

IGWEBUIKE AND THE RIGHT OF INHERITANCE IN AFRICA

Mary Winifred Gloria Eche, DMMM, Ph.D

Department of Philosophy
Saint Thomas Aquinas Major Seminary
Echegloria@yahoo.com

Abstract

Rights or human rights are known to be legal, social, or ethical principles of freedom or entitlement; which means that rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. On the other hand, inheritance is the common term used for property or any possession; that property comes to an individual mostly through his or her parents. It also indicates something that is bequeathed to a subsequent generation by an individual or by society. Governments in many parts of the world have established laws guiding the rights of man. For example, the International Bill of Rights and other international legal instruments, including the Constitution of the Federal Republic of Nigeria, 1999. These have been made to truly liberate every human being by the recognition of the equality and inalienable rights of all persons on the face of the earth as the foundation for peace, justice and freedom. Even when the customary law has given the female child its right of inheritance, they are still being denied access to this justice and freedom. This paper, therefore, using the critical and analytical methods creates more awareness of the above fact and proposes the importance of maximizing the potentials of everyone, which is where the strength of the culture lies following the principles of Igwebuiké.

Introduction

Today, one can say that this generation is experiencing a great difference as concerns the sufferings of women and the discrimination against them in the society, very specifically in our own country Nigeria and specifically in Igbo land. There is little progress, but not felt much. It is still crawling, especially with regard to the aspect of women inheritance. Indeed, studies on nature, human beings' inclusive shows that, the Hobbesian nature is the standard, where the weak are crushed by the strong. The strong here refers to physical strength. When we look carefully at the lives of women, we discover that women suffer right before they are born. For example, there are cases where after fertilization, through the use of scientific techniques, the sex of the foetus is ascertained, if it is a female, the man may request it will be aborted. In cases where a woman is

desperate to get a female child, even if they discover that the sex of the foetus is a male, there is no bitterness but cases where they are in need of a boy and the woman has a girl, she is encouraged or forced to abort. She has been seen by the society as a weaker sex. This impression is controlling the world. This has led to depriving her of her fundamental rights as a human being, the right to inheritance being one of such. Thus,

The *Universal Declaration of Human Rights*, for example, recognizes the fact that 'All human beings are born free and equal in dignity and rights' (Article 1) Furtherance of ensuring the enjoyment of these rights by women, the United Nations adopted and ratified *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*. It enshrines this right in it and also defines what constitute discrimination as:...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (Article 1).

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Some philosophers believe that natural law and natural justice are anterior and superior to positive or man-made law. In Filmer's claim that Property rights come from God to Adam and to rulers and kings through inheritance, Locke responded thus,

God planted in men a strong desire also of propagating their kind and continuing themselves in their posterity; and this gives children a title to share in the *property* of their parents, and a right to inherit their possessions. Men are not proprietors of what they have, merely for themselves; their children have a title to part of it, and have their kind of right joined with their parents, in the possession which comes to be wholly theirs, when death, having put an end to their parents'

¹Florence O. Orabueze&IfeyinwaOgbazi, 2016. "The Inscription of Fundamental Human Rights and the Liberation of the Igbo Woman from Customary and Administrative Burdens". UJAH: Unizik Journal of Arts and Humanities, vol.14, pg6. Available at <http://www.researchgate.net/.../269982173-....Accessed> July 13, 2019.

use of it, hath taken them from their possessions; and this we call inheritance.²

Death being inevitable comes with its challenges for the family of the deceased especially when a man or father or husband dies; apart from the burial rites and ceremonies that the woman goes through, the worst among other challenges is what to do with the property of the man, especially if he was wealthy. Among the Igbos, when a man dies, and leaves his property, his property is inherited by the male children through the first son. If he had no male children and has brothers, it will be shared among his brothers. A woman in the past has no right of inheritance. Customary Law is often used to determine who inherits such property.

Customary Law And Inheritance In Igbo Culture

Customary laws are known as those rules that govern a particular group of people, which involves their beliefs, social institutions, religion etc., recognized by the community. *Oyewumi v. Ogunesan* defined customary law as: “the organic and living law of the indigenous people of Nigeria regulating their lives and transactions. It is organic in that it is not static; is regulatory in that it controls the lives and transactions of the community subject to it. It is said that custom is the mirror of the culture of the people”.³

For example, nobody owns certificates of occupancy in the villages, but it is legally and generally accepted that the place given to you to build by the law makers of the community belongs to you and nobody has the right to deprive you of it. They are “customs that are acceptable as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they are laws”.⁴

² John Locke, *The Two Treatise of Government*, ed. by Peter Laslett (Cambridge: Cambridge University Press, 1960),206

³Bright E. Oniha, 2017. “Dissolution of Marriage and Custody of Children under Customary Law in Nigeria”. Available at <http://www.edojudiciary.gov.ng/wp-content/uploads/2017/07/..> Accessed on July 29, 2019

⁴iproject, Available at <https://iproject.com.ng/law/customary-succession-law-in-modern-ibo../index.html>. Accessed on July 15, 2019.

Business Dictionary also defined it as “traditional common rule or practice that has become an intrinsic part of the accepted conduct in a community, profession, or trade and is treated as a legal requirement”⁵

According to Richard,

The word 'customary' means pertaining to a custom, a way of life, a tradition, a generally accepted behaviour or way of doing things. The Evidence Act defines custom as a rule which in a particular district, has, from long usage obtained the force of law. Customary law, therefore, is the law which evolves from the established practices, customs and way of life of a people. A custom is a rule of conduct, obligatory on those within its scope, established by long usage.⁶

There are many local variations or rules that exist under Igbo customary law, which means that there is no uniformity. Even though the rules vary, there are also similarities.

The cardinal principle of customary law of succession among the Igbos is Primogeniture, part of the reason is because the Igbo culture is patriarchal. This means succession by the first born of the family. This law of succession, which has to do with the transfer of property often takes place on the death of the owner. On rare occasions will the owner do that before his death. Succession can thus be defined as “the order in which or the condition under which one person after another succeeds to a property, dignity, title or throne; the act or process of a person becoming beneficially entitled to a property or property interest of a

⁵BusinessDictionary, Available at <https://www.businessdictionary.com/definition/customary-law.html>. Accessed on July 29, 2019

⁶Richard Mordi, “An Appraisal of Inheritance Rights of Women in Nigeria” Available at http://www.academia.edu/7187814/AN_APPRAISAL_OF_INHERITANCE_RIGHTS_OF_WOMEN_IN_NIGERIA. Accessed July 26, 2019.

deceased person”.⁷ While inheritance is defined as “hereditary succession to a property, title, office ,etc. a continual right to an estate invested in a person and his or her heirs”.⁸It can be either testate that is, having left a valid will or intestate, which implies the absence of any will. The latter case is the focus of this paper.

According to Oni,

Under the principle of primogeniture, succession is through the eldest male in the family who is known as ‘Okpala, Diokpala or Diokpa. In the case of a nuclear family, succession is through the eldest male child of the deceased. With regard to the extended family, succession is through the eldest son of the ancestor and so on in that line irrespective of the fact that the Okpala may in fact be junior in age to other members of the extended family.⁹

Oni went further to establish that on the death of the founder of a family, his eldest son succeeds him as the head of the family. The eldest son is entitled to special property by virtue of his status in the family. He enjoys this property during his life time to the exclusion of his brothers. He is entitled to reside in his father’s dwelling house. Subject to accommodation required by his own family, he may allow his younger brother and sisters to live in this house with him. He is also entitled to the use of the piece of land within or surrounding the father’s compound and to harvest the economic trees in it such as palm, coconut, kola-trees and other immovable properties which are allocated to the eldest son in addition to his father’s dwelling house and compound. Under Igbo Customary Law, Females do not possess the rights to inherit land, that is, neither the

⁷iproject, Available at <https://iproject.com.ng/law/customary-succession-law-in-modern-ibo.../index.html>. Accessed on July 15, 2019.

⁸iproject, Available at <https://iproject.writers.comng/.../appraisal> of -succession-under-igbo-customary-law. Accessed on July 15, 2019.

⁹Babatunde A. Oni, 2014. “Discriminatory Property Inheritance Rights Under The Yoruba And Igbo Customary Law In Nigeria: The Need For Reforms” IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Vol. 19, pg. 34. Available at www.iosrjournals.org. Accessed July 14, 2019.

daughters nor the widows of the deceased have the right in the intestate estate of the deceased.¹⁰

As explained by Oni, customary law has no place for the female child, whether they are daughters or wives. They have no right of inheritance under Igbo customary law. To this effect many widows and orphans are left homeless and destitute after the death of their husband or father. In fact, what the woman goes through is ridiculous. Under normal circumstances, a woman that lost her husband to the cold hands of death should be empathized with and helped out of the psychological trauma into which the death of her husband has put her. Unfortunately, this is often not the case. In most Igbo societies, she passes through psychological and emotional torture. She is oppressed, suppressed, afflicted, neglected and stigmatized as the killer of her husband. She is often openly insulted and made to succumb to widowhood rites on account of customs and traditions. Usually, the widow's ordeal begins the very moment her husband breathes his last.

This level of insensitivity is still found in some parts of Igbo land. This therefore makes the realization of women's right to inheritance very difficult in Igbo land, even when the supreme law has reformed the law.

Nigeria Supreme Court And The Invalidation Of Igbo Customary Law

The long existing customary law that has subjected and tortured women in Nigeria especially in Igbo land has been abolished by the Nigerian Supreme Court. The case which brought this positive effect

originated at the Lagos High Court. When Lazarus Ogbonna Ukeje, a member of the Igbo ethnic group, died intestate in Lagos in 1981, Gladys Ada Ukeje (his daughter) sued Lois Chituru Ukeje (the deceased's wife and the plaintiff's stepmother) and Enyinnaya Lazarus Ukeje (the deceased's son and the plaintiff's half-brother) before the Lagos High Court, seeking that she be included among the persons eligible to administer the deceased's estate. The High Court sided with the plaintiff and voided the Igbo customary law excluding female descendants from inheritance. Dissatisfied with the High Court's ruling, Chituru and Lazarus appealed the decision to the Court of Appeal. When the Court of Appeal upheld the High

¹⁰ Babatunde A. Oni, 2014.

Court's decision, Chituru and Lazarus availed themselves of their right to appeal the decision to the Supreme Court.¹¹

It was after the Supreme Court decision that THE GUARDIAN reported on April 15, 2014, that on April 14, 2014, the Nigerian Supreme Court, "in a unanimous decision, confirmed the decisions of two lower courts, which had found unconstitutional an Igbo customary law of succession excluding female offspring from eligibility to inherit the property of their fathers."¹²

The Supreme Court agreed that the Igbo inheritance rules which excludes women from inheritance indeed violates the country's 1999 Constitution. Justice Bode Rhodes-Vivour, one of the five justices who heard the case, delivered the Court's opinion in which he stated that no matter the circumstances of the birth of a female child, such a child is entitled to an inheritance from her late father's estate. Consequently, the Igbo Customary Law, which disentitles a female child from partaking in the sharing of her deceased father's estate is in breach of Section 42(1) and (2) of the Constitution, a fundamental rights provision guaranteed to every Nigerian.¹³ Even though this gender-based discrimination by customary rights has been banned, the problem still remains. This is where the principle of 'Igwebuiké' comes into play. What can this principle do? In order to apply the principle of 'Igwebuiké, a little clarification on it is necessary.

The Meaning Of Igwebuiké

The word 'igwebuiké' could be a spoken word or a person's name. As noted by Kanu,

¹¹HanibalGoitom, 2014. "Nigeria: Supreme Court Invalidates Igbo Customary Law Denying Female Descendants the Right to Inherit". Available at <https://www.loc.gov/law/foreign-news/article/nigeria-supreme-court-invalidates-igbo-customary-law-denying-female-descendants>. Accessed July 14,2019.

¹²HanibalGoitom, 2014. "Nigeria: Supreme Court Invalidates Igbo Customary Law Denying Female Descendants the Right to Inherit". Available at <https://www.loc.gov/law/foreign-news/article/nigeria-supreme-court-invalidates-igbo-customary-law-denying-female-descendants>. Accessed July 14,2019.

¹³HanibalGoitom, 2014.

it can be employed as a word or used as a sentence: as a word, it is written as *Igwebuike*, and as a sentence, it is written as, *Igwe bu ike*, with the component words enjoying some independence in terms of space. The three words involved: *Igwe* is a noun which means number or population, usually a huge number or population. *Bu* is a verb, which means *is*. *Ike* is another verb, which means *strength* or *power*. Thus, put together, it means 'number is strength' or 'number is power', that is, when human beings come together in solidarity and complementarity, they are powerful or can constitute an insurmountable force.¹⁴

Kanu described it further as

a school of thought that argues that a whole is greater, than any of its corresponding parts. It is also a view that maintains that by the coming together of the individual or parts, a viable and sustainable whole will emerge, and by this, the parts will get to the brim purpose of their existence. Finally, it is the view that holds that individualized views and individualized goals and desires will be attained fully if there is a mutual collectivity existing amongst them. Thus, to be is to be in mutual complementary relationship.¹⁵

Following the words of Kanu, it therefore means that there is power in unity and complementarity. This also means that goals such as the realization of women inheritance cannot function peacefully if the men continue to reject the basic equality between them and the women in Igbo land.

¹⁴Kanulkechukwu Anthony, 2018. "Igwebuike Philosophy and Human Rights Violation in Africa". Conference paper presented held at the University of Calabar, Cross Rivers State, Department of Philosophy, Conversational School of Philosophy". Available at https://www.researchgate.net/.../329024175_IGWEBUIKE_PHILOSOPHY_AND_HUM... Accessed July 13, 2019.

¹⁵Kanu Ikechukwu Anthony

Application Of Igwebuiké's Principle To The Problem Of Inheritance Of Igbo Women

As indicated in this paper, even though the Nigerian constitution clearly stated in section 42 (2) "No citizen of Nigeria shall be subjected to circumstances of his birth, but female children and widows are discriminated against and treated cruelly. This group of people suffer physical, social and psychological violence at the death of their husbands and fathers. In section 43 of the Nigerian Constitution both male and female are permitted to own and acquire moveable and immovable property. In spite of this, a large proportion of Nigerian women are barred from owning land by customary law of inheritance. Apart from the Nigerian Constitution, this paper mentioned other bodies that are against the discrimination of women's right of inheritance and rights as human beings.

One example is the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), an international document that establishes standards of equality between women and men. The convention was adopted by the United General Assembly on 18 December 1979 and was made binding on ratifying states on 3 September 1981. CEDAW provides a framework for developing and applying equality norms to specific conditions in different countries and legal systems. This international bill of rights for women also stands as an agenda for action to guarantee these rights. In its preamble, the convention states that extensive discrimination against women continues to exist, and it emphasizes that such discrimination violates the principles of equality of rights and respect for human dignity. Article I of the convention defines discrimination against women as "any distinction, exclusion, or restriction made on the basis of sex in the political, economic, social, cultural, civil or any other field."¹⁶

Therefore, the principle of 'igwebuiké' becomes very necessary to combat this endemic disease that has eaten deep into the Igbo culture. The gender discrimination as it pertains to customary law is a serious issue. In spite of the

¹⁶Onuoha, Reginald Akujobi, 2008. "Discriminatory property inheritance under customary law in Nigeria: Ngos to the Rescue". *The international journal of Not-for-profit law Vol. 10, Issue 2*. Available at edojudiciary.gov.ng/.../Discriminatory-Property-Inheritance-Under-The-Customary-Law... Accessed July 21, 2019

constitutional provision for the protection of women's rights, violence against them has continued. They are being discriminated against, degraded and humiliated. For this reason, the principle of 'igwebuike' becomes relevant to the Igbo society and the world at large. The principle asserts that women are not to be used, controlled or oppressed, but affirms that when you oppress a woman, you oppress a nation, when you beat down a woman, you beat down a nation and when you uplift a woman, you uplift yourself and the entire people. The principle of 'igwebuike' asserts the importance of everybody. Just as the body has many parts and different functions and remains a whole, that is the nature of every human being. 'Igwebuike' as presented by Kanu, "is a complementary philosophy which understands life as a shared reality..., one in which another is part thereof. It is a relationship, though of separate and separated entities or individuals but with a joining of the same whole. It is a relationship in which case the two or more coming together makes each of them a complete whole; it is a diversity of being one with each other".¹⁷

Following the principle of 'igwebuike', it then means that when one person is crying, others are crying with the individual and when an individual is rejoicing, others follow suit, which means that the principle of 'igwebuike encourages unity, peace and love in the society. Where this is the case, the paper makes a clarion call asking that every hand should be on deck towards making the new law, which the Supreme Court has enacted, which permits female children to participate in the sharing of the family property after the death of their father to function.

The principle of 'igwebuike' advocates for changes in men's mind set, attitude and behavior. This is a necessary condition for achieving a harmonious relationship between men and women. The culture, which our ancestors lived has conditioned our minds to the extent that we see wrong ideas as being right. Our mentality needs to be changed. The mentality that a woman is less human than man, that she is inferior to man, that she is weaker etc. needs to be overhauled. The woman who brought the man into the world through the collaboration of the man, who nurtures the man, cannot not be either inferior, weaker or less human than the man. The woman possesses things in her nature which the man does not have and vice versa. So, the two are meant to complement each other with what nature has bestowed us with, that way we have a better life. This is what 'igwebuike' is presenting to us. For us to have a good life, we have to accept and accommodate one other without discrimination.

¹⁷Kanu Ikechukwu Anthony, 2018. "Igwebuike Philosophy and Human Rights Violation in Africa".

Conclusion

No matter the level of wrong mentality, understanding, ignorance etc. that has enrobed the world, one thing that cannot be denied is the fact that women are part and parcel of every society and its order. Therefore, women's rights are indeed fundamental to the growth of any society and to the well-being of its members, as mentioned above in this work. Therefore, discrimination and violence against women remains part of the evils that is destroying our land and indeed the world at large and need to be eradicated in order to embrace peace, harmony and healthy living in the society. As concerns the invalidation of the law against women's right of inheritance in Igbo land, many people, including women themselves are still living in ignorance. They are still not aware that this law has been abolished. The men including those of them that are aware of the abolishment of the law are still perpetrating this evil in different parts of Igbo land. Part of the reason being that many women are still ignorant of the new development. Ignorance, therefore, becomes a major contributing factor of gender discrimination. Part of the ignorance is also because many of those concerned are not educated and exposed. Believing that 'Igwebuiké' (that is, there is strength in number), the paper suggests that those who are aware of this new law should help to create the awareness among the ignorant. Igbo female lawyers and other female elites have a responsibility to this effect.

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