A Training Manual

on Women’s Property and Inheritance Rights in the Context of HIV and AIDS

For Magistrates, Lawyers, Paralegals, Law Enforcement Agents and Traditional Rulers in
Nigeria

CIRDDOC Nigeria
2011
**Table of Contents**

1. Introduction 3  
2. Acronyms 5  
3. Acknowledgments 6  
4. Foreword 7  
5. Notes to Users of This Training Manual 8  
6. Techniques, Icebreakers and Energizers 10  
7. Module 1: Climate Setting/Self introductions 14  
8. Pre test 18  

10. Module 3: Legal and Policy Framework for Women’s Property and Inheritance Rights 33  
11. Module 4: Protecting Women’s Property and Inheritance Rights: The Role of the Lawyers and Magistrates 52  
12. Module 5: Managing Violation of Rights of Women to Property and Inheritance in the Context of HIV and AIDS – The Role of Paralegals and Informal Justice Providers 56  

13. Appendices 63  
   a) Relevant articles of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 63  
   b) Relevant articles of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa 65  
   c) Administration and Succession (Estate of Deceased) Law 1987 67  
   e) Islamic law – primary heirs and their shares 70  
   f) Sample Evaluation Form 71  
   g) Post Test 73
Introduction
One of the biggest challenges facing Africa is the rapid spread of the HIV/AIDS epidemic. Although the prevalence rate in Nigeria has dropped from 5.4% to 5.2%, it is still at an all time high. Gender inequalities and poverty worsen the socio-economic impact of HIV/AIDS epidemic in the Nigeria. Cultural conditions and low socio-economic conditions of women and flawed socialization of girls prepare them as potential victims of property and inheritance rights violations. Customary practices such as widow inheritance or levirate marriages that regard women as chattels or property to be inherited along with the estate of their husbands; parents compelling their unmarried daughters to have children at home to perpetuate their lineage, fallout of patriarchy encourage and endorse violations of the right to property and inheritance rights of women. It is worse when the widow is an AIDS widow i.e. when the husbands pre-decease them from HIV/AIDS.

Violence against women, including denial of property and inheritance rights, has been identified as a cause as well as a consequence of HIV/AIDS. In many communities in the Southern part of Nigeria, widows are denied inheritance rights and they cannot acquire property in their name. In Africa, there is the presumption that marriage translates to automatic consent to sexual relations the terms of which are dictated by the husband. This presumption is strengthened by divorce, property laws and customary laws and practices that disadvantage women who try to escape abusive marriages. To continue to enjoy access to property, or reside in the matrimonial home after the death of their husbands, including where they are AIDS widows, they enter into risky relationships with the men in the family.

Women are disproportionately excluded from property ownership and inheritance rights and this exclusion is often justified by culture, customs, myths and religion. The situation of Nigerian women and inheritance under statutory, customary and religious laws is a product of culture, a history of colonialism as well as religion. As a result of this plurality, the law of inheritance is fraught with uncertainty and inequality; and this result in denial of rights, and access to justice is adversely affected. In the context of the rapid growth of the HIV/AIDS epidemic, women's lack of property and inheritance rights has exacerbated women's poverty and has substantially increased their vulnerability. While studies that link women's lack of property and inheritance rights to HIV/AIDS are almost non-existent, there is a growing interest in the impact of women’s inheritance and property rights on the type of threats women face in cases of being abandoned or widowed.

Just as violence against women increases their risk to HIV, it is also a consequence of HIV sero status. HIV positive women who declare their status are subjected to stigma and discrimination such as expulsion from their families and property, expulsion from their accommodation,
dismissal from workplaces etc. They face the possibility of disinheritance and dispossession from their families. Without economic autonomy, these women find it difficult to escape abusive relationships and to survive once they have been infected with HIV and ostracized by their families and communities.

Human Rights Watch’s investigations have highlighted that many Nigerian women are excluded from inheriting, evicted from their lands and homes by in-laws, stripped of their possessions, and forced to engage in risky sexual practices in order to keep their property. A woman’s access to property usually hinges on her relationship to a man. Widows who are coerced into the customary practices of “wife inheritance” (a widow is taken as a wife by a relative of her late husband), or ritual “cleansing” (widows are obliged to have sex usually unprotected, one time or over a short period with a man) run a clear risk of contracting and spreading HIV. Consequently, the HIV pandemic is now seen as a gender, health, development and human rights issue demanding immediate and urgent attention.

To address the issues raised above, the Civil Resource Development and Documentation Centre (CIRDDOC) in collaboration with the Ministry of Women Affairs in Cross River State and Ebonyi State and with support from the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) is implementing a project titled “Promoting Respect for the Rights of Women to Property and Inheritance in the Context of HIV/AIDS”. The overall goal is to secure women’s right to property and inheritance in the context of HIV/AIDS through increased and improved access of women to legal services to recover confiscated property and through a strengthened cadre of community (including the Anti-VAW Committees at the community level), and legal service providers including lawyers, paralegals, and judges. Women infected and affected by HIV will be empowered to begin to challenge infringement of their property and inheritance rights and the customary laws which discriminate against women in the context of HIV/AIDS and deny their rights to property and inheritance will be interrogated with a view to advocating for legislation that protect the property and inheritance rights of women.

The strategies adopted are research, capacity building, sensitization, legislative advocacy, service delivery, partnership and coalition building.

A series of training workshops for magistrates, lawyers, paralegals, law enforcement agents, members of the LG Anti-VAW Committees and informal justice providers including traditional rulers is part of the activities lined up to achieve the objective of the project. The training will cover human rights, women’s property and inheritance rights, the legal and policy framework and the link between women’s property rights violation and HIV/AIDS. This training Manual is to ensure that the two-day training remains focused on the issues it set out to address.
<table>
<thead>
<tr>
<th>ACRONYMS</th>
<th>Description</th>
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<tbody>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Virus</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all forms of Discrimination against Women</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immune Deficiency Virus</td>
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<td>WPIR</td>
<td>Women’s Property and Inheritance Rights</td>
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Acknowledgments
Foreword
NOTE TO USERS OF THIS TRAINING MANUAL

This Training Manual on Women Property and Inheritance Rights (WPIR) has been developed for the purpose of training of Magistrates, Customary Court Judges and informal justice providers. It is a standard manual for basic training and contains several case studies, group exercises, Quizzes, role plays and participatory activities specifically adapted for this sector – the justice sector.

The Manual is structured in Modules (8 on the whole) and sessions covering areas such as Legal and Policy Framework for WPIR, Definition of Concepts, Understanding Women’s Property and Inheritance Rights in the Context of HIV and AIDS, The Role of Magistrates, Judges and Informal justice providers in protecting WPIR.

The training can be done in two days if funds permit starting at 9.00am and ending at 5pm daily but ideally, three to four days should be allocated for such a training to allow for elaborate explanation of issues as well as give enough time for the activities. From the time allocated in this manual, you would require at least 32 hours, which translates to 4 days.

Who Should Use the Training Manual?
The Manual is designed specifically for use in the training of Magistrates and Judges and Informal justice providers in the UN Women/CIRDDOC project – promoting WPIR in the context of HIV. This Manual can be used by trainers who have some experience in running workshops and training courses. It does not matter whether or not they have experience in gender or women’s rights training. The Manual is written in simple explanatory English language with step-by-step guide for the facilitator to achieve the objectives of the training.

Its aim is to provide practical tools for the training of justice sector operatives including those in a position to influence the planning and implementation of development projects within the sector.

How to use The Training Manual
The trainer should always read the Facilitators’ Notes on each activity before selecting it. The notes will always indicate how to use it or suggestions on how to adapt it to your own specific purpose.
The timing for the Modules and the activities are estimates intended to guide the trainer in the planning. Please feel free to adjust them to suit your purpose.

Role-plays, Case studies, Icebreakers and energizers have been included in the manual and the facilitator can use them or adapt them to his/her purposes. Below is an explanation of the benefits and uses of the different training techniques, icebreakers, and energizers recommended in this manual.

This training is designed to task participants to re-examine their values and behaviours and make positive changes in their lives using participatory learning. Participatory learning uses facilitation to encourage people to actively participate in their own learning. Principles of adult education will be applied including making use of participants’ experience and insights whenever possible. The role of the facilitator will be to motivate, provoke and stimulate participants to use their own experiences and knowledge as a basis for applying knowledge. Each of the 6 modules includes text for a Power Point presentation followed by hands-on activities and/or case studies.

**Proposed Methods:**

1. Participatory training methods such as:
   - Small group discussions
   - Brainstorming
   - Case study analysis
   - Presentations
   - Practical exercises

**Brainstorming:** This will be done to share ideas and allow participants to give their views about a topic and to obtain as many ideas as possible.

**Group discussion:** This will involve having a small group of people to discuss a topic. The minimum number for the small group discussion is three people and the maximum number is six but also larger group discussions will be used to let all participants discuss the different points of view expressed by the smaller groups in plenary sessions.
Participatory methods of training are the most appropriate for adult learning and development work. They are the most effective and enjoyable. Participatory training is characterized by a respect for the participants, who are active in their own as well as others’ learning. Within participatory training, there are number of different methods and techniques which should be chosen to meet the specific objectives and contents of the training sessions.

Learning skills is best done through practice: games and songs are most useful for awareness raising, while factual information can be given through videos, quizzes and lectures. All these aspects are interrelated and different methods can be used for many different purposes. It is best to use a variety of these methods and to enable the group to go through a process of learning, discovering and creating new solutions to problems.

Case study method is very useful as a way of using the awareness, knowledge and skills that have been built up on the course. They provide the opportunity to apply theory and analysis to real situations and thus are best if they reflect the experience of participants. They may be based on real cases or be designed as hypothetical situations but based on real issues. They provide the materials on which the participants practice the analytical tool they have learned

Role-plays, Drawings, songs and games are excellent methods, which do not rely on written materials. Role-plays or simulation games imitate reality by assigning roles to participants and giving them a situation to act out. Each person in a role-play needs to have a clear understanding of the role they have been assigned and the objectives of the role-play should be well defined. The aim of a role-play is to make attitudes, situations and experiences come to life in a dramatic and enjoyable way. However, the facilitator has to be sensitive to participants who may think that they are not being treated with sufficient dignity by exposing them to these activities. It is also important to choose games which are seen as culturally acceptable interactions for men and women.
In gender training, role-plays can be a very effective way of enabling men to experience what it is like to feel powerless or invisible in a situation (when they play a woman) and to put women in touch with their own feelings about their gender roles.

Presentations should be clear and brief. Limit any segment of speaking to 20 minutes — after that participants may not be able to concentrate. Condense what you want to say to the bare essentials that people absolutely have to know (for example, ‘the 4 key points’; ‘the 4 guiding principles’). You can expand or give brief illustrations of other points, but people must go away remembering the main points.

Use visual aids to back up what you are saying e.g. projector, flipchart, handouts, VIPP Cards. These cards can be made out of Cardboard sheets and cut in different sizes according the size of text you expect them to write on it. They will make your training more interesting although they are not indispensable.

Handouts must be clear and relevant to the topic at hand. Make sure you have enough for all the participants.

Icebreakers: These are short activities designed for the beginning of the workshop, or of each day in a long workshop to help people relax, to get to know each other or gain confidence to speak in front of the group. They should encourage participation and mutual support and respect among the women and men in the workshop. In this Manual, we have presented a few which also begin to introduce the idea of gender to start people thinking about it in a non-threatening way.

The facilitator will need to create an environment where all participants will feel comfortable and relaxed. It is also important to allow participants to appreciate the objectives of the workshop and get to know one another. In order to do this, activities such as participants’ self-introduction exercises, identification of expectations, and the laying of ground rules are necessary and in an interactive and participatory manner.

Brainstorming: This is aimed at collecting from the workshop participants as many ideas as possible on a specific topic within a given time in an uninhibited way. Once you have presented the topic to the group, invite them to call out ideas, comments, phrases or words connected to it. Write all contributions on a flipchart as they come up without comment or question. Participants should not comment on each other’s suggestions. People should feel that what they say is not evaluated or judged. The list of ideas is then used as the basis for further work, which may involve discussion of them, and categorizing them, rejecting some, prioritizing others, and so on. A brainstorm can be a god way of starting off an activity in a new topic. The aim is to encourage free flow of ideas and feeling without censorship.
**Group Discussion**: This is a very common method, which can be combined with other methods in one activity. Discussion in a large group is useful for learning from experiences of all the members of the group and allowing participants to draw conclusions from the activities. Facilitator may need to encourage equal participation and discussion between participants.

Most of the activities in this manual will require participants to work in small groups for discussion or to complete a task. Each group will nominate a chairperson who will direct discussions and a Rapporteur who will report back to the larger group on plenary on behalf of the group for further discussion. People find it easier to share personal experiences in smaller groups and to relate the subject under discussion to their own lives. In gender trainings, strong emotions are often aroused by examining relations between women and men and sharing experiences in small groups is a less threatening way of doing this. Speaking in smaller groups also enables less confident people to participate more fully in the workshop and to build up confidence for speaking in the plenary sessions.

Energizers can be used at any time in the training when energy or attention is flagging: after lunch or a session on theory. They can also be used to encourage group feeling. Use only the ones that are culturally appropriate.

These are a few simple examples used to stretch when energy is diminishing:

Participants are asked to be on their feet and create space between them and their neighbours. The facilitator demonstrates the song while asking participants to do what he/she does. Facilitator starts slowly by placing two hands on his/her head for “awake”, each hand on each of the shoulders for the word “alive”, both hands on the waist for “alert” and shakes hips side by side on the word “enthusiastic”. The motion is repeated in a fast way as often as is need.

I am awake, alive, alert, enthusiastic,
I am awake, alive, alert, enthusiastic,
I am awake, alive alert,
I am awake, alive, alert,
I am awake, alive, alert, ENTHUSIASTIC.

**Claps** – Different styles of clapping when someone or a group has done something commendable e.g. after a good group presentation in plenary, can add spice to that art and re-energize the room. Here are a few examples:

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1 The OXFAM Gender Manual
**GBOSA Clap:** Facilitator may ask the participants to give a group 6 “Gbosas” for performing extremely well in their work. Participants in response will shout the word six times.

**Powder clap:** Participants pretend to be ‘women powdering their faces’. They simulate the act in stages: Shake the powder container to sprinkle powder from its container into the palm for sometime, rub both palms together, and suddenly the woman discovers that it’s too much powder and claps to reduce it.

**Atama CLAP:** The facilitator will direct the number of claps as follows: Atama – one clap, Atama – One clap, Labato, - clap 4 times, Labato clap 4 times, Labarina – clap severally and continuously dancing and turning while clapping.
Session Objectives

a. For the participants to get to know each other
b. To create mutual understanding
c. To create a cordial atmosphere for the participants to interact with each other throughout the training

Time
Θ 2 Hours 10 Mins

Activities Overview

- Introductions
- Workshop Programme Review
- Expectations, Clarifications and Ground Rules

Materials

- LCD/PowerPoint Projector
- Flipchart
- Markers
- VIPP Cards in different colours

SELF - INTRODUCTIONS (45 Mins)

Methodology: Self-introduction exercise should take place immediately the workshop starts to create a friendly, participatory learning atmosphere.

Facilitator should tell Participants to pair up with someone they had not met before the workshop. Each participant should engage in a brief discussion with his/her partner (3 minutes) and find out the partner’s name, place of work, the meaning of the partner’s name, and his/her favourite dish. After 3 minutes, each participant should introduce his/her partner to the rest of the group.

OR

Beautiful Bee
Each person says their name and a positive word to describe themselves e.g. I am Charles and I am caring, I am Susan and I am strong; I am William and I am wonderful, I am Bee and I am beautiful etc.

OR
Participants can say their name and one thing they like about themselves

EXPECTATIONS, HOPES AND FEARS – (15 mins.)
Session Objectives
a. To provide participants the opportunity to express any feelings which could prevent them from participating fully.
b. To enable facilitators to adapt the training to the participants’ expectations when necessary
c. To enable participants to have clarity about the program objectives so they do not have unreasonable expectations.
d. To encourage a feeling of participation and solidarity and reduce potential hostility or fear

Methodology
In plenary, facilitator should ask participants to express their hopes, fear and expectations. List the expectations on the flipchart under these heads:

Hopes: what they hope to get out of the workshop;
Fears: what they hope will not happen or they fear may happen.

Facilitator should go through the expectations with the participants and explain any one which may not be met and why in each case.

REVIEW OF PROGRAM – (10 mins)
Go through the program with participants and explain that you will keep to the timing as much as possible, but if need be, there would be some adjustments.

TRAINING WORKSHOP OBJECTIVES (10 mins.)
At the end of the training, participants will be able to
- Understand the intersection between WPIR and HIV and AIDS
- Learn and understand the concepts
- Understand their roles in protection of these rights
• Agree on practical ways to manage violation of these rights in their respective positions.

**Monitoring Group:** It is always helpful to create a small Monitoring and Evaluation Group which will take responsibility of reporting back to the facilitator at the end of everyday the general opinion of the group as to whether there needs to be changes in pace, speed or otherwise of the facilitator in any area.

Alternatively, there should be daily evaluation of the workshop by the participants, using three basic questions everyday:
1. What did you like most in today’s workshop?
2. What is your key learning today?
3. What needs to improve?

The monitoring group or the facilitator will analyze the evaluation and report back to participants in the plenary the next day. This enables the facilitator gauge how well he/she is doing with the training and whether or not the participants are learning.

**GROUND RULES – (15 mins.)**

**Session objective**
• To arrive at common norms of behaviour during the course of the workshop

**Method**
• Explain to the participants the need to have a set of rules of behaviour
• Ask the group to set the rules themselves and explain the need for them to comply with the rules and if necessary to have sanctions for any anyone that breaks any of them
• Write the agreed ground rules on flip chart
• Paste the flipchart on the wall for easy reference as the workshop progresses.

**Materials Needed**
• Flipchart stand and papers, Pens/Markers, Masking tape, Projector etc.

**A Sample of Some Common Ground Rules**
• *Put your phones on silent or vibrate*
• *No side talks*
• *Keep to timing*
• *Show respect to each other’s views*
• *Do not interrupt others when they are speaking*

The facilitator should also suggest ground rules if participants are not speaking or after they have made their suggestions.
PRETEST (35mins.)

Facilitators’ Notes

It is always advisable to conduct a pre-test to assess the level of knowledge of women’s rights, gender equality and HIV and AIDS among the participants. Use a set of questions relevant to the topic before the training and record the scores. At the end of the training use the same set of questions to test their knowledge. This will enable you to measure the change in knowledge level that has taken place by comparing both scores.

Distribute copies of the Questions below and have each participant work on all of them. At the end of 15 minutes, ask participants to switch their scripts with their neighbors. No participant is allowed to mark his/her script. At the end, participants should score the script they marked. Before they return the scripts, ask participants with scripts that scored 100% to stand. Count them and ask those with 90% and so on and so forth until you get to 10% or 0% as the case may be. Participants should return the scripts to the owners who will now submit to the facilitator.

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<th>PRETEST QUESTIONS</th>
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<tbody>
<tr>
<td>Please answer all the questions by encircling the correct one:</td>
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<tr>
<td>Women’s rights are human rights</td>
</tr>
<tr>
<td>a. Strongly Agree b. Strongly Disagree c. Not Sure</td>
</tr>
<tr>
<td>2. “Women shouldn’t sell or buy land” because it is the domain of men.</td>
</tr>
<tr>
<td>a. Strongly Agree b. Strongly Disagree c. Not Sure</td>
</tr>
<tr>
<td>3. Women and girls should not inherit property because they will get married and they won’t take the land to their husband’s families.</td>
</tr>
<tr>
<td>4. “Politics is not meant for women because women cannot lead and politics is a game for the brave”</td>
</tr>
<tr>
<td>5. “Women cannot sit in the Council of Elders because our tradition forbids it”</td>
</tr>
<tr>
<td>6. “A widow is part of the estate of her deceased husband to be inherited by the brothers along with the deceased’s estate.”</td>
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7. “A widow without a male child has no share in her husband’s estate because inheritance can only be through the male lineage”.

8. “HIV can be contracted by living together and eating with a person who is HIV positive, so the Eze family was right in throwing Mrs. Eze whose husband died of AIDS out of the family where she had been married for 25 years”

9. “Nrachi nwanyi” ceremony through which a daughter is retained in the family to bear male children from different men for the family is contrary to natural justice, equity and good conscience, because it deprives a young girl of the opportunity of marriage, encourages prostitution and has a high likelihood of spreading HIV and AIDS”

10. Customary practices which fuel the spread of HIV and deprive widows of their husband’s property such as harmful widowhood practices should be nullified on grounds that debase human dignity.
Objectives of session:

- To familiarise the participants with human rights concepts and the history and evolution of human rights.

Time: 1 hour

Materials Needed

- VIPP Cards (These cards can be made out of cardboard sheets cut into the desired sizes)
- PowerPoint Projector and Screen
- Markers
- Flip chart stand and paper
- Masking tape

Methodology

Divide participants into four groups and give each group one colour of VIPP Cards. These cards can be made out of cardboard sheets by cutting them into required sizes depending on the amount of words to be written on them.

Each group should pick one of the concepts from the following list and define the term:

Group 1 – Blue card to define ‘Human Rights’ and ‘Women’s Rights’,
Group 2 – Yellow to define ‘Gender’ and ‘Sex’
Group 3 – White to define ‘Property and Inheritance Rights’ and ‘HIV and AIDS’
Group 4 – Red to define ‘Violence against Women’ and ‘Gender Equality’

Paste the cards on the wall colour by colour and ask each group to read out their definitions. Others should critique the other’s definition and add or subtract from their definitions. As the definitions are being read out, the facilitator captures the key points or key words on a flipchart.

Thereafter, the facilitator should clarify those concepts in a presentation and give a brief history of human rights and how it evolved. The note below is to guide the facilitator.
Facilitator’s Notes

2.0 Definition of Concepts

2.1. Human Rights may be defined as rights conferred on men and women by virtue of being human beings created by God in His image. They are universal and common to all human beings irrespective of their sex, race, religion or culture. They are God given and pre-date human existence.

Human Rights are fundamental, inviolable, indivisible and interdependent and cannot be divided or compartmentalized. They are inalienable, inter-related, interconnected and must be enjoyed in totality not separately. They are usually translated into law in order to confer them respectability and make them enforceable. The violation of one right may lead to violation of others. Right is not absolute, one’s right ends where the other person’s right starts.

Human Rights are referred to as natural rights. They belong to people by virtue of their being human. Everybody is entitled to them regardless of age, sex, religion race colour or language. As such, people believe they are entitled to them even when their country’s constitution or laws do not recognize them. These rights are believed to supersede any national or domestic law.

Human Rights are categorized into three:
1. Civil and political rights
2. Economic, social and cultural rights
3. Collective or group rights

Civil and Political Rights: Often referred to as “First Generation” rights. They are fundamental human rights that belong to the people as human beings.

Civil Rights are
- Right to life
- Right to freedom from torture, cruel, inhuman and degrading treatment,
- Right to liberty
- Right to equality
- Right to privacy

Political Rights are
- Right to participate in the decision making process of one’s own community
- Right to freedom of access to information
- Right to freedom to association
• Right to freedom of expression
• Right to freedom of assembly
• Right to freedom of speech, thought and opinion
• Right to freedom of movement
• Right to vote and be voted for

2. Economic and Social Rights: These are referred to as “Second generation” or ECOSOC rights. They guarantee people social, economic and cultural rights. These include the
• Right to adequate opportunity to secure employment
• Right to just and humane work conditions
• Right to education
• Right to form and belong to a trade union
• **Right to own property**
• Right to shelter
• Right to food and access to good health care
• Right to adequate medical and health facilities
• Right to equal pay for equal work without discrimination on account of sex etc

C. Collective or Group Rights: These are referred to as “Third generation” rights. These rights recognize that people have the right to decent environment, free from pollution, and protected from destruction right to development and self determination right of minorities and colonized people etc.
2.2 History and Evolution
At the end of the second World in 1945, some concerned nations led by the United States of America, Great Britain, France, Russia, and Italy met to discuss ways to prevent a repeat of the atrocities perpetrated by human beings upon their fellow human beings and to address the issue of man's inhumanity to man. It was necessary to forestall a recurrence of such upheavals generated by the war. Several brainstorming sessions led to the birth of the United Nations and the Charter, which embodied the outcome of the ideals of those sessions. With the passage of time, many other independent nations appreciated the virtues in these ideals and subsequently embraced and ratified them. The Charter of the United Nations has among its basic principles, the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction or discrimination as to race, sex, language and religion.²

In 1948, the United Nations Assembly adopted the Universal Declaration of Human Rights as a bulwark against oppression and discrimination. In the wake of a devastating world war, which had witnessed some of the most barbaric crimes in human history, the Universal Declaration marked the first time that the rights and freedoms of individuals were set forth in such details. It also represented the first international recognition that human rights and fundamental freedoms are applicable to every person, everywhere. Today, it continues to affect people’s lives and inspire human rights activism and legislation all over the world. The Universal Declaration of Human Rights (UDHR) 1948 gives an insight to the effect that it became necessary to campaign for such rights because of gross violations of human rights taking place in various parts of the world.

The then 58 member states of the UN represented a range of ideologies, political systems, and religious and cultural backgrounds, as well as different stages of economic development. The authors of the Declaration, themselves from different regions of the world, sought to ensure that the draft text would reflect these different cultural traditions and incorporate common values inherent in the world’s principal legal systems and religious and philosophical traditions. Most important, the UDHR was to be a common statement of mutual aspirations – a shared vision of a more equitable and just world.

The success of their endeavour is demonstrated by the virtually universal acceptance of the Declaration. Today the UDHR, translated into nearly 250 national and local languages is the best-known and most cited human rights documents in the world. For the first time in the

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² Article 1, para. 3.
history, the international community embraced a document considered to have universal value - “a common standard of achievement for all peoples and all nations”.

The UDHR covers the range of human rights in 30 clear and concise articles. The first two articles lay the universal foundation of human rights – human beings are equal because of their shared essence of human dignity; human rights are universal, not because of any state or international organization, but because they belong to all of humanity. The two articles assure that human rights are the birth right of every one, not privileges of a select few, nor privileges to be granted or denied.

**International Bill of Rights**

Once the UDHR was adopted, the Commission on Human Rights, the premier human rights intergovernmental body within the UN, set out to translate its principles into international treaties that protected specific rights. Giving the unprecedented nature of the task, the general Assembly decided to draft 2 covenants codifying the two sets of rights outlined into the UDHR: civil and political rights and economic, social and cultural rights. The member States debated the individual provisions for two decades, seeking to give explicit endorsement to certain aspects of the universality of Human Rights only implicitly referred to in the Universal declaration, such as right of all peoples to self determination, as well as reference to certain vulnerable groups, such as indigenous people and minorities.

Consensus was reached in 1966, and the UN General Assembly adopted the International Covenant on Economic, Social and Cultural rights, and International Covenant on Civil and Political Rights that year. The Preambles and articles 1, 2, 3, and 5 are virtually identical in both international covenants. Both preambles recognize that human rights derive from the inherent dignity of human beings. Article 1 of each covenant affirms that all peoples have the right of self determination and that by virtue of that right, they are free to determine their political status and to pursue their economic, social and cultural development. Article 2 in both cases reaffirms the principle of non-discrimination, echoing the UDHR, while article 3 stresses that States should ensure the equal rights of men and women to the enjoyment of all human rights. Article 5 of both covenants echoes the final provisions of the UDHR, providing safeguards against the destruction or undue limitation of any human rights or fundamental freedom.

Two optional protocols elaborate certain provisions of the covenant on civil and political rights, one providing for complaints by individuals, the other advocating the abolition of the death penalty.
When they entered into force in 1976, the two international covenants made many of the provisions of the UDHR effectively binding for the states that ratified them. Those two international covenants, together with the UDHR and the Optional protocols, comprise the international Bill of Human Rights.

Over 60 human rights treaties elaborate fundamental rights and freedoms contained in the international bill of rights, addressing concerns such as slavery, genocide, humanitarian law, the administration of justice, social development, religious tolerance, cultural cooperation, discrimination, violence against women, and the status of refugees and minorities.

2.3 **Women’s Rights:**

Women’s rights are an integral part of human rights. This was the landmark declaration of the World Conference on Human Rights in 1993. All of the rights contained in the human rights conventions apply to women. It became necessary to amplify women’s rights because women were denied civil and political rights as well as economic, social and cultural rights. Regardless of cultural particularities, religious tenets and levels of development, women all over the world are entitled to enjoy human rights. But this is not the position in practice.

Special attention is paid to the rights of women to redress historic or age long disadvantage and discrimination that women have suffered. As a result of social, political and cultural patriarchal patterns and practices, discrimination and maltreatment have been institutionalised in the systems. The main reason for the social and cultural disadvantages of women is the patriarchy norms, which regard men as superior to women, and confer on the men and boys better privileges and rights than women and girls.

Despite conventions and laws that recognise all human beings as equal, and endowed with equal intellect by God, in reality, the equality of women with men is not observed. This state of affairs increases women’s vulnerability and therefore calls for special measures to protect women. For these reasons, the international and national human rights systems pay special attention to promoting and protecting the rights and interests of groups that suffer one form of long disadvantage or another, or who are vulnerable in the society.

Ways vulnerable and disadvantaged groups are protected include:

- a) Enacting laws and developing legal norms and standards for treatment of the group such as special-focus treaties or declarations
- b) Developing special mechanisms for the implementation of those standards and norms
- c) Imposing special obligations on governments to address the situation of the groups through specially designed programs to redress specific disadvantage.
d) Implementing time-bound affirmative action or positive discrimination in order to balance the imbalance created by the long disadvantage and vulnerability.

The United Nations started taking particular interest in the issues of women’s rights as far back as in the 1950s when it adopted the following:

- **Convention on the Political Rights of Women (1952)** which provides that women are entitled to vote in all elections, eligible for election and appointment on equal terms with men, without any discrimination;

- **Convention on Equal Remuneration for Men and Women Workers for Work of Equal Value (1953)** which promotes the principle of equal remuneration for men and women for work of equal value;

- **Convention on Consent to Marriage, Minimum Age for Marriage** etc. which provides for full and free consent of parties in a marriage and enjoins States Parties to take legislative action to specify a minimum age for marriage;

- **Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1951)** which prohibits the procuring of a person for purposes of prostitution and exploitation of the prostitution of another etc.

- **Convention on the Nationality of Married Women (1958)** which provides for freedom of choice of nationality by alien wives;

**International Women’s Year (IWY):** To raise public awareness and to encourage actions designed to eliminate discrimination against women, the UN, proclaimed 1975 the International Women’s Year (IWY) with a policy of promoting equality, development and peace in the world.

The World Conference of the IWY held in Mexico City adopted the Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace and the World Plan of Action for the Implementation of the Objectives of the International Women’s Year. The Plan of Action recommended that Governments ensure the equality of women and men before the law, and also equality of opportunities in education, training and employment.

1975 – 1985 was declared the UN Decade for women in recognition of the fact that women comprising approximately 50% of the world’s population have been marginalized and have not participated in social, political and economic development to an optimal level. The decade was to be used to remedy the wrongs and injustice of the past and concrete steps taken to bring women into the mainstream of development.
The world community through the UN took the step to recognize, pursue and realize the goal of equal rights of men and women, when it articulated and adopted in 1979 the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Nigeria ratified the Convention in 1985, but has not yet incorporated into its national laws.

The 30-Article Convention defined minimum standards and norms for achieving equal status of men and women and urged governments to adopt measures to speed up the attainment of equality and balance between men and women in all spheres of the society.

Underlying motivation of the Convention is to draw special attention to the disadvantages suffered by women over the years, and to seek specific priority measures to address the imbalances.

2.4. HIV and AIDS: Over the past 27 years, nearly 25 million people have died from AIDS. HIV (Human Immune Deficiency Virus) is the virus that causes AIDS (Acquired Immune Deficiency Syndrome) while AIDS is the illness. HIV and AIDS cause debilitating illness and premature death in people during their prime years of life and has devastated families and communities. Further, HIV/AIDS has complicated efforts to fight poverty, improve health, and promote development. The sixth Millennium Development Goal (MDG) focuses on stopping and reversing the spread of HIV/AIDS by 2015.

The global HIV/AIDS epidemic is driven in part by conditions of poverty in which individual and household options are constrained and risky choices may be made to ensure survival. Gender inequality, power dynamics in sexual relations, and women’s lack of economic empowerment relate directly to patterns of poverty and are key factors in the spread of HIV/AIDS (Rao Gupta 2000 and 2002; World Bank 2003).

While there is a lack of research on the impact of HIV on the status of widows in Nigeria generally, there is some helpful research conducted in Uganda and Kenya that may suggest similar trends hold in Nigeria. In Owen’s study, mostly focused upon Uganda, she noted that families already challenged by economic and environmental stressors are unable to cope with the pandemic. In this context, AIDS widows are particularly stigmatized and often blamed for having ill husbands. It would seem that this finding would resonate in Nigeria, given that widows are already blamed for deaths from illness.

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3 Owen, supra note 11 at 82.
4 Owen, supra note 11 at 85-87.
Regardless of what system recognizes a woman's rights, her ability to enforce her rights to land will depend upon a series of extra-legal factors. The impact of HIV/AIDS on women and girls has been particularly devastating. Women and girls now comprise 50 percent of those aged 15 and older living with HIV.\(^5\) HIV and AIDS deepen socioeconomic and gender disparities. Women are at high risk of infection and have few options for providing for their families.

HIV positive women who disclose their status are often at risk of violence from their intimate partners, family members, or the community, which may range from emotional abuse to coerced sex and even to homicide. They are frequently physically abused, subjected to stigma and discrimination including expulsion from their families, seizure of their land including farmland, dismissal from workplaces, segregation and ostracism from their families and communities. They lose their children and are rejected by the community. They face the possibility of disinheritance and dispossession from their families.\(^6\) Without economic autonomy, these women find it difficult to escape abusive relationships and to survive once they have been infected with HIV and ostracized by their families and communities.

Research carried out by Human Rights Watch in Kenya made the link between women’s property rights and HIV status.\(^7\) It revealed that women with HIV are more vulnerable to property grabbing by relatives with the result that they may lack the property necessary to secure any form of medical treatment. Furthermore, property practices may increase women’s vulnerability to HIV as lack of property rights may make them unwilling to leave a violent relationship where they have a higher risk of getting HIV and/or force them to undergo sexual cleansing and levirate marriages to remain with the husband’s family.

Human Rights Watch’s investigations have highlighted that many Nigerian women are excluded from inheriting, evicted from their lands and homes by in-laws, stripped of their possessions, and forced to engage in risky sexual practices in order to keep their property. A woman’s access to property usually hinges on her relationship to a man. Widows who are coerced into the customary practices of “wife inheritance” (a widow is taken as a wife by a relative of her late husband), or ritual “cleansing” (widows are obliged to have sex usually unprotected, one time or over a short period with the Chief Priest of a shrine to cleanse them of the deceased


\(^6\) See, e.g., Vetten and Bhana, “Violence, Vengeance and Gender,” pp. 11-12, 19.

husband’s evil spirit) run a clear risk of contracting and spreading HIV. Clearly, such practices would have a great risk for spreading HIV.

Consequently, the HIV pandemic is now seen as a gender, health, development and human rights issue demanding immediate and urgent attention.

The AIDS epidemic has compounded the lack of secure property rights of women and girls. When mothers and fathers die, orphaned girls may not have the right to inherit their parents’ property. AIDS widows are spurned because of their association with someone who died of AIDS, and left to fend for themselves. In fact, it would seem that the major role of widows and other elder women in caring for AIDS orphans and other family members may in fact serve as a justification for a new system of inheritance based upon compensation for women’s care work.\(^8\)

Levirate practice recognises that an individual is not so much married to a spouse, as to a particular lineage. As a consequence, it can even be possible to marry a female relative in order to maintain paternity for a widow’s children after her husband’s death. According to the belief system, levirate marriage provides protection for the widow, in that she remains a member of her husband’s family and retains access to his property. This practice is declining as a result of many factors including Christianity, a shift from prestige based on family size and work by civil society organisations.

Furthermore, women with AIDS may not want to remarry for risk of spreading the illness and women widowed by AIDS do not have the opportunity to decide whether to marry their in-laws because they become outcasts as soon as their HIV status or their deceased husband’s HIV status becomes public.\(^9\)

Forms of marriage also have an impact upon the vulnerability or resiliency of women faced with limited inheritance rights. Polygamous marriages mean that even if women had rights to inherit property, there may be an insufficient land base to provide for all women and children.

It is a common belief among Nigerian men that wives who encourage or persuade their husbands to write wills are planning to kill them and they are liable to be accused of their death. This reluctance is further supported by the impediment that the majority of rural women

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in Nigeria are illiterate, and have neither the capacity to write wills themselves, read wills, or read popular literature targeted at educating them about such rights.

2.5. Women’s Property and Inheritance Rights

Women property rights are their fundamental and constitutional right to purchase and own property anywhere in the country. Inheritance rights are the entitlement of women to share in the estate (property) of their deceased parents and husbands. In some parts of Nigeria especially in the Eastern parts, women are denied these rights and unless they have male issues in the family, they do not have access to these properties.

The rationale behind a son inheriting property is that as successor in title to his father he had duties and responsibilities to care for the family. Levirate marriage therefore was meant to ensure that women remained family members with a male provider. A collapsing of the concept of duty with a concept of male right to land under a common law conception of land rights has led to men exercising property rights, but without the adjunct responsibility that is the primary justification for them being granted that land. In the past, there existed certain sound underlying assumptions for what now seems to be the lack of protection for widows.

By custom it was the legal responsibility of the customary successor to maintain the surviving widow and children out of the estate of the deceased. This obligation was discharged with all seriousness by customary successors. In this present individualistic age, however, the interests of the widow and children are more often than not subjugated to the personal interests of the customary successors. It is not uncommon to find widows who have been thrown out of their matrimonial homes upon the intestate death of a husband. Roles that were historically played by the customary family in the lives of the surviving wife and children, such as bearing all the funeral expenses for the deceased, are in some communities now foisted on the widow and children. In the face of these realities, it is unconscionable to still insist on the preeminence of the customary family in matters of inheritance.

2.6 Benefits of Protection of Women’s Property Rights

There is increasing evidence that where women can own and inherit property, they are better placed to support themselves and their families. Economic security can make women less vulnerable to domestic violence and protect them from needing to resort to unsafe sex in exchange for food or shelter – thereby helping prevent HIV infection. It also provides a resource base enabling women to deal better with the consequences of HIV/AIDS in the household.

When women have legal control over their land, they can become investors in their family’s future and can ensure that their children’s needs are met.
When women have secure rights to land:

1. Family nutrition and health improve
2. Women are less likely to contract and spread HIV/AIDS and are better able to cope with the consequences of AIDS
3. Women are less likely to be victims of domestic violence
4. Children are more likely to get an education and stay in school longer
5. Women may have better access to micro-credit

2.7 Sex and Gender
Gender refers to the array of socially constructed roles and relationships, personality traits, attitudes, behaviours, values, relative power and influence that society ascribes to the two sexes on differential basis. Whereas biological sex is determined by genetic characteristics, gender is an acquired identity that is learned which changes over time and varies widely within and across cultures. Gender is relational and refers not simply to women or men but to the relationship between them.

Sex refers to the biological characteristics, which define humans as female or male. While sex is universal and permanent, gender varies according to culture and is dynamic.

2.8 Gender Equality
Gender equality connotes that all human beings, both men and women are free to develop their personal abilities; make choices without limitations set by stereotypes, and inflexible gender roles or prejudices. Gender equality means that the different behaviours, aspirations and needs of both men and women are given equal consideration, value and favoured equally. It does not mean that men and women are the same but their rights, responsibilities and opportunities will not depend on whether they are born male and female.

2.9 Gender Equity
Gender equity means fairness of treatment for women and men, according to their respective needs. This will include equal treatment or treatment that is considered equivalent in terms of rights, benefits, obligations and opportunities. In developmental context gender equity goals often requires built-in measure to compensate for the historical and social disadvantages of women.

2.10 Violence against Women
Violence against women is a global problem that affects women of all ages, ethnicities, races, nationalities and socio-economic backgrounds. Women experience gender-based violence at home, in the community, and at societal level. Women disproportionately experience domestic
violence, sexual assault, sexual harassment, trafficking in person, rape, and even cyber harassment and stalking perpetrated by state and non-state actors.

One of the most comprehensive and inclusive definitions of “violence against women” was formulated at the Beijing Women’s Conference in 1995. In the Platform for Action the term was defined as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

Accordingly, violence against women encompasses but is not limited to the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Other acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy. Acts of violence against women also include forced sterilisation and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection

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10 Beijing Platform For Action (BPFA) 1995.
MODULE 3

Legal and Policy Framework for Women’s Property and Inheritance Rights in Nigeria

Objectives of session:
- At the end of the session, participants will learn about the laws and policies that support WPIR and their applications

Time: 1 hour

Materials Needed
- VIPP Cards
- PowerPoint Projector and Screen
- Markers
- Flip chart stand and paper
- Masking tape

Methodology
- Brainstorming
- Presentation
- Group Exercises

Facilitators’ Notes
The facilitator should divide participants into 4 groups and hand out different colours of VIPP cards to each group with the following instructions:

Group1 and 3: List laws and Policies at national and state levels that promote WPIR
Group 2 and 4: List Laws and Policies that inhibit WPIR

All groups:
Please explain how laws and policies can be used to protect the rights of women.
Are you aware of any decided cases that support or promote WPIR? Please state them and explain.
Groups should report back in plenary while others add to or subtract from their work.

After a brainstorming session, the facilitator should make a PowerPoint presentation using the write up below.

3.0 Introduction

The legal framework on women’s property and inheritance rights is reflected in the plural legal system of Nigeria. Customary law, statutory law, and religious law and received English law are recognized in the Constitution. As a result of legal plurality, the law of inheritance is fraught with uncertainty and inequality. The competing values of these plural legal systems more often than not result in denial of rights, and, ultimately, access to justice is adversely affected and patently seen in the areas of marriage and inheritance.

Yet, the issue of inheritance is an important one because it is one way by which women can have access, especially, to economic resources such as land. Most Nigerian communities are agrarian based. Accordingly, a lack of access to the main resource, land, makes women economically dependent and thwarts their efforts at achieving economic independence for themselves and their families. It is much worse for women who have been widowed by AIDS. Except for Enugu state that has enacted an anti-stigma law, there are no laws specifically to protect that group of widows. This presentation will examine the provisions of the Constitution, statutory or received English Law, customary law and Islamic law on property and inheritance.


The Constitution is the supreme law of Nigeria, with all other laws, common law, statute, or customary law, being subordinate. The Constitution protects the equal rights of all citizens before the law, as well as their right to freedom from discrimination either expressly or through practical application of any law. Customary law is also recognised in the Constitution under s.21, subject to the caveat that it applies only to culture that enhances human dignity.

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12 Section 1 (1) This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.
(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.
13 Section 17 (1) The State social order is founded on ideals of Freedom, Equality and Justice.
(2) In furtherance of the social order-
(a) every citizen shall have equality of rights, obligations and opportunities before the law;
14 Section, 42. (1)
and is consistent with fundamental objectives of the Constitution, which would significantly include equality rights.\textsuperscript{15}

The Constitutional framework is clear in establishing that women and men are equal whatever legal system they subscribe to, and cannot be treated inequitably under the law due to their membership within a particular cultural community. Nigeria has four other main sources of law: common law, statutory law, customary law, and Sharia law.\textsuperscript{16}

### 3.2 Received English Law

English law remains an integral part of the Nigerian legal landscape, defining the default position in the absence of domestically enacted law or adherence to customary law. English law entered Nigeria through the Doctrine of Reception. Generally, reception is dated as of January 1, 1900. This position is reinforced by the federal Interpretation Act, which confirms that the default date of reception is January 1, 1900 for federal legislation.\textsuperscript{17} Any statutes of general application enacted in England prior to this date, and not subsequently replaced by domestic Nigerian law, will continue in force, regardless of repeal within England itself, as binding Nigerian law.\textsuperscript{18} Therefore, Nigeria does not have the benefit of the increased provision made for women’s rights throughout British twentieth century law.

The influence of received English law on customary law is very prominent in the area of personal laws (marriage and inheritance). Laws governing the marriage relationship in Nigeria tend to impact dramatically on women’s legal position and status in many respects including domicile, property rights and legal competence.\textsuperscript{19} Invariably, a woman’s right to property depends on the type of marriage she contracted. There are two types that are recognized under the law: statutory marriages and customary marriages, which include marriages under Islamic law.

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\textsuperscript{15} s.21. The State shall –
(a) protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter; and…

\textsuperscript{16} \url{http://data.unaids.org/GCWA/gcwa_bg_property_en.pdf} website of the Global Coalition on AIDS; Accessed on 17\textsuperscript{th} September 2011.

\textsuperscript{17} Interpretation Act Cap. 192. Laws of the Federation of Nigeria 1990


Nigerian laws on testate inheritance/succession includes: The Wills Amendment Act, 1937 and the Wills Amendment Act, 1852, regarded as statutes of general application, which were in force in England on January 1, 1900 and the Wills (Soldiers and Sailors) Act, 1918 which deals with the formal validity of Wills. Under Section 18 of the Wills Act (1837), every Will made by a man or woman is revoked by his or her subsequent marriage. However, section 15 of the Wills Law Western Nigeria (1958) expressly provides that a will is not revoked by a subsequent Customary – law marriage. Where a man is married under the Matrimonial Causes Act, and has a valid Will, his wishes as expressed in the Will prevail.

3.3. Statutory Law
The laws which govern the celebration and incidents of monogamous marriage in Nigeria are found principally in the Marriage Act Cap M6 Laws of the Federation of Nigeria 1958\(^{20}\) and the Matrimonial Causes Decree Cap M7 Laws of the Federation of Nigeria, No. 18 of 1970.

Some States have their own statutes regulating inheritance and succession; for example - the Succession of Estates Law Edict, 1987 of old Anambra State applicable to Enugu and Ebonyi States. The Wills Act of 1837 does not place any disability on widows with regards to their right to inherit property under a testamentary disposition. But the State laws are in some respects discriminatory. An example is the Anambra State Law, which provides that when a wife predeceases her husband, the husband inherits her estate totally but in the situation where the husband predeceases his wife, she does not inherit totally. She holds the property only for her lifetime and subject to remarriage. She cannot deal with that property in the same way a surviving husband would deal with the property. This is discriminatory and this situation, as we will see, has been properly addressed by the Protocol to the African Charter on the Rights of Women in Africa 2005.

3.4 Anti Stigma Law of Enugu State provides that No one shall be denied the right to acquire, inherit, purchase or own property in Ebonyi State nor disadvantaged in respect to the exercise of such rights on the basis of his/her HIV status or HIV related circumstance.\(^{21}\) It states that any culture or tradition that encourages the compulsory inheritance of the widow/widower of a deceased relation, notwithstanding the HIV status of either parties, shall be prohibited, except

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\(^{20}\) Section 36 of the Marriage Act, provides that:
(1) where any person who is subject to customary law contracts a marriage in accordance with the provisions of this Act and such person dies intestate, subsequently to the commencement of this Act, leaving a widow or husband, or any issue of such marriage; and also where any person who is the issue of such a marriage as aforesaid dies intestate subsequently to the commencement of this Act: The personal property of such intestate and also any real property, of which the said intestate might have disposed by will, shall be distributed in accordance with the provisions of the law of England relating to the distribution of the personal estates of intestates, any Customary law to the contrary notwithstanding:

\(^{21}\) Section 8.
in cases of mutual informed consent of both parties intending to relate as husband and wife or as sexual partner under such circumstances that do not put either parties at risk of HIV infection.\textsuperscript{22}

In response to the confusing situation of intestate succession in Nigeria some states in the Eastern region of Nigeria, namely Anambra, Enugu and Ebonyi States have adopted the Administration and Succession (Estate of Deceased Persons) Law, 1987. The Legislation deals with inheritance/succession to real and personal estate on intestacy. Section 120 of the law prescribed detailed rules of distribution of real and personal estate on intestacy.

3.5 \textbf{Customary Law}

Customary law has the tendency to discriminate against women, especially in the areas of marriage and inheritance. Nigeria is made up of over 250 different ethnic groups with about as many cultures and related customary laws as there are ethnic groups. The norms and dictates of these customary laws and practices regulate the lives of the members of particular ethnic groups. The substance of customary law varies from ethnic group to ethnic group, sometimes even from village to village.

It is significant to observe that customary laws govern the lives of a majority of Nigerians. Not surprisingly about 80\% of disposition of property are settled under customary law. The fact that many states do not have appropriate laws to deal with intestate succession has also increased the application of customary laws in distribution of real and personal property. Since customary laws are generally heavily weighted against women, their rights of inheritance suffer unduly in the face of systematic gender discriminatory and oppressive rules.

Wills are not unknown under customary law in Nigeria. They can be oral – nuncupative wills or written wills. Customary written wills usually evoke controversy especially as to whether they must comply with the provisions of the Wills Act 1837 or Wills Law 1958 already mentioned. Again, there is also a problem of the exact effect of such a document.

Under the Maliki School of Moslem law applicable in Nigeria, a testator may dispose of part of his estate by Will. However, a Moslem testator can bequeath only one-third of his estate to persons other than those who would traditionally be his heirs.\textsuperscript{23} The remaining two-thirds devolves on his traditional heirs. There is also no requirement of writing or of signing and witnessing as in the case of statutory law. Professor Nwogugu is of the opinion that if the Will

\textsuperscript{22} Section 3.
\textsuperscript{23} \textit{Adesunbokan v. Yunusa} [1968] N.N.L.R. 79.
is in writing but does not comply with the requirements of the Wills Act, it would be treated as valid under customary law.24

Since customary laws and practices governing intestate inheritance vary from one ethnic group to another, it becomes necessary to discuss this topic in relation to three major ethnic groups in Nigeria: Igbo, Yoruba, Hausa (predominantly Islamic communities).

Throughout colonial rule, the British maintained a policy of respecting the laws of the people indigenous to Nigeria as long as they are not repugnant to natural justice, equity and good conscience. As Lord Lugard aptly described, the doctrine of continuity required that:

“The British courts shall in all cases affecting natives (and even non-natives in their contractual relations with natives) recognize native law and custom when not repugnant to natural justice, and humanity or incompatible with any ordinance, especially in matters relating to marriage, land, and inheritance.”25

3.5.1 Repugnancy Doctrine: Customary law continues to be recognized in Nigeria as a branch of the law, subject to the repugnancy doctrine.26 While it is not clear what is prohibited as being repugnant, historically, the position has been that repugnancy is not measured against the standard of British conduct, but against standards internal to Nigeria. For example, in Dawodu v. Danmole,27 the Privy Council upheld a Yoruba custom of inheritance through the Idi-Igi system, in which the estate is divided in equal shares by the number of wives, with each child then taking an equal share of the portion allotted to his mother’s branch of the family. While this was contrary to the British principle of equal division to all children, the Privy Council held at page 1060 that:

“The principles of natural justice, equity and good conscience applicable in a country where polygamy is generally accepted should not be readily equated with those applicable to a community governed by the rule of monogamy”.

While there is no clearly articulated test for repugnancy28, it is clear it will depend upon dominant views of the time and, given that those traditionally exercising the power to hold laws to be repugnant were British or British-trained judges, the repugnancy clause may have in

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25 Lord Lugard, exponent of indirect rule, explaining the principle to political officers, Political Memoranda, 1913-1916 at 84.
26 The Evidence Act re-enacts the repugnancy requirement at s. 14: Provided that in case of any custom relied upon in any judicial proceeding it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience
27 [1962] 1 W.L.R. 1053,
28 Kasunmu, supra note 27 at 18.
part been a means to enforce English morality. For example, *Meribe v. Egwu*\(^{29}\) is commonly cited as an example of a repugnancy case. In this case, it was held that if there was proof that a custom permitted a woman to marry another woman, such a custom would be repugnant. However, it was found that the practice of a barren woman marrying another woman for her husband, whose issue would then be hers for the purposes of inheritance, was not repugnant as it was actually an act of procurement, with the actual marriage being between the woman and man. Given that the Constitution now provides a clear set of values with which all laws must conform, the repugnancy doctrine may now be subject to the standards of the Constitution.

For example, in *Mojekwu v. Mojekwu*\(^{30}\) Justice Niki Tobi held:

> “The “Oli Ekpe” custom which permits the son of the brother to inherit to the exclusion of his female child, is discriminatory and therefore inconsistent with the doctrine of equity....We all need not travel all the way to Beijing to know that some of our customs including the Nnewi “Oli-ekpe” custom relied upon by the appellant are not consistent with our civilized world in which we all live today, including the appellant...Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God himself.”

Justice Tobi then went on to hold the practice repugnant.

Questions of repugnancy aside, customary law is meant to be the living law of the people, which gains strength through its acceptance by community members as obligatory.\(^{31}\) As recognized in *Owonyin v Omotosho*,

> “Customary law is a mirror of accepted usage. In other words, a particular customary law must be in existence at the relevant time and it must be recognized and adhered to by the community.”\(^{32}\)

Proof of Customary law is usually as a matter of fact rather than as law within the formal court system.\(^{33}\) However, the *Evidence Act* does not apply to Area or Customary courts, and customs need not be proven before these lower courts which are assumed to have competence over

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32 *Owonyin v Omotosho* (1961) 1 All NLR 304 at 309.
33 *Giwa v Erinmilokun* (1961) 1 SCNL R 337.
such matters. \textsuperscript{34} Additionally, judicial notice can be taken of customs frequently acted upon or of “notoriety”. \textsuperscript{35}

Generally, customary law has not codified except for the publication by the Anambra State Ministry of Justice of a Manual of Customary Law for use in Anambra and Imo states. While this Manual has no official legal status and is therefore not binding, it is meant to be authoritative, but displaceable by other evidence. \textsuperscript{36}

Clearly, the repugnancy test continues to be a means to strike down, if not to transform, customary law. It may now have greater juridical meaning as the constitution can serve as a guide both to what is repugnant within a custom, as well as to simply deem a customary law unconstitutional. The Court may use s.42, equality rights, and s.21, recognition of the cultures of Nigeria subject to the promotion of dignity, to declare customs unconstitutional. \textsuperscript{37}

### 3.5.2 Igbo Customary Law Of Inheritance

In the vast majority of Igbo communities, the family grouping is strictly patrilineal. \textsuperscript{38} Thus, inheritance is based on the principle of primogeniture; that is, succession by the eldest son, known as “Okpala” or “Diokpa”. \textsuperscript{39} Where the deceased is a polygamist and has many sons from several wives, the eldest sons of each of the wives may take part in sharing of the intestate. However, daughters and wives have no right to succession to their father’s movable and immovable property.

As has been stated:

“Personal property including wives and slaves descends to the eldest son as heir, or failing a son, to the oldest brother or male relative”. \textsuperscript{40}

\textsuperscript{34} Evidence Act, S.12.
\textsuperscript{36} As explained in Ezejiofor, supra note 19 at 42.
\textsuperscript{37} Emery V, Women’s Inheritance Rights in Nigeria: Transformative Practices.
\textsuperscript{38} There are few cases of matrilineal communities in which the right of succession is through mothers or females. It has also been observed that – no Nigerian system fits into this purist form of matrilineal inheritance. \textit{Towards A Restatement} See Professor Uche, “The Matrilineal System of Inheritance – The Nigerian Model” in Nigerian customary Law \textit{op.cit.}, p. 174 – 186.
\textsuperscript{39} Bini rules of inheritance in Mid-Western Nigeria are similar to those of the Igbos. See the following cases Ogiamen v. Ogiamen [1967] N.M.L.R. 245; [1967] 1 ALL N.L.R. 191; also the recent case of Chief Saka Lawal – Osuala and 4 others v. Lydia Modupe Lawal Osuala & 5 others [1993] 2 NWLR p. 158.
\textsuperscript{40} Obi, S. N.C. \textit{The Ibo Law of Property}, \textit{op.cit.}, pp. 187 – 188.
Basically, wives do not inherit because of the customary notion that women are property and, therefore, object of inheritance themselves. A long line of authorities has firmly established this principle. In *Nezianya v. Okagbue*, the Supreme Court of Nigeria, held that:

> “Under the native law and custom of Onitsha, a widow’s possession of her deceased husband’s property is not that of a stranger and however long it is, it is not adverse to her husband’s family and does not make her owner; she cannot deal with the property without the consent of his family. She cannot by the effluxion of time claim the property as her own, if the family does not give their consent, she cannot, it would appear, deal with the property. She has, however, the right to occupy the building or part of it, but this is subject to good behaviour. Further, the court stated that no equity arose in the widow’s favour through her long possession, it having been acquired by her qua member of her husband’s family with consent (actual or implied) of his family”.

The Supreme Court again, and after more than 20 years, has passed and reaffirmed the above decision in *Nzekwu v. Nzekwu* and maintained that the interest of the widow in the house is possessory and not proprietary so that she cannot dispose of it.

Daughters, like wives, do not inherit under Igbo customary law. The only situation where a daughter can inherit is where, for example, she chooses to remain unmarried in her father’s house with a view to raising children in the father’s home. This is known as “nrachi” or “idegbe” institution. It usually happens when a man left on death a substantial estate, but no surviving sons or other male issue of the lineage to inherit it. The idea behind this practice is to save the lineage from extinction. The daughter, as an “idegbe” or “nrachi” is entitled to inherit both movable and immovable property of her deceased father’s estate. The legal interest vests in her until she gives birth to her own children. However, if she bears sons and daughters, the sons and not the daughters, will succeed her in accordance with the rule of primogeniture.

In respect of an unmarried daughter who is not an “idegbe”, her estate is inherited by full brothers; in default, fathers. If there is no surviving father or brother, the half-brother will inherit but a sister or half-sister can never inherit.

In a situation where a wife pre-deceased her husband, succession is as follows: the sons will inherit, failing sons, husband. The wife’s property like money, cattle, yams and other important chattel goes to the sons or husband as the case may be, while the daughter inherits what is regarded as feminine properties, for example, jewellery, domestic utensils, dresses, cocoyam and livestock (fowls).

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41. [1963] All N.L.R. 358 S.C
42. [1989] 2 NWLR 373.
43. See note. 15 above p. 185.
The case of *Mojekwu V. Mojekwu*[^44], seems to have changed the tide with respect to women’s right to property. The Court of Appeal held unconstitutional and contrary to democratic values an age long Igbo customary law under which males and not females inherit their father’s property.

### 3.5.3 Yoruba Customary Law

Generally, under the Yoruba customary law, it is the children of the deceased, whether male or female, who are entitled to succeed to the deceased father’s property on his death intestate to the exclusion of other relations.[^45] The property is shared among the children, either equally per capita (“ori-jori”) or per stipes (“idi-igi”) where the deceased man has more than one wife. In *Sule v. Ajisegiri*,[^46] it was held that the partition must be equally between those entitled regardless of sex. Thus, the defendant’s claim that being a male he was entitled to a larger share was rejected.

In contrast, a wife has no right of inheritance in her deceased husband’s estate. Under customary law marriage, the widows form part of the estate of their husband. As Jibowu, F.J. observed in *Suberu v. Sunmonu*[^47]

> “It is a well settled rule of native law and custom of the Yoruba people 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”.

Again, in *Sungunro – Davies v. Sungunro*,[^48] Beckley J. said that the reason for depriving a wife of inheritance rights in the deceased husband’s estate was because devolution of property under native law and custom follows the blood.

Consequently, unless a property given to a wife is proved to be an outright gift it will pass on the husband’s death to the husband’s family. She has no right of inheritance whatsoever.[^49]

The Administration of Estate Law 1958 applicable to the whole Yorubaland, which gives spouse’s right to succeed to each other’s property, does not apply to persons subject to customary law.

[^46]: 13 N.L.R. 146.
[^48]: (1929) 2 N.L.R. 79
3.6 Sharia Law/Islamic Law
The fourth dominant form of law in Nigeria is Sharia law, which defines the shares that go to each member of the family: the woman’s share is half that of a man when there are both male and female heirs. While it does not prevent women from owning assets, in some areas women who are widowed or abandoned by their husbands may cede their share of family land to their brothers in exchange for economic support. Thus both laws and the economic realities faced by women in many parts of the Muslim world reduce the likelihood that women own real property. While a lot of concern was expressed about the recent resurgence of Sharia law within Nigeria spearheaded by Zamfara state, it actually had legal standing as a form of customary law active at the time of colonisation, and has continued through the doctrine of continuity like other customary law systems. It was Sharia criminal jurisdiction that was recently revitalized; jurisdiction over “personal law”, including marriage, property and inheritance, has remained constant.

Succession rights under Islamic law are mathematically laid out in the Qur’an. Under the law, wives and daughters are entitled to participate in the sharing of the estate of their deceased husband or father. When there are children or other descendants, the widow’s portion is one-eighth of the deceased estate. If there is more than one widow, the one-eighth is shared equally amongst them. A woman without any child inherits one quarter of the deceased husband’s estate.

3.7 Christian Religious Law
The Holy Bible clearly supports inheritance rights of women. In the book of Numbers the Christian Bible records that the daughters of Zelophehad from the clans of Manasseh son of Joseph approached Moses, Eleazer the Priest, the leaders and the whole assembly of the Israelites, and said

“Our father died in the desert...and left no sons. Why should our father’s name disappear from his clan because he had no son? Give us property among our father’s relatives”.

The women’s claim was based on the fact that their father had committed no act that would preclude their inheritance. He had simply died during the forty years in the wilderness along

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50 The particular form of Sharia recognised in Nigeria is the Maliki form, which predominates throughout Western Africa.
53 Chapter 27 vs 1 – 11.
with almost everyone of his generation. The women understood that denying them land would be punishment without cause. They understood the law and knew they had a just case for fair treatment.

The Bible reports that Moses brought their case before the Lord and the Lord said to him,

“What Zelophehad’s are saying is right. You must certainly give them property as an inheritance among their father’s relatives and turn their father’s inheritance over to them. Say to the Israelites, ‘If a man dies and leaves no son, turn his inheritance over to his daughter. If he has no daughter, give his inheritance to his brothers. If he has no brothers, give his inheritance to his father’s brothers (uncles). If his father has no brothers, give his inheritance to the nearest relative in his clan, that he may possess it. This is to be a legal requirement for the Israelites, as the Lord commanded Moses’.

This passage gives a glimpse into how justice was meted out among the Israelites. The Lord had written the Law, and he also sat as the highest judge in its application. The appeal to the judge was simple, and the answer was immediate. God gave Zelophehad’s daughters their justice, why won’t the judges of the world do the same to women?

3.8 International Agreements and Treaties
A bevy of international human rights agreements specify that women and men should have equal rights to access, own, control, and inherit land, housing and other property.

3.8.1 UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), for example, requires State Parties to

“take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure, on a basis of equality of men and women the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property…”

3.8.2 Protocol to the African Charter on Human and Peoples’ Rights and on the Rights of Women in Africa (2003) provides that a woman, during her marriage, shall have the right to acquire her own property and to administer and manage it freely.\(^{54}\) In Separation, Divorce and Annulment of Marriage, there should be appropriate legislation to ensure that women and men

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\(^{54}\) Article 6.
have reciprocal rights and responsibilities towards their children and women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.\textsuperscript{55}

State parties are to promote women’s access to and control over productive resources such as land, credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women and guarantee their right to property.\textsuperscript{56} Finally, the Protocol guarantees a widow’s right to an equitable share in the inheritance of the property of her husband and right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it. Women and men shall have the right to inherit, in equitable shares, their parents' properties.\textsuperscript{57}

**3.8.3 African Union Solemn Declaration on Gender Equality in Africa (2004)** reaffirmed their commitment and agreed to actively promote the implementation of legislation to guarantee women’s land, property and inheritance rights including their rights to housing.\textsuperscript{58}

**3.8.4 Beijing Platform for Action (1995)** Strategic objective F.2 is to facilitate women’s equal access to resources, employment, markets and trade through the enhancement, at the national and local levels, rural women’s income-generating potential by facilitating their equal access to and control over productive resources, land, credit, capital, property rights, development programmes and cooperative structures.

Nevertheless, even where governments have signed and ratified international agreements and passed laws granting equal property rights, property ownership is exclusively in male control.

**3.9 Land tenure, Marriage Form and inheritable rights.**

In Eastern part of Nigeria, women’s access to land and housing is through a male relative, usually father, brother or husband. A widow will inherit land in ‘trust’ for her male children (providing they are minors). In most cases she will be given a life interest in the land. If she remarries, however, she risks forfeiting all claims to this land. Moreover, such arrangements only grant women access to land and property – not ownership, so they have no right to engage in or influence any transactions related to the land.

\textsuperscript{55} Article 7.  
\textsuperscript{56} Article 19  
\textsuperscript{57} Article 21  
\textsuperscript{58} Article 7.
Property rights in Nigeria are closely linked with land, as this is the primary good for the majority of the population in a subsistence economy.\(^5\) Systems of land tenancy therefore have a major impact on the sets of rights to property that can be inherited in Nigeria.

### 3.10 Forms of Marriage, Property and Inheritance

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

Individuals must make the choice to contract either a statutory, monogamous civil marriage, or a marriage under a customary or sharia system, which is permissive of polygamy.\(^6\) Polygamy remains common in Nigeria, with approximately 42.6% of women having such marriages, and 56.7% having some form of monogamous marriage.\(^7\) In order to have a valid civil marriage under the Marriage Act, it is necessary to both complete a formal registration process and to get married within a licensed facility. Thus, while many Christian marriages will also be civil marriages, given that Churches can be licensed to perform these services, a Christian marriage alone does not mean that an individual will have rights under the civil system.

A civil marriage establishes the presumption that the couple intends to subscribe to the British inheritance system. This presumption is established on two primary bases. First, Cole v. Cole\(^8\) established that individuals being married in the Christian form had the right to succession on Christian principles. Legally, a marriage in a church (a licensed place of worship of any denomination) is a marriage under the Act.

Where a person, subject to native law or custom marries under the Marriage Act and dies intestate, the applicable law for the distribution of his estate would be the Marriage Act and

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6. Marriage Act, Cap. 218, Laws of the Federation of Nigeria 1990, at s. 35 “Any person who is married under this Act, or whose marriage is declared by this Act to be valid, shall be incapable, during the continuance of such marriage, of contracting a valid marriage under customary law, but, save as aforesaid, nothing in this Act contained shall affect the validity of any marriage contracted under or in accordance with any customary law, or in any manner apply to marriages so contracted”.


8. (1898) 1 N.L.R. 15
not the Administration of Estates Law or Customary Law. This is because his intestacy is governed and regulated by English Law due to the nature of marriage he/she contracted.

In summary, inheritance is possible under the British system if the marriage is itself a civil marriage, the couple does not live in a customary marriage, and the land is not subject to customary prohibitions. In the alternative, a couple that does not have a civil marriage can also opt into this system through using a British will. Inheritance will occur under a customary law if the couple marries under a customary system.

3.11 Case Law
Because of the discriminatory practices of customary law, more and more widows are taking their cases to court in their quest for redress. Until recently, judicial attitudes tended to perpetuate this gender discrimination. For example in the case of Nezianya V. Okagbue63 the court held that under the native law and custom of Onitsha, no matter how long a widow possesses her deceased husband's property, it does not make her the owner; so she cannot deal with his property without the consent of his family. Further, if a husband dies without a male issue, his real property descends to his family; his female issue does not inherit it, according to custom.

Further, in the case of Onwuchekwe V. Onwuchekwe64 the Court of Appeal endorsed a custom in which a husband is said to own the wife along with her properties. This is in spite of the provisions of the High Court Laws that empower a court to declare a custom repugnant to natural justice, equity and good conscience and on that ground, refuse to apply it in a case. However, in a few cases, courts have recognised the hardships caused by the application of customary law rules and have adjudicated cases in such a manner as to alleviate the hardship.

In the 1997 case of Augustine Nwofor Mojekwu V Caroline Mgbafor Okechukwu Mojekwu65 the Court of Appeal held unconstitutional and contrary to democratic values an age-long customary law under which males and not females inherit their father’s property. Hon. Justice Niki Tobi held that it was unconstitutional, Hon. Justice Olagunju stated obita dicta, that it is “preposterous” while Honourable Justice Fabiyi held the custom to be “perfidious and the petrifying odour smells to high heavens”. As a result of the decision in this case, the daughters of the deceased person inherited their father’s property, which rightfully belonged to them.

At issue in this case was the ability of a daughter to inherit under a particular set of Nnewi customs. There were two potential systems of inheritance invoked in this case. The first was the

63 (1963) 1 All N.L.R 352
64 (1991) 5 NWLR pt. 194 p. 739
65 (1997) 7 NWLR (Pt. 512) 283
Kola tenancy system, under which both male and female children are entitled to take and the other practice was the oli-ekpe, a primogeniture rule of inheritance. Both the Court of Appeal and the Supreme Court held that the relevant law in this case was that of the lex situs, i.e. the kola tenancy. Therefore, the daughter was eligible to inherit. However, the Court of Appeal went on to hold the oli-ekpe custom to be repugnant to natural justice, and it was these obiter comments that have come to be stated as the ratio of this case.

"Is such a custom consistent with equity and fairplay in an egalitarian society such as ours where the civilised sociology does not discriminate against women? Day after day, month after month and year after year, we hear of and read about customs which discriminate against the women folk in... They are regarded as inferior to the men folk. Why should it be so? All human beings- male and female- are born into a free world, and are expected to participate freely, without an inhibition on grounds of sex; and that is constitutional. Any form of societal discrimination on grounds of sex, apart from being unconstitutional, is antithesis (sic) to a society built on the tenets of democracy which we have freely chosen as a people. We need not travel all the way to Beijing to know that some of our customs, including the Nnewi ‘Oli-Ekpe” custom relied upon by the appellant, are not consistent with our civilised world in which we all live today, including the appellant. In my humble view, it is the monopoly of God to determine the sex of a baby and not the parents. Although the scientific world disagrees with this divine truth, I believe that God, the Creator of human being, is also the final authority of who should be male and female. Accordingly, for a custom or customary law to discriminate against a particular sex is to say the least an affront on the Almighty God Himself. Let nobody do such a thing. On my part, I have no difficulty in holding that the ‘Oli-ekpe’ custom of Nnewi, is repugnant to natural justice, equity and good conscience.”

The Supreme Court’s response to the Court of Appeal’s repugnancy ruling was highly critical. It had a number of concerns including that:

- the issue was not joined by the parties,
- it was “an emotive and highly homilised pronouncement”, and
- it was obiter given the decision on the kola tenancy.
- the language used made the pronouncement so general and far-reaching that it seems to cavil at, and is capable of causing strong feelings against, all customs which fail to recognize a role for women, for instance, the customs and traditions of some

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66 Mojekwu (SC), supra note 166 at 10.
67 CA at 304-305
communities which do not permit women to be natural rulers or heads or family heads. The import is that those communities stand to be condemned without a hearing for such fundamental custom and tradition they practice by the system by which they run their native communities. It would appear, for these reasons that the underlying crusade in that pronouncement went too far to stir up a real hornet’s nest even if it had been made upon an issue joined by the parties, or properly raised and argued.”

This Court of Appeal decision was also quoted in the landmark South African case, Bhe.

The Supreme Court disapproved of the notion of unlimited gender equality canvassed by the Court of Appeal and affirmed the idea that gender ‘equality’ has limits since an unlimited gender ‘equality’ would not be feasible in some aspects of the cultural and social life of the peoples of the country. The pronouncements and clarifications made by the Supreme Court echo the idea of cultural pluralism in human rights. However, this Supreme Court had no choice but to uphold the judgement on appeal in 2004 because the kola tenancy law of Onitsha under which the case was brought allowed inheritance by females.

Any attempt to look to the judiciary as the locus of transforming customary law must begin with an analysis of Mojekwu v. Mojekwu on appeal before the Supreme Court. However, it provides a useful entry point into the Court’s thinking on the issue of transforming customary law.

Four years after the Mojekwu v. Mojekwu case, the Court Appeal sitting at Port Harcourt in the case of Uke V Iro, reiterated that the Constitution protects all rights of all sexes and no law, policy or custom should seek to relegate women to the position of second class and thereby depriving them of their inalienable and constitutionally guaranteed rights and where such law exists, they are fit for the garbage and must be disposed of.

In Ukeje V Ukeje, the Court pronounced the Ibo custom that disentitled a female child from sharing in her deceased father’s estate as void and in conflict with section 42(2) of the 1999 Constitution of Nigeria, which outlaws discrimination against anybody on grounds of sex etc.

Judicial pronouncements on customary law have often been criticized as inaccurate. Because customary law is essentially unwritten and, as already noted, differs from locality to locality, it

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68 Mojekwu (SC), supra note 166 at 14.
70 Supra
71 Court of Appeal Port Harcourt Rivers state, 2001
72 (2002) FWLR Pt. 109 p1588
is inevitable that any purported judicial pronouncements will be flawed. Nevertheless, the trend of judicial decisions reveals a gradual inclination toward the recognition and protection of the rights and interests of spouses and children of the deceased, as opposed to those of the customary family, in the absence of an adequate legislative provision on the subject.

Another recent case of Muojekwu V. Ejikeme\(^73\) from the Court of Appeal held that a female child could inherit from the deceased father's estate in Igboland without the performance of the Nrachi ceremony. Nrachi is a ceremony in which a man keeps one of his daughters at home unmarried for the rest of her life to raise issues, especially males, to succeed him. After a daughter performs this rite, she takes the position of a man in her father’s house. The Court held that section 42(1) of the Constitution of the Federal Republic of Nigeria, 1999 prohibits discrimination on grounds of sex etc. Consequently, the court held that such a custom clearly discriminated against the daughter of the deceased who did not perform the ceremony and is therefore unconstitutional in the light of the provisions of the Constitution. The court refused to apply the custom and declared it repugnant to natural justice, equity and good conscience in that it legalises fornication and encouraged prostitution, as the woman remains unmarried procreating outside the bounds of marriage.

The cases reflect a shift in the assumption that it is the man who solely provides for the family and, therefore, singularly acquires all family property. Even though some of these cases show considerable judicial empathy for the position of women, the courts are clearly limited in the scope of remedies they can grant to women. This is a consequence of the confines of customary law rules of succession. It is also a result of the lack of adequate legislation defining the rights of surviving spouses vis-à-vis the customary family.

The Court clearly has the power to hold a law to be repugnant or unconstitutional. The Court has used its powers to consider the repugnancy of laws in the scope of inheritance rights. In terms of widow rights, two cases are of note. First, in Nzekwu v. Nzekwu,\(^74\) the court held that an Onitsha customary law in which a widow, even without children, has a right to occupy the buildings of the deceased and to receive maintenance from his family, subject to her good behaviour, was not repugnant. Rather, the court stated that a law that absolutely denied a widow’s rights to the property would be repugnant. This ruling is useful in that it affirms the importance of rights of access and use, if not ownership. It recognises that absolute rights to ownership may not be the only means to provide rights for women. However, by allowing the rights subject to the caveat that a widow must maintain “good behaviour”, it also authorises a

\(^73\) (2000) 5 NWLR 403 \\
\(^74\) [1989] (2) N.W.L.R. 373.
high level of control of the widow by the deceased’s family and increases the instability of her life estate.

Further legal barriers to widow’s rights are created by the court’s failure to address legal requirements that have an inequitable gendered effect on women. For example, in *Amadi v. Nwosu*\(^75\), a widow was unsuccessful in her attempts before the Supreme Court to challenge her husband’s attempt to sell jointly owned matrimonial property because she could not provide documented evidence of material contribution. In fact, in *Onwuchekwa v. Onwuchekwa*,\(^76\) the court of appeal accepted that a wife could not make joint contribution to property as she herself was property. This conclusion was made on the basis of accepting the husband’s explanation of customary law in his area. If widows are not able to effectively bring evidence before these courts, it is questionable if they will have much success in having practices held to be repugnant.

In conclusion, the constitutional provision of the right to equality can be a blunt tool to strike down customary laws as is seen in *Mojekwu v Ejikeme*.

\(^75\) (1992), 5 N.W.L.R. 273 (S.C.), as described in Ewelukwa, supra note 94 at 463.

\(^76\) (1991), 5 N.W.L.R. 739 (C.A.)
MODULE 4
Protecting Women’s Property and Inheritance Rights
In the Context of HIV and AIDS
The Role of Magistrates and Lawyers

Objectives of session:
- At the end of the session, participants will understand their roles in the promotion and protection of WPIR

Time: 1 hour

Materials Needed
- VIPP Cards
- PowerPoint Projector and Screen
- Markers
- Flip chart stand and paper
- Masking tape

Methodology
- Brainstorming
- Presentation
- Group Exercises

Facilitators’ Notes
This time participants should be made to work in two groups according to their occupation – lawyers and Magistrates and Customary Court Judges. The facilitator should write these questions on flip chart or project them on the slide. After 30 minutes, the groups should report in plenary and their counterparts should be given the opportunity to critique their work and make their input. At the end of the presentations in plenary, the facilitator should use the notes below to make a PowerPoint presentation

| Group 1 – Magistrates and Chairmen of Customary Courts |
| Group 2 - Lawyers |
Group work discussion questions

Group 1.

- What is the Role of Magistrates and Customary Court Chairmen in the promotion and protection of WPIR?
- Please share the facts of any WPIR case(s) you have been involved in and how they were resolved.
- How can Magistrates and Judges use their powers to protect widows especially those widowed by AIDS from the property grabbing by family members?

Group 2:

- What is the Role of lawyers in the promotion and protection of WPIR?
- Please share the facts of any WPIR case(s) you have been involved in and how they were resolved.
- How can lawyers use their privileged positions to protect widows especially those widowed by AIDS from the property grabbing by family members?

Alternatively the following questions could be used:

Group Work:
- Identify existing laws on WPIR – Customary Laws inclusive
- Identify gaps in these laws
- Make recommendations for better protection of WPIR

Group Work:
- Identify customary laws that inhibit WPIR
- Suggest the Roles that traditional institutions and customary court judges can play in preventing disinheritance of women
- Identify statutory laws if you can that promote WPIR

4.1 Introduction

Laws and practices relating to women’s property and inheritance rights vary enormously from state to state in Nigeria. Received English laws, statutes, constitutional laws and traditional “customary” laws may be in conflict, making it hard to ascertain precisely what rights women have. Even when they do have a clear legal right to own and inherit houses and land, women and men may be unaware of that right. Women may not know that legal means exist through
which they can claim that right, and few women have access to legal advice. If they have access, they may lack money to actually obtain advice. The lawyers should be in a position to advise such women to access legal services through institutions and organizations that provide legal aid such as the Legal Aid Council, Multi-Door Mediation Services of the State Governments where they exist and NGOs such as the Civil Resource Development and Documentation Centre (CIRDDOC), Women’s AID Collective, Women Advocate Research and Documentation Centre (WARDC) etc. Lawyers can also offer pro bono services to such indigent women.

Most find themselves struggling against deeply entrenched public beliefs that property ownership is an exclusively male domain. Atrocities are perpetrated against widows especially aids widows under the guise of customs. In many instances, judges and magistrates lack the capacity and knowledge to interpret and implement national laws within the provisions of the international human rights instruments like CEDAW. In other instances decisions may revert to customary law, which often rules in favor of men. Legal literacy and capacity building is therefore an imperative. In this case, lawyers can intervene and source training and capacity building for Judges and Magistrates in this area. Women themselves need to know the rights they have and how they can enforce them. CRS and EBS have laws prohibiting harmful traditional practices. These lawyers need to be tested in the courts. Lawyers can take on this responsibility to adopt public interest litigation cases to test the laws and courts should be able to apply the “repugnancy doctrine” to strike down the customary practices that do not add any value to the lives of the people especially women.

Investing in a woman’s land rights creates an extraordinary ripple effect that spreads to her family, village, and beyond. However, in much of the world, while women shoulder the burden of food production—women produce as much as 60 to 80 percent of food in the developing world—they often don’t have secure rights to the land they farm. Although they till the fields, they are often barred from inheriting or owning those fields. This puts them at risk for losing that land if they lose their husband, father, or brother because of illness, violence, or migration. And losing the land often means losing their source of food, income, and shelter. Given that land is so vital to the daily survival of the rural women and that less than 25% of Nigerians live in urban environments, as judges, Magistrates and lawyers, we must assist them to recover land and property snatched from them on the death of their husbands. Nigerian women make up more than 60% of the agricultural labour force and do up to 80% of food production yet their access and control to land are limited.

77 U.S. Department of State, Background Note: Nigeria, January 2005 at 2.
Women's access to property is critical for their economic security and for the economic security of their children. When women own their own assets, they also have more independence and a bigger role in decision-making in their households and communities. All this helps improve the strength and prosperity of societies. But in Nigeria, women find obstacles in their way to owning property. Long-standing traditions which put all land and property in the hands of men, inadequate laws, ineffective courts and a lack of education conspire against women's legitimate rights to assets.

These traditional and legal barriers often damage women, their families and development efforts.

Women make up half the world's population, but they own only a tiny proportion of the world's assets. In Sub-Saharan Africa more than 80% of farmers are women, yet very few have secure rights to the land they farm. Worldwide, women own just 10 per cent of all assets. Tradition and customary law dictate that land use, housing and the transfer of land and housing within families and between generations, largely excludes women. Even when national laws permit ownership or allow women to inherit property, courts often favor a male relative. This needs to change. Lack of awareness by women of their rights also prevents them from asking the courts to intervene.

This injustice is holding back progress. When women are able to control their own assets, it has a positive impact for their families and wider society. The evidence shows that when women manage their own resources, they make choices, which usually benefit their families. Women who own property are less vulnerable to domestic violence and abuse. Their children have better diets and they are more likely to send their daughters to school. There is also growing evidence that when women enjoy ownership rights, households are better able to cope should a family member suffer from illness such as HIV/AIDS.

There have been positive steps forward. In recent years, language recognizing and respecting women's rights to property has been written into constitutions and national laws of many countries. Nigeria is yet to do this at the national level although there are state laws that prohibit the snatching of property of widows.

But much more needs to be done by the courts and authorities to ensure that the equal right to own and inherit property is applied in practice. Each nation must ensure that women's property and inheritance rights are legally enforceable, and that all owners, whether men or women,
have the same rights. It is time to cast aside outdated practices, which block women’s access to their own assets and undermine development.\textsuperscript{79}

Magistrates and lawyers ought to work to ensure that, women, especially widows and the children they support have secure land rights, which provide opportunity and stability. This work involves not only laws, but also traditions and customs. Women’s land rights have to be both legally and socially enforceable to be effective.\textsuperscript{80}

\textsuperscript{79} http://www.theelders.org/womens-initiatives/property-and-inheritance-rights; website of The Elders accessed on 17\textsuperscript{th} September 2011.

\textsuperscript{80} http://www.landesa.org/women-and-land/?gclid=CMqq37qzpKsCFcMKfAod_0C50Q website of Landesa Center for Women’s Land Rights; Accessed on 17\textsuperscript{th} September 2011.
MODULE 5
Managing Women’s Property and Inheritance Rights
In the Context of HIV and AIDS

The Role of CSOs, Police, Informal Justice Providers and Paralegals

Objectives of session:
- At the end of the session, participants will understand their roles in the promotion and protection of WPIR

Time: 1 hour

Materials Needed
- VIPP Cards
- PowerPoint Projector and Screen
- Markers
- Flip chart stand and paper
- Masking tape

Methodology
- Brainstorming
- Presentation
- Group Exercises

Facilitators’ Notes
The participants should be made to work in two groups according to their occupation – paralegals and other informal justice providers including the police, in group one and CSOs in Group 2. The facilitator should write these questions on flip chart or project them on the slide. After 30 minutes, the groups should report in plenary and their counterparts should be given the opportunity to critique their work and make their input. At the end of the presentations in plenary, the facilitator should use the notes below to make a PowerPoint presentation

<table>
<thead>
<tr>
<th>Group 1 – Paralegals and Informal Justice Providers (Traditional Rulers)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Group 2 - CSOs</td>
</tr>
</tbody>
</table>
Group work discussion questions

Group 1.

- What is the Role of the Police, paralegals and other informal justice providers in the promotion and protection of WPIR?
- Please share the facts of any WPIR case(s) you have been involved in and how they were resolved.
- How can the police, paralegals and informal justice providers protect widows especially those widowed by AIDS from the property grabbing by family members?

Group 2:

- What is the Role of CSOs in the promotion and protection of WPIR?
- Please share the facts of any WPIR case(s) you are aware of or have been reported to you and how they were resolved.
- How can CSOs use the laws to protect widows especially those widowed by AIDS from the property grabbing by family members?

Presentation

The Laws of Succession

5.1 Introduction

Women’s property rights in Nigeria is closely linked with land rights, as this is the primary good for the majority of the population in a subsistence economy. Therefore, systems of land tenancy have a major impact on the sets of rights to property that can be inherited in Nigeria. To be able to protect and manage the property and inheritance rights of women, it will be useful for the paralegal or informal justice provider to understand the systems of inheritance or succession.

5.2 Testate Succession

Civil Society Organisations should encourage people to write wills. This is one of the ways that the issue of denial of property rights and property grabbing by in laws can be checkmated. Testate succession is governed in the majority of Nigeria by The Wills Act 1837, and The Amended Wills Act 1867. Thus if an individual makes a will, he is not bound to provide for his

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family. A notable exception to this testate regime is that the states that make up the former region of Western Nigeria are governed by the *Wills Law Cap. 133, 1959 Laws of Western Nigeria*.

Under customary systems, wills may also be recognized. For example, the Ibos may make a deathbed disposition, or Ike Ekpe, which is an oral will. Written Wills may also be made under customary law. If a written will is made that meets the requirement of the *Wills Act*, by being signed and witnessed by two individuals, then it will be applicable to an individual whether married under a customary or Muslim marriage.\(^82\) A customary disposition evidenced in writing need not comply with the *Wills Act*, but rather must only comply if the intention is to live under the English system.\(^83\) Whether the will is found to be a customary or English will, it cannot transfer property held as family property, including a title (such as family head), which is not alienable by individual will.

Amongst the Hausa of Northern Nigeria, sharia law is the dominant form of “customary law”. Under sharia law, only up to one third of property is devisable by written document, or oral will (wasiyya).\(^84\) This one-third testamentary disposition may be more accurately described as a gift, or as an exception to the general principles of succession under sharia law.\(^85\)

### 5.3 Intestate Succession

The most frequent form of succession in Nigeria is intestate, which raises a much more complex set of rules under the English system. The *Statutes of Distribution* provide that if there is a widow and issue, the widow will get one third of the personal property, and that if there is no issues, one half. The *Intestates’ Estate Act* provides additional protection in that if a widow has no issue, she will receive all personal property that is not in excess of 500 pounds, or get 500 pounds absolutely and her share in the residue. The rest would go to the next of kin by proximate degree, being either the father or mother. In either case, under the English statutes,\(^82\) *Rosaki Yinusa v. Adesubokan* [1971] N.N.L.R. 77.

\(^{83}\) *Nwabuoku v. Ottih* (1961), 1 All N.L.R. 487. Similarly, in *Apatira v. Akanke* (1944), 17 N.L.R. 149 if the intent is for a Moslem to make an English will and it does not comply with the *Wills Act*, then it will be judged by English law.


\(^{85}\) The rules for making wills set out in *Yanusa v Adesubokun* (1968), Suite No. J23/67, Reported 1968 N.N.L.R. 97 (Sharia C.A. Northern Nigeria) sets out a series of principles Maliki Islamic law, including “ that a moslem is entitled to make a Will and by it dispose of one-third of his estate to persons who are not his heirs entitled to share his estate and the remaining two-thirds would be distributed to his heirs as if he died intestate and he cannot by that Will affect any alteration of the shares of these heirs in the heirs.”
the widow does not get real property, rather, it devolves onto the heir through the principle of primogeniture.

Should the wife die intestate, however, the husband takes everything. Originally enacted in the colony of Lagos, s.36 of the *Marriage Act* applied the English law, but with an important variation: that the statutory scheme applied not only to personality, but also to realty, thereby greatly increasing the rights of widows.

However, some Eastern states have also enacted their own inheritance laws, including Enugu, Ebonyi and Anambra State. Under that law, if the intestate leaves a husband or wife but no children, parent or brothers or sisters of the whole blood, the residuary estate shall be held in trust for the supervising spouse absolutely. However, where the surviving spouse is a wife, and the intestate leaves brother or sisters of the half blood, the wife’s interest will be for life or until she marries whichever first occurs. Thereafter, the residue of her interest shall go to the intestate’s brothers and sisters absolutely in equal shares.

The states in the former Western and Mid-Western region have the *Administration of Estates Law 1959* s.49 (5) Cap 1. Under this law, if there are no issues or other surviving relatives (parents, siblings), then all property goes to the wife absolutely in trust. In the case that there is an issue and other surviving relatives, the spouse will get all personal chattels absolutely, the sum of 1/3 of the residuary estate, with 1/3 of the estate held on trust during life subject to payment. If there is no issue, but other relatives, then the spouse will take the chattels and 2/3 of the value of the estate, with ½ of the residuary estate held on trust for life subject to payment.

For those states not covered by either the *Administration of Estates Law*, their own state law, or s.36 of the *Marriage Act*, being those primarily in the North (who do not follow the sharia system) and probably some areas of the East of Nigeria, the English law continues to exist unmodified. This intestate position therefore means that widows have no right to real property, and could therefore in theory be evicted by the family heir. This position is very similar to that under customary law systems, although more readily amenable to legislative reform.

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86 *Administration and Succession (Estate of Deceased Persons) Law 1987*
88 This law is modeled on the *English Administration of Estate Act*, 1925, and applies to Lagos, Ogun, Ondo Oyo, Bendel and Delta States. The individual states have also re-enacted these provisions as state laws.
5.4 Sharia

Unlike the English system of intestate succession, the sharia system is clear and simple, as it is specified within the Qu’ran. The basic principle under the Maliki system is that if a Muslim dies intestate his estate must be shared between his heirs entitled to share under Islamic Law, and that his male children must have equal shares and his female children half share each of a male child. Only children who are non-Muslims or commit patricide to inherit loose these rights. The general division is that if there are children, widows are entitled to one eighth of the property, including realty, and they are entitled to one quarter of the property if there are no children. Daughters take half the share of their brothers, and if they are the sole survivor, will take half of the net estate.

In total, woman can inherit under six of the nine categories as “Qu’ranic sharers”: as wives, mothers, daughters, and germane, consanguine, and uterine sisters. Women can also inherit from slaves and by gift or purchase. Finally, a non-Muslim cannot share in the intestate succession of a Muslim, although a Muslim is not precluded from taking under the personal law system of a non-Muslim.

5.5. Customary Law

Generally, for intestacy, the rule is that the binding law is personal law, not that of lex situs. For the Yoruba peoples, property devolves equally to all children, regardless of age or gender, while the eldest male typically succeeding as the dawodu, or family head, with responsibilities as trustee of the family property. However, in the absence of a male child, the eldest daughter can also become the dawodu.

There are two different systems of equal distribution between the children, being Idi-Igi, in which an equal portion is attributed to each wife and equally distributed amongst her children, versus ori-ojori, in which each child gets an equal share. There can be no alienation of this

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90 Pat U. Okoye, Widowhood: A Natural or Cultural Tragedy (Enugu: Nucik Publishers, 1995) at 164.
94 Lewis v Bankole (1908), 2 N.W.L.R. 66.
95 Supra. Lewis v Bankole (1908), 2 N.W.L.R. 66 recognized the eldest son could himself be replaced by the eldest daughter, and Abibatu v Flora Cole, [1986] 2 NWLR 369 held that when all of the children are female, the eldest female should be the head; Ashipa v. Ashipa (Nigeria, High Court of Lagos State, [2002] LHCR 60-84
96 Taiwo v Lawani (1961) ANLR 733.
family property without consent of the other members. The wife has no right either to inherit or administer the property as she is herself considered as part of the chattel of the estate.\textsuperscript{97} She can, however, sue on behalf of her minor children to protect their property rights.\textsuperscript{98} Nor are the contributions of the wife to the property recognized, as \textit{Rabiu v Absi} holds that improvement of family property by another member does not divest the property of its original character.\textsuperscript{99} Lack of recognition of contribution is significant, as widows may lose rights to jointly owned properties or property in which they have invested.

For the Ibo, succession is on the principle of primogeniture and primarily patrilineal, with both the rights of control and property itself flowing to the eldest son or, if there is none, to the brother. The eldest son therefore holds land on trust for himself and his brothers.\textsuperscript{100} Even if there are female children, property will pass to the brother of the deceased.\textsuperscript{101}

The widows’ rights are also very limited. The spouses have no right in each other’s property either during marriage or on the death of one of them. The husband may during his lifetime allocate a house or land to the separate use of his wife. Unless an outright gift is proved, the property allocated to the wife will on the death of the husband still pass as family property. Rather, the widow’s right in the land is to mere possession of a parcel of family property subject to her good behaviour. Therefore, the widow lacks any rights to control the property, and is vulnerable should an absentee son or family member fail to ensure she has access to land.

5.6 \textit{Traditional Rulers, Indigeneous Justice and Customary Courts}

Traditional rulers and local courts are most qualified to engage in transforming oppressive customary inheritance processes. In Nigeria, the majority of customary disputes may not even reach the customary court system, but are resolved through local mechanisms such as village counsels. There are several systems of dispute resolution that are lay systems, separate from the customary court, and through which the majority of land disputes were settled. These included the family head who is the first mediator for internal family disputes; the umuadas, or

\textsuperscript{97} \textit{Iweloa Awerọ v Raimi SAdipe} (1983) 11 O.Y.S. H.C. (pt. 11) 790, states that a widow without issue is part of the property, and liable to be inherited with the other property of the husband; \textit{Akinnubi v. Akinnubi} (1997), 2 N.W.L.R. 144 (S.C.).


married daughters who may return to enforce morality and prevent issues such as spousal abuse, theft and corruption; the village tribunal which settles the majority of land issues, and its extension to the city through organisations like town unions; age grades (cohorts) who have responsibilities to each other such as burial and enforcement of discipline amongst each other; chiefs (titled men) who have statutory authority to reconcile parties in civil matters; and oracles, used in cases of unknown offender identity such as cases of mysterious death or illness.

There are also police referrals to the court. For example, police was involved in a case between a man and his brother’s widow. The widow alleged assault reported to the police, claiming that she would not get fair treatment by the village elders due to her brother in law labelling her a troublemaker. Nonetheless, the police sought to resolve the matter, as it was founded in a land dispute, by referring it to the village tribunals.

Many studies suggest that primary reform of customary law of inheritance must occur at the local level, and will include not only changing the courts, but also ensuring that systems like the local police have adequate training to know when to divert a case through the customary indigenous system, and when to recognize that factors such as violence are present that may indicate greater police, or legal, support for the widow is indicated.

Working within local leaders and systems of justice may be important in ensuring the stability in the society in times of rapid modernization and HIV. There are a number of towns in which traditional leaders have been instrumental in moderating widow rites, through practices such as minimizing periods of confinement and getting rid of the more degrading practices such as shaving of the head. There are others where the traditional rulers and their cabinets have passed bye laws and regulations outlawing harmful traditional practices such as FGM, denial of inheritance rights etc.
APPENDIX 1

Convention on the Elimination of all forms of Discrimination against Women (CEDAW) 1979

RELEVANT SECTIONS

PART IV

**Article 15 Equality with men before the law**

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women **equal rights to conclude contracts and to administer property** and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

**Article 16 Eliminate discrimination against women in marriage and family relations**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.
APPENDIX 2
Protocol to the African Charter on the Rights of Women in Africa 2005

Article 6: Marriage
States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage. They shall enact appropriate national legislative measures to guarantee that:

1. no marriage shall take place without the free and full consent of both parties;
2. the minimum age of marriage for women shall be 18 years;
3. monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected;
4. every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognised;
5. the husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence;
6. a married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband’s surname;
7. a woman shall have the right to retain her nationality or to acquire the nationality of her husband;
8. a woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests;
9. a woman and a man shall jointly contribute to safeguarding the interests of the family, protecting and educating their children;
10. during her marriage, a woman shall have the right to acquire her own property and to administer and manage it freely.

Article 7: Separation, Divorce and Annulment of Marriage
States Parties shall enact appropriate legislation to ensure that women and men enjoy the same rights in case of separation, divorce or annulment of marriage. In this regard, they shall ensure that:

- separation, divorce or annulment of a marriage shall be effected by judicial order;
- women and men shall have the same rights to seek separation, divorce or annulment of a marriage;
• in case of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. In any case, the interests of the children shall be given paramount importance;
• in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.

Article 19: Right to Sustainable Development
Women shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take all appropriate measures to:

- introduce the gender perspective in the national development planning procedures;
- ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes;
- promote women's access to and control over productive resources such as land and guarantee their right to property;
- promote women's access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women;
- take into account indicators of human development specifically relating to women in the elaboration of development policies and programmes; and
- ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women.

Article 21: Right to Inheritance
• A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
• Women and men shall have the right to inherit, in equitable shares, their parents' properties.
APPENDIX 3

Administration and Succession (Estate of Deceased Persons) Law, 1987

Section 120 prescribed detailed rules of distribution of real and personal estate on intestacy:

a) If the intestate leaves a husband or wife but no children, parents or brothers or sisters of the whole blood, the residuary estate shall be held on trust for the surviving spouse absolutely. However, where the surviving spouse is the wife and the intestate leaves brothers or sisters of the half blood, the wife’s interest will be for her life or until she marries, whichever first occurs. Thereafter, the residue of her interest shall go to the intestate’s brothers and sisters absolutely in equal shares. The children of a deceased brother or sister will take the share to which his parent would have been entitled if alive.

b) Where the intestate leaves a husband or wife as well as children’s children (whether or not he also leaves parents or brothers or children of brothers and sisters), the residuary estate shall be held on trust as to the value of one third thereof for the surviving spouse. The interest of such spouse shall be absolute in the case of a husband and in respect of a wife, for her life or until re-marriage, whichever first occurs. The remainder of the estate together with any residue on the cesser of the wife’s interest, shall be held on trust for the children in equal shares absolutely or failing children, on trust for the children of the intestate’s children in equal shares absolutely.

c) If the intestate leaves a husband or wife as well as one or more of the following – a parent, a brother or sister of the whole blood or children of a brother or sister of the whole blood, but does not leave a child, two thirds of the residuary estate shall be held on trust for the surviving spouse. In the case of a husband, the interest shall be absolute while for a wife, it will last for her life or until her re-marriage, whichever first occurs. The remaining one-third of the estate together with any residue on cesser of the wife’s interest shall be held on trust for the brothers of the whole blood in equal shares absolutely. In the absence of brothers of the whole blood or their children, the portion will be for parents absolutely.

d) Where the intestate leaves children or children of deceased children but no husband or wife, two thirds of the residue of the intestate’s estate shall be held on trust for the children of the intestate equally. Of the remaining one third, one
sixth shall be held on trust for the parents and the other one-sixth for brothers and sisters.

e) If the intestate leaves no husband or wife and no children or children of deceased children, but leaves both parents, two-thirds of the residuary estate of the intestate shall be held on trust for the parents in equal shares absolutely. The other one third shall be held on trust for brothers and sisters, if any, in equal shares absolutely. If no brothers and sisters survive, their share shall go to the parents.

f) Where the intestate leaves no husband or wife and no issue, but leaves one parent, two-thirds of the residuary of the intestate’s estate shall be held on trust for the surviving father or mother. One-third of the value of the estate will be held on trust for brothers and sisters in equal shares absolutely. If there are no brothers and sisters, their shares will go to the surviving father or mother.

g) If the intestate leaves no husband or wife and no issue and no parent, the residuary estate of the intestate shall be held on trust for the following persons living at the death of the intestate and in the following order and manner:

- First, upon trust for the full brothers and sisters of the intestate. But if no person takes an absolutely vested interest under such trusts, then
- Secondly, on trust for the half-brothers and half-sisters of the intestate. If no person takes an absolutely vested interest under such trusts, then
- Thirdly, on trust for the grandparents of the intestate, in equal shares. If there is no member of this class, then
- Fourthly, on trust for the uncles and aunts of the intestate but if no person takes an absolutely vested interest under such trust, then
- Fifthly, on trust for the uncles and aunts of the intestate.

- In default of any person taking an absolute interest under the foregoing provisions, the residuary estate shall belong to the head of the family of which the deceased was a member. Such a head of family shall, out of the whole of the property devolving on him, provide for the dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

Western States (including Mid-Western States)
The relevant law in regard to death intestate of a person married under the Marriage Act is the Administration of Estates Law 1959. It is important to note that, under the 1959 law, provisions of that law do not apply where the distribution, inheritance and succession of any estate is governed by customary law. This is because under the Administration of Estates Law 1959, the distribution of intestate estate applies only where persons are married in accordance with the Marriage Act.\textsuperscript{102} Section 49 provides in detail for devolution of real and personal property on intestacy.

According to section 49(5):

“Where any person who is subject to customary law contracts a marriage in accordance with the provisions of the Marriage Ordinance and such person dies intestate after the commencement of this law leaving a widow or husband or any issue of such marriage, any property of which the said intestate might have disposed by will shall be distributed in accordance with the provisions of this law, any customary law to the contrary notwithstanding provided that:

- where by virtue of paragraph (f) of sub-section (1) of this section the residuary estate would belong to the state as \textit{bona vacantia}, such residuary estate shall be distributed in accordance with customary law and shall not belong to the state; and
- any real property, the succession to which cannot by customary law be affected by testamentary disposition, shall descend in accordance with customary law, anything herein to the contrary notwithstanding.”

There is need to observe that by specifically referring to marriages celebrated in accordance with the provisions of the Marriage Act, the law excludes monogamous marriages celebrated outside Nigeria and customary law marriages, whether contracted within or outside Nigeria.\textsuperscript{103}

\textsuperscript{102} The case of \textit{Zaidan v. Mohsons} [1973] All N.L.R. 86 illustrates these points.
\textsuperscript{103} See Nwogugu E.I., \textit{Family Law in Nigeria}, op.cit., p.386.
APPENDIX 5
Islamic Law - Primary heirs and their shares

a) Father, one-sixth \(\frac{1}{6}\)
b) Grand father, one-sixth \(\frac{1}{6}\)
c) Mother, one-sixth \(\frac{1}{6}\) with a child and one-third \(\frac{1}{3}\) without a child.
d) Grandmother, one-sixth \(\frac{1}{6}\) with a child and one-third \(\frac{1}{3}\) without a child.
e) Husband, one-fourth \(\frac{1}{4}\) with a child and one-half \(\frac{1}{2}\) without a child.
f) Wife or wives, one-eighth \(\frac{1}{8}\) with a child and one-fourth \(\frac{1}{4}\) without a child.
g) Daughter, half \(\frac{1}{2}\) when alone, and two-third \(\frac{2}{3}\) if more than one son.
h) Son’s daughter, howsoever like above.
i) Uterine brother or sister, one-sixth \(\frac{1}{6}\) if one, one-third \(\frac{1}{3}\) if more.
j) Full sister, one-sixth \(\frac{1}{6}\) when alone, and two-third \(\frac{2}{3}\) if more.
• Consanguine sister, half \(\frac{1}{2}\) if one and two third \(\frac{2}{3}\) if more.\(^{104}\)

\(^{104}\) Qu’ran Chp. 4 verse 14, see Professor Yakubu “Property Inheritance and Distribution of Estates under Customary Law” in Towards A Restatement of Nigerian Customary Laws op. cit, pp. 144 – 145.
Sample Evaluation Questionnaire

Please spare fifteen minutes to respond to these questions. It will enable the organizers to improve on the arrangements of future workshops. Please circle or tick ‘X’.

2. How did the training relate to the general objective and session objectives?
   a) Excellent  b) Satisfactory  c) Average  d) Unsatisfactory  e) Poor

Please state your reasons and any other comments you may have

_________________________________________________________________
_________________________________________________________________

2. How well was this training workshop facilitated?
   a) Excellent  b) Satisfactory  c) Average  d) Unsatisfactory  e) Poor

Please add your reasons and any other comments you have on facilitation.

_________________________________________________________________
_________________________________________________________________

3. How would your rate this training for meeting your needs or expectations?
   a) Excellent  b) Satisfactory  c) Average  d) Unsatisfactory  e) Poor

4. How would you rate the structure of this training? (Venue, Accommodation, Food, and Conditions of Work)
   a) Excellent  b) Satisfactory  c) Average  d) Unsatisfactory  e) Poor

5. How would you rate the course content of this training?
   a) Excellent  b) Satisfactory  c) Average  d) Unsatisfactory  e) Poor

6. How would you rate the Methodology and Presentation Skills of the Resource Persons in this training?
   a) Excellent  b) Satisfactory  c) Average  d) Unsatisfactory  e) Poor

7. Was the trainer available for consultation outside of training time?
   a) Yes  b) No  c) Don’t know

8. Did you feel free to ask questions?
9. How would you rate the Organization and Overall Logistics in this training?
   a) Excellent     b) Satisfactory  c) Average     d) Unsatisfactory     e) Poor
Please add any other comments you have on the logistics.
______________________________________________________________________
______________________________________________________________________

10. How do you rate the quality of the training materials provided at the workshop?
   a) Excellent     b) Satisfactory  c) Average     d) Unsatisfactory     e) Poor
Please add any other comments you have on materials provided.
______________________________________________________________________
______________________________________________________________________

11. What did you learn from the training that you didn’t know before this workshop?
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________

12. Which factors facilitated or hindered your learning?
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________

13. How do you intend to apply what you learnt from this training?
______________________________________________________________________
______________________________________________________________________
______________________________________________________________________

14. Which of the topics did you find most interesting and why?
______________________________________________________________________
15. Which of the topics did you find the least interesting in the workshop and why?

_____________________________________________________________________

16. Please indicate your opinion on the following statements about the training:

i. The trainer was knowledgeable.
   a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

ii. The trainer communicated clearly and effectively.
    a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

iii. The training was well organized.
     a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

iv. The facilitator presented material/research were current
    a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

v. The training activities were appropriate
   a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

vi. I felt feel free to ask questions
    a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

vii. My questions were answered to my satisfaction
     a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

viii. I was treated with respect
      a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

ix. My skills/knowledge has increased as a result of the training
    a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

x. I would recommend this training to my friends or colleagues
   a) Strongly agree b) Agree c) Neutral d) Disagree e) Strongly disagree

17. Which improvement(s) (if any) would you like to see in the overall design, delivery and methodology of the workshop or the training manual?
Facilitators’ Notes

It is always advisable to conduct a post-test to enable you measure the change if any, made on the level of knowledge of women’s rights, gender equality and HIV and AIDS among the participants determined through the pre test at the beginning of the workshop. Use the same set of questions used for the pre test.

Distribute copies of the Questions below and have each participant work on all of them. At the end of 15 minutes, ask participants to switch their scripts with their neighbors. No participant is allowed to mark his/her script. At the end, participants should score the script they marked. Before they return the scripts, ask participants with scripts that scored 100% to stand. Count them and ask those with 90% and so on and so forth until you get to 10% or 0% as the case may be. Participants should return the scripts to the owners who will now submit to the facilitator.

POST TEST QUESTIONS

Please answer all the question by encircling the correct one:

1. Women’s rights are human rights
   a. Strongly Agree b. Strongly Disagree c. Not Sure
2. “Women shouldn’t sell or buy land” because it is the domain of men.
   a. Strongly Agree b. Strongly Disagree c. Not Sure
3. Women and girls should not inherit property because they will get married and they won’t take the land to their husband’s families.
4. “Politics is not meant for women because women cannot lead and politics is a game for the brave”
5. “Women cannot sit in the Council of Elders because our tradition forbids it”
6. “A widow is part of the estate of her deceased husband to be inherited by the brothers along with the deceased’s estate.”
7. “A widow without a male child has no share in her husband’s estate because
inheritance can only be through the male lineage”.


8. “HIV can be contracted by living together and eating with a person who is HIV positive, so the Eze family was right in throwing Mrs. Eze whose husband died of AIDS out of the family where she had been married for 25 years”


9. “Nrachi nwanyi” ceremony through which a daughter is retained in the family to bear male children from different men for the family is contrary to natural justice, equity and good conscience, because it deprives a young girl of the opportunity of marriage, encourages prostitution and has a high likelihood of spreading HIV and AIDS”


10. Customary practices which fuel the spread of HIV and deprive widows of their husband’s property such as harmful widowhood practices should be nullified on grounds that debase human dignity.