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## Conceptual and Theoretical Framework of Inheritance Rights of Women and Children in South-Eastern Nigeria

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### Abstract

*When a man is alive, all seems well until the day when he departs, without an estate plan in place, then the problem of inheritance comes into play. At the receiving end of his demise are his wife and children who face the emotional trauma of the loss and the deprivation of their source of livelihood by relations. The application of customary law and the effect of dying intestate have not helped matters for women and female children when it comes to inheritance. The actions of relations appear buoyed by customary law which often deprive women and female children the right to succeed to the estate of the spouse and father. This article examines the conceptual and theoretical theories of inheritance rights of women and female children in the South Eastern Nigeria. It adopted a doctrinal approach through critical content analysis of primary and secondary data and reference to case laws. This article found that Nigerian courts have moved away from the sympathy expressed in the previous case of *Nezianya v Okagbue* to later and supportive cases of *Ukeje v Ukeje* and *Anekwe v Anekwe*, where the Supreme Court criticized such practices against the rights of women and female children.*

**Keywords:** Customary law, Discrimination, Inheritance, Intestacy, Succession.

## 1.0 INTRODUCTION

Certain cultures especially in the south eastern Nigeria, tend to take advantage of the leeway created by obsolete extant laws on succession and unknowingly shield those who abuse women and especially female children in the name of culture, which appear supreme to them, and not the plight of women and female children. The actors here are the brothers, siblings and cousins of the deceased husband and father who merely pretend to feel the shock at the demise of the deceased but take steps either before or after his burial to loot his property. Extended family members oppressing widows and children soon after the demise of their husband and father is a common occurrence in Nigeria and transcends from group to group.

The intention of this article is to contribute to the discussion on the violation of the rights of women and female children which has been in existence for a long time and to proffer a solution to address the gap created by intestacy and the effects of customary law on inheritance.

## 2.0 CONCEPTUAL FRAMEWORK

### 2.1 *Intestacy*

In terms of intestacy, Nigeria has a pluralist legal system that incorporates received English law (common law, statutes of wide application, principles of equity), legislation enacted by the National Assembly and State Houses of Assembly, and local government legislation<sup>604</sup>. In addition, the pluralistic nature of Nigeria is influenced by different native laws and customs with similarities across tribes, most of which are discriminatory to the rights of women and children, an attestation that intestacy in Nigeria is a serious issue<sup>605</sup>. It is essentially a customary issue even when the deceased had intended to dispose of his estate under the received English law but the instrument conveying such intention had failed for one reason or the other<sup>606</sup>.

Intestate succession is the legal term for the inheritance of property that has not been disposed of by a valid final will and testament, or a Will that has been struck down or ruled unconstitutional by a court of competent jurisdiction for infringing on a mirage of legal issues such as the perpetuity rule<sup>607</sup>. Although the laws governing intestate succession vary greatly

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<sup>604</sup> Bertha N. Otunta, 'Nigerian intestacy law: appraising the impact of the pluralist system' (2020) <<http://www.lawjournals.org/download/627/6-1-66-968.pdf>> Accessed February 1, 2022

<sup>605</sup> Jacob Osamagiagemwen Garuba, 'Discriminatory Customary Inheritance Law in Nigeria: Judicial Activism or Legislative Intervention?' (2018) 26 U Botswana LJ 84, 92

<sup>606</sup> *Coker v Coker* (1944) 17 NLR 55

<sup>607</sup> *Coker v. Coker* (1944) 17 NLR 55

between jurisdictions, they all follow the same basic principle: the estate should pass to those who are related to the decedent in some way. The traditional concern that property be preserved within the bloodline through which it came to the decedent has tended to be overlooked in modern intestacy rules. In addition, modern practice favors the rights of the surviving spouse, whether she is considered related, and (in most jurisdictions) relaxes prohibitions on illegitimate children inheriting<sup>608</sup>.

As customary law succession is based on the norm of primogeniture, the emasculating influence of custom in succession concerns in Nigeria inevitably has the greatest impact on women's succession rights<sup>609</sup>. Despite the unambiguous provisions of section 42 of the Nigerian Constitution and relevant international instruments prohibiting gender-based discrimination, the practice of primogeniture has persisted in Nigeria for decades<sup>610</sup>. In the view of the researcher, primogeniture, which is a state or situation accorded to the eldest male child irrespective of whether there is a female child before him, is a major problem when it comes to inheritance as it confers on the eldest male an exclusive right over and above his siblings. However, there is the need to draw a line between rights conferred by virtue of primogeniture and the exercise of such rights which in most cases could be overreaching to the point of interfering with the rights of other parties such as women and children. In other words, primogeniture concept is not bad in itself but can be a matter of serious concern only when they become the threshold upon which the rights of women and children are abused. This appears missing in the summation of Enabulele<sup>611</sup>. The writer appeared to be against the practice of primogeniture which had persisted notwithstanding international conventions that prohibit discriminatory practices against women and children.

## 2.2 *Succession*

There is a thin line between inheritance and succession but that does not mean that the necessarily mean the same thing. While inheritance is strictly in relation to intestacy, succession includes testacy. According to Adekunle<sup>612</sup>, Succession is the legal process of

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<sup>608</sup> Britannica, Intestate Succession <<https://www.britannica.com/topic/intestate-succession>> Accessed 1 February, 2022

<sup>609</sup> Amos O. Enabulele & Anthony O. Ewere, 'Liberating Widows from Prejudiced Rules of Succession upon Intestacy - Wither the Supreme Court of Nigeria?' (2019) 2 GLR 92

<sup>610</sup> *ibid* p. 92

<sup>611</sup> *ibid* p. 92

<sup>612</sup> Titus Adekunle 'Succession and inheritance law in Nigeria: Resolving the discriminatory proprietary rights of widows and children' <[https://www.academia.edu/35665674/SUCCESSION\\_AND\\_INHERITANCE\\_LAW\\_IN\\_NIGERIA\\_RESOLV](https://www.academia.edu/35665674/SUCCESSION_AND_INHERITANCE_LAW_IN_NIGERIA_RESOLV)

transferring a deceased person's rights and obligations with regard to their inheritance, office, and dignity to those who will succeed them, such as their heirs, children, spouse, or other family members. After that, those assets are regarded as belonging to the recipient, or the successor to whom they were bequeathed. The properties are then said to have been inherited by the named beneficiary. Since inheritance is the twin notion of succession, it is almost impossible to use the word succession without also mentioning it. Even though the terms succession and inheritance have similar meanings, they are not identical in any way. While succession includes the transfer of land title by will as well as the assumption of office and dignity, inheritance refers to an estate or piece of property that a man acquired by descent and can be passed on to his heir in the same manner upon his death in intestacy<sup>613</sup>.

Oni writing in the same vein on succession expressed the opinion that the transfer of a deceased person's rights and obligations with regard to his inheritance to his heirs and successors is covered by the law of succession<sup>614</sup>. This includes the laws that regulate how the deceased person's estate is administered by their personal representatives, as well as the role of the State with regard to any real estate located on its soil and any personal property that is under its legal control. According to Oni, the State frequently steps in when it is difficult to identify the deceased person's heir or next-of-kin who could replace him or when the successors cannot agree on the distribution of the deceased person's property among themselves<sup>615</sup>. It will be recalled that the cultural discrimination against women had some judicial support in *Nezianya v. Okagbue*<sup>616</sup>, the court noted that it is appropriate, as the tradition holds, for the property to remain in the family and not pass to the female offspring due to the Onitsha custom that states that a man's real estate should not pass to his female issue because she would carry the property to her husband's family upon marriage. Against the background of this postulation, Adekile added that Ibo culture forbids the female child from holding the position of household head. She is unable to handle the estate of her late spouse because she is a widow. Her only legal right is one of residency, which is conditional on good behavior. She has no inheritance rights, and if she doesn't have any children or exclusively has female children, her situation will only

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<sup>613</sup> Emiola A., *Emiola's African Customary Law* (Ogbomosho, Emiola Publishers Limited, 2011) p.177

<sup>614</sup> Oni B A, 'The Rights of Women to Inheritance under Nigerian Law: An Evaluation' (2008) 2 NJAL 40

<sup>615</sup> *ibid* p. 40

<sup>616</sup> (1963) 3 All NLR 352

get worse.<sup>617</sup> However, the courts have since moved away from this practice in *Ukeje v Ukeje*<sup>618</sup> and *Anekwe v Nweke*.<sup>619</sup> In the former, Rhodes-Vivour J.S.C. did not hesitate to strike down the practice earlier championed in *Nezianya v Okagbue*, when he held that regardless of the circumstances of her birth, he maintained that a female child is entitled to an inheritance from her father's fortune. In the latter case, the appellant, the nephew of the deceased, acting on the Awka custom which discriminates against daughters and women in the inheritance of the deceased property on intestacy, had ordered the respondent, the wife of the deceased to vacate her matrimonial home which she had shared with her husband during his lifetime on the grounds that she had only daughters and no male child to survive her deceased husband. The Supreme Court frowned at this custom and condemned it in strong terms as being repugnant to natural justice, equity and good conscience. The court also found it repulsive that the appellant would demand and seek to deprive the respondent of the building where the late husband of the respondent was buried<sup>620</sup>. The court condemned in strong terms the appellants' reliance on Awka customs and practices for their counterclaim and maintained that a practice of this kind would only serve to highlight the lack of the realities of human civilization in the context of 21st-century society.

### 2.3 *Inheritance*

Within the realm of inheritance, it has been noted that the main function of the law is to facilitate rather than govern<sup>621</sup>. According to Glover, the law achieves this purpose primarily by adopting an inheritance differential, in which it generally accepts the donor's decisions about how to divide property after death. The apathy of law in this area appears justified by the fact that freedom of choice maximizes social benefit<sup>622</sup>. This is founded on the principle that Courts in the United States do not have broad authority to dispute the wisdom, justice, or rationality of a donor's decisions concerning how to distribute his or her assets<sup>623</sup>. According to Kelly,

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<sup>617</sup> Oluwakemi Adekile, 'Property Rights of Women in Nigeria as Impediments to full Realization of Economic and Social Rights' (2010) 1 SSRN 18,19

<sup>618</sup> (2014) 11 NWLR (Part 1418) 384

<sup>619</sup> (2014) 9 NWLR (Part 1412) 393

<sup>620</sup> Garuba, Op.cit p. 94

<sup>621</sup> Restatement (Third) of Property: Wills and Other Donative Transfers 10.1 cmt.c (AM.LAW INST.2003); Glover Mark, (2018) 'A Social Welfare Theory of Inheritance Regulation', (2018) 2 ULR 4; <<https://dc.law.utah.edu/ulr/vol2018/iss2/4>> accessed 27 July 2022

<sup>622</sup> Glover Mark, 'A Social Welfare Theory of Inheritance Regulation', (2018) 2 ULR 4; <<https://dc.law.utah.edu/ulr/vol2018/iss2/4>> accessed 27 July 2022

<sup>623</sup> Glover Mark, 'Freedom of Inheritance' (2017) ULR 283, 288; Daniel B. Kelly, 'Restricting Testamentary Freedom: Ex Ante Versus Ex Post Justifications' (2013) 82 FLR 1125

general rules controlling property succession (e.g., the first child inherits everything, or each child receives an equal portion) must be relied on by legislators, which can be overly broad or both. Typically, courts do not have the time or institutional ability to analyze each decedent's circumstances in order to decide the best allocation<sup>624</sup>. In the view of the researcher, this speaks to an ideal situation where a person has taken steps to dispose of his property and therefore intestacy does not arise, but it is however silent on situations where person died intestate and external persons have either laid claim over his property or have taken possession.

Therefore, legislatures generally should be reluctant to impose a mandatory form of estate plan for people, but rather should guide them through legislation on how to make dispositions. This is premised on the fact that they are not in the minds of the person who desires to have an estate plan and therefore should be able to evaluate what they want given their peculiar circumstances in life<sup>625</sup>.

Inheritance is a common and broad concept particularly in Nigeria and has become a regular feature in the life of people who are either expecting to benefit or to devise property on their demise. It is not easy to describe it as it is a difficult task to do and therefore varies from society to society and from country to country<sup>626</sup>. According to Attah and Otunta, most countries' current succession law tendencies have focused on increasing the spouse's status, preserving the mandatory share of descendants and other relatives. Nonetheless, it appears that the application of human rights to women's roles under customary law in Nigeria (as in other parts of Africa) is one of the most fascinating and contentious problems in intestate succession. In the view of the researcher, this is fascinating and contentious because advocacy of the rights of women and children are low, while enforcement of human rights of women and children in connection with inheritance need more attention rather than lip service.

Individualism has spawned certain ideologies in the context of inheritance, which Attah and Otunta categorized into three categories. To begin with, women should have total property rights over intestate estate from a human rights standpoint. To put it another way, the right

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<sup>624</sup> Daniel B. Kelly, 'Restricting Testamentary Freedom: Ex Ante Versus Ex Post Justifications' (2013) 82 FLR 1135

<sup>625</sup> Adam J. Hirsch & William K. Wang, 'A Qualitative Theory of the Dead Hand', (1992) 68 ILJ 1, Daniel B. Kelly, 'Restricting Testamentary Freedom: Ex Ante Versus Ex Post Justifications' (2013) 82 FLR 1136, Glover Mark A Social Welfare Theory of Inheritance Regulation' (2018) 2 ULR 4; <<https://dc.law.utah.edu/ulr/vol2018/iss2/4>> accessed 27 July 2022

<sup>626</sup> Michael Attah & Bertha N. Otunta, 'Women, Intestacy and Forced Eviction: Evaluating Feminist and Judicial Responses in Nigeria', (2021) BLR 509, 528; <<https://www.scirp.org/journal/blr>>, see also <<https://doi.org/blr.2021.122028>>

should not be confined to merely possessory or tenancy rights. On the contrary, traditional structures favor and, in most circumstances, limit the woman's right to utilize the property for a limited time and do not give full ownership. Secondly, customary institutions interfere into private or self-acquired property of male family members and misapply customary norms of title holding to such properties, in most cases. According to them, the downside of this customary principle is that it negates contemporary commercial interests whereby individuals can deal with such properties for value or money or to pledge some as collaterals. Thirdly, the use of customs by male members of the family to exclude women from possessory rights and therefore termed as abuses<sup>627</sup>.

Biblical injunctions recognize and support the rights of women as exemplified in the case of the daughters of Zelophehad. The recognition is clearly summarized in the book of Numbers to the effect that Zelophehad's daughters are correct in their claim and therefore deserve to be given an inheritance along with their father's kinsmen and should not be denied inheritance as descendants<sup>628</sup>. In the view of the researcher, the question of intestacy is not a modern concept or issue but an ancient problem dating back to the Old Testament period and the recognition that due and equitable rights should be accorded to women and children.

### **3.0 THEORETICAL FRAMEWORK**

This article addresses the two concepts which both shed light on magnifying and observing the experiences of Nigerian women and female children through a lens which is indigenous and homegrown in order to get a clear and independent perspective. In the theoretical framework, the article examined two theories relating to intestacy and inheritance; namely, the Feminist theory and Afrocentric theory. The article chose the Afrocentric theory because the theory explores the situation which obtains in Nigeria and to a large extent in African cultures where women and children suffer at the demise of their breadwinner. Moreover, there is the current discussion around gender discrimination and the protection of the rights of the vulnerable in the society.

#### **3.1 Afrocentric Theory**

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<sup>627</sup> *ibid* p. 509

<sup>628</sup> Biblical Reference, Good News Bible: The Book of Numbers, cap 27 p. 7

The pursuit of African-centered models for fostering the healthy development of Black communities, according to many Afrocentric scholars, practitioners, and community organizers, is motivated by a shared desire to overthrow Eurocentric interpretations of the Black American experience, particularly regarding the identity of African diasporan people, their needs, and ways to address issues in their communities.<sup>629</sup> Professor Molefi Asante created the concept of Afrocentricity. Although Asante is credited with developing the concept of Afrocentricity, its origins can be found in the many different schools of African social and political philosophy.<sup>630</sup>

According to Midas Chawane, it is impossible to pinpoint the exact origins of Afrocentric ideology<sup>631</sup>. However, it is believed to have gained traction during the Civil Rights Movement in the United States through an influential book published in 1954. According to him, in the 1980s, Asante popularized Afrocentricity, which dates back to the 1970s, by developing the epistemological and methodological foundations for an Afrocentric curriculum based on an African perspective but aiming for global comprehension. In his summation as to the origin of the concept, he noted that Asante is frequently credited with developing the idea of Afrocentricity and popularizing it as an academic subject<sup>632</sup>.

He noted that Afrocentrism is opposed to Eurocentrism that presents a wrong view of how Africans should be seen and advocated that blacks should view things from the African perspective or viewpoint and not from western perspective. According to him, viewing issues from non-African perspective could be detrimental as it could lead to a misunderstanding of Africa when the use of viewpoints and terms other than that of the African is used to study Africa<sup>633</sup>. He further reviewed the definition of Afrocentricity by MK Asante to the effect that Afrocentricity is the ‘manner of thought and action in which the centrality of African interests, values and perspectives predominate’. Therefore, in terms of academics of which this study

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<sup>629</sup> <<https://journals.sagepub.com/doi/full/10.1177/10497315211003322>> Accessed 17 February 2023

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<[https://www.researchgate.net/publication/268148430\\_Afrocentricity\\_Published\\_in\\_the\\_Encyclopedia\\_of\\_Ideology](https://www.researchgate.net/publication/268148430_Afrocentricity_Published_in_the_Encyclopedia_of_Ideology)> Accessed 17 February 2023

<sup>631</sup> <<http://www.scielo.org.za/pdf/yt/n16/06.pdf>> accessed 18 January 2022; See DOI: <<http://dx.doi.org/10.17159/2223-0386/2016/n16a5>> accessed 18 January 2022

<sup>632</sup> *ibid* p. 79

<sup>633</sup> <<http://www.scielo.org.za/pdf/yt/n16/06.pdf>> accessed 18 January 2022; DOI: <<http://dx.doi.org/10.17159/2223-0386/2016/n16a5>> accessed 18 January 2022

relates, Afrocentricity is defined as the methodology, theory, and ideology that should be used in order to achieve the objective or goal of the proposed change<sup>634</sup>.

Similarly, Chukwuokolo supported this theory and concept of Afrocentrism when he noted that Afrocentrism, which is defined as "African centeredness," is a persistent effort to rectify the record but does not directly attack anyone or anything. It entails placing Africans in the context of their own historical experience. It is a demand that the history of the world recognize African contributions to all facets of civilization.<sup>635</sup> Another quick overview of Afrocentricity was provided by Walker and Burbanks, who stated that it is the critical analysis and interpretation of culture, economy, history, language, philosophy, politics, and society using a conceptual, methodological, and theoretical framework that prioritizes the agency of Africans and people of African descent and places Africa at the center.<sup>636</sup>

Walker and Burbanks did a good job on the literature of Afrocentricity and the knowledge of the subject. However, their contribution in the view of the researcher appears more academic than practical. The position of Midas Chawane which magnified the contribution of Asante is to be preferred as it speaks to the direct plight of the African, especially with respect to the plight of women in the south eastern region of Nigeria which this study seeks to expose. Therefore, in conclusion, this chapter gives a broad examination of the conceptual and theoretical framework of the study and attempts to flesh out the background and act as a precursor to the other aspect of the work. The Afrocentric theory would be adopted for the study as it speaks to the customs and traditions of Africans and Nigeria in particular with respect to the rights of women and children.

### **3.2 Feminist Theory**

The Feminist theory is tilted towards the protection of the rights of women and children. Although writings that could be considered "feminist" or embodying the perspectives and experiences of women have appeared throughout history, the history of Western feminist theory typically begins with those of Mary Wollstonecraft (1759-1797), one of the first feminist

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<sup>634</sup> *ibid*

<sup>635</sup> Jerry Chidozie Chukwuokolo, 'Afrocentrism or Eurocentrism: The Dilemma of African Development' (2009) 6 NJAS 33; <<https://doi.org/10.4314/og.v6i1.52333>>; <<https://www.ajol.info/index.php/og/article/view/52333>> accessed 19 January 2022

<sup>636</sup> Corey Walker & Samuel Burbanks, Samuel 'Afrocentricity Published in the Encyclopedia of Identity' (2010), <<https://researchgate.net/publication/268148430>> accessed 19 January 2022

authors in the liberal tradition.<sup>637</sup> According to Jo Ann Arinda<sup>638</sup>, Feminist philosophy dates back to the 18th century and evolved through the 1970s and 1980s equality movements. Burton (2014) claims that Marxism is at the core of feminist thought and specifically identifies Engels' work as a possible starting point.

The choice of the Feminist theory is the discrimination of women in relation to inheritance based on the reliance on cultural beliefs. In other words, women and children are at the receiving end. According to Sylvia Wallby, it refers to a set of societal institutions and practices in which men oppress, dominate, and exploit women<sup>639</sup>.

The Feminist theory is grounded on the extermination of the cultural ideologies that encourage discrimination against women and children. Therefore, it is important to approach the study from this angle and unveil an option that would address the gaps identified by the study. Feminism is often viewed as movement against men, a platform to fight men to secure equality of rights. It is the belief in the struggle for equality politically, socially, economically and in marital relations. It has been described as the belief in social, economic, and political equality of the sexes<sup>640</sup>. Its origin is attributed to the response to western traditions that restricted the rights of women, dating back to the medieval Europe. There were litanies of rights abuses in the social, political and domestic spheres that women had objected to. However, feminist thinking is not limited to the West, but has global reactions.

Like the spread of Covid-19 in series of waves, the Feminist theory also had three 'waves' of development. The first wave or phase had focused on suffrage and political rights as women were precluded from holding elective office or to vote. The second wave focused on inequality of the sexes, a sort of women liberation struggle across workplace, family and reproductive rights. The third wave is a critique of the first and second waves with respect to sex and gender, with emphasis on globalization, postcolonialism, poststructuralism and postmodernism<sup>641</sup>.

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<sup>637</sup> Sara Zeigler, 'Feminist Theory' <<https://www.mtsu.edu/first-amendment/article/1255/feminist-theory>> accessed 8 November 2022

<sup>638</sup> <<https://opentext.wsu.edu/theoreticalmodelsforteachingandresearch/chapter/feminist-theory/>> accessed 8 November 2022

<sup>639</sup> Sylvia Wallby 'Six Structures of Patriarchy (Revise Sociology)' <<https://revisesociology.com/2017/01/10/patriarchy-structure-wallby-sylvia/#:~:text=To%20Sylvia%20Walby%2C%20concept,life%2Dchances%20compared%20to%20men>> accessed 19 January 2022

<sup>640</sup> <<https://www.britannica.com/topic/feminism>> accessed 19 January 2022

<sup>641</sup> <[https://socialsci.libretexts.org/Bookshelves/Sociology/Introduction\\_to\\_Sociology/Book%3A\\_Sociology\\_\(Boundless\)/01%3A\\_Sociology/1.03%3A\\_Theory](https://socialsci.libretexts.org/Bookshelves/Sociology/Introduction_to_Sociology/Book%3A_Sociology_(Boundless)/01%3A_Sociology/1.03%3A_Theory)> accessed 19 January 2022

At the root or foundation of the Feminist theory is the nightmare and scourge of patriarchy, a system not only common in Africa but prominent in many parts of Nigeria, fueling resentment and outrage with its continued practice and implementation. It has been identified as a major obstacle to women's advancement and development tilting the scale in favour of men. According to Abed Sultana, it is the embodiment and institutionalization of male control over women and children in the home, as well as male supremacy over women in society as a whole<sup>642</sup>. In addition, she noted that feminists coined the term 'patriarchy' to define the male-female power dynamic and to investigate the core causes of women's subjugation. Customary laws, which are the native legislation of different ethnic groups in Nigeria, have its roots in folklore and behaviors. In Nigeria, there is no one set of dominant customs that is universal. These systems have an ethnic background and typically only exist in one community or location. The majority of localities, particularly among the Igbos of Eastern Nigeria, lack adequate customary rules and customs protecting women's rights to inherit and succeed. They therefore represent a significant barrier to gender equality, the economic emancipation of women, and the realization of social justice in terms of growth, peace, and security<sup>643</sup>. Due to the fact that customary law emerged during an era when many of its rules were in conflict with human rights norms, it has a significant impact on personal law in regard to issues relating to marriage, inheritance, and traditional behaviors<sup>644</sup>.

The Nigerian society is patriarchal in nature with unequal gender opportunities which has placed women in subordinate position particularly when it comes to intestacy and inheritance. It is a male dominated society where the eldest in most societies succeed and inherit their father's estate to the abandonment of the female children and the spouses of their late father. In the South Eastern Nigeria, the common system that speaks to this unequal gender opportunities is the system of primogeniture. The primogeniture system places a strong emphasis on the right of the eldest living son to automatically succeed his father as the head of the family due to seniority. Therefore, the only person who has the authority to deny the eldest son of this right is the father, who is the owner and creator of the family's property. This authority can be exercised through a valid order made with the intention of ensuring that the

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<sup>642</sup> <<https://www.banglajol.info/index.php/AFJ/article/view/12929/9293>> accessed 19 January 2022

<sup>643</sup> Nwufo Cecilia Chinwe & Okoli Chinwe Kate 'Customary Law, Law and Women Rights to Inheritance and the Challenges' (2016) 19 Nigerian LJ 199; See also Ikpeze, O.V.C 'Gender Dynamics of Inheritance Rights in Nigeria: Need for Women Empowerment' (2001) 14 WRN 31

<sup>644</sup> *ibid* p. 32

family's affairs are properly managed by someone who is qualified on the basis of intelligence and education. The eldest son's right cannot be taken away without his approval in the absence of such a directive from the father.<sup>645</sup>

Attah and Otunta, while reviewing the Feminist theory with respect to the use of customs by male members of the family with management responsibilities over family property, argue that in Nigeria, feminist equality activism fails to place the problem through the perspective of the cultural systems in which human rights principles are enacted upon intestacy. Therefore, in the zeal to protect the interest of women, the advocacy wrongly classified abuses of customs as part of the custom. As a result, traditional institutions and systems are perceived as anti-human rights. However, in the view of the researcher, this is not totally correct because where an institution or culture has been exploited or allowed to be exploited by the custodians of the culture to the disadvantage of women, such cultural institution cannot escape from the blame. Therefore, any culture or cultural institution that permits its usage to deny women and children of their rights can aptly be described as unfair albeit not totally but to the extent of its denial of the rights of women and children.

Sylvia Wallby<sup>646</sup> and Sara Zeigler<sup>647</sup> did good jobs in espousing the concepts of feminism and also provided good literature on the topic which has gained global attention and has remained a regular conversation both in the print and electronic media. However, the position of Attah and Otunta are more preferred because they are practical and speak to the domestic plight of African women, especially the women of the South Eastern region of Nigeria whose plight are felt on a continuous basis because their plights are yet to be addressed. Their views and position went beyond academic but amplify practical experiences which this study further seeks to expose and provide a solution.

#### **4.0 Conclusion**

This article examined the concepts of intestacy, inheritance and succession as it relates to the rights of women and children and the role played by customary law in discriminating against their rights to inheritance. In addition, it examined the distribution of property among ethnic

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<sup>645</sup> Onuoha Reginald Akujobi, 'Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue' (2008) <<https://edojudiciary.gov.ng/wp-content/uploads/2016/10/Discriminatory-Property-Inheritance-Under-The-Customary-Law-In-Nigeria.pdf>> Accessed 7 March 2023

<sup>646</sup> Op. cit p 11

<sup>647</sup> Op. cit p 11

groups such as the South Eastern Nigeria on the demise of a man who died intestate, especially the effect of primogeniture in inheritance and how it had not favoured women and female children. In examining the distribution of property, it observed practices which amounted to the deprivation of the rights of women and children to inheritance which can be summed up as a breach of their fundamental rights enshrined in the Constitution of the Federal Republic. These concepts are encapsulated in the Feminist and Afrocentric theories which highlighted the plight of women and the struggle to retrieve what is due to them as well as the fact that this is a common practice in Africa, and the urgent need to stop such practices. Fortunately, in the last couple of decades, the Nigerian Courts have realized the impact of customary law on the rights of women and female children and have added their voice in the condemnation of practices which have been adjudged as discriminatory against the rights of women under the guise of customary law. The cases of *Anekwe v Nweke*, *Ukeje v Ukeje* among others should be hailed for moving away from the position in *Nezianya v Okagbue*.