

**AN ANALYSIS OF THE IGIIOGBE CUSTOMARY SYSTEM AND
ITS DISCRIMINATORY IMPACT ON WOMEN' RIGHTS UNDER
THE NIGERIA CONSTITUTION**

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BENIN CITY**

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**BEING A LONG ESSAY WRITTEN AND SUBMITTED TO THE
FACULTY OF LAW, UNIVERSITY OF BENIN, BENIN CITY, EDO
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FOR THE AWARD OF BACHELOR OF LAW DEGREE (LL.B) OF
THE UNIVERSITY OF BENIN, BENIN CITY, EDO STATE**

**MAY 2025
CERTIFICATION**

I, **Osayaniyobor Precious ILEKHUOBA-IDAHOA**, with Matriculation Number **LAW1906188**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

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APPROVAL

We certify that this project was written and completed by **Osayaniyobor Precious ILEKHUOBA-IDAHOBA** with Matriculation Number **LAW1906188**, in partial fulfillment of the requirements for the award of Bachelor of Laws (LL.B) degree.

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DEDICATION

This research project is dedicated to God Almighty, for His unending grace, wisdom, and strength that sustained me throughout this journey. To myself, for the resilience, commitment, and determination to keep going, even in the face of doubt and difficulty.

And to the loving memory of my late aunt, M/C Oluwaseyi Bridget Imuzai-Afokhai, whose encouragement and quiet strength continue to inspire me. This work is a tribute to all that you were and all that you still mean to me.

Lastly, I dedicate this work to women out there fighting for justice and equality. May your courage never go unnoticed.

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Violence Against Persons (Prohibition) Act 2015

Wills Law, Cap 172, Laws of Bendel State 1976 (applicable in Edo State)

LIST OF ACRONYMS/ ABBREVIATION

CEDAW Convention on the Elimination of All Forms of Discrimination Against
 Women

VAPP Act Violence Against Persons (Prohibition) Act

ABSTRACT

Nigeria operates a plural legal system where statutory, customary, and Islamic laws coexist. Among these, the Igiogbe principle an inheritance rule under Benin customary law—stands out for its deeply rooted tradition that allows only the first male child to inherit the principal residence (the Igiogbe) of a deceased father. This practice, while long accepted within the Benin culture, raises serious legal and human rights concerns, particularly regarding its discriminatory impact on women. Female children and widows are excluded from inheriting the Igiogbe simply because of their gender, despite constitutional guarantees of equality under Section 42 of the 1999 Constitution, and international conventions such as CEDAW and the African Charter on Human and Peoples’ Rights, which Nigeria has ratified. This study examines the Igiogbe system, its legal basis, and how it clashes with statutory provisions and modern human rights standards. Using doctrinal research methods, it reviews case law, scholarly writings, and legal instruments to analyze how this customary rule undermines women’s rights to property and economic empowerment. The research finds that, although courts have begun to address some of these issues, enforcement is still weak, and customary norms remain strongly upheld in many communities. The study concludes that genuine reform must include stronger judicial interpretation, legislative change, and

public awareness campaigns. More importantly, traditional institutions must be engaged to evolve the practice in a way that respects culture without violating the rights of women. This work contributes to the call for a more inclusive and just inheritance system that aligns with constitutional values and contemporary realities.

CHAPTER ONE

INTRODUCTION

1.1 Background of Study

Inheritance rights are fundamental to property ownership and economic security. Inheritance law in Nigeria operates within a plural legal system comprising statutory, customary, and Islamic laws. However, in many parts of Nigeria, customary practices continue to favour male heirs, often to the exclusion of women. Among the various customary inheritance laws in Nigeria is the Igiogbe, the customary inheritance law of the Binis. The Igiogbe system, a unique feature of the Benin customary law dictates that the first male child of a deceased father inherits the principal residential property, known as the Igiogbe. The igiogbe refers to the principal house where a deceased Bini man lived and died, which, under the Benin customary law, is exclusively inherited by the eldest surviving son of the deceased¹. This practice, entrenched in tradition, has sparked legal and human rights debates, particularly regarding its discriminatory impact on women. The customary inheritance law of the Binis, the Igiogbe, expressly excludes women from inheriting the principal house of their fathers or husbands strictly on the basis of their gender. The Nigeria constitution guarantees equality irrespective of gender and prohibits discriminatory acts and practices against the gender of a

¹ Lugard A. Emokpae, 'The Imperatives to Absolute Primogeniture Rules Under the Bini Customary Law of Succession' *International Journal of Research Publication and Reviews* (2023) (4) (10) 693-698 <<https://ijrpr.com/uploads/V4ISSUE10/IJRPR18124.pdf>> accessed 7th March, 2025

person². Despite Nigeria's constitutional guarantees of equality, the Igiogbe system continues to exclude female children and widows from inheriting this crucial property and instead, daughters are only entitled to "remnants" of the estate after the male heirs have received their portions³ thus raising concerns about its discriminatory effect and its compatibility with statutory and international human rights law.

The Nigerian Constitution, particularly section 42 of the 1999 Constitution (as amended), prohibits discrimination based on sex. Additionally, international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on Human and Peoples' Rights advocate for gender equality in property rights. However, the persistence of the Igiogbe rule highlights the conflict between customary law and statutory provisions, as well as the challenges in enforcing gender-equitable inheritance rights. Judicial pronouncements have attempted to address this issue, but customary norms remain deeply rooted in the society.

Under Nigerian laws, customary laws are valid, however, they are subject to the validity test which ensures that customs which are repugnant to natural justice, equity and good conscience are held to be invalid and do not have the backing of the law and should be abolished⁴.

1.2 Statement of Problem

The Igiogbe principle raises significant legal and human rights concerns. Firstly, it contravenes constitutional provisions on non-discrimination and gender equality where it excludes female children from equal inheritance rights solely based on gender thereby

2 Section 42 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)

3 *Ibid.*

4 *Edet v Essien* (1932) 11 NLR 47, where the court held that for a customary law to be enforceable, it must not be repugnant to natural justice, equity, and good conscience; *Lewis v Bankole* (1908) 1 NLR 81, where the court affirmed that customary law must pass the "repugnancy test" before being upheld.; AO Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 83-85

strengthening gender inequality and holding women as inferior in the family which results in the limitation of women's economic empowerment and social standing. Thus, the Igiogbe principle excludes women from equal inheritance right due to their gender and therefore, is discriminatory on women's rights which makes it in a legal conflict with the grundnorm, the Constitution which is supreme and other human right treaties ratified by Nigeria⁵ that prohibits discrimination based on gender and the discrimination on women's right generally.

Secondly, judicial decisions remain inconsistent, with some courts upholding the customary practice⁶ while others, in cases such as *Ukeje v Ukeje*⁷, have declared gender-based inheritance discrimination unconstitutional.

This principle dis-empower women economically by striping them off their economic right to own properties via inheritance which may result in financial instability and also leading to increased vulnerability.

Also, this system is backed by cultural justification and is deeply rooted in tradition far back as the reign of Oba Ewuare the Great I⁸, who institutionalized male primogeniture in succession and inheritance. Cultural resistance has been a problem to curbing repugnant and unjust cultural practices, because they are deeply rooted in tradition, it is difficult for these people bound by these tradition to shove it aside and uphold contemporary laws against gender inequality, thus, the problem of resistance to change and acceptance of legal and policy reform by the people upholding these customs. Cultural resistance and justification and lack of legal awareness among affected women hinder the enforcement of their rights. These issues necessitate an analysis of the Igiogbe system to determine whether it aligns with contemporary legal standards and gender justice principles.

5 s.12 of the 1999 Constitution provides that "No treaty between the Federation and any other country shall have the force of law unless it has been ratified by the National Assembly."

6 *Idehen v Idehen* (1991) 6 NWLR (Pt 198) 382 (SC)

7 (2014) 11 NWLR (Pt 1418) 384

8 1440 AD

This research seeks to explore how the Igiogbe principle discriminates against women, how Nigerian courts have addressed similar inheritance disputes, and what reforms can be proposed to ensure gender-inclusive inheritance laws essential for promoting gender equality, upholding constitutional rights, and ensuring that cultural traditions evolve to align with modern principles of justice and fairness.

1.3 Research Questions

This study seeks to address the following questions:

1. What are the origins and legal principles governing the Igiogbe customary inheritance system?
2. How does the Igiogbe system impact women's inheritance rights in Nigeria?
3. To what extent do Nigerian constitutional and statutory provisions protect women from discriminatory inheritance practices?
4. What are the judicial and legislative responses to the conflict between customary inheritance laws and women's rights?
5. What are the possible solutions and reforms to curtail this traditional practice?

1.4 Objectives of Study

The primary objectives of this study are to:

1. Examine the historical and legal foundations of the Igiogbe inheritance system.
2. Assess the discriminatory impact of the Igiogbe rule on women's inheritance rights.
3. Analyze relevant Nigerian laws and judicial decisions addressing the conflict between customary and statutory inheritance rights.

4. Propose legal reforms to harmonize customary inheritance practices with constitutional and international human rights obligations.

1.5 Scope and Limitation of the Study

1.5.1 Scope of Study

This study focuses on the igiogbe inheritance system of the Benin customary law, examining its operation, legal implications, and impact on women's rights, particularly in relation to daughters and widows. This research will also analyse the constitutional and international framework governing inheritance rights in Nigeria and also the legal provisions protecting the rights of women generally and the provisions against gender discrimination and inequality. Additionally, the study will assess the role of statutory provisions, case law, and international human rights instruments in addressing gender discrimination in customary inheritance rights. Comparative analysis with other Nigerian customary inheritance systems, such as Igbo and Yoruba practices, will be explored where necessary.

1.5.2 Limitation of Study

This study is limited by several factors, including:

1. **Regional Scope:** The focus is primarily on the Benin Kingdom, limiting the applicability of findings to other ethnic groups with different customary inheritance laws.
2. **Legal Pluralism:** The coexistence of customary, statutory, and religious laws in Nigeria complicates the analysis, making it difficult to generalize legal principles across all systems.

3. Resource Availability: The reliance on judicial decisions and scholarly articles means that informal customary practices, which are not documented, may not be adequately represented.
4. Resistance to Change: Cultural and societal resistance to reforms limits the practical applicability of legal interventions, making it difficult to assess the real impact of judicial pronouncements and legislative measures.

1.6 Significance of the Study

This research is significant in several respects. It contributes to legal scholarship by critically analyzing the intersection of customary law, statutory law, and human rights in Nigeria's inheritance system and its intersection with international legal standards and also provides an analysis of how customary inheritance laws interact with constitutional and international legal standards.

It contributes and support the ongoing discussions and demands for gender equality. The study highlights the effects of Igiogbe on women's economic security and gender justice and is therefore aimed at fostering gender equality in Nigeria, in accordance with constitutional mandates and global human rights standards like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It provides valuable insights for lawmakers, legal practitioners, and human rights advocates working towards gender-equitable inheritance reforms.

The study adds to the academic discourse on customary law, inheritance practices, and gender studies by providing a comprehensive analysis of the Igiogbe concept and will serve as a reference point for future research on similar issues in other cultural contexts.

Furthermore, it offers recommendations to judicial and legislative bodies on how to reconcile customary inheritance laws with Nigeria's constitutional and international human rights commitments ensuring that customary practices evolve to reflect modern principles of justice and equity.

This research is significant in addressing gender-based discrimination in the Benin customary inheritance law, igiogbe, fostering legal reform, empowering women economically, and promoting cultural evolution while respecting traditional values. It bridges gaps between law, culture, and human rights to create a more equitable society.

1.7 Research Methodology

This study adopts a qualitative research approach to critically examine the igiogbe principle in Nigerian customary law and its impact on women's inheritance rights. The methodology involves a comprehensive review of existing literature, legal sources, and case law, with a focus on how the igiogbe rule contributes to gender inequality in inheritance practices. The research methodology involves:

- i. A thorough review of scholarly works, legal articles, and research publications that discuss the igiogbe principle and its implications for women. This will include an examination of existing studies that have critiqued the principle for being discriminatory, especially in light of constitutional and international human rights norms that promote gender equality.
- ii. Analysis of key legal materials, including statutes, judicial decisions, and constitutional provisions, will be analyzed to explore how the igiogbe principle has been applied in Nigerian courts.

- iii. The documentation for this research will be drawn from legal case studies and documented reports that highlight instances where women were either excluded or disadvantaged due to the application of the igiogbe principle in inheritance matters.
- iv. This research will interrogate the findings from the literature review, case law, and legal documents to determine whether the igiogbe principle contributes to gender discrimination. The findings will provide insights into the potential legal reforms necessary to protect women's inheritance rights under Nigerian law.

This study adopts a doctrinal legal research methodology, relying on primary and secondary sources.

Primary Sources:

1. Nigerian Constitution (1999) as amended
2. Case laws
3. Inheritance laws (statutory and customary)
4. International treaties (CEDAW, African Charter on Human and Peoples' Rights)

Secondary sources:

1. Books, legal commentaries, and journals, articles on customary inheritance law
2. Reports from human rights organizations and legal advocacy groups

A comparative approach will be employed to assess inheritance practices in other jurisdictions with similar customary legal frameworks.

This chapter outlines the research design and analytical techniques used to explore Igiogbe. It also discusses the theoretical framework guiding the study, as well as ethical considerations and limitations. The methodology is structured to ensure validity, reliability, and relevance in addressing the central research question: To what extent does the principle

of Igiogbe discriminate against women, and how can legal reforms address this issue? The Igiogbe customary inheritance system remains a contentious issue in Nigeria's legal landscape, as it embodies the conflict between tradition and modern legal principles of gender equality. While courts have taken steps towards addressing discriminatory practices, customary law remains deeply entrenched, necessitating further legal and policy interventions. This study seeks to provide a comprehensive legal analysis of the Igiogbe system and propose reforms that balance cultural heritage with gender justice under Nigerian law.

CHAPTER TWO
CONCEPTUAL AND THEORETICAL FRAMEWORK AND LITERATURE
REVIEW

This chapter provides the conceptual and theoretical foundation for analyzing the Igiogbe customary inheritance system and its discriminatory impact on women's rights under Nigerian law. It examines key legal concepts, relevant customary and statutory provisions, and theoretical perspectives that inform this study. It also provides literature review by various authors and scholars on the subject matter. The chapter also discusses the intersection of customary law and human rights principles, particularly as they relate to gender equality.

2.1 Conceptual Framework

In order to properly analyze the subject matter of this discussion, it is necessary to define key concepts and the major words central to this research for in-depth understanding and clarifications. This part is an elaboration or definition of the major words of the topic of the work by way of definition.

2.1.1 Customary Law

Customary law refers to the traditional legal norms and practices recognized and enforced by a specific community over time. In Nigeria, customary law practices varies across ethnic groups and governs personal matters such as marriage, inheritance, and land ownership. Evidence Act defines custom as “a rule which, in a particular district, has from long usage, obtained the force of law”⁹. Bairamian, F.J, described customary law as a mirror of accepted

9 Section 2 (1) Evidence Act, Cap. 112, Laws of Federation of Nigeria 1990

usages¹⁰. In *Alfa & Omega v Arepo*¹¹, the court defined customary law as “ancient rules of law binding on a particular community and which rules do change with times and the rapid development of social and economic conditions”.

The Igiogbe inheritance system falls under the Benin customary law, which dictates that the first male child inherits the principal residential property of the deceased father. While customary law is recognized under Section 315 of the 1999 Constitution of Nigeria (as amended), it must not be repugnant to natural justice, equity, and good conscience¹².

2.12 Inheritance

Inheritance refers to the legal transfer of assets, obligations, or rights from a deceased individual to their heirs or beneficiaries under intestate or testamentary succession laws¹³. William described inheritance as the right of succession to property, descending from an ancestor to an heir according to established legal principles¹⁴. Inheritance law governs the distribution of a deceased person’s estate among lawful successors, ensuring the protection of property rights and obligations¹⁵. Inheritance can also be defined as the transmission of an individual’s estate upon death, regulated by civil law, common law, or customary law, ensuring the orderly transfer of wealth and obligations¹⁶.

2.1.3 The Igiogbe

Igiogbe refers to the principal or ancestral house of a deceased Benin man, which, under Benin customary law, devolves exclusively upon his first surviving male child. It is

10 *Owonyi v Omotosho* (1961) 1 All NLR, 304

11 (1963) All NLR, 95

12 *Ollennu v Ollennu* (1967) 1GLR 177

13 Bryan A Garner (ed), *Black’s Law Dictionary* (12th edn, Thomson Reuters 2024).

14 William Blackstone, *Commentaries on the Laws of England* (1765) vol 2, ch 14.

15 UNIDROIT, *Principles of International Commercial Contracts* (UNIDROIT 2016)

<<https://www.unidroit.org>> accessed 1 April 2025.

16 E Cordero-Moss (ed), *International Encyclopaedia of Laws: Private Law* (Kluwer Law International 2020).

considered the spiritual and cultural seat of the family, symbolizing continuity and lineage. The first son is not only seen as an heir but also as a custodian of family traditions and responsibilities. It connotes “a setting where the head of a family lives in the family land built by his ancestors”¹⁷.

The Supreme Court of Nigeria described Igiogbe as “...the principal house in which a Benin man lived and died, and which under Bini native law and custom devolves on his eldest surviving male child”¹⁸. Chief C.G. Okojie, a prominent scholar on Benin customary law, explained the Igiogbe as the house in which a Benin man lived and died; it is inherited exclusively by the first son, regardless of whether the deceased left a will¹⁹.

The Igiogbe tradition has been recognized by Nigerian courts as an essential feature of Benin customary inheritance, often prevailing over testamentary dispositions, that is while individuals have the freedom to dispose of their properties by will, such dispositions must not contravene established customary law²⁰ cases such as-; *Idehen v Idehen* where the deceased, Joshua Iserhienrhien Idehen, executed a will on March 10, 1973, in which he made several devises and bequests. Notably, he devised his two houses at No. 62 Akpakpava Street and No. 1 Oregbeni Ikpoba Hill, both in Benin City, to his eldest son, Dr. Humphrey Idemudia Idehen. These properties were recognized as his Igiogbe, the principal house a Bini man occupies during his lifetime, which under Bini customary law, passes to the eldest son upon the father's death. However, Dr. Humphrey predeceased his father, leading to a dispute over the inheritance of the Igiogbe. The plaintiffs, including Joseph Osemwegie Idehen, the next eldest surviving son, challenged the validity of the will, arguing that the

Igiogbe should pass to him under Bini customary law. The Supreme Court held that while

17 *Giwa-Osagie v. Giwa-Osagie* (2009) LPELR-4533 (CA)

18 *Idehen v Idehen* (1991) 6 NWLR (Pt 198) 382

19 CG Okojie, *Native Law and Custom of the Benin People* (1st edn, Ilupeju Press 1994) 131.

20 *Arase v Arase* (1981) 5 SC 33; *Uwaijo v Uwaijo* (2005) 3 NWLR (Pt 913) 479; *Idehen v Idehen*;

PO Itua ‘Succession under Benin customary law in Nigeria: Igiogbe matters arising’ *Journal of Law and Conflict Resolution* Vol. 3(7), pp. 117-129, September 2011

<<https://academicjournals.org/journal/JLCR/article-full-text-pdf/3B555907725>> accessed 1 May 2025

the will was valid in form, the specific devise of the Igiogbe to Dr. Humphrey was void because it contravened Bini customary law. The court emphasized that under Section 3(1) of the Wills Law, a testator's power to dispose of property by will is subject to any customary law relating thereto. Therefore, the Igiogbe, being subject to Bini customary law, could not be validly devised to someone other than the eldest surviving son. As a result, the Igiogbe passed to Joseph Osemwegie Idehen, the eldest surviving son, in accordance with Bini customary law. Similarly the Supreme Court reaffirmed the principle that under Bini customary law, the igiogbe the principal house where a deceased Bini man lived and died must pass to his eldest surviving son, regardless of any contrary provisions in a will in *Uwaifo v Uwaifo* where the central question was whether the deceased could validly bequeath his igiogbe to someone other than his eldest son, in light of Section 3(1) of the Wills Law of Bendel State (applicable in Edo State)²¹, which stipulates that testamentary dispositions are subject to customary law. The The Supreme Court held that the igiogbe is the house where the deceased lived and died and is traditionally inherited by the eldest surviving son under Bini customary law. Any testamentary disposition that attempts to bequeath the igiogbe to someone other than the eldest son is void to that extent, as it contravenes established customary practices. The will remains valid in other respects, but the provision concerning the igiogbe is invalid. Justice Galadima, J.S.C., emphasized that the igiogbe is an ancestral home and that the eldest son's right to inherit it cannot be divested by means of disinheritance.

The inheritance rule of the Igiogbe reflects the patrilineal nature of Benin society and is a vivid example of gender-exclusive succession practice²².

21 Wills Law (Cap 172), Laws of Bendel State 1976, s 3(1) which provides that subject to any customary law relating thereto, it shall be lawful for every person to bequeath or dispose of, by his will executed in accordance with this Law, all property to which he is entitled, either in law or in equity, at the time of his death.

22 AO Oba, 'Property Rights and Gender in Customary Law: The Case of Igiogbe in Benin' (2010) 12(3) *African Journal of Legal Studies* 217.

2.1.4 The Igiogbe Customary Inheritance System

The igiogbe inheritance system is a principle of Benin customary law that grants the first male child exclusive rights to inherit the deceased father's primary residence²³. This practice is deeply rooted in tradition and viewed as a means of preserving ancestral property within the paternal lineage. However, it has been challenged on the grounds of gender discrimination, as it excludes female children and widows from inheriting the Igiogbe.

2.1.5 Gender Discrimination

Gender Discrimination refers to the unfair treatment of individuals based on their sex, particularly in legal, social, and economic contexts. Black's Law Dictionary defines Gender Discrimination as the unequal or unfair treatment of individuals based on their gender, particularly in areas such as employment, education, and social status²⁴. Gender discrimination occurs when individuals are treated unfairly solely based on their sex or gender, which results in inequality in rights, responsibilities, and opportunities. Discrimination against women includes 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 field²⁵. Scholars like Catherine MacKinnon describe Gender discrimination as a structural imbalance that perpetuates male dominance and female subordination, embedded within legal and social institutions²⁶.

23 *Idehen v Idehen*

24 Bryan A Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019)

25 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 1

26 Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1991)

The Igiogbe system discriminates against women by denying them inheritance rights solely based on gender. Section 42(1) of the 1999 Constitution prohibits discrimination on the grounds of sex, yet customary practices like the Igiogbe persist, creating a conflict between constitutional and customary law.

2.2 Brief History of Igiogbe in Benin Kingdom

The concept of Igiogbe is a fundamental inheritance principle in Benin customary law, where the eldest surviving male child inherits the principal residence of his deceased father. The historical significance of Igiogbe lies in its role in preserving lineage, property continuity, and family heritage. This part of this research explores the historical origins of Igiogbe, its evolution in Benin society, and its interaction with colonial and post-colonial legal frameworks.

2.2.1 Origins of Igiogbe in Benin Customary Law

The Benin Kingdom, one of the most powerful pre-colonial states in West Africa, developed a structured system of governance, inheritance, and succession, largely influenced by the monarchy and patriarchal traditions²⁷. Within this system, land and property ownership were tied to male lineage, reinforcing male primogeniture as a means of preserving family estates.

The word Igiogbe itself derives from the Bini language, where "Igi" means "tree" and "ogbe" signifies "house" or "compound," metaphorically representing the family's ancestral home²⁸. Traditionally, this property was considered sacred and could not be fragmented among multiple heirs, ensuring continuity under the stewardship of the eldest son²⁹.

27 Egharevba, *A Short History of Benin* (1968), p. 45

28 RE Bradbury, *Benin Studies* (1973), p. 112

29 *Ibid.*

In pre-colonial Benin society, inheritance laws were unwritten but strictly adhered to, and enforcement rested with the Oba (king) and local chiefs, who acted as custodians of customs³⁰. This practice was deeply intertwined with religious beliefs, as ancestral worship was central to Benin culture, and the Igiogbe often housed ancestral shrines maintained by the first son.

2.2.3 Colonial Influence on Igiogbe (1897–1960)

The British conquest of Benin in 1897 marked a turning point for customary inheritance laws. The introduction of English law through ordinances and colonial courts led to conflicts between statutory and customary inheritance systems. However, British colonial administrators largely preserved indigenous legal traditions, including Igiogbe, under the policy of indirect rule³¹.

Despite colonial legal pluralism, Igiogbe remained resilient. The British recognized its importance in stabilizing social structures and preventing disputes over land and property within the Benin community. However, by the 1950s, Western-style education and urbanization had begun to challenge some traditional practices, leading to early discussions on gender equity in inheritance.

2.2.4 Post-Colonial Evolution of Igiogbe (1960–Present)

After Nigeria's independence in 1960, the legal system continued to recognize Igiogbe under customary law, particularly in Edo State, where Benin traditions hold significant influence. Landmark judicial decisions have reinforced Igiogbe, such as *Idehen v Idehen*³², in which

30 Philip Igbafe, *Benin Under British Administration: The Impact of Colonial Rule on an African Kingdom* (1979), p. 89

31 AO Oba, "Colonialism and Customary Law in Nigeria" (1995) 3(1) *African Journal of Legal Studies* 56

32 (1991) 6 NWLR (Pt. 198) 382

the Supreme Court affirmed the exclusive right of the eldest son to inherit the Igiogbe, despite challenges from other heirs.

In the post-colonial era, however, there has been increasing tension between customary law and constitutional provisions on gender equality. While the Nigerian Constitution (1999) guarantees non-discrimination³³, Igiogbe continues to be applied in a way that excludes daughters from inheritance.

The debate over Igiogbe has intensified due to urbanization, economic changes, and shifting social norms. The emergence of female-headed households and women's increasing economic contributions challenge the historical rationale for male primogeniture. Additionally, international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Women's Protocol call for equal inheritance rights, increasing pressure for legal reform.

2.2.5 Contemporary Challenges and Prospects for Reform

Despite its deep historical roots, Igiogbe faces growing scrutiny from legal scholars, feminists, and human rights activists. Some argue that while the principle served a socio-economic function in pre-colonial Benin, its rigid application in modern society creates injustices, particularly for female heirs and widows.

Judicial precedents such as *Ukeje v Ukeje*³⁴, which declared the exclusion of female children from inheritance unconstitutional, suggest a potential shift in legal interpretation. However, courts have yet to apply this ruling directly to Igiogbe, as its unique cultural and religious significance complicates legal challenges.

33 s 42
34 (2014) 11 NWLR (Pt. 1418) 384

Some scholars advocate for a reformist approach that balances tradition with constitutional mandates. Proposed solutions include:

1. Judicial activism: Encouraging courts to interpret Igiogbe in ways that accommodate gender equality.
2. Legislative intervention: Amending inheritance laws to provide equal rights while respecting cultural heritage.
3. Community-driven reforms: Encouraging traditional institutions, such as the Oba's court, to adopt progressive policies.

The history of Igiogbe in Benin reflects the complexities of inheritance law, culture, and gender justice. While it has played a crucial role in preserving family continuity for centuries, its discriminatory impact on women has become a subject of legal and social debate. As Nigeria navigates the tension between tradition and modernity, reforms to Igiogbe must be considered within a broader framework of cultural sensitivity and human rights protections.

2.3 An Overview of Women's Rights in Nigeria: Legal Protections and Customary Challenges

Women's rights are an integral part of human rights. They encompass a broad range of civil, political, economic, social, and cultural rights aimed at ensuring women and girls enjoy equal dignity and opportunities as their male counterparts. Globally, the advancement of women's rights has been a central concern for decades, but in many countries, Nigeria included, however, cultural practices, customary laws, and inadequate enforcement mechanisms continue to undermine the full realization of these rights. This section explores

the general scope of women's rights and critically examines their protection and challenges within the Nigerian legal and cultural framework.

A) General Scope of Women's Rights

Women's rights cover a wide array of entitlements that promote gender equality and protect women from discrimination and abuse. These include:

- i. Legal and Political Rights: The right to vote, run for office, and participate in public life.
- ii. Social and Economic Rights: The right to education, employment, fair wages, property ownership, and access to economic resources.
- iii. Health and Reproductive Rights: The right to access quality healthcare, make reproductive choices, and live free from harmful practices.
- iv. Freedom from Violence and Discrimination: Protection from gender-based violence, domestic abuse, sexual harassment, and discrimination based on sex.

International frameworks, such as the Universal Declaration of Human Rights (1948) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), reinforce these rights and bind state parties to implement gender-sensitive policies.

B) Constitutional and Legal Framework in Nigeria

In Nigeria, women's rights are enshrined in the 1999 Constitution (as amended)³⁵:

- i. Section 42(1) prohibits discrimination on the basis of sex, guaranteeing women equal treatment under the law.

35 Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 17, 34, 42.

- ii. Section 34(1) protects the dignity of individuals, including protection from inhuman and degrading treatment, which encompasses gender-based violence.
- iii. Section 17(2) of the Constitution also promotes equality of rights, obligations, and opportunities for every citizen.

Nigeria has also ratified CEDAW, which commits the country to take all appropriate measures to eliminate discrimination against women in political, economic, social, and cultural life³⁶. However, the challenge lies in the implementation and enforcement of these rights, especially where customary and religious practices conflict with constitutional provisions.

C) Challenges to Women's Rights in Nigeria

Despite legal protections, women in Nigeria face persistent challenges that hinder the full enjoyment of their rights:

- i. Customary and Religious Barriers: Customary laws especially in inheritance and marriage often discriminate against women. For instance, under Bini customary law, the Igiogbe (family house) is inherited exclusively by the eldest son, excluding daughters regardless of their contributions or need.

However, in *Ukeje v. Ukeje*, the Supreme Court declared that any customary law denying female children the right to inherit from their father's estate was unconstitutional.

- ii. Gender-Based Violence and Harmful Practices: Women continue to face high levels of domestic violence, female genital mutilation (FGM), child marriage, and widowhood rites. While the Violence Against Persons (Prohibition) Act 2015 (VAPP

36 CEDAW (1979) 1249 UNTS 13.

Act) criminalizes these acts³⁷, it is only applicable in the Federal Capital Territory unless adopted by individual states.

- iii. Limited Access to Economic Resources: Many women in Nigeria are denied access to land ownership, credit facilities, and economic opportunities, particularly in rural areas. Cultural beliefs often prioritize men in property rights and control over family resources.
- iv. Under-representation in Politics Women remain underrepresented in Nigerian politics and governance. Despite forming nearly half the population, they hold less than 10% of elected positions nationally, largely due to cultural, financial, and institutional barriers.

D) Judicial Efforts and Reform

The Nigerian judiciary has increasingly played a proactive role in promoting women's rights by declaring discriminatory customs unconstitutional. Notable cases include: *Mojekwu v. Mojekwu*³⁸ challenged the Oli-ekpe custom which excluded women from inheritance and declared the custom as repugnant to natural justice, equity and good conscience. Similarly in *Anekwe v. Nweke*³⁹, the court condemned a custom that disinherited a widow, affirming her right to benefit from her late husband's estate.

These rulings demonstrate a progressive judicial trend toward upholding the supremacy of the Constitution over customary law when the latter violates fundamental rights.

E) For women's rights to be fully realized in Nigeria:

- i. State adoption, implementation and enforcement of national laws like the VAPP Act must be accelerated. Quite a number of state have domesticated this Act, however

37 Violence Against Persons (Prohibition) Act 2015, ss 11, 23.

38 (1997) 7 NWLR (Pt. 512) 283

39 (2014) 9 NWLR (Pt 1412) 393

enforcement level across the country is generally low, this is due to various factors such as low public awareness, weak institutions, cultural resistance, poor reporting systems, judicial delays and inconsistent political commitment.

- ii. Customary and religious laws must be reformed to align with constitutional principles.
- iii. Public awareness and education must be promoted to shift cultural mindsets.
- iv. Political will is needed to implement existing laws and fulfill international obligations.

Civil society organizations, legal advocacy groups, and international partners also have a vital role in supporting legal reforms and empowering women at all levels.

Women's rights are not just a matter of legal entitlement but of justice, equality, and human dignity. While Nigeria has taken significant steps in recognizing these rights legally, much work remains in ensuring they are respected in practice. Addressing the cultural, religious, and systemic barriers that hinder women's full participation and protection is essential for a just and equitable society that upholds women's rights especially in inheritance matters.

2.4 Legal Framework on Gender Equality and Inheritance

The Nigerian legal system consists of customary, statutory, and Islamic laws, creating a complex framework for inheritance rights. This section examines the relevant legal provisions and international instruments that govern women's inheritance rights.

2.4.1 Constitutional Provisions

The 1999 constitution of Nigeria (as amended) serves as the supreme law of the country and guarantees gender equality. Key provisions include:

- (a) Section 42(1): Prohibits discrimination based on sex, origin, or circumstances of birth.
- (b) Section 43: Guarantees the right of every Nigerian to acquire and own immovable property.

Despite these provisions, customary inheritance practices like the Igiogbe system continue to undermine the constitutional rights of women. The courts have intervened in some instances, as seen in *Ukeje v Ukeje*⁴⁰ where the Supreme Court declared the exclusion of female children from inheritance unconstitutional.

2.4.2 Statutory Provisions

Nigeria's statutory laws also regulate inheritance and property rights. These include:

1. The Administration of Estates Law of Lagos State, Cap A5, Laws of Lagos State 2015: addresses customary practices that exclude women from inheriting property and provides for the distribution of estates where there is no will, ensuring equal rights for male and female beneficiaries. Section 49 protects widows, overturning traditional practices where widows are excluded from inheritance.
2. Married Women's Property Act 1882: Grants married women rights to own property and manage it independently without their husbands involvement or permission. It ensures that property acquired during marriage is independent of husband's control and considered her separate property.

Despite these statutory protections, enforcement remains weak in communities where customary law dominates inheritance practices.

2.4.3 International Legal Framework

40 (2014) LPELR-22724(SC)

Nigeria is a signatory to several international instruments that promote gender equality in inheritance rights. These include:

1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979: Article 16(1)(h) mandates equality in property inheritance.
2. African Charter on Human and Peoples' Rights (ACHPR), 1981: Guarantees the right to non-discrimination under Article 2.
3. Maputo Protocol, 2003: Article 21 emphasizes women's rights to inheritance, it guarantees widows the right to an equitable share in their deceased husband's property and the right to continue living in their matrimonial home, especially if it is inherited by them. It also affirms equal rights for women and men to inherit their parents' properties.

Despite Nigeria's ratification of these treaties, customary practices often override statutory and international norms due to weak implementation mechanisms.

2.5 Theoretical Framework

This study is guided by legal and sociological theories that explain the persistence of gender-based discrimination in inheritance laws.

1. Feminist Legal Theory

Feminist legal theory critiques laws that reinforce patriarchal structures and gender discrimination. It argues that the Igiogbe system is an institutionalized form of male privilege that denies women equal rights to inheritance. Scholars like Catharine MacKinnon advocate for legal reforms to dismantle discriminatory customs and promote substantive equality⁴¹.

41 MacKinnon C 'Feminism Unmodified' (1987) Harvard University Press.

2. Legal Pluralism Theory

Legal pluralism recognizes the coexistence of multiple legal systems within a state. Nigeria operates a plural legal system where customary, statutory, and religious laws intersect. This theory explains the tension between constitutional guarantees of equality and customary inheritance laws that favor male heirs⁴².

3. Cultural Relativism vs. Universal Human Rights

Cultural relativists argue that inheritance customs should be preserved as part of indigenous traditions, while universal human rights advocates emphasize the need to eliminate practices that violate gender equality. The debate between these perspectives influences judicial decisions and policy approaches to inheritance rights in Nigeria.

2.6 Literature Review

The concept of Igiogbe is a customary law principle in Benin tradition that grants the eldest surviving male child the right to inherit the family's principal residence upon the father's death. This customary practice has been challenged for its discriminatory impact on women, particularly daughters and widows, as it effectively excludes them from inheriting the family home. This literature review subtly examines scholarly works on Igiogbe from a legal and human rights perspective, analyzing its discriminatory nature, judicial interpretations, and the tension between customary law and constitutional provisions on gender equality.

2.6.1 The Legal Basis of Igiogbe

Under Benin customary law, Igiogbe is a well-established principle that ensures continuity in the family lineage through the eldest male descendant. It has been upheld in various

Nigerian court decisions, including *Idehen v Idehen*⁴³, where the Supreme Court reaffirmed the exclusive right of the eldest son to inherit the Igiogbe. This principle is deeply rooted in the patriarchal nature of Benin inheritance customs, reflecting societal norms that favor male succession.

2.6.2 Discrimination against Women in Igiogbe

The primary criticism of Igiogbe is that it violates women's right to equality and non-discrimination as enshrined in the Nigerian Constitution⁴⁴. The Constitution explicitly prohibits laws or customs that discriminate based on sex, yet Igiogbe continues to operate in a way that denies female children the same inheritance rights as their male counterparts.

Moreover, the exclusion of daughters from Igiogbe inheritance contradicts Nigeria's obligations under international human rights treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates equal property and inheritance rights for women⁴⁵. The African Charter on Human and Peoples' Rights, domesticated in Nigeria via the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, also guarantees the right to non-discrimination⁴⁶.

2.6.3 Judicial Responses and Gender Equality

Despite constitutional protections against discrimination, Nigerian courts have been reluctant to invalidate Igiogbe outright. In *Arase v Arase*⁴⁷, the Supreme Court upheld the principle of Igiogbe, reinforcing the traditional male entitlement to the inheritance of the igiogbe. However, in some cases, courts have acknowledged the discriminatory impact of customary law. For example, in *Ukeje v Ukeje*⁴⁸, the Supreme Court ruled that the exclusion

43 (1991) 6 NWLR (Pt. 198) 382

44 Constitution of the Federal Republic of Nigeria 1999, s 42

45 CEDAW, art 16

46 African Charter, art 2

47 (1981) 5 SC 33

48 Ibid.

of female children from inheritance under Igbo customary law was unconstitutional. While this case did not specifically address Igiogbe, it set a significant precedent for challenging discriminatory inheritance practices.

Legal scholars argue that a similar approach should be applied to Igiogbe, the judiciary must reconcile customary practices with constitutional guarantees of gender equality to prevent discrimination against women in inheritance matters.

2.6.4 The Impact on Widows

The application of Igiogbe also adversely affects widows, as it grants the deceased husband's home exclusively to the eldest son, often leaving the widow without secure housing. This contradicts international human rights principles, such as those in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, which calls for women's equal rights to inheritance⁴⁹. Research indicates that widows in Benin society frequently face displacement when the eldest son claims the Igiogbe, particularly if he is from a different marriage. This raises concerns about property rights and the economic vulnerability of widows.

2.6.5 The Need for Legal Reforms

There have been calls for reforming Igiogbe to align with constitutional and international human rights standards. Some scholars advocate for legislative intervention, such as amending the Nigerian customary law framework to ensure equal inheritance rights for men and women. Others propose judicial activism as a means of gradually modifying discriminatory customs through progressive case law.

The principle of Igiogbe remains a significant legal and cultural issue in Nigeria, as it disproportionately disadvantages women in inheritance matters. While it is deeply rooted in

49 African Women's Protocol, art 21

tradition, its discriminatory nature conflicts with constitutional and international human rights norms. Judicial precedents such as *Ukeje v Ukeje* indicate a shift toward gender equality in inheritance rights, but more concrete legal reforms are necessary to address the injustices perpetuated by Igiogbe. Ensuring that women, both daughters and widows, have equal inheritance rights is essential to achieving gender justice within Nigeria's legal system.

This chapter has examined the conceptual and theoretical underpinnings of the Igiogbe inheritance system and its discriminatory impact on women's rights. It highlights the conflict between customary law and statutory provisions, historical development of the Igiogbe principle, scholarly perspectives on its application and gender based challenges it presents. Subsequent chapters will analyze case laws and the practical implications of the Igiogbe system on women's inheritance rights in Nigeria.

CHAPTER THREE

ANALYSIS OF THE IGIIOGBE CUSTOMARY INHERITANCE SYSTEM AND ITS DISCRIMINATORY IMPACT ON WOMEN'S RIGHTS

This chapter provides an in-depth analysis of the Igiogbe customary inheritance system, its legal framework, and its implications for women's rights in Nigeria. It critically examines the principles governing the Igiogbe system, relevant judicial decisions, and the socio-legal

challenges associated with its application. The discussion also explores the conflict between customary inheritance practices and statutory provisions designed to promote gender equality, while assessing the role of judicial activism and legislative reforms in mitigating discriminatory practices. The Igiogbe system, despite being deeply embedded in Benin customary law, has come under scrutiny for its inherent gender bias, prompting debates on whether it aligns with constitutional and international human rights norms.

3.1 The Legal Basis of the Igiogbe Customary Inheritance System

The igiogbe principle is a unique feature of Benin customary law, mandating that the first male child of a deceased father inherits the principal residential property. This rule, deeply rooted in tradition, is justified on the grounds of preserving the ancestral home and ensuring continuity of the lineage. Scholars argue that the Igiogbe system is a reflection of the patriarchal structure of the Benin society, where inheritance rights are predominantly vested in male descendants.

The legal recognition of the Igiogbe principle can be traced to several judicial decisions. In *Idehen v Idehen*⁵⁰, the Supreme Court upheld the Benin customary law rule that the eldest male child is the rightful heir to the Igiogbe, irrespective of other members of the family claims. This decision reaffirmed the customary principle but also exposed its rigidity in the face of evolving societal norms on gender equality.

While customary law is recognized under Section 315 of the 1999 Constitution (as amended), it is expected to conform to principles of natural justice, equity, and good conscience. The exclusivity of the Igiogbe system, however, raises concerns about its alignment with constitutional guarantees of gender equality, section 42 of the Constitution expressly prohibits discrimination on the basis of gender, leading to debates on whether the

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ibid

Igiogbe system violates this provision. The legal pluralism in Nigeria, which allows customary laws to coexist with statutory laws, creates a complex legal landscape where discriminatory customs persist despite constitutional safeguards.

3.2 The Discriminatory Impact of Igiogbe on Women's Rights

The igiogbe inheritance system has significant implications for women's rights in Nigeria, particularly in the areas of property ownership and economic empowerment. Under this segment of this research, an analysis of the various ways the igiogbe system discriminates women will be properly highlighted to include:

3.2.1 Exclusion of Female Children from Inheriting the Igiogbe

The igiogbe rule explicitly denies female children the right to inherit their father's principal residence. The rule states that the principal house where a Bini man lived died and in some cases buried should be exclusively inherited by the first surviving male child of the Benin man. This practice is reinforced by cultural beliefs that property ownership and lineage continuation should be exclusively male responsibilities. Thus, excluding female children and female relatives from enjoying the priveledges and properties left by their deceased father solely because they are female. In other words the igiogbe system explicitly exclude female children from inheriting the igiogbe on grounds of their gender, which amounts to gender discrimination. However, in *Ukeje v Ukeje*⁵¹, the Supreme Court declared that the exclusion of female heirs from inheritance is unconstitutional. Despite this landmark decision, enforcement remains a challenge in communities that strictly adhere to customary laws.

3.2.2 Denial of Widows' Inheritance Rights

51 *ibid*

Under the igiogbe system, widows are often left without any legal claim to their late husband's principal residence which is in most cases where they have also lived their lives and have become accustomed to. Instead, the property is automatically transferred to the eldest son, leaving widows vulnerable to eviction or dependency on their male children.

It is also important to note that most of these Bini men are polygamous, hardly ever can one come across a Bini monogamous man, they usually have two or more wives, which means that there will be vulnerability of not just one woman (widow) but of more widows upon the demise of a Bini man. There are also cases where the deceased man in question has only one property, which is the igiogbe, upon his demise and the eldest surviving son inherits this property, and in most cases he can't and won't want to shoulder all of his fathers responsibilities and then these widows are faced with eviction, they are sent out of their husband's house with their children, a place that has become her home, she is then asked to leave because there is a new authority and administrator of the house. Other times out of hatred, jealousy and anger, the eldest surviving son sends his stepmothers, the other widows of the deceased and his step-siblings, the other children of the deceased out of the house sheltering only his mother and the children birthed by his mother. In other situations, still out of hatred, anger and jealousy, the widows of the deceased man are made dependent on the eldest surviving son and are subjected to maltreatment and injustice. Widows may be displaced from the family home upon the death of their husbands since the property automatically goes to the eldest son, undermining the security of the widow.

There are also cases where a woman toiled and built with her husband, supporting financially, mentally, emotionally, generally with her sweat and blood, either directly or indirectly to the building of the property. There are cases where she will step up as the breadwinner of the family providing all that the family needs while she asks her husband to

focus on building their home with all that he gets. In this same instance what if she doesn't birth a male child? What if the husband in question births a male child outside of their marriage or even with another woman whom he gets married to? It is definitely injustice for the said property to be inherited by someone else simply because she is female and does not have the right to inherit the igiogbe for the same reason.

This practice directly contravenes statutory provisions such as the Administration of Estates Law, which grants widows a right to a portion of their deceased husband's estate⁵². Widows should not be left destitute due to discriminatory customary inheritance practices.

3.2.3 Patriarchal Bias

The system reflects deep-rooted patriarchal values where inheritance and continuity of lineage are seen as the responsibility of males. The major defence of Igiogbe exclusively an inheritance right for male only, is that, only men can preserve and keep the lineage of the deceased father and also on the ground that the males can keep a continued relationship with the ancestors of the family. Research revealed the eldest son inherits his deceased father Igiogbe because ancestor worship is the reason for the existence of the Igiogbe, for the Igiogbe is a religious concept and in traditional Benin society a woman is not allowed to take on the responsibility of leading the family in ancestral worship⁵³. This diminishes the legal and social standing of women within the family and therefore imposing that women are not good leaders of the home and cannot protect the lineage and heritage of the family which is highly discriminatory.

3.2.4 Emotional and Psychological Impact

52 And other provision such as: African Charter on Human and Peoples' Rights on the Rights of Women in Africa art. 21; art. 21 of the Maputo Protocol

53 Donatus Sunday Oluya "*Bini Customary Law of Inheritance: Shift in 'Igiogbe' as case Study*" (MA Dissertation Department of History(African Studies) Dalarna University Falun, Sweden 2012)

The exclusion of women from inheriting the igiogbe can cause feelings of rejection, inferiority, and family alienation mostly in cases where the deceased has only one property. This can most likely lead to eviction from a place they have known to be and have called home, a place where they find safety and security thereby leaving them destabilized psychologically and emotionally. As a result, many women feel undervalued despite their contributions to the family.

3.2.5 Violation of the Constitution and International Human Rights Standards

The Nigerian Constitution prohibits discrimination on the basis of sex in section 42 of the 1999 constitution (as amended). The customary law of Igiogbe directly conflicts with this constitutional right, yet it remains upheld in many traditional contexts. Nigeria also, is a signatory to several international conventions, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), African Charter on Human and Peoples' Rights⁵⁴, Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol, 2003)⁵⁵ all of which prohibits discrimination of any kind including gender discrimination and also upholds the right of women to own properties by every legal means which includes inheritance and not limiting this right because of their gender. Thus, the practice of Igiogbe inheritance contravenes these commitments by perpetuating gender inequality.

3.2.6 Cultural Reinforcement of Inequality

The major reason given by the Binis for exclusively reserving the right to inherit the igiogbe for the first son, is that, this first son can communicate with the ancestors and maintain the family lineage as per being the first son. However this view, the igiogbe tradition,

54 Particularly Articles 2, 3, and 18(3) on non-discrimination and women's rights.

55 Emphasizes the right of women to inherit property

perpetuates a culture where women are seen as temporary members of their families expected to marry and "belong" to another family. Thus, it connotes that women (female daughters) born to the family are merely members of the family for a while and after which, they are married off to another family which strips them of their identity with their birth family. Thus, this cultural system discriminates the place, position and relevance of the female child in the family. This undermines their identity and rights within their natal homes. It is noteworthy to state that even when this girl child is married off she is expected to find security in her new home, however the husband dies and the cycle continues, she has no right nor her daughters to inherit the property of her late husband simply because they are women.

3.2.7 Limited Legal Redress

Despite constitutional protection against discrimination⁵⁶, women often face challenges in courts when such matters are brought before the court, because some judges uphold customary laws⁵⁷ even when against this constitutional protections and international treaties under the guise of respecting tradition, leaving women with limited avenues for justice. It was held by the court that under the Bini native law and custom, the eldest son of a deceased person or testator is entitled to inherit without question the house or houses known as 'Igiogbe' in which the deceased/testator lived and died⁵⁸.

3.2.8 Disregard for the Female Head of Household

Even if a woman assumes the role of the family head or provides for the family, and even contribute to the upkeep of the property, she is still ineligible to inherit the igiogbe under

56 s 42

57 *Idehen v Idehen; Osula v Osula* (1995) 3 NWLR (Pt 382) 128; *Arase v Arase; Agidigbi v Agidigbi; Igbino v Igbino* (1995) 1 NWLR (Pt.371) 375, where the Court of Appeal decided that under Bini Customary Law neither testamentary disposition nor family arrangement can deprive the eldest surviving son of the Igiogbe.

58 *Agidigbi v Agidigbi* (1996) 6 NWLR (Pt 454) 300

customary law. This shows that there is little or no acknowledgment for females who head homes.

3.2.9 Economic and Social Implications

The denial of inheritance rights to women has far-reaching economic and social consequences. Studies have shown that lack of access to property ownership exacerbates women's economic vulnerability, contributing to cycles of poverty and dependence. Scholars argue that discriminatory inheritance practices hinder women's ability to achieve financial independence and social stability. Without legal protection, many women find themselves without resources to sustain themselves and their children after the death of their husbands or fathers.

3.3 Contradictions between Igiogbe and Nigerian Law

The Igiogbe principle, a customary rule rooted in Bini tradition, confers the exclusive right of inheritance to the eldest surviving male child of a deceased father's residence, irrespective of any testamentary wishes or statutory entitlements. While this custom reflects deeply held cultural values, it often directly contradicts Nigeria's statutory frameworks governing inheritance and succession. Statutory laws, such as the Administration of Estates Law, recognize equal inheritance rights for all children and spouses, regardless of gender. These laws are further supported by constitutional provisions, particularly Section 42 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which prohibits discrimination on the basis of sex or circumstances.

3.3.1 Gender Rights in Conflict: Igiogbe and the Constitution

Nigeria operates a federal constitution that guarantees fundamental human rights⁵⁹. The Constitution of the Federal Republic of Nigeria is supreme over any other law in Nigeria⁶⁰. The Igiogbe custom is “an existing law” under section 315 of the Constitution “being a body of rules of law in force immediately before the coming into force”⁶¹ of the Constitution and is therefore subject to the Nigerian Constitution like any other law⁶².

In conflict of laws, the Constitution is a “countervailing super mandatory norm” to customary law, including the Igiogbe custom. This means that although the Igiogbe custom is a mandatory norm under section 3(1) of the Wills Law, the Constitution as the grundnorm has overriding superiority over the Igiogbe custom. The focus here is on Nigerian constitutional law in advancing human rights norms as they impact the Igiogbe custom. There are other human rights provisions such as CEDAW and the African Charter⁶³. These provisions are not as effective as the Nigerian Constitution, which is supreme over any other law, including domesticated international law⁶⁴. It will be submitted in this section that the Igiogbe custom violates the Nigerian constitutional provisions that protect against discrimination, and freedom of thought, conscience, and religion. The constitution provides⁶⁵ as follows:

1. A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:
 - a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to

59 Chapter IV of the 1999 Constitution (as amended)

60 s 1

61 *Ibid.*

62 *Ibid.*

63 African Charter on Human and Peoples’ Rights (Ratification and Enforcement) CAP A10LFN2004

64 Nigeria is a dualist country, so international law is generally domesticated into Nigerian law like any other statute; *Fawehinmi v. Abacha* (2000) 6 NWLR (Pt 660) 228

65 In section 42

disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

- b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

- 2. No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

Section 42 protects against gender discrimination, it therefore means that a person ought not to be subjected to discrimination or deprivation in inheriting the property of their father simply because they are not the eldest surviving son. It is the circumstances of their birth that make them not to be the eldest son. Taken to its logical conclusion, section 42 is gender-neutral and protects men and women against the harshness of the Igiogbe custom.

There are cases where section 42 has been used to successfully override discriminatory customs, cases such as in *Ukeje v. Ukeje* where Rhodes-Vivour JSC held that the “Igbo native law and custom which dis-entitles a female from inheriting in her late father’s estate is void as it conflicts with sections 39(1)(a) and (2) of the 1979 Constitution (as amended)”⁶⁶. Also in *Timothy v. Oforka*⁶⁷ the plaintiff-respondents were grantees of land by their late grandfather, the defendant-appellant challenged their father’s grant on the ground that it breached the Oraifite customary law which forbade women and children from dealing with land, the plaintiff-respondents sought a declaration that the defendant-appellant

66 Section 39 of the 1979 constitution is now, currently section 42 of the 1999 constitution (as amended)

67 (2008) 9 NWLR (Pt 1091) CA.

violated their fundamental right to freedom from discrimination and the right to acquisition and ownership of property guaranteed by the 1999 Constitution, the High Court and Court of Appeal both held in favour of the plaintiff-respondents by inter alia applying section 42(1) of the 1999 Constitution⁶⁸. However there are no cases where this section of the Constitution has been used to challenge the constitutionality, validity and fairness of the Igiogbe custom. Given the significant number of cases where Nigerian appellate courts have relied on section 42 of the 1999 Constitution to override discriminatory customs, it is submitted that Nigerian courts can declare the Igiogbe custom as contravening section 42 of the 1999 Constitution. No person should be deprived of an inheritance simply on the ground that they are not the eldest surviving son of the deceased, this argument becomes even more forceful where the Igiogbe is the only property that the deceased has left behind⁶⁹.

3.3.2 Legal Conflicts between Statutory and Customary Inheritance Laws

Inheritance laws in Nigeria are governed by both statutory and customary legal frameworks. Statutory inheritance laws are derived from enacted legislation, including the Constitution and the Administration of Estates Law, while customary laws are rooted in traditional practices specific to various ethnic groups. However, conflicts often arise when customary inheritance laws contradict statutory provisions, particularly regarding gender equality, the rights of widows, and property distribution. Some key areas of this conflict will be highlighted in this segment of this research:

68 Chukwuma Okoli, Abu Yekini & Philip Oamen, 'The Igiogbe Custom as a Mandatory Norm in Conflict of Laws: An Exploration of Nigerian Appellate Court Decisions' [2023] () African Journal of International and Comparative Law <<https://www.researchgate.net/publication/374383765>> accessed on 2 April, 2025

69 *Ibid.*

A) Gender Discrimination in Inheritance: Many customary laws, such as the Igiogbe system of the Benin Kingdom, grant inheritance rights exclusively to male heirs, often excluding female children and widows from inheriting property. This practice conflicts with:

- i. **Section 42(1) of the 1999 Constitution**, which prohibits discrimination based on gender. **Judicial precedent in *Ukeje v Ukeje***, where the Supreme Court ruled that female children cannot be excluded from inheritance.
- ii. **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, which Nigeria has ratified but struggles to implement effectively

B) Inheritance Rights of Widows: Under many customary systems, a widow may not inherit her late husband's estate but is often expected to be dependent on her husband's male relatives. This practice contradicts:

- i. **The Administration of Estates Law**, which provides widows with a share of their husband's estate. **The Marriage Act**, which mandates equal inheritance rights for spouses in statutory marriages.
- ii. **Judicial decisions** which emphasized widows' inheritance rights.

C) Intestate Succession and Customary Practices: When a person dies without a will (intestate), statutory laws generally provide for equitable distribution of the estate among all legal heirs. However, customary laws often dictate a different method of inheritance, typically favoring male heirs or extended family members over the deceased's immediate family.

- i. The **Administration of Estates Law** in states like Lagos and Enugu provides that the estate of a deceased person should be distributed equally among all surviving children, regardless of gender.
- ii. Customary law, in contrast, often prioritizes male lineage, leading to family disputes and legal battles.

D) Conflicts in Jurisdiction and Enforcement: Nigerian courts often face challenges in enforcing statutory inheritance laws due to the deep-rooted nature of customary practices. The key issues include:

- i. Customary Courts vs. High Courts: Customary courts typically uphold traditional inheritance practices, while high courts apply statutory law, creating inconsistencies in judgments.
- ii. Enforcement of Judicial Decisions: Even when courts rule against discriminatory customary practices, implementation at the community level remains weak due to cultural resistance.

The conflict between statutory and customary inheritance laws in Nigeria remains a major legal challenge, particularly regarding gender discrimination and widow's rights. While statutory laws provide for equality and fairness, customary laws often uphold traditional norms that disadvantage women and certain heirs. Addressing these conflicts requires a combination of legal reforms, judicial enforcement, and public sensitization to ensure a just and equitable inheritance system.

3.4 Social and Economic Consequences of Igiogbe on Women

The Benin customary law of Igiogbe, which reserves the principal residence of a deceased man exclusively for his first male child, has significant social and economic consequences for women. This tradition marginalizes female children and widows, reinforcing patriarchal norms that limit their access to property and economic security.

A. Economic Consequences

1. Denial of Property Ownership: One of the most profound impacts of Igiogbe on women is economic disenfranchisement. Female children and widows are customarily barred from inheriting the Igiogbe, limiting their access to one of the most valuable family assets. This exclusion keeps women outside the circle of wealth transmission.
2. Increased Financial Dependency: Women are often left to depend on male relatives for shelter and basic needs. This dependency diminishes their bargaining power within the family structure and society at large.
3. Poverty and Economic Vulnerability: Without property rights, especially in widowhood, many women fall into poverty. They are sometimes evicted from their homes by male heirs who inherit the Igiogbe. The exclusion of women from inheritance under customary law contributes to the feminisation of poverty⁷⁰, particularly in old age or widowhood⁷¹.
4. Lack of Enforceable Legal Remedies: Despite constitutional protections under Section 42(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), and judicial pronouncements such as *Ukeje v Ukeje*, customary law still holds sway in local practice, making it difficult for women to claim their rights.

70 Feminisation of poverty refers to a trend where women disproportionately experience poverty due to gender gap

71 AO Oba, 'Property Rights and Gender in Customary Law' (2010) 12(3) African Journal of Legal Studies 217

B. Social Consequences

1. **Eviction and Housing Insecurity:** Widows and daughters who have lived in the Igiogbe their whole life, may be evicted after the death of the male head of household causing instability and homelessness. Customary disinheritance practices like the Igiogbe system perpetuate homelessness among widows and expose them to various forms of societal abuse⁷². This practice often goes unchallenged due to cultural conformity and fear of stigma.
2. **Marginalization within the Family:** Cultural norms regard daughters as temporary members of their natal families, undermining their status and rights. The emphasis on patrilineal succession sidelines women from key family decisions and legacy. Inheritance customs that exclude women are not merely economic in consequence, they institutionalise a social order that places women as secondary citizens. Excluding daughters from inheriting the family home sends a broader message that women's ties to their fathers and their contributions to the household are less valuable or temporary.
3. **Reinforcement of Patriarchal Norms:** By prioritizing male heirs, the Igiogbe custom reinforces gender stereotypes and the belief that only men can uphold family continuity and spiritual responsibilities
4. **Stigmatization and Emotional Trauma:** Women disinherited under customary law may suffer emotional distress, isolation, and societal scorn. Widows, in particular, are vulnerable to blame, suspicion, and exclusion.
5. **Legal Contradictions and Cultural Resistance:**

⁷² S Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Fountain Publishers 2008)

While Nigeria's Constitution (Section 42) prohibits gender-based discrimination, and the Supreme Court in *Ukeje v Ukeje* affirmed the right of female children to inherit property, the Igiogbe tradition remains resistant to change due to deep cultural entrenchment. There remains a dangerous tension between formal legal provisions and the lived realities of women under customary law⁷³, this cultural resistance perpetuates the gap between law and practice, where women's rights exist in theory but not in application.

The Igiogbe tradition, though deeply rooted in Benin culture, has far-reaching negative social and economic consequences for women. It sustains gender inequality by economically dis-empowering women and socially marginalizing them within both their natal and marital families. A culturally sensitive, yet progressive reform is needed, one that respects heritage but upholds constitutional and human rights standards.

CHAPTER FOUR

JUDICIAL AND LEGAL RESPONSES TO IGIIOGBE AND COMPARATIVE ANALYSIS OF OTHER INHERITANCE PRACTICES

The practice of Igiogbe inheritance under the Benin Customary law has been subjected to several analysis and debates including judicial scrutiny, especially in the light of Constitutional provisions guaranteeing equality and non-discrimination to every citizen. Over time, various issues centered on Igiogbe has been presented before the court and the courts have delivered varying judgments, with some upholding the tradition as absolute⁷⁴ and in other cases have moved towards gender justice and conformity with the Constitution⁷⁵.

4.1 Judicial Recognition of Igiogbe as Customary Law

73 U Ewelukwa, 'Post-Colonialism, Gender, and Customary Inheritance Law in Africa' (2002) 17(2) *Indiana International & Comparative Law Review* 265

74 *Idehen v Idehen; Uwaifo v Uwaifo; Arase v Arase*

75 *Ukeje vUkeje; Anekwe v Nweke*

A custom may be judicially noticed ⁷⁶ if it has been previously applied by a superior court or a court of coordinate jurisdiction. The Benin customary law of inheritance, the Igiogbe, has been brought before competent courts of jurisdiction several times and has even made its way to the Supreme Court for final adjudication and verdict, therefore it is said to have been judicially noticed⁷⁷. Nigerian courts have long recognised the Igiogbe tradition as a valid aspect of Benin customary law, particularly favouring the male line in succession as far back as 1967 till date⁷⁸.

In *Idehen v Idehen*, the Supreme Court held that the Igiogbe, being the house in which a Benin man lived and died, devolves exclusively to his eldest surviving male child, regardless of contrary provisions in a will or other testamentary documents⁷⁹.

Similarly, in *Arase v Arase*, the court upheld the male heir's exclusive right to inherit the Igiogbe, it was held that the male surviving son of the deceased under the rule of primogeniture has an exclusive rights over his late father's estates, reinforcing the validity of native customs not shown to be repugnant to natural justice⁸⁰.

In *Agidigbi v. Agidigbi* it was held *in alia*: Under the Bini native law and custom, the eldest son of a deceased person or testator is entitled to inherit without question the house or houses known as Igiogbe in which the deceased/testator lived and died. Thus, a testator cannot validly dispose of the Igiogbe by his will except to his eldest surviving male child. And any devise of the Igiogbe to any other person is void.

Also in *Uwaifo v Uwaifo* the Supreme Court held that Igiogbe is a principal house where a deceased Benin man lived and died. This is an ancestral home, it is not vacant land whether

76 Judicial notice is a legal doctrine where a court accepts facts as true without requiring formal evidence.

77 While judicial notice is a mechanism to avoid proof, it does not mean a custom is free from scrutiny.

78 No court has declared the custom as discriminatory yet.

79 *Ibid.*

80 *Ibid.*

or not adjacent. Under Bini Native Law and Custom, the eldest son of a deceased person or testator is entitled to inherit without question the house or houses known as Igiogbe in which the deceased/testator lived and died. Neither testamentary deposition, nor family elders' arrangement, can deprive the eldest surviving son of the Igiogbe, the house in which his deceased father lived and died. In other words, no one can take away from the eldest son's exclusive title to his father's Igiogbe upon performance of the final burial rites of the deceased.

In *Igbinoba v Igbinoba*, the Court of Appeal decided that under Bini Customary Law neither testamentary disposition nor family arrangement can deprive the eldest surviving son of Igiogbe. It did not decide that vacant land also constitutes Igiogbe under Bini Customary Law.

However, a turning point came in *Ukeje v Ukeje*, where the Supreme Court declared the Igbo custom of excluding female children from inheritance unconstitutional, as it violated Section 42(1) of the 1999 Constitution (as amended). Though this case dealt with Igbo rather than Benin custom, its principle that discriminatory customs are void has been cited in arguments against Igiogbe where it excludes women.

This decision demonstrates that courts are increasingly willing to invalidate customary practices where they infringe on gender rights.

4.1.1 Judicial Efforts to Invalidate Discriminatory Customs

Nigerian courts have taken progressive steps to nullify customs that violate constitutional rights, especially concerning gender-based inheritance discrimination. These judicial interventions aim to uphold constitutional values such as equality, dignity, and non-discrimination.

In *Mojekwu v. Mojekwu*⁸¹ The widow of a deceased man challenged the “Oli-Ekpe” custom of Nnewi, which restricted inheritance to male relatives, the Court of Appeal declared the custom repugnant to natural justice, equity, and good conscience, and inconsistent with the right to gender equality. This case established a precedent for scrutinizing discriminatory customs through the repugnancy test.

In the landmark case of *Ukeje v Ukeje* a daughter of the deceased sought a share of her father’s estate, but her brothers objected based on Igbo custom, which excludes female children from inheritance. The Supreme Court held that the custom was unconstitutional, as it violated Section 42(1) of the 1999 Constitution, which guarantees freedom from discrimination. This case reinforced that customary law must not override constitutional provisions on equality.

Similarly in *Anekwe v. Nweke*, Mrs. Lois Chituru Nweke was the wife of the deceased who had lived with him in his house and bore children. Upon his death, his relatives sought to evict her and take over the property on the basis of a customary belief that a woman cannot inherit her husband’s property if she has no male child. They claimed the property belonged to the family, not to her. The court condemned the custom that sought to deny a widow the right to remain in her matrimonial home or inherit her husband’s estate. The court held that any custom which discriminates against women and denies them rights solely based on gender is repugnant to natural justice, equity, and good conscience, and also violates Section 42 of the 1999 Constitution. This case reaffirms the principle that customary laws must not override constitutional rights, especially those related to equality and non-discrimination. It further strengthens the legal protection of widows' rights to inheritance and residence in Nigeria.

81 (1997) 7 NWLR (Pt. 512) 283 (CA)

These cases collectively affirm that any custom, including those governing inheritance, must pass the tests of constitutionality, equity, and public policy. Nigerian courts have shown willingness to invalidate discriminatory customs, especially where they infringe upon the rights of women and daughters. These efforts reflect a progressive move toward gender justice and uphold the supremacy of the Constitution over harmful traditional practices.

However, while Nigerian courts have made commendable strides in invalidating discriminatory inheritance customs, the practical implementation of these decisions remains weak. Many affected individuals, particularly women, face barriers such as lack of legal awareness, financial constraints, and societal pressure, which prevent them from asserting their rights. Additionally, inconsistent enforcement by lower courts and traditional institutions undermines the authority of these rulings. Some judges may also exhibit bias or deference to customary norms, further limiting the impact. Without effective mechanisms for enforcement and broader public education, these judicial efforts risk remaining largely symbolic rather than delivering substantive change.

4.2 Legislative Efforts to Address Discriminatory Inheritance Laws in Nigeria

Several legislative measures and initiative, both constitutional and statutory, have been introduced and interpreted to counteract gender-based discrimination in inheritance practices in Nigeria:

1. Constitution of the Federal Republic of Nigeria 1999 (as amended):
Section 42(1) prohibits discrimination on the grounds of sex, ethnic group, place of origin, religion, or political opinion. Though not inheritance-specific, Nigerian courts have applied this provision to invalidate customary inheritance practices that exclude women, as seen in *Ukeje v Ukeje*.

2. Administration of Estates Laws (State-Level): In states like Lagos, the Administration of Estates Law⁸² has been interpreted to ensure that all children regardless of gender or legitimacy have equal inheritance rights. However, in many other states, particularly in the South-East, the laws like this remains silent and subservient to customary law.
3. Violence Against Persons (Prohibition) Act 2015 (VAPP Act): Section 15 of the VAPP Act criminalizes harmful traditional practices, including those that deny women inheritance or dispossess widows off of their homes.
4. Gender and Equal Opportunities Bill (Proposed)⁸³ This bill aims to domesticate international conventions such as CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women) and to guarantee equal rights for women, including in matters of inheritance. Despite being introduced multiple times, it has not yet been passed by the National Assembly due to political and cultural resistance.

4.2.1 Limitations of Legislative Intervention in Customary Law and the Igiogbe

Despite constitutional and statutory efforts to promote equality and reform inheritance practices, legislative intervention in customary matters especially regarding the igiogbe under Bini customary law remains constrained by several key limitations:

1. Entrenchment of customary autonomy: Customary law enjoys constitutional recognition under section 315(4)(b) of the 1999 Constitution, making it difficult for general legislation to override deep-rooted customs without specific and targeted legislative reforms.

82 Administration of Estates Law (Cap A3), Laws of Lagos State 2015.

83 Gender and Equal Opportunities (GEO) Bill 2020 (Proposed, National Assembly, Nigeria); Not yet enacted

2. Cultural sensitivity and resistance: The igiogbe is deeply symbolic in Bini culture, according to the Binis, it represents the ancestral home of the family and upholds ancestral continuity and patriarchal succession on the ground that only the male members of the family can carry on the ancestral rites of the family. Legislative attempts to alter this often face resistance from traditional institutions and local communities that view such reforms as cultural erosion. Top of it, the Binis are very traditional and hold their traditions and rites very tight, as a matter of fact, some might see going against the tradition as an abomination that will attract dire consequences and some others are willing to give their all defending this custom and rather die than see any alteration done to their tradition and some others will agree to die also in the process of fighting for their traditional stance. As a result, any legislative attempt to alter the inheritance pattern of the igiogbe is often perceived as an attack on cultural identity, leading to fierce resistance from traditional rulers, elders, and community stakeholders who act as custodians of these norms.
3. Inconsistent adoption of reform laws: Despite the enactment of various statutory reforms aimed at promoting gender equality in inheritance, the adoption and implementation of these laws remain inconsistent across Nigeria. Some states, particularly in the South, have incorporated progressive inheritance laws that protect women's rights, while others still heavily rely on customary practices like the Igiogbe principle. Even in states with reform laws, enforcement is often weak due to lack of awareness, resistance from traditional authorities, and limited judicial intervention. This uneven application continues to create inequality in inheritance rights and hinders efforts to achieve uniform protection for women under the law.

4. Judicial reluctance to fully override custom: While courts have invalidated discriminatory customs under section 42 of the Constitution and the repugnancy test⁸⁴, they have upheld the igiogbe rule in several cases and has never invalidated the custom on the ground of discrimination, even though the section of the constitution has always been there, reflecting a reluctance to displace customary inheritance laws unless expressly legislated.
5. Lack of uniformity in customary law: Customary laws vary widely across ethnic groups and regions, making it difficult to enact uniform legislative reform. What applies to the igiogbe in Benin may not apply in Igbo or Yoruba contexts, complicating nationwide legislative solutions. Therefore, legislative intervention alone is insufficient to dismantle discriminatory inheritance customs. It must be complemented by grassroots cultural engagement, public enlightenment, and gradual community led reform, especially in patriarchal societies where customary authority remains influential.

Despite constitutional guarantees, there is still no national legislation explicitly abolishing the Igiogbe rule or harmonising customary and statutory inheritance laws. However, Nigeria's ratification of international human rights instruments strengthens the case for reform.

Notably, Article 16(1)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandates equal inheritance rights for women⁸⁵. Nigeria is also a party to the African Charter on Human and Peoples' Rights, which guarantees equality and freedom from discrimination, equality before the law and prohibits discrimination based on race, ethnic group, gender or any other similar status⁸⁶.

84 *Edet v Essien; Mojekwu v Mojekwu; Meribe v Egwu* (1976) 1 NMLR 47

85 art 16(1)(h)

86 Arts. 2, 3 and 18(3)

4.2.2 Practical Challenges to Legal Reform

Despite these legal developments, enforcement remains a challenge. Generally in Nigeria, enforcement mechanisms is slow as a result of bad governance, corruption and even reluctance from citizens who refuse to be part of enforcing the law by not reporting, failure to seek remedies legally and disobedience of the law even after a final verdict is given by the court. As a result of this and even judging from how dearly people adore their customs, implementation and enforcement is a challenge. Factors like social stigma, high litigation costs, and the cultural sanctity of customary law often deter women from pursuing legal remedies. Even where courts declare customs void, implementation within traditional communities is slow and often resisted. As Ewelukwa notes, “There remains a dangerous tension between formal legal provisions and the lived realities of women under customary law⁸⁷.”

While Nigerian courts have made commendable efforts to uphold constitutional rights, customary practices like Igiogbe continue to be enforced in many communities. Bridging this gap will require more than judicial intervention it will demand legislative clarity, public education, and sustained advocacy to ensure women’s rights are truly protected.

4.3 The Role of Customary Courts and Traditional Institutions in Inheritance and the Igiogbe

Customary courts and traditional institutions play a vital role in the interpretation, enforcement, and preservation of customary inheritance practices, including the deeply embedded principle of the igiogbe under Bini customary law. As the closest institutions to indigenous communities, they function not merely as judicial organs, but as custodians of cultural norms and values.

⁸⁷ U Ewelukwa, ‘Post-Colonialism, Gender, and Customary Inheritance Law in Africa’ (2002) 17(2) *Indiana International & Comparative Law Review* 265, 289.

Customary courts are statutorily recognized courts⁸⁸ of limited jurisdiction that apply customary law in civil matters involving persons who are subject to it. In matters of inheritance, these courts are often the first point of legal recourse for family disputes, particularly in rural and semi-urban areas where access to high courts is limited. They ensure the application of relevant customs, and in the Bini context, they are instrumental in affirming the rule that the igiogbe devolves exclusively to the eldest surviving son. While they may lack the power to invalidate discriminatory customs, they reflect and reinforce prevailing cultural expectations regarding succession and family hierarchy.

On the other hand, traditional institutions comprising the Oba, chiefs, elders, and family heads exercise significant informal authority over matters of inheritance. In Bini culture, these institutions are seen as the guardians of ancestral tradition and are often involved in supervising the sharing of the deceased's estate, confirming the rightful heir to the igiogbe, and resolving disputes within extended families. Their decisions often carry more social legitimacy than formal court judgments, especially where communal harmony and lineage continuity are at stake.

However, the influence of these institutions, while culturally significant, can perpetuate gender-based discrimination, particularly when customs are strictly interpreted in a patriarchal framework. For example, women are often excluded from discussions regarding the igiogbe or inheritance generally, and widows may be denied property rights if they do not bear a male heir. This underscores a growing tension between customary authority and constitutional guarantees of equality, especially as legal reforms and judicial interventions challenge discriminatory customs.

In some cases, customary courts and traditional leaders have begun to show flexibility by encouraging compromise within families or by supporting alternative settlements that

preserve peace without strictly adhering to rigid patriarchal customs. Nonetheless, their continued relevance and influence mean that any sustainable reform in the area of customary inheritance particularly regarding the igiogbe must include the engagement and gradual re-education of these institutions.

4.4 Resistance to Change and the Role of Cultural Perception among Individuals and Judges

The enforcement of constitutional rights in customary inheritance disputes is often met with substantial resistance to change, rooted in both cultural perceptions and traditional values. This resistance, seen both among individuals and within the judicial system, complicates the application of modern legal principles to customary practices, especially those surrounding the inheritance of the igiogbe and other patrimonial assets. The persistence of these cultural attitudes deeply ingrained within the social fabric shapes the outcomes of inheritance disputes, thereby posing significant challenges to legal reforms aimed at ensuring gender equality.

4.4.1 Cultural Resistance among Individuals

Cultural resistance to change is perhaps most evident among individuals who are the direct beneficiaries of traditional inheritance systems. Family heads, elders, and community members who uphold and participate in customary law often resist modifications that challenge their social identity and legitimacy. In the context of inheritance, the practice of the igiogbe being passed down solely to the eldest son is seen as an integral part of family and cultural heritage. Any effort to shift this practice, particularly through judicial rulings or legislative reforms, is often perceived as a threat to identity and tradition.

For instance, in rural communities where patrilineal succession dominates, the inheritance of property by women or daughters might be viewed as undermining the patriarchal authority

and family lineage that has been preserved over generations. In these communities, the idea of a daughter inheriting the family home or *igiogbe* is seen as unacceptable, and any legal challenge to this norm is viewed with skepticism and resistance.

This resistance is not merely a reflection of misogyny or gender discrimination, but is tied to deeper fears of cultural erosion and loss of control over inheritance customs. The cultural perception of women as secondary to men in terms of inheritance can therefore be difficult to challenge, even with constitutional backing. Social sanctions may follow those who attempt to assert their rights in defiance of traditional norms, further compounding the difficulty of enforcing legal rights.

4.4.2 Judges and Cultural Perception

Resistance to change is also evident among some judges, whose personal cultural perceptions may influence the way they interpret and apply the law. Despite being bound by constitutional principles, judges may still carry cultural biases that shape their legal reasoning in cases involving customary inheritance. The influence of traditional norms on judges is particularly noticeable in lower courts and customary courts, where legal decisions are often made within the context of the community's values.

For instance, in cases involving the *igiogbe*, judges may feel a cultural obligation to defer to customary practices, even when such practices contradict constitutional provisions of gender equality. In doing so, the judge demonstrates deference to traditional customs, prioritizing cultural continuity over the formal equality provided in the Constitution. This tendency to align with cultural norms can also be seen in appellate courts, where judges, though more educated in constitutional law, may still allow customary principles to prevail in certain cases, owing to the long-standing acceptance of these practices in the society. Such decisions

can be seen as attempts to balance legal formalism with social realities, reflecting an inherent tension between the law and cultural traditions.

4.4.3 The Role of Tradition in Legal Judgments

The judicial tendency to defer to cultural perceptions is often compounded by the fact that customary law is not codified in the same way as statutory law. This absence of clear, standardized rules leaves room for judges to interpret customary inheritance principles in ways that align with the prevailing cultural attitudes of the community they serve. As a result, inconsistent judgments may emerge across regions, leading to disparities in how constitutional rights are enforced in inheritance cases.

In the case of *Uwaifo v Uwaifo*, the court was faced with reconciling customary inheritance practices with the constitutional principle of gender equality. While the court acknowledged that customary law must be interpreted in line with constitutional rights, it still deferred to customary inheritance rules by upholding the eldest son's inheritance of the *igiogbe*. This case illustrates the dilemma judges face the desire to preserve social harmony while simultaneously upholding individual rights.

4.4.4 Bridging the Gap Between Customary Practices and Constitutional Rights

The path forward requires a delicate balancing act between respecting cultural values and ensuring equality for all citizens, especially women. As the Nigerian legal system continues to evolve, there is growing recognition that legal reforms must address the cultural foundations of customary inheritance practices. Judges, in particular, must become more sensitive to the constitutional imperatives of equality and non-discrimination, while acknowledging the importance of cultural heritage. Efforts should be made to educate both judges and the public on the importance of reforming discriminatory inheritance practices to align with modern human rights standards.

The engagement of traditional leaders in these reform processes is crucial. While their roles are key to community cohesion, they must also be part of the re-education process to harmonize cultural beliefs with contemporary principles of justice and gender equality.

4.5 Comparative Analysis

A comparative analysis of customary inheritance laws allows us to explore how different cultural and legal systems handle the delicate balance between tradition and gender equality. While many African customary laws, including Bini custom, often exclude women from inheritance, there are other customs that have adopted more gender-just approaches to inheritance, reflecting evolving societal values. Below is a detailed comparative analysis of various customary systems in Nigeria and beyond, showcasing how gender justice is incorporated into inheritance practices.

4.5.1 Yoruba Customary Law

Yoruba customary law of inheritance is one of the most developed systems of traditional succession in Nigeria. It is primarily patrilineal and recognizes the family, rather than the individual, as the fundamental unit of society. In cases of intestacy, the deceased's estate is treated as family property to be shared among his children. Historically, Yoruba inheritance customs did not discriminate significantly based on gender, as both male and female children were considered heirs.

Two principal methods of property distribution under Yoruba customary law are *Idi-Igi* and *Ori-Ojori*. The *Idi-Igi* system allocates inheritance based on the number of wives who bore children for the deceased, with each wife's lineage receiving an equal share. This method

may result in unequal distribution among individual children, depending on the number of children in each maternal line. In contrast, the *Ori-Ojori* method ensures equal distribution among all children, regardless of maternal affiliation, reflecting a more egalitarian approach. The choice of method may depend on family consensus or the discretion of the family head, who is typically the eldest male child (Dawodu).

Judicial decisions have played a pivotal role in affirming and shaping Yoruba customary inheritance practices. In *Yusuf v. Dada & Ors*⁸⁹, the court confirmed that Yoruba custom recognizes the inheritance rights of both male and female children. This case emphasized the non-discriminatory nature of Yoruba customary law and clarified that daughters are not to be excluded from their father's estate. Similarly, in *Amusan v. Olawunmi*⁹⁰, the Court of Appeal condemned the denial of inheritance rights to a deceased's daughter, affirming that women could not only inherit property but also assume leadership roles within the family. The decision reinforced the principle that gender should not be a barrier to succession under Yoruba customary law. Further support for equal inheritance right can be seen in *Akinyede v. Opere*⁹¹, where the court acknowledged both *Idi-Igi* and *Ori-Ojori* as legitimate and valid under Yoruba tradition. This recognition by the judiciary provides flexibility for families to adopt the method that aligns with their values and circumstances, while also promoting fairness in distribution.

Despite the progressive tone of these judicial pronouncements, challenges remain in the implementation of equitable inheritance practices. In rural and traditionally conservative settings, social norms and patriarchal values continue to influence the interpretation and enforcement of customary rules, often disadvantaging female heirs. Additionally, some

89 (1990) 4 NWLR (Pt. 146) 657

90 (2002) 12 NWLR (Pt 780)

91 (1967) LLJR - SC

family heads resist applying the Ori-Ojori system, especially where land is involved, due to perceived notions of male entitlement.

In conclusion, Yoruba customary law of inheritance exhibits a framework that is, in principle, inclusive and flexible. The courts have affirmed this inclusiveness, especially in relation to gender equality. However, the gap between law and practice necessitates continuous legal and social reform, education, and judicial activism to ensure that customary law evolves in line with constitutional guarantees of equality and non-discrimination

4.5.2 Igbo Customary Law

Historically, Igbo customary law has been seen as patrilineal, with inheritance rights primarily vested in male children. The Igbo customary practice traditionally denies daughters access to inheritance, particularly when it comes to the family home or land⁹². However, in recent years, there have been significant strides toward gender equity within Igbo inheritance practices, partly influenced by judicial decisions and legislative interventions.

One key case in this regard is *Ukeje v Ukeje*, where the Supreme Court of Nigeria declared that Igbo customary law discriminating against female children in inheritance matters was unconstitutional⁹³. The decision effectively challenged the customary belief that women have no rights to inherit property, and it set a precedent for challenging gender-biased

92 *Onuoha v Onuoha* (1984) 3 NCLR 352.

93 *Ibid.*

customary laws. This marked a shift towards gender justice, encouraging other ethnic groups to reconsider outdated discriminatory customs.

4.5.3 South African Customary Law

In South Africa, customary law has been historically patrilineal and often discriminatory against women in matters of inheritance. However, South Africa has been more proactive in integrating gender justice within its customary inheritance laws, largely due to its post-apartheid constitution (1996), which explicitly guarantees gender equality and protection from discrimination. The Constitution provides that customary law must be consistent with the Bill of Rights and therefore must protect gender equality⁹⁴.

The Recognition of Customary Marriages Act 120 of 1998 in South Africa have been pivotal in ensuring that women's rights to inheritance are protected. These acts provide that women in customary marriages have equal inheritance rights alongside their male counterparts. Furthermore, court cases such as of *Bhe v Magistrate Khayelitsha* marked a landmark judgment, where the Constitutional Court of South Africa ruled that the customary law practices of excluding women from inheritance were unconstitutional and violated women's rights to equality⁹⁵. This ruling was a significant victory for women, ensuring that daughters and wives have access to property inheritance.

4.5.4 Kenyan Customary Law

In Kenya, customary law was historically patriarchal, with the eldest son inheriting the family property and other sons being given a portion, while daughters were generally excluded. However, Kenya's Constitution 2010⁹⁶ and the Kenya Law of Succession Act of 1981 have placed pressure on customary inheritance practices to be more inclusive and

94 Constitution of South Africa, 1996, s 9(3).

95 *Bhe & Ors v Magistrate Khayelitsha & Ors* (2005) (1) BCLR 1 (CC)

96 Article 27 (1) guarantees equal rights and prohibits discrimination based on gender, including in matters of inheritance.

gender-just. The Kenyan Law of Succession Act provides that wives, daughters, and sons are entitled to inherit property from their deceased husbands or fathers⁹⁷. This law mandates equal inheritance rights, regardless of gender, which has gradually shifted traditional practices to be more inclusive of women.

Kenya also has tribal and community-based variations in customary inheritance laws, but legal reforms have worked toward aligning these with international human rights standards. The case of *In re Estate of Njuguna Ngarama* challenged the exclusion of daughters in inheritance under Kikuyu customary law. The court acknowledged that any customary law that discriminates against women is inconsistent with the constitution and therefore null and void⁹⁸.

4.5.5 Ghanaian Customary Law

Ghana's approach to customary inheritance law reflects a shift towards gender inclusivity. The Ghanaian Constitution 1992 guarantees the right of all citizens to equality and prohibits discrimination on the basis of sex. Ghana's Intestate Succession Act (1985) ensures that both sons and daughters inherit from their deceased parents, unlike many other customary systems that prefer sons. This law specifically mandates that daughters have equal rights to inherit from their father's estate, provided the father's will does not stipulate otherwise.

The comparative analysis shows that while many African customary inheritance systems have traditionally been gender-biased, there are notable examples of progressive reforms in countries such as South Africa, Kenya, Ghana, and even parts of Nigeria, where gender equality is being incorporated into customary law through judicial intervention and

97 Law of Succession Act, Cap 160, Laws of Kenya, 1981

98 *In re Estate of Njuguna Ngarama*

(2024) KEHC 15633 (KLR) <<https://new.kenyalaw.org/akn/ke/judgment/kehc/2024/15633/eng@2024-12-03>> accessed 23rd May, 2025

legislative reforms. Courts have played a critical role in challenging discriminatory inheritance practices and ensuring that women are entitled to equal inheritance rights.

However, cultural resistance remains a significant challenge, and achieving meaningful gender justice in customary inheritance disputes requires a combination of legal reforms, judicial activism, and engagement with traditional institutions to create an environment where cultural norms evolve alongside modern concepts of gender equality.

CHAPTER FIVE

CONCLUSION

This chapter presents a summary of the analysis of the contradictions between the *Igiogbe* principle and Nigeria's statutory and constitutional frameworks. It summarizes the discriminatory nature of the practice, explores its legal and social implications, and offers recommendations for reform. The chapter advocates for harmonizing customary inheritance systems with modern legal standards to ensure justice and gender equality, especially for widows and daughters who are most affected by such customs.

5.1 Summary of Findings

This research has revealed significant contradictions between customary inheritance practices particularly the Igiogbe principle of Benin customary law and statutory legal provisions guaranteeing equal inheritance rights. Despite constitutional protections and progressive legislations, customary norms continue to deprive women, especially widows and daughters, of their inheritance rights.

It was found that courts have occasionally upheld gender-discriminatory customs, although recent decisions such as *Ukeje v Ukeje* have marked a shift towards reinforcing constitutional supremacy and gender equality. However, enforcement remains inconsistent, and the influence of cultural beliefs on both society and the judiciary continues to impede meaningful reform.

Further, the role of customary courts and traditional institutions in perpetuating these discriminatory norms was highlighted, revealing the complexity of achieving legal reform in a pluralistic legal system. While legislative efforts and judicial pronouncements are vital, the findings indicate that cultural perception, societal resistance to change, and a lack of awareness among the public significantly hinder progress.

Finally, this research found that sustainable gender equality in inheritance can only be achieved through a multi-dimensional approach one that combines legal reform with judicial activism, public education, traditional rulers engagement, and socio-cultural transformation.

5.1.1 The Discriminatory Effect of Igiogbe on Women's Rights

One of the central findings of this research is the inherently discriminatory nature of the Igiogbe principle in Benin customary law, which reserves the right to inherit the family home exclusively for the eldest surviving male child. This principle systematically excludes female children and widows, irrespective of their contributions to the family or the deceased's intentions. Such exclusion not only contradicts constitutional guarantees of equality and non-discrimination under sections 42 and 43 of the 1999 Constitution (as amended), but also undermines statutory protections offered by laws such as the Administration of Estates Law.

The research further found that even where a valid will exists, attempts to bequeath the Igiogbe to a female heir are often invalidated by customary expectations, as seen in *Arase v*

Arase. This demonstrates how customary law continues to override testamentary freedom when it conflicts with tradition, to the detriment of women. The persistence of this principle highlights a legal and cultural gap where women's rights to housing, property, and financial security are systematically denied on the basis of gender, thereby reinforcing patriarchal dominance and perpetuating economic dependence.

5.1.2 The Inconsistency between Igiogbe and Constitutional Principles

This research has also revealed a fundamental inconsistency between the Igiogbe principle and the constitutional principles enshrined in Nigeria's legal framework. The Igiogbe rule, which confers inheritance of the family home solely on the eldest surviving male child, is in direct conflict with the constitutional guarantee of freedom from discrimination, particularly on the grounds of sex, as provided under Section 42(1) of the 1999 Constitution (as amended). It also clashes with Section 43, which guarantees every Nigerian the right to acquire and own immovable property anywhere in the country.

Judicial pronouncements, such as in *Ukeje v Ukeje* and *Anekwe v Nweke*⁹⁹ have reinforced the supremacy of the Constitution over any customary practice that is inconsistent with its provisions. However, despite this, the application of the Igiogbe principle in many instances continues to violate these constitutional protections. The persistence of such customary practices in modern legal contexts reveals a gap between the ideals of the law and the realities of legal enforcement, especially in rural or tradition-bound communities.

This inconsistency undermines the credibility and authority of the Constitution, erodes confidence in the legal system, and perpetuates systemic inequality. Addressing this

99 (2014) 9 NWLR (Pt 1412) 393

contradiction requires not only legal reform but also a strategic cultural shift towards harmonising customary laws with national constitutional values.

5.1.3 Judicial Intervention and the Limitations of Legislative Reform

The study also highlights the dual role of the judiciary and legislature in addressing gender-based discrimination in inheritance laws, and the inherent limitations of relying solely on statutory reform. While landmark judicial decisions such as *Ukeje v Ukeje* and *Anekwe v Nweke* have invalidated discriminatory customary practices, the enforcement of these judgments is often hindered by social resistance and judicial conservatism at the lower court levels, particularly in customary courts.

Despite constitutional and statutory guarantees promoting equality, the research finds that legislative provisions have not been uniformly effective in curbing the influence of patriarchal customs like the Igiogbe principle. This is largely due to weak enforcement mechanisms, lack of public awareness, and the reluctance of some judges especially in culturally conservative regions to apply constitutional supremacy over deeply rooted customs.

The judiciary, though powerful in interpreting the law, remains constrained where legislative clarity is lacking or where political will to enforce progressive decisions is absent. Therefore, while courts play a critical role in protecting women's inheritance rights, the absence of complementary legislative reforms and community-level advocacy significantly limits the impact of judicial pronouncements.

5.1.4 Cultural Resistance and the Influence of Traditional Institutions

Another key finding of this research is the entrenched cultural resistance to reforming discriminatory inheritance practices, particularly the Igiogbe principle. Deeply rooted in patriarchal norms and centuries-old traditions, this resistance is sustained by a collective cultural mindset that prioritises male succession and lineage preservation over gender equality. Even in the face of constitutional and legislative mandates, many communities continue to view inheritance by women as an aberration.

Traditional institutions and customary courts play a central role in maintaining these norms. As custodians of culture and arbiters in family disputes, traditional rulers and customary court judges often uphold the Igiogbe principle without question, reinforcing the gender hierarchy embedded in customary law. Their decisions are rarely guided by statutory law or constitutional principles, but rather by precedent and cultural expectations.

This cultural entrenchment limits the effectiveness of legal interventions and makes meaningful reform a complex task. Unless traditional institutions are actively engaged in reinterpreting and evolving these customs, legal reforms alone may remain largely symbolic. Therefore, any strategy aimed at achieving gender justice in inheritance must address not only legal structures but also the socio-cultural frameworks that sustain discrimination.

5.1.5 Public Perception and Lack of Awareness of Women's Inheritance Rights

This study also found that public perception and low levels of awareness significantly contribute to the continued enforcement of discriminatory inheritance practices such as the Igiogbe principle. Many individuals, especially in rural and tradition-oriented communities, are either unaware of women's constitutional and statutory inheritance rights or perceive these rights as contrary to cultural values. As a result, even when the law provides

protection, affected women often do not assert their rights due to fear of social backlash, family disapproval, or simply ignorance of their entitlements.

Additionally, legal literacy among women is notably low, which further prevents them from challenging injustices. In many cases, they accept exclusion from inheritance as the cultural norm, unaware that the law permits otherwise. This widespread lack of awareness not only emboldens discriminatory practices but also diminishes the impact of court judgments and legislative reforms.

The findings underscore the need for targeted public education and legal awareness campaigns to bridge the knowledge gap and empower women to assert their rights. Without changing public attitudes and educating citizens both male and female legal reforms will remain ineffective in practice.

5.2 Recommendations for Legal and Policy Reform

In light of the findings discussed above, it is evident that the continued application of the Igiogbe principle and other discriminatory customary inheritance practices poses a serious threat to the realization of gender equality and justice in Nigeria. While judicial pronouncements and constitutional provisions have made significant strides in challenging these norms, practical enforcement remains limited by socio-cultural resistance, institutional conservatism, and lack of public awareness. Therefore, a multifaceted and strategic approach is required—one that combines legislative reform, judicial activism, traditional leadership engagement, and public education. The following recommendations are proposed as actionable steps toward harmonising customary practices with constitutional mandates and ensuring equitable inheritance rights for all Nigerians, regardless of gender.

5.2.1 Legislative Measures to Ensure Gender Equality in Inheritance Law

In light of the entrenched discrimination against women in customary inheritance practices such as the Igiogbe principle, there is a pressing need for legislative intervention to safeguard gender equality. One of the most effective steps is the codification of gender-neutral inheritance laws that expressly prohibit discrimination based on sex. These laws should override any customary practice that contradicts constitutional provisions, especially Section 42(1) of the 1999 Constitution of the Federal Republic of Nigeria, which guarantees equal rights irrespective of gender or birth circumstances. Furthermore, state succession laws should be amended to explicitly incorporate constitutional protections, thereby limiting the scope for customary courts to enforce discriminatory norms under the guise of tradition.

There is also the need to abolish customary rules that have been identified as inherently discriminatory. The Igiogbe principle, for instance, could be declared void through statutory provisions similar to those in the Administration of Estates Law of Lagos State, which mandates equal treatment of male and female children in the distribution of a deceased person's estate. Beyond state-level reforms, the National Assembly should consider enacting a uniform inheritance law applicable across Nigeria's regions. Such a law would create consistency in the legal approach to inheritance while upholding gender justice and complying with Nigeria's obligations under international treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Moreover, legislative reforms should encourage the writing and registration of wills, ensuring that the wishes of the deceased are respected and that women are not unjustly excluded from inheritance. In addition, compliance with statutory inheritance laws should be legally enforced through sanctions against individuals or customary leaders who promote or enforce discriminatory practices. Finally, periodic legislative review mechanisms should be instituted to evaluate the implementation of these reforms and adjust them as societal needs

evolve. Collectively, these measures would strengthen the legal framework protecting women's rights and promote an inclusive inheritance system that aligns with Nigeria's constitutional and international human rights obligations.

5.2.2 Strategies for Integrating Customary Law with Modern Principles

Integrating customary law with modern legal norms requires a multifaceted approach that respects cultural identity while ensuring compliance with constitutional and international human rights standards. First, codification and harmonization of customary rules can provide clarity: state legislatures should compile recognised customary principles into statutory instruments, subject to review by a law reform commission to excise provisions that conflict with gender equality or other fundamental rights. Such codification has been recommended by the Nigerian Law Reform Commission as a means of reducing uncertainty in customary adjudication and aligning local customs with national legal standards¹⁰⁰.

Second, judicial and judicial-officer training is essential. Judges of customary courts and magistrates should receive continuous education on constitutional guarantees especially Section 42's prohibition of sex discrimination and on the Supreme Court's decisions invalidating discriminatory customs. Workshops co-hosted by traditional rulers and legal scholars can foster mutual understanding and encourage the application of modern principles in customary adjudication.

Third, community engagement and dialogue led by traditional institutions can facilitate grassroots acceptance of reform. Collaborations between NGOs, women's rights groups, and palace councils (e.g. the Oba-in-Council in Benin) should aim to reinterpret practices such as the Igiogbe principle in ways that preserve symbolic succession while granting daughters

¹⁰⁰ Nigerian Law Reform Commission, *Report on the Codification of Customary Law* (NLRC Report No 7, 2016) 24.

and widows meaningful shares in family property. Similar participatory reforms in South Africa's Limpopo Province demonstrate how "living customary law" can evolve through community-driven protocols that reflect both tradition and gender justice.

Fourth, the promotion of alternative dispute resolution (ADR) mechanisms such as family mediation panels incorporating both customary elders and legal practitioners can offer culturally sensitive forums for fair settlements, reducing reliance on rigid customary courts.

Finally, periodic legislative review clauses should be built into statutes governing succession, mandating that assemblies reassess customary law provisions every five years to ensure ongoing conformity with evolving human rights norms and international obligations such as CEDAW.

5.2.3 The Need for Judicial Activism and Continuous Interpretation

In the ongoing effort to harmonise customary practices with constitutional values, judicial activism and continuous interpretation by the courts remain indispensable. Judicial activism allows judges to adopt a progressive, rights-based approach in resolving conflicts between discriminatory customary norms and statutory or constitutional provisions. This is particularly important in inheritance disputes where customs like the Igiogbe principle exclude women from inheriting the family home. The judiciary, as the guardian of the Constitution, must take proactive steps in interpreting the law to protect vulnerable groups, especially women and children, from systemic injustice.

Landmark cases such as *Ukeje v Ukeje* illustrate how the Supreme Court of Nigeria has asserted its interpretative role by declaring unconstitutional the Igbo customary rule that disinherits female children. Similarly, in *Mojekwu v Mojekwu*, the Court of Appeal condemned the discriminatory *oli-ekpe* custom and called for the abolition of customs that are inconsistent with equity, good conscience, and natural justice. These decisions reflect the

courts' evolving recognition of women's rights under both national and international legal instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

However, judicial progress must be sustained through consistent interpretation and the willingness of judges particularly those in customary and lower courts to embrace constitutional supremacy. Training and capacity-building for judicial officers are necessary to strengthen their understanding of human rights jurisprudence and ensure that progressive decisions are not limited to the higher courts. Furthermore, when judges interpret customary law dynamically and contextually as part of a living legal system, they enable it to evolve in alignment with modern principles of justice and equality.

Judicial activism is, therefore, not about rewriting the law, but about interpreting it in a manner that aligns with the values of dignity, equality, and fairness enshrined in the Constitution. In a plural legal system like Nigeria's, this active interpretative role is critical to achieving gender justice in inheritance and other areas governed by custom.

5.2.3 Absolute Primogeniture

The primary reason why the Igiogbe is automatically devolved to the eldest son according to the custom to communicate with the ancestors and ensuring continuity of the lineage. It is important to note that a female child is also a member of the family by birth and can do all these for and with the Igiogbe, therefore, if the duty is to be carried out by an eldest child it should be done with absolute primogeniture. Absolute primogeniture is a system of inheritance where the eldest child regardless of gender, inherits a title or property upon the death of their parent. With this, there is no discrimination against women, the eldest surviving child inherits the igiogbe irrespective of their sex or gender.

5.3 Recommendations for Socio-Cultural Reform

While legal and institutional reforms are crucial, they must be accompanied by sustained socio-cultural transformation to eliminate gender discrimination in inheritance practices. Deeply entrenched customs, such as the Igiogbe principle, derive their power not only from tradition but from societal acceptance and resistance to change. To achieve lasting gender justice, it is essential to challenge and reshape the cultural norms and perceptions that sustain discriminatory inheritance systems.

5.3.1 The Role of Traditional Rulers in Adapting Customary Law to Modern Realities

Traditional rulers occupy a central position in the evolution and enforcement of customary law in Nigeria. As custodians of tradition and mediators in communal disputes, they possess both the authority and the influence to reshape discriminatory customs in light of constitutional principles and societal progress. Therefore, any reform agenda aimed at harmonising customary law with modern legal realities must deliberately incorporate the active participation of traditional rulers.

One key recommendation is the strategic involvement of traditional institutions in law reform consultations. State governments and law reform commissions should engage Obas, Igwes, Emirs, and other traditional leaders in public hearings and legislative reviews concerning succession and inheritance. Their endorsement of progressive changes such as allowing daughters or widows to inherit family property can lend legitimacy to legal reforms and enhance public acceptance. As the Supreme Court recognised in *Ukeje v Ukeje*, customs that contravene constitutional rights are void; however, their practical eradication depends significantly on the cooperation of traditional leaders who interpret and apply those customs at the local level.

Traditional rulers should also be encouraged to issue community edicts or proclamations revising customary practices to align with gender justice. In several communities across

Yoruba land, palace-backed reinterpretations of succession rules now permit women to share in family property demonstrating that internal reform is not only possible but culturally sustainable. By formalising such changes, traditional councils can pave the way for more equitable interpretations of customs like the Igiogbe rule.

Moreover, there is a need for capacity building for traditional leaders through workshops and seminars on constitutional rights, statutory inheritance laws, and international human rights instruments such as CEDAW. This will equip them with the knowledge to harmonise traditional practices with Nigeria's legal obligations and development goals. Collaboration with the National Human Rights Commission (NHRC) and the National Council of Traditional Rulers of Nigeria (NCTRN) can create a structured pathway for traditional authority to contribute meaningfully to law reform.

Ultimately, the role of traditional rulers is not to abandon culture but to lead its transformation in a way that honours heritage while embracing justice and equality. Their leadership is critical to legitimising reforms and embedding them into the lived experiences of the people.

5.3.2 Public Education and Awareness Campaigns on Women's Inheritance

A key strategy for transforming discriminatory inheritance practices is the implementation of sustained public education and awareness campaigns focused on women's inheritance rights. Customary rules such as the Igiogbe principle persist largely due to widespread ignorance of constitutional protections and the statutory entitlements of women and girls. Public enlightenment, therefore, becomes essential in dismantling harmful norms, reshaping societal attitudes, and empowering affected individuals to assert their rights.

Government agencies, civil society organisations, faith-based institutions, and traditional leaders must collaborate to design culturally sensitive campaigns that inform citizens,

especially in rural and semi-urban communities about women's legal rights to inherit under statutory law and the Nigerian Constitution. These campaigns should utilise radio, community theatre, market outreach, religious gatherings, and local language publications to reach diverse audiences. As noted by Akinola, legal literacy campaigns have proven effective in challenging gendered stereotypes and empowering women to seek redress in inheritance disputes¹⁰¹.

Incorporating real-life stories and testimonials of women who have successfully challenged discriminatory customs can also be powerful. Such narratives serve not only to educate but to inspire confidence and encourage collective action among women. Additionally, targeted efforts should be made to educate men and boys, as their support is often crucial to dismantling patriarchal practices entrenched in the family structure.

Furthermore, public education must include information on existing judicial precedents such as *Ukeje v Ukeje* which affirm that no Nigerian woman can be denied inheritance on the basis of gender. These rulings should be simplified and shared widely so that women know that the courts stand as a viable avenue for justice.

Ultimately, education is the foundation for behavioural change. Without an informed population, legal reforms risk remaining theoretical and unenforced. Therefore, investing in public awareness is not just complementary to legislative change—it is essential to its success.

5.4 Conclusion

The conflict between customary inheritance practices, such as the *Igiogbe* principle, and modern legal standards reflects a broader tension within Nigerian society, between the preservation of cultural heritage and the imperative to uphold constitutional values of

¹⁰¹ B Akinola, *Law and Cultural Change: Women's Rights in Nigerian Customary Inheritance* (Ibadan Legal Publishers 2021) 43.

equality and justice. This essay has explored key recommendations for bridging that divide, including legislative reform, judicial activism, public education, and the strategic engagement of traditional rulers. These efforts must be pursued simultaneously and with determination, recognising that legal change without cultural transformation is insufficient. As Nigeria continues to evolve, there is a pressing need to craft an inclusive legal framework that honours the richness of its traditions while ensuring that no citizen is denied their fundamental rights on the basis of gender. Striking this balance requires collaboration between lawmakers, courts, civil society, and communities. The future of gender equality in inheritance depends on our collective ability to harmonise the past with the present, to reform what is unjust while preserving what is meaningful. With sustained commitment, Nigeria can pave the way toward a more equitable and just society, where both women and men can inherit not only property but dignity and opportunity.

Preserving cultural heritage is vital to the identity and continuity of any society, however, when certain customs, such as male-exclusive inheritance under the Igiogbe principle, conflict with fundamental human rights, a careful balance must be struck. The goal is not to discard tradition but to reform it in a way that upholds justice, equity, and constitutional guarantees. Legal reforms must be sensitive to the values and symbols embedded in customs, while also affirming the dignity and rights of all individuals, regardless of gender. By encouraging dialogue between legal institutions and cultural custodians, Nigeria can craft a pluralistic legal system that respects tradition without allowing it to perpetuate discrimination. This approach is not only necessary for legal harmony but also crucial for societal cohesion and sustainable gender justice

The future of gender equality in Nigeria's inheritance law lies in the nation's ability to harmonise its plural legal systems with the universal principles of equality, fairness, and

non-discrimination. Landmark judicial decisions, such as *Ukeje v Ukeje*, have laid the legal foundation for the rejection of customs that exclude women from inheriting family property. However, true progress will depend on the consistent enforcement of such rulings, continued legislative reforms that explicitly outlaw discriminatory practices, and deep-rooted societal change. As the present generations and generations to come become more aware of their rights and more vocal against inequality, there is growing momentum for reform. When supported by education, economic empowerment, and inclusive cultural narratives, Nigeria can foster a legal environment where gender no longer determines one's right to inherit. The future holds promise if stakeholders remain committed to dismantling discriminatory norms and building a just society for all.

There is a pressing need to balance the preservation of cultural heritage with the demand for gender justice. Customs should evolve, not be abolished. What is required is a careful reimagining of tradition in ways that reflect contemporary values and constitutional rights. This balance ensures that reforms are not seen as attacks on culture, but as progress rooted in justice and fairness. By involving traditional rulers and community stakeholders in law reform, Nigeria can protect its rich heritage while making it inclusive and just for all members of society.

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