressing the rights of women and girls either specifically or generally; and has also taken appropriate measures for the implementation of the rights recognized in the said instruments. All measures have been made to address the challenges faced by Nigerian women and girls, as discussed in the preceding parts of this article; and more efforts are ongoing. Nigeria has since domesticated the African Charter on Human and Peoples' Rights and ratified the Protocol to The African Charter on Women in Africa, also known as the Maputo Protocol⁸⁰ which strengthens the rights of African Women and obliges Nigeria to take measures to eliminate discrimination and violence against women. Women's rights are not an entirely new set of rights per se, but they bring poignancy to human rights that already exist which have been historically denied, neglected or marginalised. Hence, Nigeria ratified the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) in 1985⁸¹, which obliges Nigeria to prevent and address gender-based discrimination and promote gender equality in all areas. Article 1 of CEDAW defines discrimination as 'any distinction, exclusion or restriction made on the basis of sex in the political, economic, social, cultural civic or any other field'. It further defines discrimination against women as anything that can bring about unequal treatment between men and women in the course of their livelihood. This article groups married and unmarried women together. Article 13 stipulates in part that women have the right to obtain family benefits, while Article 15 states inter alia that women have equal rights with men in matters of law that relate to business contracts. Under Article 16, women are empowered to own and give away their property. Relatedly, the Child Rights Act (CRA)⁸² was passed to protect the rights of children. This law has been domesticated in all of 36 states of the federation of Nigeria.

⁷⁰Office of the United Nations High Commissioner for Human Rights, 'Fact Sheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children' UN Human Rights<<https://www.ohchr.org/>> accessed 1st February 2024.

⁷¹ibid.

⁷²UNICEF, 'UNICEF Warns FGM on the Rise Among Young Nigerian Girls' UNICEF Press Release<<https://www.unicef.org/>><<https://www.unicef.org/>> accessed 1st February 2024.

⁷³ibid.

⁷⁴ibid.

⁷⁵Amaka Elochukwu, 'Widowhood Practices in Nigeria and Abuse of Women's Right' Rights of Equality<<https://www.rightsofequality.com/>> accessed 1st February 2024.

⁷⁶ ibid.

⁷⁷ ibid.

⁷⁸ ibid.

⁷⁹ Elochukwu n. 73.

⁸⁰ Adopted July 1, 2003.

⁸¹ Adopted in 1979 by The UN General Assembly.

⁸² CRA 2003

Furthermore, Violence Against Persons Prohibition Act, 2015 was enacted in Nigeria in compliance with CEDAW's recommendations which enjoins parties to take legal measures to protect women against GBV.⁸³ One laudable aspect of the Act is the criminalisation of acts that were previously not regarded as offences under Nigerian law, including harmful traditional practices, FGM, emotional, verbal and psychological abuse, harmful widowhood practices, abandonment of spouse, children and other dependants without sustenance, stalking, attack with harmful substances, spousal battery as well as economic abuse. The Act has been domesticated in 35 states as of May 2023. There exist also a National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria (2013 – 2017) which was extended to 2019 was recently revised to last between 2021-2025. It is worthy of note that the domestication of CRA and VAPP has significantly reduced FGM in states where the practice is predominant. For example, in the 2015 National Demographic Health Survey, Ebonyi State had the highest FGM prevalence in Nigeria of 74.4%. But after the domestication of VAPP Law and criminalization of FGM, in 2018 the prevalence of FGM dropped to 52.3%. Presently, several ongoing efforts are underway to outlaw discriminatory customary practices through legal amendments. Worthy of note is the Gender and Equal Opportunities Bill in Nigeria which is currently under consideration by the National Assembly. This bill seeks to fully implement the provisions of Section 42 of the Constitution and also seeks to eliminate all forms of discrimination against women. When it eventually becomes a law, it will ensure equality of opportunities for every person and prohibit all forms of discrimination based on gender, including harmful traditional practices. It is therefore not surprising that this right from its first reading before the National Assembly, the bill has faced opposition from some groups on the grounds that it undermines cultural norms.⁸⁴

7. Challenges in Eradicating Harmful Customary Laws Women Nigeria and the Way Forward

Despite constitutional provisions against gender discrimination and the court decisions to that effect, these practices still persist unchallenged in many parts of the country. As already discussed, Nigeria has adopted regional and international instruments relating to the rights of women thereby, reaffirming that women are entitled to the respect of their inherent dignity and of all human rights and fundamental freedoms on an equal basis with others. Nigeria has further created legislative and administrative measures for the implementation of the rights recognised in the said instruments. Notably, the use of the repugnancy doctrine has significantly whittled the potency of customary law as a tool for practices that disinherit daughters, limiting their economic agency and perpetuating dependence. However, other negative customary practices like child marriage, denial of education, FGM and harmful widowhood rites are still prevalent in our society for many reasons ranging from illiteracy, poverty, access to justice, cultural sensitivity, etc.

In Nigeria, women face significant challenges in seeking legal redress for violations of their rights under customary law. Two major factors exacerbating this issue are illiteracy and poverty. Many women, particularly in rural areas, lack awareness of their fundamental rights enshrined in the Nigerian Constitution or international conventions.⁸⁵ This makes them vulnerable to customary practices that might be harmful or discriminatory. Furthermore, with poverty disproportionately affecting women, it is difficult to afford legal representation or even travel to court. Women's lack of economic freedom and inability to fend for themselves make them vulnerable to oppression and exploitation by in-laws, clans, village heads, or even villagers.⁸⁶ In many cases, women experiencing rights violations are financially dependent on the perpetrators, making it difficult to challenge them for fear of losing financial support. Again, the male domination of Nigerian communities has left the society with socio-cultural mindsets and practices that have put women in a disadvantaged position.⁸⁷ Thus, there is concern for bias towards patriarchal norms within traditional courts in seeking legal redress, further discouraging women seeking justice. While traditional courts offer an alternative dispute resolution system in many communities, their adherence to customary practices based on deeply ingrained patriarchal norms significantly puts women at a disadvantage. Cultural practices are often deeply embedded in history, beliefs, and social structures; hence, redirecting navigating sensitivities is crucial for achieving sustainable progress without causing offence or eroding cultural values.⁸⁸ For these reasons, despite constitutional provisions against harmful customary practices or gender discrimination and the progressive court decisions to that effect, Nigerian women who come from communities with deeply entrenched discriminatory customary beliefs will continue to suffer until members of such communities collectively reject such customs. Recommendations are therefore warranted on how to protect Nigerian women and girls from harmful traditional practices.

Legislative Reform: As already stated previously in this paper, there are laws, policies and programmes that seek to protect the rights of women in Nigeria; and in interpreting those laws, the courts have overtime and in bold terms declared discriminatory customary practices as unlawful either based on the repugnancy doctrine, incompatibility test or public policy test. These doctrines have whittled down, though not completely eradicated the application of harmful customary

⁸³ Olaitan O. Olusegun, Olatunji S. Oyelade 'Access to justice for Nigerian women: A veritable tool to achieving sustainable development' *International Journal of Discrimination and the Law* (2021) (22) (1).

⁸⁴ Abdulqudus Ogundapo, 'Gender Equality bill Passes second reading at Senate' *Premium Times* (Abuja, 31 May 2023).

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ Ekwutosi Essien Offiong, Eyo Itam Eyo, Asibong Essien Offiong, 'Patriarchy, Culture and the Social Development of Women in Nigeria' *Journal of Art, Humanity and Social Justice* (2021) (1)(4).

⁸⁸ Nicholas Idoko, 'Cultural Sensitivity: A Must for Social Media Managers in Nigeria' *Professions.ng* <<https://professions.ng>> accessed 1st February 2024.

law. Thus, there is still need for more legal reform, to amend extant laws and enact new ones for the purpose of covering gaps and eliminating provisions not favourable to the protection of women and girls.

Community Engagement and Education: Community-based initiatives play a critical role in raising awareness about harmful practices and promoting positive cultural shifts. These initiatives can tailor messages and approaches to specific cultural nuances and sensitivities, making them more likely to resonate with community members.⁸⁹ They can leverage trusted local voices and channels like community leaders, religious figures, or traditional media to ensure wider reach and acceptance.⁹⁰ Raising awareness using local stories, testimonials, and open dialogue sessions can personalize the impact of harmful practices and create a safe space for questioning traditional norms.⁹¹ This fosters empathy and understanding, which are crucial for behavioral change.⁹² It has been found that this community based initiative enjoy more credibility within the community than interventions.⁹³ This trust built as a result of the foregoing, allows for open communication and facilitates addressing concerns and anxieties related to change, overcoming resistance to progress.⁹⁴ To this end, it is important to educate both both men and women on gender equality and human rights for creating a just society for everyone. For the women, education equips them with the knowledge and skills to advocate for themselves and their rights, challenge harmful stereotypes, and pursue their full potential.⁹⁵ For the men, education helps them understand and deconstruct harmful customary stereotypes about masculinity and femininity, promoting more equitable gender roles and relationships.⁹⁶

Enhanced Access to Justice: There is need to increase access to justice for women by providing free or affordable legal service, establishing specialized courts or tribunals to handle gender related cases where possible, and promoting alternative dispute resolution mechanisms that prioritize women's rights and safety.

Women Empowerment and Economic Inclusion: There is need to promote women economic empowerment through access to education, skill acquisition and financial recourses. Implementing policies and programmes that create equal opportunities for women in employment and other prospects will make them independent of their abusers, and more assertive to take up roles and actively contribute to the society.

Women's Representation and Participation at Community Level: There is also need to encourage and support the increased representation and participation of women in decision-making process, political office, and leadership position.

8. Conclusion

This paper has attempted an analysis of the interaction between customary law as a law of personal status and human rights as it relates to the affairs of women and girls in Nigeria. Particularly, it considered the existing biases in the application of women's rights under certain customary laws. It was observed that Nigerian customary law presents a a double-edged sword wielding both the power to preserve and the potential to oppress. While its role in maintaining social order and cultural identity is undeniable, its perpetuation of harmful practices against women cannot be tolerated. By analyzing legislations and decided cases that define the rights of women and clearly outlaw harmful customs and traditions, the paper concludes that indeed, women's rights can be protected under customary law. However, this cannot be achieved by legislation alone; meaningful change will also require the participation of the 'people who own the custom' through open dialogue, and critical reflection to willingly renounce discriminatory harmful customs, or at least model such customs in compliance with human rights standards. That way, Nigerians can unlock the immense potential of customary law to become a force for positive change in society.

⁸⁹UNICEF, 'Community-level transformation of social norms and practices' <<https://www.unicef.org/what-we-do>> accessed 2 February, 2024.

⁹⁰ *ibid.*

⁹¹GSDRC, 'Initiatives to stop harmful practices against women and girls' <<https://gsdrc.org/>> accessed 2 February, 2024.

⁹²*ibid.*

⁹³*ibid.*

⁹⁴Centre for Family Health Initiative, 'Cultural practices in Africa' <<https://www.cfhinitiative.org>> accessed 2nd February, 2024.

⁹⁵UN Women 'Gender Equality' <<https://www.unwomen.org/en>> accessed 2 February, 2024.

⁹⁶ Equipundo 'Promoting Nurturing, Equitable, Nonviolent Masculinity Since 2011' <<https://www.equipundo.org/>> accessed 2 February, 2024.